2001-2002

HOUSE FINANCIAL INSTITUTIONS

MINUTES

HOUSE COMMITTEE ON

FINANCIAL INSTITUTIONS

2001 Session

Representatives Church and Morgan, Chairs

Joyce Fuller and Dixie Epps
Committee Assistants

NORTH CAROLINA GENERAL ASSEMBLY

FINANCIAL INSTITUTIONS
2001 – 2002 SESSION

Rep. Church
Chair

Rep. Morgan
Chair

Rep. McAllister
Vice-Chair

Rep. Allred

Rep. Brubaker

Rep. Buchanan

Rep. Cole

Rep. Culpepper

Rep. Dockham

Rep. Gibson

Rep. Harrington

Rep. Howard

Rep. McLawhorn

Rep. McMahan

Rep. Michaux

Rep. Miller

Rep. Smith

Rep. Wainwright

Rep. Walend

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
2001 – 2002 Session

MEMBER	ASSISTANT	PHONE	ROOM	SEAT
CHURCH, Walter Chair	Joyce Fuller	3-5805	1311	33
MORGAN, Richard Chair	Dixie Epps	5-3010	418B	64
McALLISTER, Mary Vice Chair	Marilyn Suitt	3-5959	638	28
ALLRED, Cary	Jean Allred	3-5878	611	26
BRUBAKER, Harold	Cindy Coley	5-4946	1229	39
BUCHANAN, Monroe	Glenda Jones	3-5825	536	30
COLE, Nelson	Suzanne Smith	3-5779	1218	45
CULPEPPER, Bill	Dot Crocker	5-3028	404	36
DOCKHAM, Jerry	Regina Irwin	3-5822	1106	66
GIBSON, Pryor	Shirlyn MacPherson	5-3007	419A	108
HARRINGTON, Mike	Joyce Langdon	3-5823	1305	114
HOWARD, Julia	Gail Stewart	3-5904	1023	104
McLAWHORN, Marion	Susan Burleson	5-3017	417B	34
McMAHAN, Ed	Sharon Cram	3-5934	1104	54
MICHAUX, Mickey	Anita Wilder	3-5772	1325	57
MILLER, Paul	Eryn Gee	3-5872	640	27

SMITH, Ronnie	Ann Jordan	3-5773	2223	2
WAINWRIGHT, William	Blinda Edwards	~~3-5662~~ 3-5995	~~530~~ 532	8
WALEND, Trudi	Ken Walend	5-3012	418A	113

EX OFFICIO MEMBERS

HACKNEY, Joe Speaker Pro Tem	Emily Reynolds	3-5752	2207	69
BADDOUR, Philip Majority Leader	Elizabeth Kirkland.	5-0850	2301	31
CUNNINGHAM, Pete	Valerie Rustin	3-5788	541	7
DEDMON, Andrew Majority Whip	Donna Abu Harb	3-5732	2213	12
EARLE, Beverly Majority Whip	Ann Raeford	3-5747	535	95

ATTENDANCE

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

DATES	3/21	3/28	4/4	4/11	4/18	5/2	5/23	6/13	6/20	7/11	7/18	7/25	8/1	8/22	
CHURCH, Walter CHAIR	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	
MORGAN, Richard CHAIR	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	
McALLISTER, Mary VC		✓	✓	✓	✓	✓	✓	✓		✓		✓	✓	✓	
ALLRED, Cary	✓	✓		✓			✓			✓				✓	
BRUBAKER, Harold	✓	✓	✓	✓	✓	✓	✓			✓	✓			✓	
BUCHANAN, Monroe	✓	✓	✓	✓	✓		✓		✓	✓	✓	✓	✓	✓	
COLE, Nelson	✓	✓		✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	
ULPEPPER, Bill		✓					✓			✓		✓		✓	
DOCKHAM, Jerry	✓	✓	✓				✓	✓		✓	✓	✓	✓		
GIBSON, Pryor	✓		✓		✓	✓	✓		✓	✓	✓	✓			
HARRINGTON, Mike	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
HOWARD, Julia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
McLAWHORN, Marion	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	
McMAHAN, Ed	✓	✓	✓		✓		✓	✓	✓	✓	✓	✓	✓	✓	
MICHAUX, Mickey	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
MILLER, Paul	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
SMITH, Ronnie	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓	✓	✓	
WAINWRIGHT, William	✓	✓			✓	✓	✓			✓		✓		✓	
WALEND, Trudi	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	

ATTENDANCE

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

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DATES		3/21	3/28	4/4	4/11	4/18	5/2	5/30	6/13	6/20	7/11	7/18	7/25	8/1	8/22	
EX OFFICIO MEMBERS																
HACKNEY, Joe	SPT															
BADDOUR, Philip	ML														✓	
CUNNINGHAM, Pete															✓	
DEDMON, Andrew	MW															
EARLE, Beverly	MW															

FINANCIAL INSTITUTIONS

MARCH 21, 2001
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF – MS. KAREN COCHRANE-BROWN AND MR. WALKER REAGAN, COMMITTEE COUNSELS; DIXIE EPPS AND JOYCE FULLER, COMMITTEE ASSISTANTS; WALTER SPELL AND THOMAS WILDER: SGT.-AT ARMS; ANDREW STROUPE AND LINDA BOYD, PAGES.

SB #237 STATEWIDE APPLICATION OF G.S. 24-9 – SEN. HARTSELL

JOHN ALLISON, CHAIRMAN AND CEO OF BB&T WILL ADDRESS THE COMMITTEE.

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
March 21, 2001

The **House Committee on Financial Institutions** met on Wednesday, March 21, 2001, at 10 a.m. in Room 1425 of the State Legislative Building. The meeting was called to order by Co-Chairman Walter Church, Sr. Co-Chairman Church recognized the following staff: Mrs. Karen Cochrane-Brown and Mr. Walker Reagan, Committee Counsels; Mrs. Dixie Epps and Mrs. Joyce Fuller, Committee Assistants; Mr. Walter Spell and Mr. Thomas Wilder, Sgt.-at-Arms; and the two pages assigned to the meeting were Andrew Stroupe and Linda Boyd. The following members of the committee were present: Co-Chairmen Church and Morgan; Members: Reps. Allred, Brubaker, Buchanan, Cole, Dockham, Gibson, Harrington, Howard, McLawhorn, McMahan, Michaux, Miller, Smith, Wainwright and Walend.

Rep. Church then turned the meeting over to Co-Chairman Morgan who requested that Sen. Hartsell, the sponsor of the bill, to come forward and explain **S.B. 237 STATEWIDE APPLICATION OF G.S. 24-9.** This bill provides for statewide applications of G.S. 24-9, which prohibits certain entities organized for profit from asserting the claim or defense of usury, as recommended by the General Statutes Commission. The act would become effective when it becomes law and would apply to transactions entered into on or after that date. Rep. Brubaker moved that **S.B. 237 BE GIVEN A FAVORABLE REPORT.** This motion was seconded by Rep. Buchanan and the motion carried. **S.B. 237 – FAVORABLE REPORT.**.

Rep. Church then returned to the podium to introduce our speaker, Mr. John A. Allison. Mr. Allison is Chairman and Chief Executive Officer of BB&T Corporation, a $63 billion bank holding company. He began his service with BB&T in 1971 and has managed a wide variety of responsibilities throughout the bank. He became President of BB&T in 1987 and was elected Chairman in July of 1989.

Mr. Allison, 52, is a Phi Beta Kappa graduate of the University of North Carolina at Chapel Hill where he received his bachelor's degree in business administration. He received his master's in management from Duke University in 1974. He is also a graduate of the Stonier Graduate School of banking and received an Honorary Doctorate Degree from East Carolina University in 1995.

He is a member of the American Bankers Association, and The Financial Services RoundTable and the Breeton Woods Committee. Mr. Allison serves as Chairman of the Board of Trustees of Appalachian State University and serves on the Board of Visitors at the Fuqua School of Business at Duke University.

Mr. Allison shared his views with the committee on the banking industry. He stated that of the 17 largest banks in the country, four of them are in North Carolina. North Carolina

is second only to New York. He also shared with us the influence the banking industry has on the economy of our state.

There being no further business, Rep. Church adjourned the meeting at 10:55 a.m.

Co-Chairman Walter Church, Sr.

Co-Chairman Richard Morgan

Joyce A. Fuller, Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **CHURCH AND MORGAN** (Chair/Chairs) for the Committee on **FINANCIAL INSTITUTIONS.**

☐ Committee Substitute for
S.B. 237 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE STATEWIDE APPLICATION OF G.S. 24-9 WHICH PROHIBITS CERTAIN BUSINESS ENTITIES FROM ASSERTING THE DEFENSE OF USURY, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 237*

Short Title:	Statewide Application of G.S. 24-9.	(Local)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

February 22, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE STATEWIDE APPLICATION OF G.S. 24-9 WHICH PROHIBITS CERTAIN BUSINESS ENTITIES FROM ASSERTING THE DEFENSE OF USURY, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1½ of Chapter 753 of the 1963 Session Laws, as amended by Chapter 755 of the 1967 Session Laws, is repealed.

SECTION 2. This act is effective when it becomes law and applies to transactions entered into on or after that date.

SENATE BILL 237:
Statewide Application of G.S. 24-9

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Senator Hartsell
Date:	March 21, 2001	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: Senate Bill 237 provides for statewide application of G.S. 24-9, which prohibits certain entities organized for profit from asserting the claim or defense of usury, as recommended by the General Statutes Commission. The act would become effective when it becomes law and would apply to transactions entered into on or after that date.

CURRENT LAW: Currently, G.S. 24-9 provides that the usury provisions of Chapter 24, which cap the maximum interest rates a lender can legally charge, do not apply to loans made to corporations, partnerships, or limited liability companies engaged in commercial pursuits. However, this provision does not apply to Ashe, Columbus, or Pender Counties.

BILL ANALYSIS: Senate Bill 237 would make application of G.S. 24-9 statewide so that businesses in every county in the State would be able to freely negotiate interest rates that are in their best interest without restriction.

BACKGROUND: G.S. 24-9 was originally enacted in 1963 as an act entitled, "AN ACT TO PROVIDE FINANCIAL RESOURCES TO PROMOTE THE GROWTH OF INDUSTRY IN NORTH CAROLINA BY AMENDING CHAPTER 24 OF THE GENERAL STATUTES TO PERMIT CORPORATIONS ORGANIZED FOR PECUNIARY GAIN TO CONTRACT FOR BORROWED FUNDS WITHOUT LEGISLATIVE RESTRICTION AS TO INTEREST RATE." At the time it was passed, the act did not apply to Ashe, Columbus, Pender or New Hanover County, but New Hanover County was subsequently removed from the exceptions to the law.

The purpose of North Carolina's usury laws is to protect less sophisticated borrowers from unscrupulous lenders and to protect borrowers who are not in a position to negotiate on an even footing with lenders. The assumption of G.S. 24-9 seems to be that businesses do not need the same type of protection, and the intent of G.S. 24-9, when originally enacted, seems to have been to encourage businesses to grow by allowing them to negotiate interest rates and borrow necessary funds as part of their overall business strategy.

This summary was substantially contributed to by Wendy Graf, Co-Counsel to the Senate Judiciary I Committee

S237-SMRU-V1-001

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
POST OFFICE BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 716-6800

MEMORANDUM

TO: House Financial Institutions Committee

FROM: General Statutes Commission

DATE: March 20, 2001

RE: Senate Bill 237 (Statewide Application of G.S. 24-9)

Senate Bill 237 repeals a local modification to G.S. 24-9. G.S. 24-9 allows corporations, limited liability companies, and partnerships "substantially engaged in commercial pursuits for pecuniary gain" to agree with a lender to pay any interest rate. In other words, the normal usury limits in Chapter 24 do not apply to these loans. The local modification to this statute exempts Ashe, Columbus, and Pender Counties. The local modification was enacted in 1963 as part of the session law that created G.S. 24-9. New Hanover County was originally included, but it was deleted in 1967. The continued existence of the local modification for the three remaining counties was brought to the General Statutes Commission's attention, and, it appearing to the Commission that statewide application of this type of statute would be desirable and there not appearing to be any local opposition, the Commission agreed to recommend repeal of the local modification altogether.

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — MARCH 21, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
P. Bly Hall	General Statutes Commission
Tim Minton	NC Home Builders Assn
Paul Stock	NC Bankers Assn
John Civils	Wachovia Bank
Ross M. Smith	PCS Phosphate
A. Jami Craig	LCA
Peter Keber	Bank of America
R. Reed Wilson	NCMBA
Catherine Dorsey	Electricities
Dick Carlton	NCFSA
Joe McEldowney	Independent Lenders Group
Alice Garland	Electricities

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — MARCH 21, 2001
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Larry Heckner	Household Finance Corp
Dean McKillip	Moore & Van Allen

FINANCIAL INSTITUTIONS

MARCH 28, 2001
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF – MS. KAREN COCHRANE-BROWN AND MR. WALKER REAGAN, COMMITTEE COUNSELS; DIXIE EPPS AND JOYCE FULLER, COMMITTEE ASSISTANTS; FRANCIS POOLE AND THOMAS WILDER: SGT.-AT ARMS; EMILY TROUTMAN AND HAROLD LUSK, JR., PAGES.

H.B. #599 REVISE CONSUMER FINANCE ACT – REP. MICHAUX

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
MARCH 28, 2001

The **House Committee on Financial Institutions** met on Wednesday March 28, 2001, at 10 a.m. in Room 1425 of the State Legislative Building. The meeting was called to order by Co-Chairman Walter Church, Sr. Co-Chairman Church recognized the Sgt.-at-Arms and the Pages who were assigned to the meeting. The following members of the Committee were present: Co-Chairmen Church and Morgan; Members: Reps. McAllister, Vice-Chair; Allred, Brubaker, Buchanan, Cole, Culpepper, Dockham, Harrington, Howard, McLawhorn, McMahan, Michaux, Miller, Smith, Wainwright, and Walend.

Rep. Church turned the meeting over to Co-Chairman Morgan who requested that Rep. Michaux, the sponsor of the bill, to come forward and explain **H.B. #599 REVISE CONSUMER FINANCE ACT**. This bill makes several changes in the North Carolina Consumer Finance Act, including increasing the amount of loanable assets required before an applicant can be licensed to operate a consumer finance business in the state, revising the rates of interest charged on loans made under the Act, increasing the maximum amounts of small loans, and authorizing lenders to charge a loan processing fee and late payment penalty. The bill also proposes the requirement of disclosures on solicitation of loans by facsimile or negotiable checks. Rep. Michaux presented an amendment and the staff was instructed to put this in a committee substitute bill for the next meeting.

Several members of the committee asked Rep. Michaux questions pertaining to the bill and his amendment. Speaking on the bill were: Richard H. Carlton, N.C. Financial Services Association; Rob Schofield, Justice and Community Dev. Center, N.C.; Roger Bone, Resident Lenders of North Carolina; Michael E. Rulison, Ph.D., Vice President of Government Affairs, N.C. Consumers Council; and Reitzel Dalton, Director of Consumer Industries, N.C. Office of the Commissioner of Banks. After much discussion, the Co-Chairman stated that this bill would not be voted on at this meeting and would be carried over until the next meeting.

There being no further business, Co-Chairman Church adjourned the meeting at 10:50 a.m.

Co-Chairman Walter Church, Sr. Co-Chairman Richard Morgan

Joyce A. Fuller, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 599

Short Title:	Revise Consumer Finance Act.	(Public)
Sponsors:	Representatives Michaux; Church, Dockham, Fitch, Gibson, Hurley, McAllister, McLawhorn, McMahan, Smith, Wainwright, Womble, and Wright.	
Referred to:	Financial Institutions.	

March 14, 2001

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CONSUMER FINANCE ACT TO INCREASE THE AMOUNT OF LOANABLE ASSETS REQUIRED BEFORE AN ENTITY IS LICENSED TO ENGAGE IN BUSINESS IN THE STATE, TO REVISE THE AMOUNT OF, AND MAXIMUM RATE OF INTEREST FOR, SMALL LOANS, TO REVISE THE COLLECTION OF INTEREST UNDER CERTAIN CIRCUMSTANCES, TO ESTABLISH A LOAN PROCESSING FEE, TO ALLOW LENDERS TO CHARGE A LATE PAYMENT PENALTY UNDER CERTAIN CIRCUMSTANCES, TO REQUIRE DISCLOSURE ON SOLICITATION OF LOANS BY FACSIMILE OR NEGOTIABLE CHECKS, TO ALLOW LENDERS TO MAINTAIN CERTAIN RECORDS IN THE FORM OF OPTICAL IMAGE DISKS, TO REPEAL OBSOLETE PROVISIONS OF THE GENERAL STATUTES, AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-168 reads as rewritten:

"**§ 53-168. License required; showing of convenience, advantage and financial responsibility; investigation of applicants; hearings; existing businesses; contents of license; transfer; posting.**

(a) Necessity for License; Prerequisites to Issuance. – No person shall engage in or offer to engage in the business regulated by this Article unless and until a license has been issued by the Commissioner of Banks, and the Commissioner shall not issue any such license unless and until ~~he~~ the Commissioner finds:

(1) That authorizing the applicant to engage in such business will promote the convenience and advantage of the community in which the applicant proposes to engage in business; and

(2) That the financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly, within the purposes of this Article; and

(3) That the applicant has available for the operation of such business at the specified location loanable assets of at least ~~twenty-five thousand dollars ($25,000).~~ fifty thousand dollars ($50,000).

(b) Investigation of Applicants. – Upon the receipt of an application, the Commissioner shall investigate the facts. If the Commissioner determines from such preliminary investigation that the applicant does not satisfy the conditions set forth in subsection (a), ~~he~~ the Commissioner shall so notify the applicant who shall then be entitled to an informal hearing thereon provided he so requests in writing within 30 days after the Commissioner has caused the above-referred to notification to be mailed to the applicant. In the event of a hearing, to be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after the hearing, issue a written order granting or denying such application. At the time of making such application, the applicant shall pay the Banking Department the sum of two hundred fifty dollars ($250.00) as a fee for investigating the application, which shall be retained irrespective of whether or not a license is granted the applicant.

~~(c) Existing Business. Notwithstanding the provisions of this section, any person, firm or corporation which, on December 31, 1973, was a licensee under this Article either as a licensee to make loans under the provisions of G.S. 53-173 or as a motor vehicle lender under G.S. 53-176.1, may surrender such license to the Commissioner within 90 days after May 25, 1974, and elect to become a licensee to make loans under either G.S. 53-173 or 53-176.1 but not both. Such license shall be issued by the Commissioner without further application or investigation and the licensee shall be deemed a licensee under the category that it elects upon the surrender of its current license and the election.~~

(d) Required Assets Available. – Each licensee shall continue at all times to have available for the operation of the business at the specified location loanable assets of at least ~~twenty-five thousand dollars ($25,000).~~ fifty thousand dollars ($50,000). The requirements and standards of this subsection and subsection (a)(2) of this section shall be maintained throughout the period of the license and failure to maintain such requirements or standards shall be grounds for the revocation of a license under the provisions of G.S. 53-171 of this Article.

(e) License, Posting, Continuing. – Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership, or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Transfer or assignment of a license by one person to another by sale or otherwise is prohibited without the prior approval of the Commissioner. Each license shall be kept posted in the licensed place of business. Each license shall remain in full force and effect until surrendered, revoked, or suspended as hereinafter provided. "

SECTION 2. G.S. 53-173 reads as rewritten:

"§ 53-173. **Maximum rate of ~~charge;~~ interest and fee; computation of ~~charges;~~ interest; limitation on interest after judgment; limitation on interest after maturity of the loan.**

(a) Maximum Rate of ~~Charge.~~Interest. – Every licensee hereunder may contract for, compute, and receive on any loan of money, not exceeding ~~three thousand dollars ($3,000)~~ six thousand dollars ($6,000) in amount, ~~charges~~ interest at rates not exceeding ~~thirty-six percent (36%)~~ thirty percent (30%) per annum on that part of the unpaid principal balance of any loan not in excess of ~~six hundred dollars ($600.00) and fifteen percent (15%)~~ one thousand eight hundred dollars ($1,800) and eighteen percent (18%) per annum on any remainder of such unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

(a1) Maximum Fee. – In addition to the interest authorized in subsection (a) of this section, a licensee making loans under this section may collect from the borrower a fee for processing the loan equal to five percent (5%) of the cash advance, not to exceed fifty dollars ($50.00).

(b) Computation of ~~Charges.~~ Interest.– ~~Charges~~ Interest on loans made pursuant to this section shall not be paid, deducted, or received in advance. Such ~~charges~~ interest shall not be compounded but ~~charges~~ interest on loans shall (i) be computed and paid only as a percentage of the unpaid principal balance or portion thereof and (ii) computed on the basis of the number of days actually elapsed; provided, however, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the loan contract may include any unpaid ~~charges~~ interest on the prior loan which have accrued within 90 days before the making of the new loan contract. For the purpose of computing ~~charges,~~ interest, a day shall equal 1/365th of a year. Any payment made on a loan shall be applied first to any accrued interest and then to principal, and any portion or all of the principal balance may be prepaid at any time without penalty.

(c) Limitation on Interest after Judgment. – If judgment be obtained against any party on any loan made under the provisions of this section neither the judgment nor the loan shall carry, from the date of the judgment, any interest in excess of eight percent (8%) per annum.

(d) Limitation of Interest after Maturity of Loan. – After the maturity date of any loan contract made under the provisions of this section and until the loan contract is paid in full by cash, new loan, refinancing or otherwise, no charges other than interest at eight percent (8%) per annum shall be computed or collected from any party to the loan upon the unpaid principal balance of the loan.

(e) Repealed by Session Laws 1989, c. 17, s. 3.

~~(f) Subject to the limitations contained in this Article as to maximum rates, the Commission may from time to time, upon the basis of changed conditions or facts, redetermine and refix any such maximum rates of charge, but, before determining or redetermining any such maximum rates, the Commission shall give reasonable notice of its intention to consider doing so to all licensees and a reasonable opportunity to be~~

~~heard and introduce evidence with respect thereto. The notice herein required may be given by mailing such notice to the offices of the licensees as shown in the records of the Commissioner of Banks. Any such changed maximum rates of charge shall not affect preexisting loan contracts lawfully entered into between any licensee and any borrower.~~"

SECTION 3. G.S. 53-165(a) reads as rewritten:

"(a) "Amount of the loan" shall mean the aggregate of the cash advance and the ~~charges~~ interest authorized by G.S. 53-173."

SECTION 4. G.S. 53-176 reads as rewritten:

"**§ 53-176. Optional rates, maturities and amounts.**

(a) In lieu of making loans in the amount and at the ~~charges~~ interest stated in G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may at any time elect to make loans in installments not exceeding ten thousand dollars ($10,000) and which shall not be repayable in less than six months or more than 84 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed ~~the following actuarial rates:~~

~~(1) With respect to a loan not exceeding seven thousand five hundred dollars ($7,500), thirty percent (30%) per annum on that part of the unpaid principal balance not exceeding one thousand dollars ($1,000)~~ the actuarial rates of twenty-eight percent (28%) per annum on that part of the unpaid principal balance not exceeding two thousand dollars ($2,000) and eighteen percent (18%) per annum on the remainder of the unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

~~(2) With respect to a loan exceeding seven thousand five hundred dollars ($7,500), eighteen percent (18%) per annum on the outstanding principal balance.~~

(b) In addition to the interest permitted in this section, a licensee may assess at closing a ~~reasonable credit investigation charge as agreed upon by the parties,~~ fee for processing the loan equal to five percent (5%) of the cash advance, not to exceed ~~the actual cost of the credit investigation; provided that such charges may not be assessed more than twice in any 12-month period.~~ fifty dollars ($50.00). The Commissioner of Banks may review charges assessed pursuant to this ~~section~~ subsection and may adopt appropriate rules in accordance with G.S. 53-185.

(c) The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section.

(d) Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and on date of such notification begin making loans regulated by this section for the following 12 months. Annually after such election a licensee may elect to

make loans in accordance with this section unless the licensee notifies in writing the Commissioner of its intention to terminate such election.

(e) The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty.

(f) No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article except as authorized in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee that elects to make loans in accordance with the provisions of this section shall be bound by that election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State.

(g) A lender may charge a party to a loan or extension of credit governed by this section a late payment charge not to exceed five percent (5%) of the payment due or seven dollars ($7.00), whichever is greater, for any payment past due for 10 days or more; provided, in no case shall the late charge exceed the outstanding principal balance. If a late payment charge has been once imposed with respect to a late payment, no late charge shall be imposed with respect to any future payment which would have been timely and sufficient but for the previous default."

SECTION 5. G.S. 53-181(a) is amended by adding a new subdivision to read:

"(10) In addition to any disclosures otherwise provided by law, a licensee soliciting loans using a facsimile or negotiable check shall disclose the following:

'THIS IS A SOLICITATION FOR A LOAN. READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS AGREEMENT.'

This notice shall be printed in not less than 12-point bold type and shall appear conspicuously on the offer."

SECTION 6. G.S. 53-182(b) reads as rewritten:

"(b) Upon payment of any loan in full, a licensee shall cancel and return to the borrower, within a reasonable length of time, originals or copies of any note, assignment, mortgage, deed of trust, or other instrument securing such loan, which no longer secures any indebtedness of the borrower to the licensee."

SECTION 7. G.S. 53-184(a) reads as rewritten:

"(a) Each licensee shall maintain all books and records relating to loans made under this Article required by the Commissioner of Banks to be kept, and the Commissioner, his deputy, or duly authorized examiner or agent or employee is authorized and empowered to examine such records at any reasonable time. Such books and records may be maintained in the form of magnetic tape, magnetic ~~disk~~ disk, optical disk, or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other

medium acceptable to the Commissioner of Banks; provided, however, that such books and records so kept must be convertible into clearly legible tangible documents within a reasonable time. Any licensee having more than one licensed office may maintain such books and records at a location other than the licensed office location if such location is approved by the Commissioner; provided that, upon such requirements as may be imposed by the Commissioner of Banks, there shall be available to the borrower at each licensed location or such other location convenient to the borrower, as designated by the licensee, complete loan information; and provided further that such books and records of each licensed office shall be clearly segregated. When a licensee maintains its books and records outside of North Carolina, the licensee shall make them available for examination at the place where they are maintained and shall pay for all reasonable and necessary expenses incurred by the Commissioner in conducting such examination. Where the data processing for any licensee is performed by a person other than the licensee, the licensee shall provide to the Commissioner of Banks a copy of a binding agreement between the licensee and the data processor which allows the Commissioner of Banks, his deputy, or duly authorized examiner or agent or employee to examine that particular data processor's activities pertaining to the licensee to the same extent as if such services were being performed by the licensee on its own premises; and, notwithstanding the provisions of G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the licensee shall reimburse the Commissioner of Banks for all costs and expenses incurred by ~~him~~ the Commissioner in such examination."

SECTION 8. This act becomes effective July 1, 2001, and applies to loans made on or after that date.

HOUSE BILL 599:
Revise Consumer Finance Act.

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Rep. Michaux
Date:	March 27, 2001	**Summary by:**	Karen Cochrane-Brown
Version:	First Edition		Committee Counsel

SUMMARY:

House Bill 599 makes several changes to the North Carolina Consumer Finance Act, including increasing the amount of loanable assets required before an applicant can be licensed to operate a consumer finance business in the state, revising the rates of interest charged on loans made under the Act, increasing the maximum amounts of small loans, and authorizing lenders to charge a loan processing fee and late payment penalty. The bill also proposes the requirement of disclosures on solicitation of loans by facsimile or negotiable checks.

CURRENT LAW:

The North Carolina Consumer Finance Act authorizes the Commissioner of Banks to license and to supervise loan companies, which make direct consumer loans of $10,000 or less. A licensee must meet several statutory requirements including, maintaining loanable assets of not less than $25,000. Lenders that do not charge interest rates higher than those permitted by Chapter 24 are exempt for this Act. Also exempted are banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations, production credit associations, pawnbrokers, and installment paper dealers.

The statute creates two tiers of lenders. G.S. 53-173 allows interest charges of 36% per year on that part of the unpaid principal balance, which does not exceed $600.00, and 15% per year on that portion which is more than $600 but not more than $3,000.

G.S. 53-176 authorizes optional rates for those lenders who elect to make loans of $10,000 or less and who so notify the Commissioner. These lenders may charge interest at the rate of 30% per year on that part of the unpaid principal balance, which does not exceed $1,000, and 18% per year on the remainder, which does not exceed $7,500. If the principal balance is more than $7,500, the maximum rate is 18% per year on the entire loan. Optional rate lenders may also charge a reasonable credit investigation fee, which cannot exceed the actual cost of the credit investigation.

Both categories of lenders use a blended interest rate for most loans made under this Article.

BILL ANALYSIS:

This bill makes the following changes to the current law:

- Increases the amount of loanable assets which a licensee must possess from $25,000 to $50,000.
- Raises the maximum amount for small loans, (those made under G.S. 53-173) from $3,000 to $6,000

- Changes the interest rate that may be charged on small loans from 36% per year on the first $600 to 30% per year on the first $1,800, and from 15% per year on the remaining balance up to $3,000 to 18% on the amount between $1,800 and $6,000.
- Creates a loan processing fee equal to 5% of the cash advance not to exceed $50.
- Deletes a provision authorizing the Banking Commission to redetermine the maximum rates upon notice to and an opportunity to be heard by the regulated community.
- Changes the interest rate that may be charged on optional rate loans from 30% per year on the first $1,000 and 18% per year on the balance up to $7,500 (or 18% per year on the entire loan if the balance is more than $7,500) to 28% per year on the first $2,000 and 18% per year on the balance up to the maximum loan of $10,000.
- Eliminates the credit investigation fee and authorizes a loan processing fee of 5% of the cash advance not to exceed $50.
- Authorizes lenders to charge a late payment fee of the greater of 5% of the payment due or $7, when a payment is past due for 10 days or more.
- Requires lenders who solicit loans using facsimile or negotiable checks to place a disclosure conspicuously on the offer, stating that the document is a solicitation for a loan.
- Requires lenders to return to borrowers both the originals and copies of any note, or other evidence of indebtedness, upon payment of the loan in full.
- Allows licensees to make certain required reports to the Commissioner of Banks by means of optical disk.

The act would become effective July 1, 2001, and apply to loans made on or after that date.

BACKGROUND:

This bill is very similar to two bills introduced during the 1999 Session of the General Assembly. House Bill 95, also introduced by Rep. Michaux, included substantially the same revisions to small loan rates as is included in this bill. House Bill 95 passed the House in 1999, but was not considered by the Senate. Senate Bill 570 proposed similar changes to the rates charged on optional rate loans. That bill did not pass the Senate.

Attached is a chart taken from the 1999 Consumer Finance Annual Report, issued by the Commissioner of Banks, which classifies loans by various categories, including by loan size, type of security, and type of borrower.

Reconciliation Of Loan Balances

January 1, 1999 - December 31, 1999

	Number	Amount
Loans Receivable, Beginning of Year	547,306	$ 1,381,228,651 *
Loans Made During the Year	539,613	1,504,043,632
Loan Balances Purchased During the Year	10,473	25,170,979
Loan Balances Sold During the Year	663	(885,903)
Loan Balances Charged Off During the Year	45,743	(82,354,419)
Collections of Principal During the Year	—	(1,421,197,827)
Loans Receivable Outstanding at End of Period	**586,539**	**$ 1,406,005,113**

Classification Of Loans By Size

January 1, 1999 - December 31, 1999

	Number	Amount
Loans Made During the Year:		
(a) $600.00 or less	42,724	$ 21,518,901
(b) Over $600.01 to $1,000.00	53,636	44,811,010
(c) Over $1,000.01 to $3,000.00	238,432	436,575,247
(d) Over $3,000.01 to $5,000.00	128,038	469,103,603
(e) Over $5,000.01 to $7,500.00	58,509	375,409,642
(f) Over $7,500.01 to $10,000.00	18,274	156,625,229
Total Loans Made	**539,613**	**$ 1,504,043,632**

Classification Of Loans By Type Of Security

January 1, 1999 - December 31, 1999

	Number	Amount
Loans Made During the Year Based in Whole or in Larger Part on:		
(a) Personal property	272,868	$ 603,124,868
(b) Signature or endorsement	64,994	208,743,352
(c) Motor vehicles	108,832	306,677,324
(d) Other considerations	92,919	385,498,088
Total Loans Made During the Period	**539,613**	**$1,504,043,632**

Classification Of Loans By Type Of Borrower

January 1, 1999 - December 31, 1999

	Number	Amount
Loans Made During the Year:		
(a) Which renewed existing accounts	317,702	$ 894,421,675
(b) To former borrowers	73,100	168,782,584
(c) To new borrowers	148,811	440,839,373
Total Loans Made During the Period	**539,613**	**$ 1,504,043,632**

* Does not match prior year's published figure for loans outstanding at end of period due to unreported disposition of loan balances by companies no longer licensed at reporting date.

Why Consumer organizations Oppose House Bill 599

What's the current law? Interest rates for these types of loans work under one of two schemes. Lenders choose which structure to operate under by notifying the office of the Commissioner of Banks.

Small Loan Structure - Under G.S. 53-173, lenders may loan up to a maximum of $3,000. The interest rate is calculated by applying a 36% APR to the first $600 of the loan and 15% to the remainder. This produces a single "blended" interest rate that ranges from 36% on very small loans to the low-twenties on bigger loans. These lenders are not permitted to charge additional fees on the theory that the very high rates of interest more than compensate for the risk taken..

Larger Loan Structure -- Under G.S. 53-176, lenders may loan up to a maximum of $10,000. The interest rate for loans of $7,500 or less is figured on a "blended" rate of 30% on the first $1,000 and 18% on amounts up to $7,500. Loans between $7,500 and $10,000 are at a flat 18%. Lenders in this category are also permitted to charge a reasonable credit investigation fee each time a loan is made -- up to twice per year.

What does the bill propose? The bill would change both interest rate structures to produce minimal consumer savings on interest charges on the smallest loans. ***For most loans, however, the interest rate would be sharply higher.*** Moreover, the bill would raise the permitted fee for almost all loans to $50 per loan and remove the limitation that it can only be charged twice per year -- thus providing an additional incentive to "flip" the loans. The bill also introduces an additional late fee on top of the added cost already paid by customers who pay after the monthly due date. ***The bottom line is that the total cost of every consumer finance loan will be higher.***

For example, under the large lender section:

- The total cost of a $3,000, 36-month loan will rise by approximately $170 -- from $1,256 to $1,427 or just under 14%.
- The total cost of a $5,000, 60-month loan will rise by $362 -- from $3,221 to $3,583 -- or just over 11%.

Neither of these examples includes the new late fee.

Under the small lender section:

- The total cost of a $1,800, 18-month loan will rise by approximately $118 -- $389 to $507 -- or just over 30%.
- Many comparable loans will be more expensive than in the larger lender section.

OVER

With the industry currently collecting over $300 million per year in interest and fees on well over half a million loans, the total cost of this proposal could be up to $40 million per year to North Carolina consumers.

*****What do consumer advocates have to say?*****

House Bill 599 should be opposed in its present form. Consumer finance lenders have long argued that there is a need to raise interest rates to allow them "keep up with inflation." This bill, however, goes much farther. By adding a large new fee that can be charged an unlimited number of times, the bill encourages the kind of "flipping" practice that was the target of the anti-predatory mortgage lending bill of 1999. The bill also, for instance, fails to address in any way the sale of expensive single premium credit insurance that was also targeted by the 1999 law. At a minimum, the bill should be significantly amended.

If you have any questions about this proposal or related matters, please contact:

Rob Schofield

N.C. Justice and Community Development Center
P.O. Box 28068
Raleigh, NC 27611
(919) 856-2153
(919) 856-2175 (fax)
rob@ncjustice.org

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — MARCH 28, 2001.

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kiki Dorton	NCPIRG
Shirley Banks	American Credit Corp. Greenville N.C.
Jeffrey Cox	American Credit Co.
Jesse M. Baker	RLNC
Dave Dorsey	RLNC
Jim Crawford	RLNC Home Credit
Roger Bone	Bone + Assoc - RLNC
Cressy Porter	" "
Margaret Westbrook	NCCLH
Larry Pulley	LBA

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — MARCH 28, 2001.

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nick Carlton	N.C.F.S.A.
Dr. Joyner	AARP
Ross Sch. fdtn	NC Justice Center
Hal D. Lingerfelt	Commissioner of Banks
Otis M. MEACHAM	Deputy Commissioner of Banks
Reitzel Deaton	NC office of the Commissioner of Banks
Mc Neil Chestnut	Assist. AG / Dep. Comm. Bks.
Ross M. Smith	PCS Phosphate
Larry Heckner	Household Financial Group
Joe McClain	Ind Lenders Group
Helen Savage	AARP

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — MARCH 28, 2001.

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Fitzsimon	Common Sense Foundation
[illegible]	Rep Baldwin Off.

FINANCIAL INSTITUTIONS

APRIL 4, 2001
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF – MS. KAREN COCHRANE-BROWN AND MR. WALKER REAGAN, COMMITTEE COUNSELS; DIXIE EPPS AND JOYCE FULLER, COMMITTEE ASSISTANTS; SHANNON BATTEN AND THOMAS WILDER: SGT.-AT ARMS; RANDOLPH DAVIDSON AND MONTE TENNELL., PAGES.

H.B. #599 REVISE CONSUMER FINANCE ACT – REP. MICHAUX

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
APRIL 4, 2001

The **House Committee on Financial Institutions** met on Wednesday, April 4, 2001, at 10 a.m. in Room 1425 in the State Legislative Building. The meeting was called to order by Co-Chairman Walter Church, Sr. Co-Chairman Church recognized the Sgt.-at-Arms and Pages who were assigned to the meeting. The following members of the Committee were present: Co-Chairmen Church and Morgan; Members: Reps. McAllister, Vice-Chair; Brubaker, Buchanan, Dockham, Gibson, Harrington Howard, McLawhorn McMahan, Michaux, Miller, and Smith.

Rep. Church requested that Rep. Michaux, the sponsor of the bill, come forward to explain the **PROPOSED COMMITTEE SUBSTITUTE FOR H.B. #599.** Rep. Michaux explained that this Proposed Committee substitute adds a limitation to the provision authorizing lenders to charge a loan procession fee. The fee may not be assessed more than twice in a 12-month period. The Commissioner of Banks is authorized to review the charges and adopt any appropriate rules. Rep. Church asked if anyone had any questions, and there being none, Rep. Buchanan moved that **H.B. #599 BE GIVEN A FAVORABLE REPORT AS TO COMMITTEE SUBSTITUTE BILL AND UNFAVORABLE TO ORIGINAL BILL.**

There being no further business, Co-Chairman Church adjourned the meeting at 10:10 a.m.

Co-Chairman Walter Church, Sr.

Co-Chairman Richard Morgan

Joyce A. Fuller, Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **CHHURCH AND MORGAN** (Chair/Chairs) for the Committee on **FINANCIAL INSTITUTIONS.**

☑ Committee Substitute for
H.B. 599 A BILL TO BE ENTITLED AN ACT TO MODIFY THE CONSUMER FINANCE ACT TO INCREASE THE AMOUNT OF LOANABLE ASSETS REQUIRED BEFORE AN ENTITY IS LICENSED TO ENGAGE IN BUSINESS IN THE STATE, TO REVISE THE AMOUNT OF, AND MAXIMUM RATE OF INTEREST FOR, SMALL LOANS, TO REVISE THE COLLECTION OF INTEREST UNDER CERTAIN CIRCUMSTANCES, TO ESTABLISH A LOAN PROCESSING FEE, TO ALLOW LENDERS TO CHARGE A LATE PAYMENT PENALTY UNDER CERTAIN CIRCUMSTANCES, TO REQUIRE DISCLOSURE ON SOLICITATION OF LOANS BY FACSIMILE OR NEGOTIABLE CHECKS, TO ALLOW LENDERS TO MAINTAIN CERTAIN RECORDS IN THE FORM OF OFFICIAL IMAGE DISKS, TO REPEAL OBSOLETE PROVISIONS OF THE GENERAL STATUTES, AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☑ With a favorable report as to committee substitute bill (#____), ☐ ~~which changes the title,~~ unfavorable as to (original bill) (~~Committee Substitute Bill #_____), (and recommendation that the committee substitute bill #_____) be re-referred to the Committee on _____.)~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 599
PROPOSED COMMITTEE SUBSTITUTE H599-PCS7132-RO-3 [v.3]

Short Title: Revise Consumer Finance Act. (Public)

Sponsors:

Referred to:

March 14, 2001

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CONSUMER FINANCE ACT TO INCREASE THE AMOUNT OF LOANABLE ASSETS REQUIRED BEFORE AN ENTITY IS LICENSED TO ENGAGE IN BUSINESS IN THE STATE, TO REVISE THE AMOUNT OF, AND MAXIMUM RATE OF INTEREST FOR, SMALL LOANS, TO REVISE THE COLLECTION OF INTEREST UNDER CERTAIN CIRCUMSTANCES, TO ESTABLISH A LOAN PROCESSING FEE, TO ALLOW LENDERS TO CHARGE A LATE PAYMENT PENALTY UNDER CERTAIN CIRCUMSTANCES, TO REQUIRE DISCLOSURE ON SOLICITATION OF LOANS BY FACSIMILE OR NEGOTIABLE CHECKS, TO ALLOW LENDERS TO MAINTAIN CERTAIN RECORDS IN THE FORM OF OPTICAL IMAGE DISKS, TO REPEAL OBSOLETE PROVISIONS OF THE GENERAL STATUTES, AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-168 reads as rewritten:

"**§ 53-168. License required; showing of convenience, advantage and financial responsibility; investigation of applicants; hearings; existing businesses; contents of license; transfer; posting.**

(a) Necessity for License; Prerequisites to Issuance. – No person shall engage in or offer to engage in the business regulated by this Article unless and until a license has been issued by the Commissioner of Banks, and the Commissioner shall not issue any such license unless and until ~~he~~ the Commissioner finds:

(1) That authorizing the applicant to engage in such business will promote the convenience and advantage of the community in which the applicant proposes to engage in business; and

(2) That the financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the

public and to warrant the belief that the business will be operated lawfully and fairly, within the purposes of this Article; and

(3) That the applicant has available for the operation of such business at the specified location loanable assets of at least ~~twenty-five thousand dollars ($25,000).~~ fifty thousand dollars ($50,000).

(b) Investigation of Applicants. – Upon the receipt of an application, the Commissioner shall investigate the facts. If the Commissioner determines from such preliminary investigation that the applicant does not satisfy the conditions set forth in subsection (a), ~~he~~ the Commissioner shall so notify the applicant who shall then be entitled to an informal hearing thereon provided he so requests in writing within 30 days after the Commissioner has caused the above-referred to notification to be mailed to the applicant. In the event of a hearing, to be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after the hearing, issue a written order granting or denying such application. At the time of making such application, the applicant shall pay the Banking Department the sum of two hundred fifty dollars ($250.00) as a fee for investigating the application, which shall be retained irrespective of whether or not a license is granted the applicant.

~~(c) Existing Business. Notwithstanding the provisions of this section, any person, firm or corporation which, on December 31, 1973, was a licensee under this Article either as a licensee to make loans under the provisions of G.S. 53-173 or as a motor vehicle lender under G.S. 53-176.1, may surrender such license to the Commissioner within 90 days after May 25, 1974, and elect to become a licensee to make loans under either G.S. 53-173 or 53-176.1 but not both. Such license shall be issued by the Commissioner without further application or investigation and the licensee shall be deemed a licensee under the category that it elects upon the surrender of its current license and the election.~~

(d) Required Assets Available. – Each licensee shall continue at all times to have available for the operation of the business at the specified location loanable assets of at least ~~twenty-five thousand dollars ($25,000).~~ fifty thousand dollars ($50,000). The requirements and standards of this subsection and subsection (a)(2) of this section shall be maintained throughout the period of the license and failure to maintain such requirements or standards shall be grounds for the revocation of a license under the provisions of G.S. 53-171 of this Article.

(e) License, Posting, Continuing. – Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership, or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Transfer or assignment of a license by one person to another by sale or otherwise is prohibited without the prior approval of the Commissioner. Each license shall be kept posted in the licensed place of business. Each license shall remain in full force and effect until surrendered, revoked, or suspended as hereinafter provided."

SECTION 2. G.S. 53-173 reads as rewritten:

"**§ 53-173. Maximum rate of ~~charge;~~ interest and fee; computation of ~~charges;~~ interest; limitation on interest after judgment; limitation on interest after maturity of the loan.**

(a) Maximum Rate of ~~Charge.~~ Interest. – Every licensee hereunder may contract for, compute, and receive on any loan of money, not exceeding ~~three thousand dollars ($3,000)~~ six thousand dollars ($6,000) in amount, ~~charges~~ interest at rates not exceeding ~~thirty-six percent (36%)~~ thirty percent (30%) per annum on that part of the unpaid principal balance of any loan not in excess of ~~six hundred dollars ($600.00) and fifteen percent (15%)~~ one thousand eight hundred dollars ($1,800) and eighteen percent (18%) per annum on any remainder of such unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

(a1) Maximum Fee. – In addition to the interest authorized in subsection (a) of this section, a licensee making loans under this section may collect from the borrower a fee for processing the loan equal to five percent (5%) of the cash advance, not to exceed fifty dollars ($50.00), provided that such charges may not be assessed more than twice in any 12-month period. The Commission may review charges assessed pursuant to this subsection and may adopt appropriate rules in accordance with G.S. 53-185.

(b) Computation of ~~Charges.~~ Interest. – ~~Charges~~ Interest on loans made pursuant to this section shall not be paid, deducted, or received in advance. Such ~~charges~~ interest shall not be compounded but ~~charges~~ interest on loans shall (i) be computed and paid only as a percentage of the unpaid principal balance or portion thereof and (ii) computed on the basis of the number of days actually elapsed; provided, however, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the loan contract may include any unpaid ~~charges~~ interest on the prior loan which have accrued within 90 days before the making of the new loan contract. For the purpose of computing ~~charges,~~ interest, a day shall equal 1/365th of a year. Any payment made on a loan shall be applied first to any accrued interest and then to principal, and any portion or all of the principal balance may be prepaid at any time without penalty.

(c) Limitation on Interest after Judgment. – If judgment be obtained against any party on any loan made under the provisions of this section neither the judgment nor the loan shall carry, from the date of the judgment, any interest in excess of eight percent (8%) per annum.

(d) Limitation of Interest after Maturity of Loan. – After the maturity date of any loan contract made under the provisions of this section and until the loan contract is paid in full by cash, new loan, refinancing or otherwise, no charges other than interest at eight percent (8%) per annum shall be computed or collected from any party to the loan upon the unpaid principal balance of the loan.

(e) Repealed by Session Laws 1989, c. 17, s. 3.

~~(f) Subject to the limitations contained in this Article as to maximum rates, the Commission may from time to time, upon the basis of changed conditions or facts, redetermine and refix any such maximum rates of charge, but, before determining or redetermining any such maximum rates, the Commission shall give reasonable notice of its intention to consider doing so to all licensees and a reasonable opportunity to be heard and introduce evidence with respect thereto. The notice herein required may be given by mailing such notice to the offices of the licensees as shown in the records of the Commissioner of Banks. Any such changed maximum rates of charge shall not affect preexisting loan contracts lawfully entered into between any licensee and any borrower.~~"

SECTION 3. G.S. 53-165(a) reads as rewritten:

"(a) "Amount of the loan" shall mean the aggregate of the cash advance and the ~~charges~~ interest authorized by G.S. 53-173."

SECTION 4. G.S. 53-176 reads as rewritten:

"**§ 53-176. Optional rates, maturities and amounts.**

(a) In lieu of making loans in the amount and at the ~~charges~~ interest stated in G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may at any time elect to make loans in installments not exceeding ten thousand dollars ($10,000) and which shall not be repayable in less than six months or more than 84 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed ~~the following actuarial rates:~~

~~(1) With respect to a loan not exceeding seven thousand five hundred dollars ($7,500), thirty percent (30%) per annum on that part of the unpaid principal balance not exceeding one thousand dollars ($1,000)~~ the actuarial rates of twenty-eight percent (28%) per annum on that part of the unpaid principal balance not exceeding two thousand dollars ($2,000) and eighteen percent (18%) per annum on the remainder of the unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

~~(2) With respect to a loan exceeding seven thousand five hundred dollars ($7,500), eighteen percent (18%) per annum on the outstanding principal balance.~~

(b) In addition to the interest permitted in this section, a licensee may assess at closing a ~~reasonable credit investigation charge as agreed upon by the parties,~~ fee for processing the loan equal to five percent (5%) of the cash advance, not to exceed ~~the actual cost of the credit investigation;~~ fifty dollars ($50.00), provided that such charges may not be assessed more than twice in any 12-month period. The ~~Commissioner of Banks~~ Commission may review charges assessed pursuant to this ~~section~~ subsection and may adopt appropriate rules in accordance with G.S. 53-185.

(c) The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section.

(d) Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and on date of such notification begin making loans regulated by this section for the following 12 months. Annually after such election a licensee may elect to make loans in accordance with this section unless the licensee notifies in writing the Commissioner of its intention to terminate such election.

(e) The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty.

(f) No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article except as authorized in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee that elects to make loans in accordance with the provisions of this section shall be bound by that election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State.

(g) A lender may charge a party to a loan or extension of credit governed by this section a late payment charge not to exceed five percent (5%) of the payment due or seven dollars ($7.00), whichever is greater, for any payment past due for 10 days or more; provided, in no case shall the late charge exceed the outstanding principal balance. If a late payment charge has been once imposed with respect to a late payment, no late charge shall be imposed with respect to any future payment which would have been timely and sufficient but for the previous default."

SECTION 5. G.S. 53-181(a) is amended by adding a new subdivision to read:

"(10) In addition to any disclosures otherwise provided by law, a licensee soliciting loans using a facsimile or negotiable check shall disclose the following:

'THIS IS A SOLICITATION FOR A LOAN. READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS AGREEMENT.'

This notice shall be printed in not less than 12-point bold type and shall appear conspicuously on the offer."

SECTION 6. G.S. 53-182(b) reads as rewritten:

"(b) Upon payment of any loan in full, a licensee shall cancel and return to the borrower, within a reasonable length of time, originals or copies of any note, assignment, mortgage, deed of trust, or other instrument securing such loan, which no longer secures any indebtedness of the borrower to the licensee."

SECTION 7. G.S. 53-184(a) reads as rewritten:

"(a) Each licensee shall maintain all books and records relating to loans made under this Article required by the Commissioner of Banks to be kept, and the Commissioner, his deputy, or duly authorized examiner or agent or employee is authorized and empowered to examine such records at any reasonable time. Such books and records may be maintained in the form of magnetic tape, magnetic ~~disk~~ disk, optical disk, or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium acceptable to the Commissioner of Banks; provided, however, that such books and records so kept must be convertible into clearly legible tangible documents within a reasonable time. Any licensee having more than one licensed office may maintain such books and records at a location other than the licensed office location if such location is approved by the Commissioner; provided that, upon such requirements as may be imposed by the Commissioner of Banks, there shall be available to the borrower at each licensed location or such other location convenient to the borrower, as designated by the licensee, complete loan information; and provided further that such books and records of each licensed office shall be clearly segregated. When a licensee maintains its books and records outside of North Carolina, the licensee shall make them available for examination at the place where they are maintained and shall pay for all reasonable and necessary expenses incurred by the Commissioner in conducting such examination. Where the data processing for any licensee is performed by a person other than the licensee, the licensee shall provide to the Commissioner of Banks a copy of a binding agreement between the licensee and the data processor which allows the Commissioner of Banks, his deputy, or duly authorized examiner or agent or employee to examine that particular data processor's activities pertaining to the licensee to the same extent as if such services were being performed by the licensee on its own premises; and, notwithstanding the provisions of G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the licensee shall reimburse the Commissioner of Banks for all costs and expenses incurred by ~~him~~ the Commissioner in such examination."

SECTION 8. This act becomes effective July 1, 2001, and applies to loans made on or after that date.

State of North Carolina

ROY COOPER
ATTORNEY GENERAL

Department of Justice
P. O. Box 629
RALEIGH
27602-0629

CONSUMER PROTECTION
(919) 716-6000
Fax: (919) 716-6050

April 4, 2001

TO: House Committee on Financial Institutions
N. C. General Assembly

Dear Chairman Church and Members of the Committee:

Thank you for the opportunity to state the position of the North Carolina Department of Justice concerning House Bill 599. We are opposed to the passage of this bill.

House Bill 599 would increase the rates and fees that a consumer finance lender can charge most consumers. It should be noted that this bill is being considered at a time when interest rates are low and dropping even lower, in contrast to the relatively high interest rates of the early 1980s, when the law was last revised.

In addition to the interest rate increase, House Bill 599 would allow for two new fees that will result in additional costs to consumers. The proposed loan origination fee and the proposed late fee would raise the costs of consumer finance loans to consumers who are already paying a very high interest rate on these loans.

The Attorney General's Office recognizes the need for a regulated source of credit to be available to consumers of limited means; however, we believe the current Consumer Finance Act better strikes the proper balance to achieve this goal.

Thank you for your attention to this matter.

Sincerely yours,

Josh Stein
Senior Deputy Attorney General
Consumer Protection Division

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS
Name of Committee

APRIL 4, 2001
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Larry Heckner	Household Financial Group
Tom Deason	Capitol Group
Josh Stein	NC DOJ
Julia White	NC DOJ
Paul Lehman	" "
Rob Schofield	NC Justice Ctr.
Julie White	Breedlove's Office
DAVID BARNES	Poyner + Spruill
Emily Taylor	Smith Anderson
Nancy Shore	Venture Products, Lenoir, NC

FINANCIAL INSTITUTIONS

APRIL 11 2001
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSELS – MS. KAREN COCHRANE-BROWN MR. WALKER REAGAN
COMMITTEE ASSISTANTS – DIXIE EPPS AND JOYCE FULLER
SGT.-AT-ARMS – SHANNON BATTEN AND BOB FOWLER
PAGES – ASHTON EPPS AND MARIE EPPS – DAUGHTER AND GRANDDAUGHTER OF DIXIE EPPS

H.B. #803 – REORGANIZE SAVINGS INSTITUTION DIVISION – REPS. CHURCH AND MORGAN

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
APRIL 11, 2001

The **House Committee on Financial Institutions** met on Wednesday, April 11, 2001, at 10:00 a.m. in Room 1425 of the State Legislative Building. The meeting was called to order by Co-Chairman Walter Church, Sr. Co-Chairman Church recognized the Sgt.-at-Arms and the Pages who were assigned to the meeting. The pages assigned to the meeting today were Ashton Epps and Marie Epps, the daughter and granddaughter of Dixie Epps one of the Committee Assistants. The following members of the Committee were present: Co-Chairmen Church and Morgan; Members: Reps. McAllister, Vice Chair; Allred, Brubaker, Buchanan, Cole, Harrington, Howard, McLawhorn, Michaux, Miller, Smith, and Walend.

Rep. Church turned the meeting over to the Vice-Chair McAllister since he and Rep. Morgan were the sponsors of the bill. Rep Church came forward and explained the **PROPOSED COMMITTEE SUBSTITUTE FOR HOUSE BILL #803.** This proposed Committee Substitute would organize the Savings Institution Division under the Office of the Commissioner of Banks and the Savings Institutions Commission would be merged with the State Banking Commission. It also authorizes the Commissioner of Banks to study the regulation of banks and savings institutions and make any appropriate recommendations. After much discussion, Rep. Buchanan made a motion that **H.B. #803 BE GIVEN A FAVORABLE REPORT AS TO COMMITTEE SUBSTITUTE BILL AND UNFAVORABLE TO ORIGINAL BILL.**

There being no further business, Vice-Chair McAllister adjourned the meeting at 10:20 a.m.

Co-Chairman Walter Church, Sr.

Co-Chairman Richard Morgan

Joyce A. Fuller, Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **CHURCH AND MORGAN** (Chair/Chairs) for the Committee on **FINANCIAL INSTITUTIONS.**

☐ Committee Substitute for
H.B. 803 A BILL TO BE ENTITLED AN ACT TO TRANSFER THE SAVINGS INSTITUTION DIVISION TO THE STATE BANKING COMMISSION; TO AUTHORIZE ADDITIONAL DEPUTY COMMISSIONERS; TO MERGE THE SAVINGS INSTITUTIONS COMMISSION WITH THE STATE BANKING COMMISSION; TO REQUIRE THE COMMISSIONER TO REPORT TO THE GENERAL ASSEMBLY; AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE STATUTES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill (#_____), ☒ which changes the title, unfavorable as to (original bill) (~~Committee Substitute Bill #_____), (and recommendation that the committee substitute bill #_____) be re-referred to the Committee on _____)~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 803*

Short Title:	Reorganize Savings Inst. Div.	(Public)
Sponsors:	Representatives Church, Morgan; Alexander, Allen, Allred, Baddour, Buchanan, Cansler, Cole, Crawford, Culpepper, Fitch, Fox, Harrington, Hill, Jarrell, Kiser, Luebke, McLawhorn, Michaux, Owens, Starnes, Wainwright, Warner, and G. Wilson.	
Referred to:	Financial Institutions.	

March 26, 2001

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE SAVINGS INSTITUTION DIVISION TO THE STATE BANKING COMMISSION; TO AUTHORIZE ADDITIONAL DEPUTY COMMISSIONERS; TO MERGE THE SAVINGS INSTITUTIONS COMMISSION WITH THE STATE BANKING COMMISSION; TO REQUIRE THE COMMISSIONER TO REPORT TO THE GENERAL ASSEMBLY; AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE STATUTES.

The General Assembly of North Carolina enacts:

PART I. SAVINGS INSTITUTIONS DIVISION TRANSFERRED TO THE STATE BANKING COMMISSION.

SECTION 1. G.S. 53-93.1 reads as rewritten:

"**§ 53-93.1. Deputy ~~commissioner.~~commissioners.**

(a) The Commissioner of Banks shall appoint, with approval of the Governor, and may remove at his discretion a chief deputy commissioner, who, in the event of the absence, death, resignation, disability or disqualification of the Commissioner of Banks, or in case the office of Commissioner shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Commissioner of Banks.

Irrespective of the conditions under which the chief deputy commissioner may exercise the powers and perform the duties of the Commissioner of Banks, pursuant to the preceding paragraph, such chief deputy commissioner, in addition thereto, is hereby authorized and empowered at any and all times, at the discretion of the Commissioner of Banks, to perform such duties and exercise such powers of the Commissioner of Banks in the name of and on behalf of the Commissioner as the Commissioner, in his discretion, may direct.

(b) In addition to the chief deputy commissioner authorized by subsection (a) of this section, the Commissioner of Banks may appoint deputy commissioners to serve at the Commissioner's pleasure. The deputy commissioners authorized by this subsection shall perform any duties and exercise any powers directed by the Commissioner."

SECTION 2. All (i) statutory authority, powers, duties, and functions, including rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Savings Institutions Division of the Department of Commerce are transferred to and vested in the State Banking Commission authorized by Article 8 of Chapter 53 of the General Statutes. Though transferred to the State Banking Commission pursuant to this section, the Savings Institution Division shall continue to function under that name. All statutory authority, powers, duties, and functions of the Administrator of the Savings Institutions Division are transferred to and vested in the Commissioner of Banks. This transfer has all the elements of a Type I transfer, as defined in G.S. 143A-6.

SECTION 3. Except for those sections of the General Statutes amended in this act, the Revisor of Statutes shall substitute the term "Commissioner of Banks" for the terms "Administrator of the Savings Institutions Division", "Administrator of Savings Institutions Division", and "Administrator of Savings Institutions" everywhere those terms appear in the General Statutes. In addition, the Revisor of Statutes shall substitute the term "Commissioner of Banks" for the term "Administrator" everywhere that term appears in Chapters 54B and 54C of the General Statutes.

SECTION 4. G.S. 53-17.1(b) reads as rewritten:

"(b) A State association, as defined in G.S. 54B-4, is an eligible State association if it is insured by a mutual deposit guaranty association, as defined in Article 12, Chapter 54B of the General Statutes, which will provide financial assistance for a transaction authorized by this section, and if the ~~Administrator, as defined in G.S. 54B-4,~~ Commissioner of Banks has found, pursuant to G.S. 54B-44, that such State association is unable to operate in a safe and sound manner."

SECTION 5. G.S. 54B-4(b)(1) is repealed.

SECTION 6. G.S. 54B-4(b) is amended by adding a new subdivision to read:

"(14a) 'Commissioner' means the Commissioner of Banks authorized pursuant to G.S. 53-92."

SECTION 7. G.S. 54B-54 reads as rewritten:

"**§ 54B-54. Deputy ~~administrator~~ commissioner of Savings Institutions Division.**

~~(a)~~ There shall be a deputy ~~administrator~~ commissioner of the Savings Institutions ~~Division who, in the event of the absence, death, resignation, disability or disqualification of the Administrator, or in case the office of Administrator shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Administrator.~~

~~(b)~~ Division as appointed by the Commissioner in G.S. 53-93.1(b). ~~The deputy administrator is authorized and empowered at any and all times to perform such duties and exercise such powers of the Administrator as the Administrator may direct.~~ The

deputy commissioner authorized by this section shall perform any duties and exercise any powers directed by the Commissioner."

SECTION 8. G.S. 54B-62 reads as rewritten:

"**§ 54B-62. Relationship of savings and loan associations with the Savings Institutions Division.**

(a) Except as provided by subsection (b) of this section, a savings and loan association or any director, officer, employee, or representative thereof shall not grant or give to ~~the Administrator or to~~ any employee of the ~~Administrator's office,~~ Savings Institutions Division, or to their spouses, any loan or gratuity, directly or indirectly.

(b) ~~Neither the Administrator nor any~~ No person on the staff of the Savings Institutions Division shall:

(1) Hold an office or position in any State association or exercise any right to vote on any State association matter by reason of being a member of the association;

(2) Be interested, directly or indirectly in any savings and loan association organized under the laws of this State; or

(3) Undertake any indebtedness, as a borrower directly or indirectly or endorser, surety or guarantor, or sell or otherwise dispose of any loan or investment to any savings and loan association organized under the laws of this State.

(c) Notwithstanding subsection (b) of this section, ~~the Administrator or~~ any ~~other~~ person employed in or by ~~his office~~ the Savings Institutions Division may be a withdrawable account holder and receive earnings on such account.

(d) ~~If the Administrator or other person has any prohibited right or interest in a savings and loan association, either directly or indirectly, at the time of his appointment or employment, he shall dispose of it within 60 days after the date of his appointment, or employment.~~ Any employee of the Savings Institutions Division shall dispose of any right or interest in a savings and loan association, held either directly or indirectly, that is prohibited under subsection (b) of this section, within 60 days after the date of the employee's appointment or employment. If ~~the Administrator or other such~~ that person is indebted as borrower directly or indirectly, or is an endorser, surety or guarantor on a note, at the time of his appointment or employment, he may continue in such capacity until such loan is paid off.

(e) If ~~the Administrator or~~ any employee of the Division has a loan or other note acquired by a State savings ~~bank~~ and loan association through the secondary market, he may continue with the debt until such loan or note is paid off."

SECTION 9. G.S. 54C-4(b)(1) is repealed.

SECTION 10. G.S. 54C-4(b) is amended by adding a new subdivision to read:

"(8a) Commissioner. - The Commissioner of Banks authorized pursuant to G.S. 53-92."

SECTION 11. G.S. 54C-59 reads as rewritten:

"**§ 54C-59. Relationship of savings banks with the Savings Institution Division.**

(a) Except as provided by subsection (b) of this section, a savings bank or any director, officer, employee, or representative thereof shall not grant or give ~~to the Administrator or~~ to any employee of the Savings Institutions Division or to their spouses, any loan or gratuity, directly or indirectly.

(b) ~~Neither the Administrator nor any~~ No employee of the Savings Institutions Division shall:

(1) Hold an office or position in any State savings bank or exercise any right to vote on any State savings bank matter by reason of being a member of the savings bank;

(2) Be interested, directly or indirectly, in any savings bank organized under the laws of this State; or

(3) Undertake any indebtedness as a borrower, directly or indirectly, or act as endorser, surety, or guarantor, or sell or otherwise dispose of any loan or investment to any savings bank organized under the laws of this State.

(c) Notwithstanding subsection (b) of this section, ~~the Administrator or~~ any employee of the Savings Institutions Division may be a deposit account holder and receive earnings on a deposit account.

(d) ~~The Administrator or any employee of the Division shall dispose of any prohibited right or interest in a savings bank, either directly or indirectly, within 60 days after the date of the Administrator's or employee's appointment or employment~~. Any employee of the Savings Institutions Division shall dispose of any right or interest in a savings bank, held either directly or indirectly, that is prohibited under subsection (b) of this section, within 60 days after the date of the employee's appointment or employment. If ~~the Administrator or~~ any employee of the Division is indebted as borrower, directly or indirectly, or is an endorser, surety, or guarantor on a note, at the time of appointment or employment, the ~~Administrator or~~ employee may continue in that capacity until the loan is paid off.

(e) If ~~the Administrator or~~ any employee of the Savings Institutions Division has a loan or other note acquired by a State savings bank through the secondary market, the ~~Administrator or~~ employee may continue with the debt until the loan or note is paid off."

SECTION 12. G.S. 143B-431(a)(2) reads as rewritten:

"(2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:

a. The State Board of Alcoholic Control,

b. The North Carolina Utilities Commission,

c. The Employment Security Commission,

d. The North Carolina Industrial Commission,

e. State Banking Commission and the Commissioner of Banks,

f. ~~Savings and Loan Association Division,~~Savings Institutions Division,

g. The State Savings Institutions Commission,

h. Credit Union Commission,

i. The North Carolina Milk Commission,
j. The North Carolina Mutual Burial Association Commission,
k. The North Carolina Rural Electrification Authority,
l. The North Carolina State Ports Authority, all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; ~~and,~~and".

SECTION 13. G.S. 143B-433 reads as rewritten:

"**§ 143B-433. Department of Commerce – organization.**

The Department of Commerce shall be organized to include:

(1) The following agencies:
a. The North Carolina Alcoholic Beverage Control Commission.
b. The North Carolina Utilities Commission.
c. The Employment Security Commission.
d. The North Carolina Industrial Commission.
e. State Banking Commission.
f. ~~Savings and Loan Association Division.~~Savings Institutions Division.
g. The State Savings Institutions Commission.
h. Credit Union Commission.
i. The North Carolina Milk Commission.
j. The North Carolina Mutual Burial Association Commission.
k. North Carolina Cemetery Commission.
l. The North Carolina Rural Electrification Authority.
m. Repealed by Session Laws 1985, c. 757, s. 179(d).
n. North Carolina Science and Technology Research Center.
o. The North Carolina State Ports Authority.
p. North Carolina National Park, Parkway and Forests Development Council.
q. Economic Development Board.
r. Labor Force Development Council.
s. Energy Policy Council.
t. Energy Division.
u. Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.
v. Repealed by Session Laws 1993, c. 321, s. 313b.

(2) Those agencies which are transferred to the Department of Commerce including the:
a. Community Assistance Division.
b. Community Development Council.
c. Employment and Training Division.
d. Job Training Coordinating Council.

(3) Such divisions as may be established pursuant to Article 1 of this Chapter."

SECTION 14. G.S. 150B-38(a) reads as rewritten:

"(a) The provisions of this Article shall apply to the following agencies:

(1) Occupational licensing ~~agencies;~~agencies.

(2) The State Banking Commission, the Commissioner of Banks, ~~the Savings Institutions Division of the Department of Commerce,~~ and the Credit Union Division of the Department of ~~Commerce;~~ ~~and~~Commerce.

(3) The Department of Insurance and the Commissioner of Insurance.

(4) The Department of Commerce in the administration of the provisions of Part 16 of Article 10 of Chapter 143B of the General Statutes."

PART II. SAVINGS INSTITUTIONS COMMISSION REPEALED AND STATE BANKING COMMISSION REVISED.

SECTION 15. Except for those sections of the General Statutes amended in this act, the Revisor of Statutes shall substitute the term "State Banking Commission" for the terms "North Carolina Savings Institution Commission", "North Carolina Savings Institutions Commission", "Savings Institution Commission", "Savings Institutions Commission", "State Savings Institutions Commission", and "State Savings Institution Commission" everywhere those terms appear in the General Statutes.

SECTION 16. G.S. 54B-53, 54B-55(b)(6), 143B-431(a)(2)g., and 143B-433(1)g. are repealed.

SECTION 17. G.S. 54B-246(a) reads as rewritten:

"(a) In addition to any and all other powers, duties and functions vested in the Secretary of Commerce under the provisions of this Article, and for the protection of member institutions and the general public, the Secretary of Commerce shall have general control and supervision over all mutual deposit guaranty associations doing business in this State. Mutual deposit guaranty associations shall be subject to the control and supervision of the Secretary of Commerce as to their conduct, organization, management, business practices, reserve requirements and their financial and fiscal matters. The grant of general control and supervision over mutual deposit guaranty associations to the Secretary of Commerce by this Article shall in no way be deemed to affect the existing powers, duties and responsibilities of the Credit Union Commission, the Commissioner of Banks, or the State Banking Commission ~~or the North Carolina Savings Institutions Commission~~ except for the removal herein of general control and supervision over mutual deposit guaranty associations from the Administrator of the Savings Institutions Division to the Secretary of Commerce."

SECTION 18. G.S. 53-92(b) reads as rewritten:

"(b) The State Banking Commission, which has heretofore been created, shall consist of the State Treasurer, who shall serve as an ex officio member thereof, ~~12~~ 19 members appointed by the Governor, and two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate and one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives. The Governor shall appoint five practical ~~bankers and~~ bankers, ~~seven~~ 11 persons selected primarily as representatives of the borrowing ~~public.~~ public, and two chief

executive officers of State savings institutions. The person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be a practical banker. The person appointed by the General Assembly upon the recommendation of the Speaker of the House shall be a person selected primarily as a representative of the borrowing public. The persons selected primarily as representatives of the borrowing public shall not be employees or directors of any financial institution nor shall they have any interest in any regulated financial institution other than as a result of being a depositor or borrower. Under this section, no person shall be considered to have an interest in a financial institution whose interest in any financial institution does not exceed one-half of one percent (1/2 of 1%) of the capital stock of that financial institution. These members of the Commission shall be selected so as to fully represent the consumer, industrial, manufacturing, professional, business and farming interests of the State. No person shall serve on the Commission for more than two complete consecutive terms. As the terms of office of the appointive members of the Commission expire, their successors shall be appointed by the person appointing them, for terms of four years each. Any vacancy occurring in the membership of the Commission shall be filled by the appropriate appointing officer for the unexpired term, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. The appointed members of the Commission shall receive as compensation for their services the same per diem and expenses as is paid to the members of the Advisory Budget Commission. This compensation shall be paid from the fees collected from the examination of banks as provided by law."

SECTION 19. Those persons who are serving as members of the Savings Institutions Commission as of June 30, 2001, are hereby appointed to the State Banking Commission to serve as the new members of the State Banking Commission pursuant to G.S. 53-92, as amended by Section 18 of this act. Those members whose terms on the Savings Institutions Commission expire June 30, 2001, shall serve on the State Banking Commission until March 31, 2002, and those members whose terms expire June 30, 2002, shall serve on the State Banking Commission until March 31, 2003. Thereafter, the Governor shall appoint members to fill those vacancies in compliance with the requirements of G.S. 53-92, as amended by Section 18 of this act.

PART III. STUDY OF COMMISSIONER OF BANKS.

SECTION 20. The Commissioner of Banks shall study the issue of regulation of State-chartered banks and savings institutions and develop a plan to regulate those banks and savings institutions in the most effective, efficient, and equitable manner. The study shall include a consideration of various financial charter options and the feasibility and advisability of reorganizing the financial services regulatory agency to a cabinet level status. After the State Banking Commission has approved the plan, the Commissioner shall report the plan and any legislative recommendations or proposals to implement the plan to the General Assembly on or before May 1, 2002.

PART IV. EFFECTIVE DATE.

SECTION 21. This act becomes effective July 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 803*
PROPOSED COMMITTEE SUBSTITUTE H803*-PCS3371-RO-6

Short Title: Reorganize Savings Inst. Div. (Public)

Sponsors:

Referred to:

March 26, 2001

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE SAVINGS INSTITUTIONS DIVISION TO THE STATE BANKING COMMISSIONER; TO AUTHORIZE ADDITIONAL DEPUTY COMMISSIONERS; TO MERGE THE SAVINGS INSTITUTIONS COMMISSION WITH THE STATE BANKING COMMISSION; TO REQUIRE THE COMMISSIONER TO REPORT TO THE GENERAL ASSEMBLY; AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-93.1 reads as rewritten:

"**§ 53-93.1. Deputy ~~commissioner.~~commissioners.**

(a) The Commissioner of Banks shall appoint, with approval of the Governor, and may remove at his discretion a chief deputy commissioner, who, in the event of the absence, death, resignation, disability or disqualification of the Commissioner of Banks, or in case the office of Commissioner shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Commissioner of Banks.

Irrespective of the conditions under which the chief deputy commissioner may exercise the powers and perform the duties of the Commissioner of Banks, pursuant to the preceding paragraph, such chief deputy commissioner, in addition thereto, is hereby authorized and empowered at any and all times, at the discretion of the Commissioner of Banks, to perform such duties and exercise such powers of the Commissioner of Banks in the name of and on behalf of the Commissioner as the Commissioner, in his discretion, may direct.

(b) In addition to the chief deputy commissioner authorized by subsection (a) of this section, the Commissioner of Banks may appoint deputy commissioners to serve at the Commissioner's pleasure. The deputy commissioners authorized by this subsection shall perform any duties and exercise any powers directed by the Commissioner."

SECTION 2. G.S. 53-17.1(b) reads as rewritten:

"(b) A State association, as defined in G.S. 54B-4, is an eligible State association if it is insured by a mutual deposit guaranty association, as defined in Article 12, Chapter 54B of the General Statutes, which will provide financial assistance for a transaction authorized by this section, and if the ~~Administrator, as defined in G.S. 54B-4,~~ Commissioner of Banks has found, pursuant to G.S. 54B-44, that such State association is unable to operate in a safe and sound manner."

SECTION 3. G.S. 54B-4(b)(1), 54B-53, and 54B-55(b)(6) are repealed.

SECTION 4. G.S. 54B-4(b) is amended by adding a new subdivision to read:

"(14a) 'Commissioner' means the Commissioner of Banks authorized pursuant to G.S. 53-92."

SECTION 5. G.S. 54B-54 reads as rewritten:

"**§ 54B-54. Deputy ~~administrator~~ commissioner of Savings Institutions Division.**

~~(a)~~ There shall be a deputy ~~administrator~~ commissioner of the Savings Institutions ~~Division who, in the event of the absence, death, resignation, disability or disqualification of the Administrator, or in case the office of Administrator shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Administrator.~~

~~(b)~~ Division as appointed by the Commissioner in G.S. 53-93.1(b). ~~The deputy administrator is authorized and empowered at any and all times to perform such duties and exercise such powers of the Administrator as the Administrator may direct.~~ The deputy commissioner authorized by this section shall perform any duties and exercise any powers directed by the Commissioner."

SECTION 6. G.S. 54B-62 reads as rewritten:

"**§ 54B-62. Relationship of savings and loan associations with the Savings Institutions Division.**

(a) Except as provided by subsection (b) of this section, a savings and loan association or any director, officer, employee, or representative thereof shall not grant or give to ~~the Administrator or to~~ any employee of the ~~Administrator's office,~~ Savings Institutions Division, or to their spouses, any loan or gratuity, directly or indirectly.

(b) ~~Neither the Administrator nor any~~ No person on the staff of the Savings Institutions Division shall:

(1) Hold an office or position in any State association or exercise any right to vote on any State association matter by reason of being a member of the association;

(2) Be interested, directly or indirectly in any savings and loan association organized under the laws of this State; or

(3) Undertake any indebtedness, as a borrower directly or indirectly or endorser, surety or guarantor, or sell or otherwise dispose of any loan or investment to any savings and loan association organized under the laws of this State.

(c) Notwithstanding subsection (b) of this section, ~~the Administrator or~~ any ~~other~~ person employed in or by ~~his office~~ the Savings Institutions Division may be a withdrawable account holder and receive earnings on such account.

(d) ~~If the Administrator or other person has any prohibited right or interest in a savings and loan association, either directly or indirectly, at the time of his appointment or employment, he shall dispose of it within 60 days after the date of his appointment, or employment.~~ Any employee of the Savings Institutions Division shall dispose of any right or interest in a savings and loan association, held either directly or indirectly, that is prohibited under subsection (b) of this section, within 60 days after the date of the employee's appointment or employment. If ~~the Administrator or other such~~ that person is indebted as borrower directly or indirectly, or is an endorser, surety or guarantor on a note, at the time of his appointment or employment, he may continue in such capacity until such loan is paid off.

(e) If ~~the Administrator or~~ any employee of the Division has a loan or other note acquired by a State savings ~~bank~~ and loan association through the secondary market, he may continue with the debt until such loan or note is paid off."

SECTION 7. G.S. 54C-4(b)(1) is repealed.

SECTION 8. G.S. 54C-4(b) is amended by adding a new subdivision to read:

"(8a) Commissioner. – The Commissioner of Banks authorized pursuant to G.S. 53-92."

SECTION 9. G.S. 54C-59 reads as rewritten:

"**§ 54C-59. Relationship of savings banks with the Savings ~~Institution~~ Institutions Division.**

(a) Except as provided by subsection (b) of this section, a savings bank or any director, officer, employee, or representative thereof shall not grant or give ~~to the Administrator or~~ to any employee of the Savings Institutions Division or to their spouses, any loan or gratuity, directly or indirectly.

(b) ~~Neither the Administrator nor any~~ No employee of the Savings Institutions Division shall:

(1) Hold an office or position in any State savings bank or exercise any right to vote on any State savings bank matter by reason of being a member of the savings bank;

(2) Be interested, directly or indirectly, in any savings bank organized under the laws of this State; or

(3) Undertake any indebtedness as a borrower, directly or indirectly, or act as endorser, surety, or guarantor, or sell or otherwise dispose of any loan or investment to any savings bank organized under the laws of this State.

(c) Notwithstanding subsection (b) of this section, ~~the Administrator or~~ any employee of the Savings Institutions Division may be a deposit account holder and receive earnings on a deposit account.

(d) ~~The Administrator or any employee of the Division shall dispose of any prohibited right or interest in a savings bank, either directly or indirectly, within 60 days after the date of the Administrator's or employee's appointment or employment~~. Any employee of the Savings Institutions Division shall dispose of any right or interest in a savings bank, held either directly or indirectly, that is prohibited under subsection (b) of this section, within 60 days after the date of the employee's appointment or employment. If ~~the Administrator or~~ any employee of the Division is indebted as borrower, directly or indirectly, or is an endorser, surety, or guarantor on a note, at the time of appointment or employment, the ~~Administrator or~~ employee may continue in that capacity until the loan is paid off.

(e) If ~~the Administrator or~~ any employee of the Savings Institutions Division has a loan or other note acquired by a State savings bank through the secondary market, the ~~Administrator or~~ employee may continue with the debt until the loan or note is paid off."

SECTION 10. G.S. 143B-431(a)(2) reads as rewritten:

"(2) All functions, powers, duties and obligations heretofore vested in an agency enumerated in Article 15 of Chapter 143A, to wit:

a. The State Board of Alcoholic Control,
b. The North Carolina Utilities Commission,
c. The Employment Security Commission,
d. The North Carolina Industrial Commission,
e. State Banking Commission and the Commissioner of Banks,
f. ~~Savings and Loan Association Division,~~Savings Institutions Division,
~~g. The State Savings Institutions Commission,~~
h. Credit Union Commission,
i. The North Carolina Milk Commission,
j. The North Carolina Mutual Burial Association Commission,
k. The North Carolina Rural Electrification Authority,
l. The North Carolina State Ports Authority, all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; ~~and,~~and".

SECTION 11. G.S. 143B-433 reads as rewritten:

"**§ 143B-433. Department of Commerce – organization.**

The Department of Commerce shall be organized to include:

(1) The following agencies:

a. The North Carolina Alcoholic Beverage Control Commission.
b. The North Carolina Utilities Commission.
c. The Employment Security Commission.
d. The North Carolina Industrial Commission.
e. State Banking Commission.

f. ~~Savings and Loan Association Division.~~Savings Institutions Division.
~~g.~~ ~~The State Savings Institutions Commission.~~
h. Credit Union Commission.
i. The North Carolina Milk Commission.
j. The North Carolina Mutual Burial Association Commission.
k. North Carolina Cemetery Commission.
l. The North Carolina Rural Electrification Authority.
m. Repealed by Session Laws 1985, c. 757, s. 179(d).
n. North Carolina Science and Technology Research Center.
o. The North Carolina State Ports Authority.
p. North Carolina National Park, Parkway and Forests Development Council.
q. Economic Development Board.
r. Labor Force Development Council.
s. Energy Policy Council.
t. Energy Division.
u. Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.
v. Repealed by Session Laws 1993, c. 321, s. 313b.

(2) Those agencies which are transferred to the Department of Commerce including the:
a. Community Assistance Division.
b. Community Development Council.
c. Employment and Training Division.
d. Job Training Coordinating Council.

(3) Such divisions as may be established pursuant to Article 1 of this Chapter."

SECTION 12. G.S. 150B-38(a) reads as rewritten:

"(a) The provisions of this Article shall apply to the following agencies:
(1) Occupational licensing ~~agencies;~~ agencies.
(2) The State Banking Commission, the Commissioner of Banks, ~~the Savings Institutions Division of the Department of Commerce,~~ and the Credit Union Division of the Department of ~~Commerce;~~ ~~and~~Commerce.
(3) The Department of Insurance and the Commissioner of Insurance.
(4) The Department of Commerce in the administration of the provisions of Part 16 of Article 10 of Chapter 143B of the General Statutes."

SECTION 13. G.S. 54B-246(a) reads as rewritten:

"(a) In addition to any and all other powers, duties and functions vested in the Secretary of Commerce under the provisions of this Article, and for the protection of member institutions and the general public, the Secretary of Commerce shall have

general control and supervision over all mutual deposit guaranty associations doing business in this State. Mutual deposit guaranty associations shall be subject to the control and supervision of the Secretary of Commerce as to their conduct, organization, management, business practices, reserve requirements and their financial and fiscal matters. The grant of general control and supervision over mutual deposit guaranty associations to the Secretary of Commerce by this Article shall in no way be deemed to affect the existing powers, duties and responsibilities of the Credit Union Commission, the Commissioner of Banks, or the State Banking Commission ~~or the North Carolina Savings Institutions Commission~~ except for the removal herein of general control and supervision over mutual deposit guaranty associations from the Administrator of the Savings Institutions Division to the Secretary of Commerce."

SECTION 14. G.S. 53-92(b) reads as rewritten:

"(b) The State Banking Commission, which has heretofore been created, shall consist of the State Treasurer, who shall serve as an ex officio member thereof, ~~12~~ 19 members appointed by the Governor, and two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate and one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives. The Governor shall appoint five practical ~~bankers and~~ bankers, ~~seven~~ 11 persons selected primarily as representatives of the borrowing ~~public.~~ public, and two chief executive officers of State savings institutions. The person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be a practical banker. The person appointed by the General Assembly upon the recommendation of the Speaker of the House shall be a person selected primarily as a representative of the borrowing public. The persons selected primarily as representatives of the borrowing public shall not be employees or directors of any financial institution nor shall they have any interest in any regulated financial institution other than as a result of being a depositor or borrower. Under this section, no person shall be considered to have an interest in a financial institution whose interest in any financial institution does not exceed one-half of one percent (1/2 of 1%) of the capital stock of that financial institution. These members of the Commission shall be selected so as to fully represent the consumer, industrial, manufacturing, professional, business and farming interests of the State. No person shall serve on the Commission for more than two complete consecutive terms. As the terms of office of the appointive members of the Commission expire, their successors shall be appointed by the person appointing them, for terms of four years each. Any vacancy occurring in the membership of the Commission shall be filled by the appropriate appointing officer for the unexpired term, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. The appointed members of the Commission shall receive as compensation for their services the same per diem and expenses as is paid to the members of the Advisory Budget Commission. This compensation shall be paid from the fees collected from the examination of banks as provided by law."

SECTION 15. All (i) statutory authority, powers, duties, and functions, including rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Savings Institutions Division of the Department of Commerce are transferred to and vested in the Office of Commissioner of Banks authorized by Article 8 of Chapter 53 of the General Statutes. Though transferred to the Office of Commissioner of Banks pursuant to this section, the Savings Institutions Division shall continue to function under that name. All statutory authority, powers, duties, and functions of the Administrator of the Savings Institutions Division are transferred to and vested in the Commissioner of Banks. This transfer has all the elements of a Type I transfer, as defined in G.S. 143A-6.

SECTION 16. Except for those sections of the General Statutes amended in this act, the Revisor of Statutes shall substitute the term "Commissioner of Banks" for the terms "Administrator of the Savings Institutions Division", "Administrator of Savings Institutions Division", and "Administrator of Savings Institutions" everywhere those terms appear in the General Statutes. In addition, the Revisor of Statutes shall substitute the term "Commissioner of Banks" for the term "Administrator" everywhere that term appears in Chapters 54B and 54C of the General Statutes.

SECTION 17. Except for those sections of the General Statutes amended in this act, the Revisor of Statutes shall substitute the term "State Banking Commission" for the terms "North Carolina Savings Institution Commission", "North Carolina Savings Institutions Commission", "Savings Institution Commission", "Savings Institutions Commission", "State Savings Institutions Commission", and "State Savings Institution Commission" everywhere those terms appear in the General Statutes.

SECTION 18. Those persons who are serving as members of the Savings Institutions Commission as of June 30, 2001, are hereby appointed to the State Banking Commission to serve as the new members of the State Banking Commission pursuant to G.S. 53-92, as amended by Section 18 of this act. Those members whose terms on the Savings Institutions Commission expire June 30, 2001, shall serve on the State Banking Commission until March 31, 2002, and those members whose terms expire June 30, 2002, shall serve on the State Banking Commission until March 31, 2003. Thereafter, the Governor shall appoint members to fill those vacancies in compliance with the requirements of G.S. 53-92, as amended by Section 18 of this act.

SECTION 19. The Commissioner of Banks shall study the issue of regulation of State-chartered banks and savings institutions and develop a plan to regulate those banks and savings institutions in the most effective, efficient, and equitable manner. The study shall include a consideration of various financial charter options and the feasibility and advisability of reorganizing the banking and savings institutions regulatory agency to a cabinet level status. After the State Banking Commission has approved the plan, the Commissioner shall report the plan and any legislative recommendations or proposals to implement the plan to the General Assembly on or before May 1, 2002.

SECTION 20. This act becomes effective July 1, 2001.

HOUSE BILL 803:
Reorganize Savings Institutions Division.

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Reps. Church and Morgan
Date:	April 11, 2001	**Summary by:**	O. Walker Reagan and Karen Cochrane-Brown
Version:	Proposed Committee Substitute (H803-CSRO-6[v.2])		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 803 would reorganize the Savings Institution Division under the Office of the Commissioner of Banks and the Savings Institutions Commission would be merged with the State Banking Commission. It also authorizes the Commissioner of Banks to study the regulation of banks and savings institutions and make any appropriate recommendations.***

CURRENT LAW: Currently the Savings Institutions Division is a separate, independent Division in the Department of Commerce. The Division is headed by the Administrator of Savings Institutions and serves the Savings Institutions Commission. These two entities are responsible for the supervision and regulation of State-chartered savings institutions, including savings and loan associations under Chapters 54B – (Savings and Loan Associations) and savings banks under Chapter 54C – (Savings Banks). State chartered banks are supervised and regulated by the State Banking Commissioner and the State Banking Commission under Chapter 53 – (Banks). State-chartered credit unions are supervised and regulated by another division in the Department of Commerce, the Credit Union Division and the Administrator of Credit Unions under Article 14B of Chapter 54.

BILL ANALYSIS: House Bill 803 would transfer the Savings Institution Division to the State Banking Commissioner, would substitute the State Banking Commissioner for the Administrator of the Savings Institutions Division, and would make other conforming changes. The bill would also merge the Savings Institutions Commission with the State Banking Commission by repealing the Savings Institutions Commission, expanding the State Banking Commission by seven members and having the current members of the Savings Institution Commission serve for the remainder of their current terms plus nine months on the State Banking Commission so that the additional members' terms will correspond to the terms of current Banking Commission members. All the other laws governing savings and loan associations and savings banks would remain the same and these changes would not affect or change how these savings institutions are currently regulated.

The bill also directs the Commissioner to study the regulation of banks and savings institutions and recommend a plan for the effective, efficient and equitable administration of these financial institutions. The Commissioner must also consider whether it is advisable to make the banking and savings institutions regulatory agency a cabinet level agency.

This bill would not affect the regulation of State-chartered credit unions.

BACKGROUND: Historically state-chartered banks and savings institutions, nationwide, have been regulated by separate agencies. But with the decline in the number of savings institutions, all states

except NC and Texas have combined their regulatory agencies. Twenty years ago there were more than 200 State-chartered savings institutions in North Carolina. Today there are only 27. Because of the reduction in the number of institutions, the fees charged for regulation of saving institutions has had to increase to support the minimal regulatory staff and the capacity of the agency to deal with safety and soundness issues has been reduced as the agency staff has shrunk.

EFFECTIVE DATE: The bill becomes effective July 1, 2001.

H803-SMRU-V2-002

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — APRIL 11, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Eabanks	STD
Amy Fullbright	Hunton & Williams
Margaret Westbrook	Kennedy Covington
W. Cherry	Bone & Assoc.
Irene Smith	OCOB
Otis M. Meacham	Deputy Commissioner of Banks
McNeil Chestnut	Atty Gens. Office
Paul Stock	NC Bankers Assn.
David Worth	NC Savings Inst Div

FINANCIAL INSTITUTIONS

APRIL 18, 2001
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSELS – MS. KAREN COCHRANE-BROWN MR. WALKER REAGAN
COMMITTEE ASSISTANTS – DIXIE EPPS AND JOYCE FULLER
SGT.-AT-ARMS – SHANNON BATTEN AND ANN LASSITER
PAGES – ELLEN CROWELL AND HEATHER LAMBERT

H.B.#1098 – AMEND DEPOSIT ACCOUNT LAW – REPS. CHURCH AND BUCHANAN

H.B.#1106 – ENACT MORTGAGE LENDING ACT. - REP. CHURCH

H.B.#1113 – FINANCIAL RECORDS KEPT CONFIDENTIAL – REP. BADDOUR

H.B.#1179 – MORTGAGE LENDERS AND BROKERS LICENSURE – REPS. COLE AND BRUBAKER

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
APRIL 18, 2001

The **House Committee on Financial Institutions** met on Wednesday, April 18, 2001, at 10:00 a.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chairman Walter Church. Co-Chairman Church recognized the Committee Counsels, the Committee Assistants, the Sgt-at-Arms, and the two pages who were assigned to the meeting. The following members of the committee were present: Co-Chairmen Church and Morgan; Vice Chairman McAllister; Members: Reps. Brubaker, Buchanan, Cole, Gibson, Harrington, Howard, McLawhorn, McMahan, Michaux, Miller, Smith, Wainwright, and Walend.

H.B. #1113 – FINANCIAL RECORDS KEPT CONFIDENTIAL. Co-Chairman Church recognized Rep. Baddour to present the bill. This bill adds provisions to the law permitting disclosure of consumer information to nonaffiliated third persons by financial institutions to the extent permitted by federal law. The bill also directs the Attorney General to develop a public education program to inform the public about the requirements of federal law. After discussion, Rep. Brubaker moved that **H.B.. #1113 BE GIVEN A FAVORABLE REPORT.** This motion was seconded by Rep. Buchanan and the motion carried. **H.B. #1113 – FAVORABLE REPORT.**

H.B.. #1098 – AMEND DEPOSIT ACCOUNT LAW. Co-Chairman Morgan came forward to preside and recognized Co-Chairman Church to come forward to explain the bill. The bill changes the name of the accounts from trust accounts to Payable on Death accounts and authorizes the accounts to have multiple owners and multiple beneficiaries. Rep. Church presented a Proposed Committee Substitute for this bill. (A copy of this Committee Substitute is attached to the minutes.) The Committee voted to adopt the amendment. After much discussion, Rep. Buchanan made a motion to **ROLL THE AMENDMENT INTO A COMMITTEE SUBSTITUTE AND TO GIVE A FAVORABLE REPORT TO THE COMMITTEE SUBSTITUTE BILL AND UNFAVORABLE TO ORIGINAL BILL**

H.B. #1106 – ENACT MORTGAGE LENDING ACT. Co-Chairmen Church and Morgan who sponsored this bill requested that Mr. Walker Reagan, Committee Co-Counsel, come forward to explain this bill. This bill would repeal the existing registration of mortgage bankers and brokers and replace it with a licensing law for mortgage lenders and mortgage brokers. Vice-Chairman McAllister came forward to preside during the discussion of this bill. Vice-Chairman McAllister stated that Co-Chairman Church had said at the beginning of the meeting that this bill would not be voted on today and a vote would be taken at the meeting next week.

There being no further business, Co-Chairman McAllister adjourned the meeting at 10:40 p.m.

Co-Chairman Walter Church, Sr.

Co-Chairman Richard Morgan

Joyce A. Fuller, Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **CHURCH AND MORGAN** (Chair/Chairs) for the Committee on **FINANCIAL INSTITUTIONS.**

☐ Committee Substitute for
H.B. 1113 A BILL TO BE ENTITLED AN ACT TO LIMIT DISCLOSURE OF CONSUMER FINANCIAL INFORMATION TO THIRD PERSONS AND TO PROVIDE FOR EDUCATION OF THE PUBLIC ON THOSE LIMIATIONS.

☑ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1113

Short Title:	Financial Records Kept Confidential.	(Public)
Sponsors:	Representative Baddour.	
Referred to:	Financial Institutions.	

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO LIMIT DISCLOSURE OF CONSUMER FINANCIAL INFORMATION TO THIRD PERSONS AND TO PROVIDE FOR EDUCATION OF THE PUBLIC ON THOSE LIMITATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-43 is amended by adding a new subdivision to read:

"(11) To furnish consumer information or records to nonaffiliated third persons to the extent permitted by the Gramm-Leach-Bliley Act of 1999 (Public Law 106-102), provided the bank complies with the consumer disclosure requirements and opt-out provisions of that Act, as applicable."

SECTION 2. G.S. 54-109.21 is amended by adding a new subdivision to read:

"(27) Furnish consumer information or records to nonaffiliated third persons to the extent permitted by the Gramm-Leach-Bliley Act of 1999 (Public Law 106-102), provided the credit union complies with the consumer disclosure requirements and opt-out provisions of that Act, as applicable."

SECTION 3. Article 4 of Chapter 54B of the General Statutes is amended by adding a new section to read:

"**§ 54B-63.2. Disclosure of consumer information.**

An association may furnish consumer information or records to nonaffiliated third persons to the extent permitted by the Gramm-Leach-Bliley Act of 1999 (Public Law 106-102), provided the association complies with the consumer disclosure requirements and opt-out provisions of that Act, as applicable."

SECTION 4. Article 4 of Chapter 54C of the General Statutes is amended by adding a new section to read:

"§ 54C-60.2. Disclosure of consumer information.

A savings bank may furnish consumer information or records to nonaffiliated third persons to the extent permitted by the Gramm-Leach-Bliley Act of 1999 (Public Law 106-102), provided the savings bank complies with the consumer disclosure requirements and opt-out provisions of that Act, as applicable."

SECTION 5. The Attorney General shall develop and implement a public education program to inform the public of the requirements of the Gramm-Leach-Bliley Act. The program shall educate the public regarding:

(1) The legal right of customers to opt-out, the limitations of opt-out, and how customers exercise their rights to opt-out of information sharing.

(2) The fact that financial institutions are required to provide customers with initial and annual privacy notices and what those notices must contain.

(3) Categories of information about customers that financial institutions are allowed to disclose to third persons.

(4) Categories of information that financial institutions collect about customers.

SECTION 6. This act is effective when it becomes law, and Section 5 of this act shall not become effective until and unless the Attorney General receives State, federal, or private funds to implement that section.

HOUSE BILL 1113:
Financial Records Kept Confidential.

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Rep. Baddour
Date:	April 18, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1113 adds provisions to the law permitting disclosure of consumer information to nonaffiliated third persons by financial institutions to the extent permitted by federal law. The bill also directs the Attorney General to develop a public education program to inform the public about the requirements of federal law.

CURRENT LAW:

The federal Gramm-Leach-Bliley Financial Modernization Act of 1999 (P.L. 106-102) changed the financial services laws of the United States by eradicating the barriers between commercial banks, securities firms, and insurance companies, which barriers had existed since 1933. The Act also provides for the protection of the privacy of consumer records.

The Gramm-Leach-Bliley Act requires financial institutions to do two things with regard to privacy protection:

1. Give notice to consumers of the institution's policies on disclosure of nonpublic personal information to nonaffiliated third parties, and
2. Provide consumers with an opportunity to "opt out" after receiving the financial institution's notice, when the consumer decides that he or she does not want the information disclosed.

Unless these requirements are satisfied, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information.

BILL ANALYSIS:

This bill adds provisions to Chapter 53 (Commercial Banks), Chapter 54 (Credit Unions), Chapter 54B (Savings and Loan Associations), and Chapter 54C (Savings Banks) authorizing these financial institutions to furnish consumer information and records to nonaffiliated third persons to the extent permitted by the Gramm-Leach-Bliley Act, provided the institution complies with the disclosure requirements and opt-out provisions. The bill codifies into North Carolina law the requirements of the federal law.

The bill also directs the Attorney General to develop and implement a public education program to inform the public of the requirements of the federal law.

This act would become effective when it becomes law. Section 5, which provides for the public education program, shall not become effective until and unless the Attorney General receives State, federal or private funds to implement that section.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **CHURCH AND MORGAN** (Chair/Chairs) for the Committee on **FINANCIAL INSTITUTIONS.**

☐ Committee Substitute for
H.B. 1098 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS CONCERNING CERTAIN TYPES OF DEPOSIT ACCOUNTS IN NORTH CAROLINA TO MAKE THEM MORE UNDERSTANDABLE TO CONSUMERS AND TO MAKE THEM MORE FLEXIBLE IN MEETING CONSUMER PREFERENCES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill ~~(#), ☐ which changes the title;~~ unfavorable as to (original bill) ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

HOUSE BILL 1098

Short Title:	Amend Deposit Account Law.	(Public)
Sponsors:	Representatives Church and Buchanan (Primary Sponsors).	
Referred to:	Financial Institutions.	

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS CONCERNING CERTAIN TYPES OF DEPOSIT ACCOUNTS IN NORTH CAROLINA TO MAKE THEM MORE UNDERSTANDABLE TO CONSUMERS AND TO MAKE THEM MORE FLEXIBLE IN MEETING CONSUMER PREFERENCES.

The General Assembly of North Carolina enacts:

PART I. ACCOUNTS AT COMMERCIAL BANKS.

SECTION 1. G.S. 53-146.2 reads as rewritten:

"**§ 53-146.2. ~~Trust~~ Payable on Death (POD) accounts.**

(a) If any person or persons establishing a deposit account shall execute a written agreement with the bank containing a statement that it is executed pursuant to the provisions of this ~~subsection~~ section and providing for the account to be held in the name of ~~such~~ the person or persons as ~~trustee~~ owner or owners ~~for not more than one person~~ for one or more persons designated as ~~beneficiary,~~ beneficiaries, the account and any balance thereof shall be held as a ~~trust~~ Payable on Death account, with the following incidents:

(1) ~~The trustee~~ Any owner during the ~~trustee's~~ owner's lifetime may change ~~the~~ any designated beneficiary by a written direction to the bank.

(1a) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 53-146.1.

(2) ~~The trustee~~ Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the ~~trustee's~~ owner's personal order. ~~Such payment or withdrawal shall constitute a revocation of the trust agreement as to the amount withdrawn.~~

(3) If ~~the~~ only one beneficiary is living and of legal age at the death of the ~~trustee,~~ last surviving owner, the beneficiary shall be the owner of the account, and payment by the bank to such owner shall be a total discharge of the bank's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 53-146.1, and payment by the bank to the owners or any of the owners shall be a total discharge of the bank's obligation as to the amount paid.

(4) If ~~the beneficiary predeceases the trustee,~~ one or more owners survive the last surviving beneficiary, the account shall become an individual account of the ~~trustee~~ owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual ~~account.~~ account in the case of a single owner or a joint account with right of survivorship, as provided in G.S. 53-146.1, in the case of multiple owners.

(5) If ~~the named~~ only one beneficiary is living and that beneficiary is not of legal age at the death of the ~~trustee,~~ last surviving owner, the bank shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the bank shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(6) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a ~~trust~~ Payable on Death account established pursuant to this subsection shall belong to the beneficiary or beneficiaries upon the death of the ~~trustee~~ last surviving owner and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the bank of funds in the ~~trust~~ Payable on Death account to the beneficiary or beneficiaries shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the bank for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary or beneficiaries is not terminated.

The person or persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the following:

"BANK (or name of institution)
~~TRUST~~ PAYABLE ON DEATH ACCOUNT
G.S. 53-146.2

I (or we) understand that by establishing a ~~trust~~ Payable on Death account under the provisions of North Carolina General Statute 53-146.2 that:

1. During ~~my lifetime I~~ my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account; and
2. By written direction to the bank (or name of institution) I (or we) individually or jointly, may change the ~~beneficiary;~~ beneficiary or beneficiaries; and
3. Upon my (or our) death the money remaining in the account will belong to the beneficiary or beneficiaries and the money will not be inherited by my (or our) heirs or be controlled by will.

_____

_____"

(a1) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

~~(b) Whenever the beneficiary of a trust account does not survive the trustee, then the account and any balance thereof which exists shall be owned by the trustee in the trustee's own right and for the trustee's own use and benefit.~~

(c) No addition to such accounts, nor any withdrawal, payment, or change of beneficiary shall affect the nature of such accounts as ~~trust~~ Payable on Death accounts, or affect the right of ~~a trustee~~ any owner to terminate the account.

(d) This section does not repeal or modify any provisions of laws relating to estate taxes."

PART II. ACCOUNTS AT CREDIT UNIONS.

SECTION 2. G.S. 54-109.57 reads as rewritten:

"**§ 54-109.57. ~~Trusts~~ Payable on Death (POD) accounts.**

(a) Shares may be issued to and deposits received from any person or persons establishing an account who shall execute a written agreement with the credit union containing a statement that it is executed pursuant to the provisions of this ~~subsection~~ section and providing for the account to be held in the name of ~~such~~ the person or persons as ~~trustee for not more than one person~~ owner or owners for one or more persons designated as ~~beneficiary,~~ beneficiaries, the account and any balance thereof shall be held as a ~~trust~~ Payable on Death account, with the following incidents:

(1) ~~The trustee~~ Any owner during the ~~trustee's~~ owner's lifetime may change ~~the~~ any designated beneficiary by a written direction to the credit union.

(1a) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 54-109.58.

(2) ~~The trustee~~ Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the ~~trustee's~~ owner's personal order. ~~Such~~

~~payment or withdrawal shall constitute a revocation of the trust agreement as to the amount withdrawn.~~

(3) If ~~the~~ only one beneficiary is living and of legal age at the death of the last surviving trustee, the beneficiary shall be the holder of the account, and payment by the credit union to the holder shall be a total discharge of the credit union's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 54-109.58, and payment by the credit union to the owners or to any of the owners shall be a total discharge of the credit union's obligation as to the amount paid.

(4) If one or more owners survive the last surviving beneficiary, ~~the beneficiary predeceases the trustee,~~ the account shall become an individual account of the ~~trustee~~ owner, or a joint account with right of survivorship of the owners and shall have the legal incidents of an individual ~~account.~~ account in the case of a single owner or a joint account with right of survivorship, as provided in G.S. 54-109.58, in the case of multiple owners.

(5) If ~~the named~~ only one beneficiary is living and that beneficiary is not of legal age at the death of the ~~trustee,~~ last surviving owner, the credit union shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the credit union shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(6) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a ~~trust~~ Payable on Death account established pursuant to this subsection shall belong to the beneficiary or beneficiaries upon the death of the ~~trustee~~ last surviving owner and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the credit union of funds in the ~~trust~~ Payable on Death account to the beneficiary shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the credit union for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary or beneficiaries is not terminated.

The person or persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the following:

"CREDIT UNION (or name of institution)
~~TRUST~~ PAYABLE ON DEATH ACCOUNT
G.S. 54-109.57

I (or we) understand that by establishing a ~~trust~~ Payable on Death account under the provisions of North Carolina General Statute 54-109.57 that:

1. During ~~my lifetime I~~ my (or our) lifetime I (or we) may withdraw the money in the account; and
2. By written direction to the credit union (or name of institution) I (or we), individually or jointly, may change the ~~beneficiary;~~ beneficiary or beneficiaries; and
3. Upon my (or our) death the money remaining in the account will belong to the ~~beneficiary,~~ beneficiary or beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by ~~my~~ will.

_____

_____"

(a1) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

~~(b) Whenever the beneficiary of a trust account does not survive the trustee, then the account and any balance thereof which exists shall be held by the trustee in the trustee's own right and for the trustee's own use and benefit.~~

(c) No addition to such accounts, nor any withdrawal, payment, or change of beneficiary shall affect the nature of such accounts as ~~trust~~ Payable on Death accounts, or affect the right of ~~a trustee~~ any owner to terminate the account.

(d) ~~Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of law relating to estate taxes.~~ This section does not repeal or modify any provisions of law relating to estate taxes."

PART III. ACCOUNTS AT SAVINGS AND LOAN ASSOCIATIONS.

SECTION 3. G.S. 54B-130 reads as rewritten:

"**§ 54B-130. ~~Trust~~ Payable on Death (POD) accounts.**

(a) If any person or persons establishing a withdrawable account shall execute a written agreement with the association containing a statement that it is executed pursuant to the provisions of this ~~subsection~~ section and providing for the account to be held in the name of ~~such~~ the person or persons as ~~trustee for not more than one person~~ owner or owners for one or more persons designated as ~~beneficiary,~~ beneficiaries, the account and any balance thereof shall be held as a ~~trust~~ Payable on Death account with the following incidents:

(1) ~~The trustee~~ Any owner during the ~~trustee's~~ owner's lifetime may change ~~the~~ any designated beneficiary by a written direction to the association.

(1a) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 54B-129.

(2) ~~The trustee~~ Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the ~~trustee's~~ owner's personal order. ~~Such payment or withdrawal shall constitute a revocation of the trust agreement as to the amount withdrawn.~~

(3) If ~~the~~ only one beneficiary is living and of legal age at the death of the ~~trustee,~~ last surviving owner, the beneficiary shall be the holder of the account, and payment by the association to the holder shall be a total discharge of the association's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 54B-129, and payment by the association to the owners or to any of the owners shall be a total discharge of the association's obligation as to the amount paid.

(4) If ~~the beneficiary predeceases the trustee,~~ one or more owners survive the last surviving beneficiary, the account shall become an individual account of the ~~trustee~~ owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual ~~account.~~ account in the case of a single owner or a joint account with right of survivorship, as provided in G.S. 54B-129, in the case of multiple owners.

(5) If ~~the named~~ only one beneficiary is living and that beneficiary is not of legal age at the death of the ~~trustee,~~ last surviving owner, the association shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the association shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(6) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a ~~trust~~ Payable on Death account established pursuant to this subsection shall belong to the beneficiary or beneficiaries upon the death of the ~~trustee~~ last surviving owner and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the association of funds in the ~~trust~~ Payable on Death account to the beneficiary or beneficiaries shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the association for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary or beneficiaries is not terminated.

The person or persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the following:

"SAVINGS AND LOAN (or name of institution)
~~TRUST~~ PAYABLE ON DEATH ACCOUNT
G.S. 54B-130(a)

I (or we) understand that by establishing a ~~trust~~ Payable on Death account under the provisions of North Carolina General Statute 54B-130(a) that:

1. During my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account; and
2. By written direction to the savings and loan association (or name of institution) I (or we), individually or jointly, may change the beneficiary; and
3. Upon my (or our) death the money remaining in the account will belong to the ~~beneficiary,~~ beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by ~~my~~ will.

_____

_____"

(a1) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

~~(b) Whenever the beneficiary of a trust account does not survive the trustee then the account and any balance thereof which exists shall be held by the trustee in the trustee's own right and for the trustee's own use and benefit.~~

(c) No addition to such accounts, nor any withdrawal, payment, or change of beneficiary shall affect the nature of such accounts as ~~trust~~ Payable on Death accounts, or affect the right of ~~a trustee~~ any owner to terminate the account.

(d) This section does not repeal or modify any provisions of laws relating to estate taxes."

PART IV. ACCOUNTS AT SAVINGS BANKS.

SECTION 4. G.S. 54C-166 reads as rewritten:

"**§ 54C-166. ~~Trust~~ Payable on Death (POD) accounts.**

(a) If a person or persons establishing a withdrawable account executes a written agreement with the savings bank containing a statement that it is executed under this ~~subsection~~ section and providing for the account to be held in the name of the person or persons as ~~trustee for not more than one person~~ owner or owners for one or more persons designated as ~~beneficiary,~~ beneficiaries, the account and any balance of the account is held as a ~~trust~~ Payable on Death account with the following incidents:

(1) ~~The trustee~~ Any owner during the ~~trustee's~~ owner's lifetime may change ~~the~~ any designated beneficiary by a written direction to the savings bank.

(1a) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 54C-165.

(2) ~~The trustee~~ Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the ~~trustee's~~ owner's personal order. ~~The payment or withdrawal shall constitute a revocation of the trust agreement as to the amount withdrawn.~~

(3) If ~~the~~ only one beneficiary is living and of legal age at the death of the ~~trustee,~~ last surviving owner, the beneficiary is the holder of the account, and payment by the savings bank to the holder is a total discharge of the savings bank's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 54C-165, and payment by the savings bank to the owners or to any of the owners shall be a total discharge of the savings bank's obligation as to the amount paid.

(4) If ~~the beneficiary predeceases the trustee,~~ one or more owners survive the last surviving beneficiary, the account shall become an individual account of the ~~trustee~~ owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual ~~account.~~ account in the case of a single owner or a joint account with right of survivorship, as provided in G.S. 54C-165, in the case of multiple owners.

(5) If ~~the named~~ only one beneficiary is living and that beneficiary is not of legal age at the death of the ~~trustee,~~ last surviving owner, the savings bank shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the savings bank shall hold the funds in a similar interest-bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(6) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a ~~trust~~ Payable on Death account established under this subsection shall belong to the beneficiary or beneficiaries upon the death of the last surviving owner ~~trustee~~ and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the savings bank of funds in the ~~trust~~ Payable on Death account to the beneficiary or beneficiaries shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the savings bank for the funds so paid, but the personal representative's authority to collect the funds from the beneficiary or beneficiaries is not terminated.

The person or persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the following:

"SAVINGS BANK (or name of institution) ~~TRUST~~ PAYABLE ON DEATH ACCOUNT
G.S. 54C-166(a)

I (or we) understand that by establishing a ~~trust~~ Payable on Death account under G.S. 54C-166(a) that:

1. During ~~my lifetime I~~ my (or our) lifetime, I (or we) may withdraw the money in the account; and
2. By written direction to the savings bank (or name of institution) I (or we), individually or jointly, may change the beneficiary; and
3. Upon my (or our) death the money remaining in the account will belong to the ~~beneficiary,~~ beneficiary or beneficiaries and the money will not be inherited by my (or our) heirs or be controlled by ~~my~~ will.

_____

_____"

(a1) This section is not deemed exclusive. Deposit accounts not conforming to this section are governed by other applicable law, as appropriate.

~~(b) Whenever the beneficiary of a trust account does not survive the trustee, then the account and any balance of the account that exists is held by the trustee in the trustee's own right and for the trustee's own use and benefit.~~

(c) No addition to the accounts, nor any withdrawal, payment, or change of beneficiary shall affect the nature of the accounts as ~~trust~~ Payable on Death accounts, or affect the right of ~~a trustee~~ any owner to terminate the account.

(d) This section does not repeal or modify any law relating to estate taxes."

PART V. CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

SECTION 5. G.S. 36A-120 reads as rewritten:

"**§ 36A-120. ~~Discretionary revocable trust~~ Payable on Death accounts in financial institution.**

~~Trusts~~ Payable on Death accounts created under the provisions of G.S. 53-146.2, G.S. 54-109.57 or G.S. 54B-129 are governed by the provisions of those statutes."

SECTION 6. G.S. 36A-125.1(3) reads as rewritten:

"(3) "Trust" means an express noncharitable trust. A trust is noncharitable if it is neither a wholly charitable trust nor a charitable split-interest trust subject to the provisions of Article 4 or 4A of Chapter 36A of the General Statutes. The term "trust" does not include constructive trusts, resulting trusts, conservatorships, personal representatives, ~~trust accounts~~ Payable on Death accounts as defined in G.S. 53-146.2, 54-109.57, and G.S. 54B-130, trust funds subject to G.S. 90-210.61, custodial arrangements pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages,

profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another."

SECTION 7. G.S. 36A-161(d) reads as rewritten:

"(d) This Article does not apply:

(1) Unless the provisions of the trust provide otherwise by specific reference to this Article, to:

a. Trusts under any federal employee retirement income security statute or other retirement or pension trusts;

b. Trusts which are created by legislative act;

c. Trusts which are created by or pursuant to premarital or postmarital agreements, divorce settlements, settlements of other proceedings or disputes;

d. Transfers under the Uniform Transfers to Minors Act;

e. Transfers under the Uniform Custodial Trust Act; or

f. Honorary trusts, trusts for pets, and trusts for cemetery lots.

(2) To trusts imposed or required under another chapter of the General Statutes or by rule in which the investment of the trust funds is regulated by the other chapter or by rule, unless a provision of the other chapter or the rule provides otherwise by a specific reference to this Article.

(3) To:

a. Constructive trusts and resulting trusts;

b. Guardianship, conservatorship, and estates managed by personal representatives; or

c. ~~Trust~~ Payable on Death accounts as defined in G.S. 53-146.2, 54-109.57, 54C-166, and G.S. 54B-130; or

d. Business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interests, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another."

PART VI. EFFECTIVE DATE.

SECTION 8. This act becomes effective October 1, 2001, and applies to accounts opened on or after that date.

HOUSE BILL 1098:
Amend Deposit Account Law.

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Reps.Church and Buchanan
Date:	April 18, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1098 makes several changes in the laws governing trust accounts in depository institutions. The bill changes the name of the accounts from trust accounts to Payable on Death (POD) accounts and authorizes the accounts to have multiple owners and multiple beneficiaries.

CURRENT LAW:

Under current law, financial institutions, including commercial banks, credit unions, savings and loan associations and savings banks, may offer customers several kinds of deposit accounts. The General Statutes authorize joint accounts with right of survivorship, personal agency accounts and trust accounts. Trust accounts may be established in each of the four types of financial institutions by a person who executes an agreement with the institution, which provides that the account is held by the person as trustee for no more than one beneficiary. The trustee may change the beneficiary at any time during the trustee's life and may withdraw the funds at any time. If the beneficiary is living and of legal age at the death of the trustee, the beneficiary becomes the owner of the account, subject to claims by the personal representative for debts of the deceased trustee.

The statute also sets forth the specific language that must be used to create a trust account under this provision. However, statutory accounts are not exclusive. Deposit accounts that do not conform to the specific requirements of the law may be governed by other statutes or by common law.

BILL ANALYSIS:

This bill amends the laws governing trust accounts offered by financial institutions. The bill changes the name of the accounts from "Trust" to "Payable on Death (POD)", in each of the four Chapters of the General Statutes in which it appears, including Chapter 53 (Commercial Banks), Chapter 54 (Credit Unions), Chapter 54B (Savings and Loan Associations), and Chapter 54C (Savings Banks).

The bill also authorizes the accounts to be owned by more than one person, and allows the owner or owners to designate more than one beneficiary. During the owners' lifetimes, they own the account as joint tenants with the right of survivorship. At the death of the last owner, the account becomes an individual account belonging to the beneficiary, or if there are multiple beneficiaries, it becomes a joint account with the right of survivorship.

Finally, the bill makes several conforming amendments to references to trust accounts in other statutes.

This act would become effective October 1, 2001, and would apply to accounts opened on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1098

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1098-ARO-2 [v.0]

Date _____,2001

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Representative

moves to amend the bill on page 9, line 31,
by inserting the following; "G.S. 54C-166," at the beginning of the line;
and on page 9, line 39, by inserting the following; "G.S. 54C-166," after the phrase
"54-109.57,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1098
PROPOSED COMMITTEE SUBSTITUTE H1098-PCS1181-RO-11

Short Title: Amend Deposit Account Law. (Public)

Sponsors:

Referred to:

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS CONCERNING CERTAIN TYPES OF DEPOSIT ACCOUNTS IN NORTH CAROLINA TO MAKE THEM MORE UNDERSTANDABLE TO CONSUMERS AND TO MAKE THEM MORE FLEXIBLE IN MEETING CONSUMER PREFERENCES.

The General Assembly of North Carolina enacts:

PART I. ACCOUNTS AT COMMERCIAL BANKS.

SECTION 1. G.S. 53-146.2 reads as rewritten:

"**§ 53-146.2. ~~Trust~~ Payable on Death (POD) accounts.**

(a) If any person or persons establishing a deposit account shall execute a written agreement with the bank containing a statement that it is executed pursuant to the provisions of this ~~subsection~~ section and providing for the account to be held in the name of ~~such~~ the person or persons as ~~trustee~~ owner or owners ~~for not more than one person~~ for one or more persons designated as ~~beneficiary,~~ beneficiaries, the account and any balance thereof shall be held as a ~~trust~~ Payable on Death account, with the following incidents:

(1) ~~The trustee~~ Any owner during the ~~trustee's~~ owner's lifetime may change ~~the~~ any designated beneficiary by a written direction to the bank.

(1a) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 53-146.1.

(2) ~~The trustee~~ Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the ~~trustee's~~ owner's personal order. ~~Such payment or withdrawal shall constitute a revocation of the trust agreement as to the amount withdrawn.~~

(3) If ~~the~~ only one beneficiary is living and of legal age at the death of the ~~trustee,~~ last surviving owner, the beneficiary shall be the owner of the account, and payment by the bank to such owner shall be a total discharge of the bank's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 53-146.1, and payment by the bank to the owners or any of the owners shall be a total discharge of the bank's obligation as to the amount paid.

(4) If ~~the beneficiary predeceases the trustee,~~ one or more owners survive the last surviving beneficiary, the account shall become an individual account of the ~~trustee~~ owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual ~~account.~~ account in the case of a single owner or a joint account with right of survivorship, as provided in G.S. 53-146.1, in the case of multiple owners.

(5) If ~~the named~~ only one beneficiary is living and that beneficiary is not of legal age at the death of the ~~trustee,~~ last surviving owner, the bank shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the bank shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(6) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a ~~trust~~ Payable on Death account established pursuant to this subsection shall belong to the beneficiary or beneficiaries upon the death of the ~~trustee~~ last surviving owner and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the bank of funds in the ~~trust~~ Payable on Death account to the beneficiary or beneficiaries shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the bank for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary or beneficiaries is not terminated.

The person or persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the following:

"BANK (or name of institution)
~~TRUST~~ PAYABLE ON DEATH ACCOUNT
G.S. 53-146.2

I (or we) understand that by establishing a ~~trust~~ Payable on Death account under the provisions of North Carolina General Statute 53-146.2 that:

1. During ~~my lifetime I~~ my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account; and
2. By written direction to the bank (or name of institution) I (or we), individually or jointly, may change the ~~beneficiary;~~ beneficiary or beneficiaries; and
3. Upon my (or our) death the money remaining in the account will belong to the beneficiary or beneficiaries and the money will not be inherited by my (or our) heirs or be controlled by will.

_____

_____"

(a1) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

~~(b) Whenever the beneficiary of a trust account does not survive the trustee, then the account and any balance thereof which exists shall be owned by the trustee in the trustee's own right and for the trustee's own use and benefit.~~

(c) No addition to such accounts, nor any withdrawal, payment, or change of beneficiary shall affect the nature of such accounts as ~~trust~~ Payable on Death accounts, or affect the right of ~~a trustee~~ any owner to terminate the account.

(d) This section does not repeal or modify any provisions of laws relating to estate taxes."

PART II. ACCOUNTS AT CREDIT UNIONS.

SECTION 2. G.S. 54-109.57 reads as rewritten:

"**§ 54-109.57. ~~Trusts~~ Payable on Death (POD) accounts.**

(a) Shares may be issued to and deposits received from any person or persons establishing an account who shall execute a written agreement with the credit union containing a statement that it is executed pursuant to the provisions of this ~~subsection~~ section and providing for the account to be held in the name of ~~such~~ the person or persons as ~~trustee for not more than one person~~ owner or owners for one or more persons designated as ~~beneficiary,~~ beneficiaries, the account and any balance thereof shall be held as a ~~trust~~ Payable on Death account, with the following incidents:

(1) ~~The trustee~~ Any owner during the ~~trustee's~~ owner's lifetime may change ~~the~~ any designated beneficiary by a written direction to the credit union.

(1a) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 54-109.58.

(2) ~~The trustee~~ Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the ~~trustee's~~ owner's personal order. ~~Such payment or withdrawal shall constitute a revocation of the trust agreement as to the amount withdrawn.~~

(3) If ~~the~~ only one beneficiary is living and of legal age at the death of the last surviving trustee, the beneficiary shall be the holder of the account, and payment by the credit union to the holder shall be a total discharge of the credit union's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 54-109.58, and payment by the credit union to the owners or to any of the owners shall be a total discharge of the credit union's obligation as to the amount paid.

(4) If one or more owners survive the last surviving beneficiary, ~~the beneficiary predeceases the trustee,~~ the account shall become an individual account of the ~~trustee~~ owner, or a joint account with right of survivorship of the owners and shall have the legal incidents of an individual ~~account.~~ account in the case of a single owner or a joint account with right of survivorship, as provided in G.S. 54-109.58, in the case of multiple owners.

(5) If ~~the named~~ only one beneficiary is living and that beneficiary is not of legal age at the death of the ~~trustee,~~ last surviving owner, the credit union shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the credit union shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(6) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a ~~trust~~ Payable on Death account established pursuant to this subsection shall belong to the beneficiary or beneficiaries upon the death of the ~~trustee~~ last surviving owner and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the credit union of funds in the ~~trust~~ Payable on Death account to the beneficiary shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the credit union for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary or beneficiaries is not terminated.

The person or persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the following:

"CREDIT UNION (or name of institution)
~~TRUST~~ PAYABLE ON DEATH ACCOUNT
G.S. 54-109.57

I (or we) understand that by establishing a ~~trust~~ Payable on Death account under the provisions of North Carolina General Statute 54-109.57 that:

1. During ~~my lifetime I~~ my (or our) lifetime I (or we) may withdraw the money in the account; and
2. By written direction to the credit union (or name of institution) I (or we), individually or jointly, may change the ~~beneficiary;~~ beneficiary or beneficiaries; and
3. Upon my (or our) death the money remaining in the account will belong to the ~~beneficiary,~~ beneficiary or beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by ~~my~~ will.

_____

_____"

(a1) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

~~(b) Whenever the beneficiary of a trust account does not survive the trustee, then the account and any balance thereof which exists shall be held by the trustee in the trustee's own right and for the trustee's own use and benefit.~~

(c) No addition to such accounts, nor any withdrawal, payment, or change of beneficiary shall affect the nature of such accounts as ~~trust~~ Payable on Death accounts, or affect the right of ~~a trustee~~ any owner to terminate the account.

(d) ~~Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or provisions of law relating to estate taxes.~~ This section does not repeal or modify any provisions of law relating to estate taxes."

PART III. ACCOUNTS AT SAVINGS AND LOAN ASSOCIATIONS.

SECTION 3. G.S. 54B-130 reads as rewritten:

"**§ 54B-130. ~~Trust~~ Payable on Death (POD) accounts.**

(a) If any person or persons establishing a withdrawable account shall execute a written agreement with the association containing a statement that it is executed pursuant to the provisions of this ~~subsection~~ section and providing for the account to be held in the name of ~~such~~ the person or persons as ~~trustee for not more than one person~~ owner or owners for one or more persons designated as ~~beneficiary,~~ beneficiaries, the

account and any balance thereof shall be held as a ~~trust~~ Payable on Death account with the following incidents:

(1) ~~The trustee~~ Any owner during the ~~trustee's~~ owner's lifetime may change ~~the~~ any designated beneficiary by a written direction to the association.

(1a) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 54B-129.

(2) ~~The trustee~~ Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the ~~trustee's~~ owner's personal order. ~~Such payment or withdrawal shall constitute a revocation of the trust agreement as to the amount withdrawn.~~

(3) If ~~the~~ only one beneficiary is living and of legal age at the death of the ~~trustee,~~ last surviving owner, the beneficiary shall be the holder of the account, and payment by the association to the holder shall be a total discharge of the association's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 54B-129, and payment by the association to the owners or to any of the owners shall be a total discharge of the association's obligation as to the amount paid.

(4) If ~~the beneficiary predeceases the trustee,~~ one or more owners survive the last surviving beneficiary, the account shall become an individual account of the ~~trustee~~ owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual ~~account.~~ account in the case of a single owner or a joint account with right of survivorship, as provided in G.S. 54B-129, in the case of multiple owners.

(5) If ~~the named~~ only one beneficiary is living and that beneficiary is not of legal age at the death of the ~~trustee,~~ last surviving owner, the association shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the association shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(6) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a ~~trust~~ Payable on Death account established pursuant to this subsection shall belong to the beneficiary or beneficiaries upon the death of the ~~trustee~~

last surviving owner and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the association of funds in the ~~trust~~ Payable on Death account to the beneficiary or beneficiaries shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the association for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary or beneficiaries is not terminated.

The person or persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the following:

"SAVINGS AND LOAN (or name of institution)
~~TRUST~~ PAYABLE ON DEATH ACCOUNT
G.S. 54B-130(a)

I (or we) understand that by establishing a ~~trust~~ Payable on Death account under the provisions of North Carolina General Statute 54B-130(a) that:

1. During my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account; and
2. By written direction to the savings and loan association (or name of institution) I (or we), individually or jointly, may change the beneficiary; and
3. Upon my (or our) death the money remaining in the account will belong to the ~~beneficiary,~~ beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by ~~my~~ will.

_____

_____"

(a1) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

~~(b) Whenever the beneficiary of a trust account does not survive the trustee then the account and any balance thereof which exists shall be held by the trustee in the trustee's own right and for the trustee's own use and benefit.~~

(c) No addition to such accounts, nor any withdrawal, payment, or change of beneficiary shall affect the nature of such accounts as ~~trust~~ Payable on Death accounts, or affect the right of ~~a trustee~~ any owner to terminate the account.

(d) This section does not repeal or modify any provisions of laws relating to estate taxes."

PART IV. ACCOUNTS AT SAVINGS BANKS.

SECTION 4. G.S. 54C-166 reads as rewritten:

"**§ 54C-166. ~~Trust~~ Payable on Death (POD) accounts.**

(a) If a person or persons establishing a withdrawable account executes a written agreement with the savings bank containing a statement that it is executed under this ~~subsection~~ section and providing for the account to be held in the name of the person or persons as ~~trustee for not more than one person~~ owner or owners for one or more persons designated as ~~beneficiary,~~ beneficiaries, the account and any balance of the account is held as a ~~trust~~ Payable on Death account with the following incidents:

(1) ~~The trustee~~ Any owner during the ~~trustee's~~ owner's lifetime may change ~~the~~ any designated beneficiary by a written direction to the savings bank.

(1a) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 54C-165.

(2) ~~The trustee~~ Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the ~~trustee's~~ owner's personal order. ~~The payment or withdrawal shall constitute a revocation of the trust agreement as to the amount withdrawn.~~

(3) If ~~the~~ only one beneficiary is living and of legal age at the death of the ~~trustee,~~ last surviving owner, the beneficiary is the holder of the account, and payment by the savings bank to the holder is a total discharge of the savings bank's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 54C-165, and payment by the savings bank to the owners or to any of the owners shall be a total discharge of the savings bank's obligation as to the amount paid.

(4) If ~~the beneficiary predeceases the trustee,~~ one or more owners survive the last surviving beneficiary, the account shall become an individual account of the ~~trustee~~ owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual ~~account.~~ account in the case of a single owner or a joint account with right of survivorship, as provided in G.S. 54C-165, in the case of multiple owners.

(5) If ~~the named~~ only one beneficiary is living and that beneficiary is not of legal age at the death of the ~~trustee,~~ last surviving owner, the savings bank shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the savings bank shall hold the funds in a similar interest-bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(6) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a ~~trust~~ Payable on Death account established under this subsection shall belong to the beneficiary or beneficiaries upon the death of the last surviving owner ~~trustee~~ and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the savings bank of funds in the ~~trust~~ Payable on Death account to the beneficiary or beneficiaries shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the savings bank for the funds so paid, but the personal representative's authority to collect the funds from the beneficiary or beneficiaries is not terminated.

The person or persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the following:

"SAVINGS BANK (or name of institution) ~~TRUST~~ PAYABLE ON DEATH ACCOUNT
G.S. 54C-166(a)

I (or we) understand that by establishing a ~~trust~~ Payable on Death account under G.S. 54C-166(a) that:

1. During ~~my lifetime I~~ my (or our) lifetime, I (or we) may withdraw the money in the account; and
2. By written direction to the savings bank (or name of institution) I (or we), individually or jointly, may change the beneficiary; and
3. Upon my (or our) death the money remaining in the account will belong to the ~~beneficiary,~~ beneficiary or beneficiaries and the money will not be inherited by my (or our) heirs or be controlled by ~~my~~ will.

_____

_____"

(a1) This section is not deemed exclusive. Deposit accounts not conforming to this section are governed by other applicable law, as appropriate.

~~(b) Whenever the beneficiary of a trust account does not survive the trustee, then the account and any balance of the account that exists is held by the trustee in the trustee's own right and for the trustee's own use and benefit.~~

(c) No addition to the accounts, nor any withdrawal, payment, or change of beneficiary shall affect the nature of the accounts as ~~trust~~ Payable on Death accounts, or affect the right of ~~a trustee~~ any owner to terminate the account.

(d) This section does not repeal or modify any law relating to estate taxes."

PART V. CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

SECTION 5. G.S. 36A-120 reads as rewritten:

"**§ 36A-120. ~~Discretionary revocable trust~~ Payable on Death accounts in financial institution.**

~~Trusts~~ Payable on Death accounts created under the provisions of G.S. 53-146.2, G.S. 54C-166, G.S. 54-109.57 or G.S. 54B-129 are governed by the provisions of those statutes."

SECTION 6. G.S. 36A-125.1(3) reads as rewritten:

"(3) "Trust" means an express noncharitable trust. A trust is noncharitable if it is neither a wholly charitable trust nor a charitable split-interest trust subject to the provisions of Article 4 or 4A of Chapter 36A of the General Statutes. The term "trust" does not include constructive trusts, resulting trusts, conservatorships, personal representatives, ~~trust accounts~~ Payable on Death accounts as defined in G.S. 53-146.2, 54-109.57, G.S. 54C-166, and G.S. 54B-130, trust funds subject to G.S. 90-210.61, custodial arrangements pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another."

SECTION 7. G.S. 36A-161(d) reads as rewritten:

"(d) This Article does not apply:

(1) Unless the provisions of the trust provide otherwise by specific reference to this Article, to:

a. Trusts under any federal employee retirement income security statute or other retirement or pension trusts;

b. Trusts which are created by legislative act;

c. Trusts which are created by or pursuant to premarital or postmarital agreements, divorce settlements, settlements of other proceedings or disputes;

d. Transfers under the Uniform Transfers to Minors Act;

e. Transfers under the Uniform Custodial Trust Act; or

f. Honorary trusts, trusts for pets, and trusts for cemetery lots.

(2) To trusts imposed or required under another chapter of the General Statutes or by rule in which the investment of the trust funds is regulated by the other chapter or by rule, unless a provision of the other chapter or the rule provides otherwise by a specific reference to this Article.

(3) To:

a. Constructive trusts and resulting trusts;

b. Guardianship, conservatorship, and estates managed by personal representatives; or

c. ~~Trust~~ Payable on Death accounts as defined in G.S. 53-146.2, 54-109.57, 54C-166, and G.S. 54B-130; or

d. Business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interests, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another."

PART VI. EFFECTIVE DATE.

SECTION 8. This act becomes effective October 1, 2001, and applies to accounts opened on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1106

Short Title:	Enact Mortgage Lending Act.	(Public)
Sponsors:	Representatives Church, Morgan, Cole, Brubaker, and Hill.	
Referred to:	Financial Institutions.	

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO ENACT THE MORTGAGE LENDING ACT TO GOVERN MORTGAGE BROKERS AND BANKERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 53 of the General Statutes is repealed.

SECTION 2. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 19A.

"Mortgage Lending Act.

"**§ 53-243.01. Definitions.**

The following definitions apply in this Article:

(1) Act as a mortgage broker. – The act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, of accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, engaging in tablefunding of mortgage loans, or generating leads or referrals for mortgage loans through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

(2) Act as a mortgage lender. – The act of engaging in the business of making mortgage loans for compensation or gain.

(3) Branch manager. – The individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker.

(4) Branch office. – An office of the licensee acting as a mortgage broker or mortgage banker that is separate and distinct from the licensee's principal office.

(5) Commissioner. – The North Carolina Commissioner of Banks and the Commissioner's designees.

(6) Control. – The power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, association, or trust.

(7) Exempt person. – The term includes any of the following:

a. Any agency of the federal government or any state or municipal government granting first mortgage loans under specific authority of the laws of any state or the United States.

b. Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer.

c. Any lender authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system, life insurance company, savings institution, or credit union, under the laws of the United States, this State, or any other state.

d. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan.

e. Any officer or employee of an exempt person described in sub-subdivision c. of this subdivision.

f. Any person who, as seller, receives in one calendar year no more than five mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation.

g. The North Carolina Housing Finance Agency as established by Article 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Article 122D of the General Statutes.

(8) Licensee. – A loan officer, mortgage broker, or mortgage banker who is licensed pursuant to this Article.

(9) Loan officer. – A natural person who, in exchange for compensation as an employee of another person, accepts or offers to accept applications for mortgage loans. The definition of loan officer shall not include any exempt person described in sub-subdivision (5)b. of this section.

(10) Make a mortgage loan. – To close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan.

(11) Managing principal. – A person who meets the qualifications of G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker.

(12) Mortgage banker. – A person who acts as a mortgage lender as that term is defined in subdivision (2) of this section. However, the definition does not include a person who acts as a mortgage lender only in tablefunding transactions.

(13) Mortgage broker. – A person who acts as a mortgage broker as that term is defined in subdivision (1) of this section.

(14) Mortgage loan. – A loan made to a natural person or persons primarily for personal family or household use, primarily secured by either a mortgage or a deed of trust on residential real property located in North Carolina.

(15) Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities however organized.

(16) Qualified lender. – A person who is engaged as a mortgage lender in North Carolina and is either a supervised or a nonsupervised institution, as these terms are defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.

(17) Qualified person. – A person who is employed as a registered loan officer by a mortgage broker, qualified lender, or mortgage banker or who is an officer, director, shareholder, partner, member, or manager of a registered mortgage broker, qualified lender, or mortgage banker.

(18) Residential real property. – Real property located in the State of North Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units.

(19) Tablefunding. – A transaction where a licensee closes a loan in its own name with funds provided by others and the loan is assigned simultaneously with or within one business day of the funding of the loan to the mortgage lender providing the funding.

"**§ 53-243.02. License required; licensee records.**

(a) Other than an exempt person, it is unlawful for any person in this State to act as a mortgage broker or mortgage banker, or directly or indirectly to engage in the business of a mortgage broker or a mortgage banker, without first obtaining a license from the Commissioner under the provisions of this Article.

(b) It is unlawful for any natural person to engage in the solicitation and acceptance of applications for mortgage loans without first obtaining a license as a loan officer issued by the Commissioner under the provisions of this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a loan officer unless the loan officer is licensed as a loan officer under this Article. Exempt persons shall not be subject to this subsection.

(c) The license of a loan officer is not effective during any period when that person is not employed by a mortgage broker or mortgage banker licensed under this

Article. When a loan officer ceases to be employed by a mortgage broker or mortgage banker licensed under this Article, the loan officer and the mortgage broker or mortgage banker licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. A loan officer shall not be employed simultaneously by more than one mortgage broker or mortgage banker licensed under this Article.

(d) Each mortgage broker and mortgage banker licensed under this Article shall maintain on file with the Commissioner a list of all loan officers who are employed with the mortgage broker or mortgage banker.

"**§ 53-243.03. Review by Banking Commission.**

The Banking Commission may review any rule, regulation, order, or article of the Commissioner adopted pursuant to or with respect to the provisions of this Article, and any person aggrieved by any rule, regulation, order, or article may appeal to the Banking Commission for review upon giving notice in writing 20 days after the rule, regulation, order, or article that is the subject of the complaint is adopted or issued. Notwithstanding any other provision of law, any party aggrieved by a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92.

"**§ 53-243.04. Rule-making authority.**

The Banking Commission may adopt any rules necessary to carry out the provisions of this Article, to provide for the protection of the borrowing public, and to instruct mortgage lenders in interpreting this Article.

"**§ 53-243.05. Qualifications for licensure; issuance.**

(a) Any person other than an exempt person desiring to obtain a license as a loan officer, mortgage banker, or mortgage broker shall make written application for licensure to the Commissioner on forms prescribed by the Commissioner. In accordance with rules adopted by the Commission, the application shall contain any information the Commissioner deems necessary regarding the following:

(1) The applicant's name and address.

(2) The applicant's form and place of organization, if applicable.

(3) The applicant's proposed method of and locations for doing business, if applicable.

(4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including: (i) a description of any injunction or administrative order by any state or federal authority to which the person is or has been subject; (ii) a conviction of a misdemeanor including any aspect of the residential mortgage lending business; (iii) any convictions of misdemeanors or felonies involving fraudulent dealings or moral turpitude.

(5) The applicant's financial condition, credit history, and business history.

(b) In addition to the requirements imposed by the Commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:

(1) Be at least 18 years of age.

(2) Have satisfactorily completed, within the three years immediately preceding the date application is made, a mortgage lending fundamentals course approved by the Commissioner. The course shall consist of at least eight hours of classroom instruction in subjects related to mortgage lending approved by the Commissioner. In addition, the applicant shall have satisfactorily completed a written examination approved by the Commissioner or possess residential mortgage lending education or experience in residential mortgage lending transactions that the Commissioner deems equivalent to the course.

(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

(1) If the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose by rule.

(2) If the applicant is a general or limited partnership, at least one of its general partners shall have the experience as described under subdivision (1) of this subsection.

(3) If the applicant is a corporation, at least one of its principal officers shall have the experience as described under subdivision (1) of this subsection.

(4) If the applicant is a limited liability company, at least one of its managers shall have the experience as described under subdivision (1) of this subsection.

(d) Each applicant shall identify one person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.

(e) Every applicant for initial licensure shall pay a filing fee of one thousand dollars ($1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars ($50.00) for licensure as a loan officer.

(f) A mortgage banker shall post a surety bond in the amount of one hundred fifty thousand dollars ($150,000) and a mortgage broker shall post a surety bond in the amount of fifty thousand dollars ($50,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money or monetary value in connection with a mortgage loan. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond that is required. An audited financial statement showing a net worth of two hundred fifty

thousand dollars ($250,000) or more shall be accepted in lieu of any bond required. No bond shall be required of any supervised or any nonsupervised institution, as defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.

(g) Any partner, member, shareholder, officer, or other person occupying a similar position with an applicant at the time of the application and who meets the requirements under subsection (c) of this section shall be issued a license as a loan officer without further action under this Article.

(h) Each branch office of a mortgage broker or mortgage banker licensed under the provisions of this Article shall be issued a separate license. A licensed mortgage broker or mortgage banker shall file with the Commissioner an application on a form prescribed by the Commissioner that identifies the address of the branch and the branch manager. A filing fee of one hundred dollars ($100.00) shall be assessed by the Commissioner for each branch office issued a license.

(i) Upon determining that an applicant meets the qualifications for licensure, the Commissioner shall issue a license to the applicant.

"**§ 53-243.06. License renewal; termination.**

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 30th day of June following issuance or on any other date that the Commissioner may determine. The license shall become invalid after that date unless renewed. A license may be renewed 45 days prior to the expiration date by paying to the Commissioner a renewal fee as follows:

(1) Licensed mortgage bankers shall pay an annual fee of five hundred dollars ($500.00), and one hundred dollars ($100.00) for each branch office.

(2) Licensed mortgage brokers shall pay an annual fee of five hundred dollars ($500.00), and one hundred dollars ($100.00) for each branch office.

(3) Licensed loan officers shall pay an annual fee of fifty dollars ($50.00).

(b) If a license is not renewed prior to the applicable expiration date, then an additional two hundred fifty dollars ($250.00) shall be assessed as a late fee to any renewal. In the event a licensee fails to obtain a reinstatement of the license within 90 days after the date the license expires, the Commissioner may require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(c) Licenses issued under this Article are not assignable. Control of a licensee shall not be acquired through a stock purchase or other device without the prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to G.S. 53-243.11 are applicable to the acquiring person.

"**§ 53-243.07. Continuing education.**

(a) As a condition of license renewal, the Commissioner may adopt rules to require continuing education of licensees under this Article for the purpose of enhancing

the professional competence and professional responsibility of mortgage bankers, mortgage brokers, and loan officers. The rules may include criteria for:

(1) The content of continuing education courses.
(2) Accreditation of continuing education sponsors and programs.
(3) Accreditation of videotape or other audiovisual programs.
(4) Computation of credit.
(5) Special cases and exemptions.
(6) General compliance procedures.
(7) Sanctions for noncompliance.

(b) Annual continuing professional education requirements shall be determined by the Commissioner. However, the requirements shall not exceed eight credit hours within a one-year period.

"**§ 53-243.08. Managing principals and branch managers.**

Each mortgage broker or mortgage banker licensed under this Article shall have a managing principal who operates the business under that person's full charge, control, and supervision. Each branch office of a mortgage broker or mortgage banker licensed under this Article shall have a branch manager who meets the requirements under G.S. 53-243.05(c). The managing principal for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its managing principal or branch manager designated for each branch. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.11 until the licensee complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this Article.

"**§ 53-243.09. Offices; address changes; display of license.**

(a) Each mortgage broker licensee shall maintain and transact business from a principal place of business in this State. A principal place of business in this State shall consist of at least one enclosed room or building of stationary construction in which negotiations of mortgage loan transactions of others may be conducted and carried on in privacy and in which all of the books, records, and files pertaining to mortgage loan transactions relating to borrowers in this State are maintained. However, the Commissioner may, by rule, impose terms and conditions under which the records and files may be maintained outside of this State.

(b) A mortgage banker or mortgage broker licensee shall report any change of address of the principal place of business or any branch office within 15 days after the change.

(c) Each mortgage broker or mortgage banker licensed under this Article shall display in plain view the certificate of licensure issued by the Commissioner in its principal office and in each branch office. Each loan officer licensed under this Article

shall display in each branch office in which the officer acts as a loan officer the certificate of licensure issued by the Commissioner.

"**§ 53-243.10. Prohibited activities.**

In addition to the activities prohibited under other provisions of this Article, it shall be unlawful for any person in the course of any mortgage loan transaction:

(1) To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.

(2) To refuse improperly to issue a satisfaction of a mortgage.

(3) To fail to account for or to deliver to any person any personal property obtained in connection with a mortgage loan, such as money, including money provided by a borrower for a real estate appraisal or a credit report, funds, deposit, check, draft, mortgage, or other document or thing of value, which has come into his or her possession and that is not his or her property or that he or she is not in law or equity entitled to retain.

(4) To pay any commission, share, split, or compensation in connection with a mortgage loan: (i) to any person who is engaged in the mortgage brokerage or mortgage banking business in violation of this Article; or (ii) to any unlicensed person, other than an exempt person, acting as a loan officer, mortgage broker, or mortgage lender.

(5) To charge or collect any fee or rate of interest prohibited by Chapter 24 of the General Statutes in connection with a mortgage loan.

(6) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants.

(7) To fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.

(8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person, in connection with the making of or purchase or sale of any mortgage loan.

(9) To fail promptly to pay when due reasonable fees to a licensed appraiser or licensed land surveyor for appraisal or survey services that are:

a. Requested from the appraiser or surveyor in writing by the mortgage broker or mortgage banker or an employee of the mortgage broker or mortgage banker; and

b. Performed by the appraiser in connection with the origination or closing of a mortgage loan for a customer or the mortgage broker or mortgage banker.

"§ 53-243.11. Disciplinary authority.

(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee, if the Commissioner finds:

(1) That the order is in the public interest.

(2) That the applicant, licensee, or any partner, member, manager, officer, director, loan officer, managing broker, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee:

a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement which, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

b. Has willfully violated or willfully failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.

c. Has been convicted, within the past 10 years, of any misdemeanor involving mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.

e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage broker or mortgage banker.

f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage or mortgage banking industry denying or revoking that person's license as a mortgage broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker.

g. Does not meet the qualification requirements under G.S. 53-243.05 or any bond or capital requirements imposed by the Commissioner, by rule, under the provisions of this Article.

h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or mortgage banker who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.

i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial

order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected.

(b) The Commissioner may, by order, summarily postpone or suspend the license of a licensee pending final determination of any proceeding under this section. Upon entering the order, the Commissioner shall promptly notify the applicant or licensee that the order has been entered and the reasons for the order. The Commissioner shall calendar a hearing within 15 days after the Commissioner receives a written request for a hearing. If a licensee does not request a hearing and the Commissioner does not request a hearing, the order will remain in effect until it is modified or vacated by the Commissioner. If a hearing is requested or ordered by the Commissioner, after notice of and opportunity for hearing, the Commissioner may modify or vacate the order or extend it until final determination.

(c) The Commissioner may, by order, impose a civil penalty upon a licensee or any partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee for any violation of this Article. The civil penalty shall not exceed ten thousand dollars ($10,000) for each violation of this Article by a mortgage broker or mortgage banker. The Commissioner may impose a civil penalty of up to ten thousand dollars ($10,000) for each violation of this Article by a person other than a licensee or exempt person.

(d) In addition to other powers under this Article, upon finding that any action of a person is in violation of this Article, the Commissioner may order the person to cease from the prohibited action. If the person subject to the order fails to appeal the order of the Commissioner in accordance with G.S. 53-240 and continues to engage in the prohibited action in violation of the Commissioner's order, the person shall be subject to a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation of the Commissioner's order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a licensee for the licensee's failure to comply with an order of the Commissioner.

(e) Unless otherwise provided, all actions and hearings under this Article shall be governed by Chapter 150B of the General Statutes.

(f) When a licensee is accused of any act, omission, or misconduct that would subject the licensee to disciplinary action, the licensee, with the consent and approval of the Commissioner, may surrender the license and all the rights and privileges pertaining to it for a period of time established by the Commissioner. A person who surrenders a license shall not be eligible for or submit any application for licensure as a mortgage broker or mortgage banker during the period the license is surrendered.

(g) If the Commissioner has reasonable grounds to believe that a licensee or other person has violated the provisions of this Article or that facts exist that would be the basis for an order against a licensee or other person, the Commissioner may at any time, either personally or by a person duly designated by the Commissioner, investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of any licensee or other person relating to the complaint or matter under investigation. The Commissioner and all persons duly designated by the Commissioner may issue subpoenas to require the attendance of and to examine under

oath all persons whose testimony the Commissioner deems relative to the person's business. The reasonable cost of this investigation or examination shall be charged against the licensee.

(h) In addition to the rights described under this section, the Commissioner may require a licensee to pay to a borrower or other individual any amounts received by the licensee or its employees in violation of Chapter 24 of the General Statutes.

(i) If the Commissioner finds that the managing principal, branch manager, or loan officer of a licensee had knowledge of or participated in any activity that results in the entry of an order under this section suspending or withdrawing the license of a licensee, the Commissioner may prohibit the managing broker or loan officer from serving as a managing broker or loan officer for any period of time the Commissioner deems necessary.

"**§ 53-243.12. Records; escrow funds or trust accounts.**

(a) The Commissioner shall keep a list of all applicants for licensure under this Article that includes the date of application, name, and place of residence and whether the license was granted or refused.

(b) The Commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective loan officers and a roster of exempt persons required to file a notice under G.S. 53-243.02. The rosters shall: (i) be kept on file in the office of the Commissioner; (ii) contain information regarding all orders or other action taken against the licensees, loan officers, and other persons; and (iii) be open to public inspection.

(c) Every licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed in rules adopted by the Commissioner. All records shall be preserved for three years unless the Commissioner, by rule, prescribes otherwise for particular types of records. The recordkeeping requirements imposed by the Commissioner or this subsection shall not be greater than those imposed by applicable federal law.

(d) If the information contained in any document filed with the Commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall promptly file a correcting amendment to the information contained in the document.

(e) A licensee shall maintain in a segregated escrow fund or trust account any funds which come into the licensee's possession, but which are not the licensee's property and which the licensee is not entitled to retain under the circumstances. The escrow fund or trust account shall be held on deposit in a federally insured financial institution.

"**§ 53-243.13. Validity of mortgage loan.**

A violation of any provision of this Article shall not invalidate the loan transaction or create liability for a subsequent holder of the loan who purchased the loan without knowledge of the violation. Failure to comply with the provisions of this Article shall not affect the validity or enforceability of any mortgage loan. However, this section shall not be construed as a limitation on the rights of a borrower to pursue any available remedy to redress a loss suffered as a result of the violation of this Article."

SECTION 3. G.S. 53-99(b)(7b) reads as rewritten:

"(7b) Records of examinations and investigations of registrants under the Mortgage ~~Bankers and Brokers Act, Article 19 of this Chapter;~~ Lending Act, Article 19A of this Chapter;".

SECTION 4. G.S. 66-106 reads as rewritten:

"**§ 66-106. Definitions.**

For purposes of this Article the following definitions apply:

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

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

Provided, that this Article shall not apply to any party approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, a National Mortgage Association or any federal agency; nor to any 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 insurance company registered with and licensed by the North Carolina Insurance Commissioner; nor, with respect to residential mortgage loans, to any residential mortgage banker or mortgage broker ~~registered with the Commissioner of Banks pursuant to Article 19 of Chapter 53 or exempt from such registration pursuant to G.S. 53-234(6);~~ licensed pursuant to Article 19A of Chapter 53 of the General Statutes or exempt from licensure pursuant to G.S. 53-243.01(7) and G.S. 53-243.02; nor to any attorney-at-law, public accountant, or dealer registered under the North Carolina Securities Act, acting in the professional capacity for which such 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."

SECTION 5. All exempt persons described in G.S. 253-243.01(7), enacted by Section 1 of this act, who are engaged in the mortgage brokerage or mortgage banking business shall be required to file with the Commissioner, within 90 days of the effective date of this act or upon the commencement of mortgage brokerage or mortgage banking business in this State, a statement on a form prescribed by the Commissioner setting forth the name of the respective exempt person, the basis of the exempt status of the exempt person, the principal business address of the exempt person, and the State or federal regulatory authority responsible for its supervision, examination, or regulation, if any. In addition to any other measures the exempt person may be subject to under Article 19A of Chapter 53 of the General Statutes, enacted by Section 1 of this act, failure by an exempt person to file the required form shall not affect the exempt status of the person. However, the entity shall be subject to a civil penalty set by the Commissioner that shall not exceed the sum of two hundred fifty dollars ($250.00) for each year the form is not filed. No person required to file under

this section may transact business in this State as a mortgage banker or mortgage broker unless the person has filed the prescribed form with the Commissioner in accordance with this section.

SECTION 6.(a) Any person who, on the effective date of this act, is engaged in business and registered as a mortgage broker or mortgage banker shall not be required to file an application under G.S. 53-243.05, enacted by Section 1 of this act, and shall be entitled to issuance of a license under Article 19A of Chapter 53 of the General Statutes, enacted by Section 1 of this act.

SECTION 6.(b) Any qualified person who files, within 180 days after this act becomes effective, a sworn application with the Commissioner stating that he or she has met the definition of a qualified person under G.S. 53-243.01(17), enacted by Section 1 of this act, including a statement that he or she has not been convicted of any felony or any felony or misdemeanor involving moral turpitude, shall be issued a license as a loan officer from the Commissioner without having to meet the requirements for licensure under G.S. 53-243.05(b), enacted by Section 1 of this act.

SECTION 6.(c) Any qualified lender who files, within 90 days after this act becomes effective, a sworn statement with the Commissioner that consists of a list of its loan officers in North Carolina, the addresses of its principal office and each of its branches, and the names and addresses of the managing principal and each of its branch managers and states that no employee, loan officer, or individual with a controlling interest in the lender has been convicted of any felony or any misdemeanor involving moral turpitude, shall be issued a license as a mortgage banker from the Commissioner without having to meet the requirements for licensure under G.S. 53-243.05(c), enacted by Section 1 of this act.

SECTION 7. On or after July 1, 2003, any individual mortgage banker, mortgage broker, or loan officer desiring to renew a license shall offer evidence satisfactory to the Commissioner that he or she has complied with the continuing professional education requirements approved by the Commissioner pursuant to G.S. 53-243.07, enacted by Section 1 of this act.

SECTION 8. This act becomes effective July 1, 2002.

HOUSE BILL 1106:
Enact Mortgage Lending Act.

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Reps. Church and Morgan
Date:	April 18, 2001	**Summary by:**	O. Walker Reagan,
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1106 would repeal the existing registration of mortgage bankers and brokers and replace it with a licensing law for mortgage lenders and mortgage brokers.***

CURRENT LAW: Current law requires mortgage bankers and mortgage brokers to register with the Commissioner of Banks unless banker or broker is exempt for the law. The law does not specify any qualifications for a person registering, does not require any surety bonds, and only gives the Commissioner limited authority to enforce the prohibitions under the statute.

BILL ANALYSIS: House Bill 1106 repeals the existing registration law, Article 19 of Chapter 53, and replaces it with a licensing statute. Mortgage bankers, mortgage brokers, and loan officers are required to be licensed before engaging in the business of mortgage lending or mortgage brokering, unless exempt. The bill exempts from the provisions of the bill depository institutions (banks, savings and loans, credit unions), insurance companies and governmental lenders, and their employees; and persons who make no more than 5 loans a year and real estate brokers who does not receive compensation for making loans.

To be licensed an applicant must show evidence of financial requirements (bonding), branch office information, evidence of employee training and experience, legal corporate organization and pay the necessary fees. The Commissioner shall license any person whose qualifications, experience, business history, and credit history are satisfactory. A loan officer must be 18 and completed within 3 years an approved mortgage lending fundamentals course. The financial responsibility requirements are a surety bond of $150,000 for mortgage bankers and $50,000 for mortgage brokers. Licenses must be renewed annually. The Commissioner is also directed to adopt rules for continuing education for mortgage bankers, brokers and loan officers, not to exceed 8 hours per year.

The bill also requires each mortgage broker and banker to designate a managing principal for all offices and a separate branch manager for each branch office. The bill also specifies record keeping and reporting requirements, and branch offices requirements. The bill details the specific prohibited activities (G.S. 53-243.10). The bill specifies the powers of the Commissioner for disciplinary action for licensing violations including revocation of licenses and civil fines for violations. (G.S. 53-243.11).

G.S. 53-243.05(e) and G.S. 53-243.06 set out the various fees to be charged for the different licenses and branch offices.

Section 5 of the bill requires all persons engaged in mortgage brokerage or mortgage banking business exempt from the licensing requirements under this bill to register with the Commissioner or be subject to a civil fine of $250.

Section 6 provides for the transition provisions to allow any person registered as a mortgage banker or broker under existing law to automatically be eligible for licensure under this new law. Also within 180 days of the effective date of this law, a person can be licensed as a loan officer upon filing a sworn application. A qualified lender, within 90 days of the effective date, can also license all loan

officers, managing principals, and principal and branch offices without having to meet the licensure requirements of the act by filing a sworn statement.

The bill becomes effective July 1, 2002.

SPECIAL NOTES: The bill authorizes the Commissioner to charge licensing fees and therefore requires the bill to be rereferred to the Committee on Finance and therefore the bill is not subject to the April 26th crossover deadline. Also because the bill creates a new licensing requirement, under G.S. 120-149.3 and Rule 35.1 of the House Rules, the bill must be given an assessment report by the Legislative Committee on New Licensing Boards before action can be taken in committee or on the House floor.

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — APRIL 18, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
McNeil Chestnut	AG. OFF. Rep Comm. Bkg.
DANIEL GARNER	OFFICE, COMMISSIONER OF BANKS
Reitzel Deaton	Office, Commissioner of Banks
Hal Lingerfelt	" " " "
BRAD LOVIN	NC MANUFACTURED HOUSING INST
Frank Gray	"
[illegible]	[illegible]
Paul H. Stock	NC Bankers Assn.
[illegible]	MFSRA.
DICK BOISKY	NCAMP
WAYNE COWAN	NCAMP

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — **Name of Committee**

APRIL 18, 2001 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Schofield	NC Justice Ctr.
Margaret Westbrook	Kennedy Covington
Roney Lamm	Citi Financial / Citigroup
Barbara Conklin	Manning Fulton & Skinner
Mark Bacon	Capitol Consulting
Dick Carlton	NCFSA
Richard Riano	NCAMP
Sherry Bridge	NCAMP
Kate Crawford	NCAMP/NAMB
Mary Mundt	Parker Poe
Larry Bentley	ABA Assoc.
Jim Long	NCCCA

FINANCIAL INSTITUTIONS

MAY 2, 2001
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSELS – MS. KAREN COCHRANE-BROWN MR. WALKER REAGAN
COMMITTEE ASSISTANTS – DIXIE EPPS AND JOYCE FULLER
SGT.-AT-ARMS – DONNELL LEATHERS AND THOMAS WILDER
PAGES – CHRISTOPHER GRAHAM AND BRANDY MYERS

S.B. #882 – CONFORM NC LAW TO COMMODITIES EXCHANGE ACT – SEN. CARPENTER

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
MAY 2, 2001

The **House Committee on Financial Institutions** met on Wednesday, May 2, 2001, at 10 a.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chairman Walter Church. Co-Chairman recognized the Sgt.-at-Arms and the two pages who were assigned to the meeting. The following members of the committee were present: Co-Chairman Church; Vice Chairman McAllister; Members: Reps. Brubaker, Cole, Gibson, Harrington, Howard, McLawhorn, Michaux, Miller, Smith, Wainwright and Walend.

S.B. #882 – CONFORM NC LAW TO COMMODITIES EXCHANGE ACT. Co-Chairman Church recognized Sen. Carpenter to present the bill. Senate Bill #882 amends G.S. 16-3, which prohibits contracts for "futures", to bring State Law into conformity with the Federal Commodities Exchange Act. The law was originally enacted in 1889 to protect the public from "bucket shops", which are establishments seemingly engaged in a stock exchange or similar business, but are really engaged in the registration of lots or wagers. It was also enacted to attempt to discourage commodities market price manipulation.

Rep. Brubaker moved that the Committee Substitute for S.B. #882 be adopted for discussion. O. Walker Reagan, Committee Co-Counsel, explained the **PROPOSED HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL #882.** This proposed amendment to GS. 16-3 would conform N. C. to the federal law, and together would continue to protect the public from fraudulent operators by only exempting legitimate hedging, risk management and investment activities. After much discussion Rep. Harrington moved that **S.B. #882 BE GIVEN A FAVORABLE REPORT AS TO COMMITTEE SUBSTITUTE BILL AND UNFAVORABLE TO ORIGINAL BILL.**

There being no further business, Co-Chairman Church adjourned the meeting at 10:25 a.m.

Walter Church Sr.
Co-Chairman Walter Church, Sr.

Joyce A. Fuller
Joyce A. Fuller, Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **CHURCH AND MORGAN** (Chair/Chairs) for the Committee on **FINANCIAL INSTITUTIONS**.

☐ Committee Substitute for
S.B. 882 A BILL TO BE ENTITLED AN ACT TO CONFORM THE LAW GOVERNING CONTRACTS FOR "FUTURES" TO THE FEDERAL COMMODITY EXCHANGE ACT.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☑ With a favorable report as to House committee substitute bill ~~(#), ☐ which changes the title,~~ unfavorable as to (original bill) ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .~~)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 882

Short Title:	Conform NC Law to Commodities Exchange Act.	(Public)
Sponsors:	Senator Carpenter.	
Referred to:	Commerce.	

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE LAW GOVERNING CONTRACTS FOR "FUTURES" TO THE FEDERAL COMMODITY EXCHANGE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 16-3 reads as rewritten:

"**§ 16-3. Certain contracts as to "futures" void.**

Every contract, whether in writing or not, whereby any person shall agree to sell and deliver any cotton, Indian corn, wheat, rye, oats, tobacco, meal, lard, bacon, salt pork, salt fish, beef, cattle, sugar, coffee, stocks, bonds, and choses in action, at a place and at a time specified and agreed upon therein, to any other person, whether the person to whom such article is so agreed to be sold and delivered shall be a party to such contract or not, when, in fact, and notwithstanding the terms expressed of such contract, it is not intended by the parties thereto that the articles or things so agreed to be sold and delivered shall be actually delivered, or the value thereof paid, but it is intended and understood by them that money or other thing of value shall be paid to the one party by the other, or to a third party, the party to whom such payment of money or other thing of value shall be made to depend, and the amount of such money or other thing of value so to be paid to depend upon whether the market price or value of the article so agreed to be sold and delivered is greater or less at the time and place so specified than the price stipulated to be paid and received for the articles so to be sold and delivered, and every contract commonly called "futures" as to the several articles and things hereinbefore specified, or any of them, by whatever other name called, and every contract as to the said several articles and things, or any of them, whereby the parties thereto contemplate and intend no real transaction as to the article or thing agreed to be delivered, but only the payment of a sum of money or other thing of value, such payment and the amount thereof and the person to whom the same is to be paid to depend on whether or not the market price or value is greater or less than the price so agreed to be paid for the said article or thing at the time and place specified in such contract, shall be utterly null and

void; and no action shall be maintained in any court to enforce any such contract, whether the same was made in or out of the State, or partly in and partly out of this State, and whether made by the parties thereto by themselves or by or through their agents, immediately or mediately; nor shall any party to any such contract, or any agent of any such party, directly or remotely connected with any such contract in any way whatever, have or maintain any action or cause of action on account of any money or other thing of value paid or advanced or hypothecated by him or them in connection with or on account of such contract and agency; nor shall the courts of this State have any jurisdiction to entertain any suit or action brought upon a judgment based upon any such contract. This section shall not be construed so as to apply to any person, firm or corporation, or his or their agents, engaged in the business of manufacturing or wholesale merchandising in the purchase and/or sale of the necessary commodities required in the ordinary course of their business; nor shall this section be construed so as to apply to any contract with respect to the purchase and/or sale for future delivery of any of the articles or things mentioned and referred to in this section, where such purchase and/or sale is made on any exchange on which any such article or things are regularly bought and sold, or contracts therefor regularly entered into, and the rules and regulations of such exchange are such that either party to such contract may require delivery thereof: Provided, such contract is made in accordance with such rules and regulations.

In addition, neither this section nor any other section of this Article shall be construed to apply to any person, firm, corporation, or other entity, either as principal or agent, or to any contract, that is excluded or exempted under the Commodity Exchange Act, as provided in section 16(e)(2) of the Commodity Exchange Act, 7 U.S.C. § 16(e)(2) and, accordingly, each section of this Article shall be considered a "law that regulates or prohibits the operation of bucket shops" within the meaning of section 16(e)(2) of the Commodity Exchange Act."

SECTION 2. This act becomes effective October 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 882
PROPOSED HOUSE COMMITTEE SUBSTITUTE S882-CSRU-48 [v.2]

5/1/2001 5:09:29 PM

Short Title: Conform NC Law to Commodities Exchange Act. (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE LAW GOVERNING CONTRACTS FOR "FUTURES" TO THE FEDERAL COMMODITY EXCHANGE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 16-3 reads as rewritten:

"**§ 16-3. Certain contracts as to "futures" void.**

Every contract, whether in writing or not, whereby any person shall agree to sell and deliver any cotton, Indian corn, wheat, rye, oats, tobacco, meal, lard, bacon, salt pork, salt fish, beef, cattle, sugar, coffee, stocks, bonds, and choses in action, at a place and at a time specified and agreed upon therein, to any other person, whether the person to whom such article is so agreed to be sold and delivered shall be a party to such contract or not, when, in fact, and notwithstanding the terms expressed of such contract, it is not intended by the parties thereto that the articles or things so agreed to be sold and delivered shall be actually delivered, or the value thereof paid, but it is intended and understood by them that money or other thing of value shall be paid to the one party by the other, or to a third party, the party to whom such payment of money or other thing of value shall be made to depend, and the amount of such money or other thing of value so to be paid to depend upon whether the market price or value of the article so agreed to be sold and delivered is greater or less at the time and place so specified than the price stipulated to be paid and received for the articles so to be sold and delivered, and every contract commonly called "futures" as to the several articles and things hereinbefore specified, or any of them, by whatever other name called, and every contract as to the said several articles and things, or any of them, whereby the parties thereto contemplate and intend no real transaction as to the article or thing agreed to be delivered, but only the payment of a sum of money or other thing of value, such payment and the amount thereof and the person to whom the same is to be paid to depend on whether or not the market price or value is greater or less than the price so agreed to be paid for the said article or thing at the time and place specified in such contract, shall be utterly null and void; and no action shall be maintained in any court to enforce any such contract,

whether the same was made in or out of the State, or partly in and partly out of this State, and whether made by the parties thereto by themselves or by or through their agents, immediately or mediately; nor shall any party to any such contract, or any agent of any such party, directly or remotely connected with any such contract in any way whatever, have or maintain any action or cause of action on account of any money or other thing of value paid or advanced or hypothecated by him or them in connection with or on account of such contract and agency; nor shall the courts of this State have any jurisdiction to entertain any suit or action brought upon a judgment based upon any such contract. This section shall not be construed so as to apply to any person, firm or corporation, or his or their agents, engaged in the business of manufacturing or wholesale merchandising in the purchase and/or sale of the necessary commodities required in the ordinary course of their business; nor shall this section be construed so as to apply to any contract with respect to the purchase and/or sale for future delivery of any of the articles or things mentioned and referred to in this section, where such purchase and/or sale is made on any exchange on which any such article or things are regularly bought and sold, or contracts therefor regularly entered into, and the rules and regulations of such exchange are such that either party to such contract may require delivery thereof: Provided, such contract is made in accordance with such rules and regulations.

In addition, this Article shall not apply to any person, firm, corporation, or other entity, either as principal or agent, or to any contract, that is excluded or exempted under the Commodity Exchange Act, as provided in section 16(e)(2) of the Commodity Exchange Act, 7 U.S.C. § 16(e)(2), and, accordingly, each section of this Article shall be considered a "law that regulates or prohibits the operation of bucket shops" within the meaning of section 16(e)(2) of the Commodity Exchange Act."

SECTION 2. This act becomes effective October 1, 2001.

SENATE BILL 882:
Conform NC Law to Commodities Exchange Act.

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Senator Carpenter
Date:	May 2, 2001	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: Senate Bill 882 amends G.S. 16-3, which prohibits contracts for "futures", to bring State law into conformity with the Federal Commodities Exchange Act.

CURRENT LAW: Currently, G.S. 16-3 makes certain contracts for "futures" void under North Carolina law and makes the entering into these contracts a Class 1 misdemeanor. "Futures", as defined in G.S. 16-3, are contracts for the purchase or sale of commodities, stocks or bonds, in which it is not intended by the parties that the things agreed to be sold will actually be delivered. Rather, the intent is that, at a future date, the losing party will pay to the other party the difference between the market price and the contract price.

The law was originally enacted in 1889 to protect the public from "bucket shops", which are establishments seemingly engaged in a stock exchange or similar business, but are really engaged in the registration of lots or wagers. It was also enacted to attempt to discourage commodities market price manipulation.

In the years since G.S. 16-3 was enacted, and with the development of more sophisticated financial products, there has been extensive federal regulation of securities and commodities exchanges. The Federal Commodities Exchange Act and the Commodities Futures Modernization Act of 2000 currently allows certain types of transactions that could be interpreted as illegal and unenforceable under North Carolina's statute.

BILL ANALYSIS: Senate Bill 882 would add a provision to G.S. 16-3 to make it not apply to any person or contract that is not restricted by the federal Commodities Exchange law. Effectively this would make transactions that are valid and enforceable under the Federal Commodities Exchange Act valid and enforceable under North Carolina law.

EFFECTIVE DATE: The act would become effective October 1, 2001.

S882-SMRU-V1-001

§ 16-4. Entering into or aiding contract for "futures" misdemeanor.

If any person shall become a party to any contract declared void in this Article; or if any person shall be the agent, directly or indirectly, of any party in making or furthering or effectuating the same; or if any agent or officer of a corporation shall in any manner knowingly aid in making or furthering any such contract to which the corporation is a party, he shall be guilty of a Class 1 misdemeanor.

If any person shall, while in this State, consent to become a party to any such contract made in another state, and if any person shall, as agent of any person or corporation, become a party to any such contract made in another state, or in this State do any act or in any way aid in the making or furthering of any such contract so made in another state, he shall be guilty of a Class 1 misdemeanor. (1889, c. 221, ss. 3, 4; Rev., ss. 3823, 3824; C.S., s. 2147; 1993, c. 539, s. 304; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 16-5. Opening office for sales of "futures" misdemeanor.

If any person, corporation or other association of persons, either as principal or agent, shall establish or open an office or place of business in this State for the purpose of carrying on or engaging in making such contracts as are forbidden in this Article, he shall be guilty of a Class 1 misdemeanor. (1905, c. 538, ss. 1, 2; Rev., s. 3825; C.S., s. 2148; 1993, c. 539, s. 305; 1994, Ex. Sess., c. 24, s. 14(c).)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 882
PROPOSED HOUSE COMMITTEE SUBSTITUTE S882-PCS6273-RU-48

Short Title: Conform NC Law to Commodities Exchange Act. (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE LAW GOVERNING CONTRACTS FOR "FUTURES" TO THE FEDERAL COMMODITY EXCHANGE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 16-3 reads as rewritten:

"§ 16-3. Certain contracts as to "futures" void.

Every contract, whether in writing or not, whereby any person shall agree to sell and deliver any cotton, Indian corn, wheat, rye, oats, tobacco, meal, lard, bacon, salt pork, salt fish, beef, cattle, sugar, coffee, stocks, bonds, and chooses in action, at a place and at a time specified and agreed upon therein, to any other person, whether the person to whom such article is so agreed to be sold and delivered shall be a party to such contract or not, when, in fact, and notwithstanding the terms expressed of such contract, it is not intended by the parties thereto that the articles or things so agreed to be sold and delivered shall be actually delivered, or the value thereof paid, but it is intended and understood by them that money or other thing of value shall be paid to the one party by the other, or to a third party, the party to whom such payment of money or other thing of value shall be made to depend, and the amount of such money or other thing of value so to be paid to depend upon whether the market price or value of the article so agreed to be sold and delivered is greater or less at the time and place so specified than the price stipulated to be paid and received for the articles so to be sold and delivered, and every contract commonly called "futures" as to the several articles and things hereinbefore specified, or any of them, by whatever other name called, and every contract as to the said several articles and things, or any of them, whereby the parties thereto contemplate and intend no real transaction as to the article or thing agreed to be delivered, but only the payment of a sum of money or other thing of value, such payment and the amount thereof and the person to whom the same is to be paid to depend on whether or not the market price or value is greater or less than the price so agreed to be paid for the said article or thing at the time and place specified in such contract, shall be utterly null and void; and no action shall be maintained in any court to enforce any such contract,

whether the same was made in or out of the State, or partly in and partly out of this State, and whether made by the parties thereto by themselves or by or through their agents, immediately or mediately; nor shall any party to any such contract, or any agent of any such party, directly or remotely connected with any such contract in any way whatever, have or maintain any action or cause of action on account of any money or other thing of value paid or advanced or hypothecated by him or them in connection with or on account of such contract and agency; nor shall the courts of this State have any jurisdiction to entertain any suit or action brought upon a judgment based upon any such contract. This section shall not be construed so as to apply to any person, firm or corporation, or his or their agents, engaged in the business of manufacturing or wholesale merchandising in the purchase and/or sale of the necessary commodities required in the ordinary course of their business; nor shall this section be construed so as to apply to any contract with respect to the purchase and/or sale for future delivery of any of the articles or things mentioned and referred to in this section, where such purchase and/or sale is made on any exchange on which any such article or things are regularly bought and sold, or contracts therefor regularly entered into, and the rules and regulations of such exchange are such that either party to such contract may require delivery thereof: Provided, such contract is made in accordance with such rules and regulations.

In addition, this Article shall not apply to any person, firm, corporation, or other entity, either as principal or agent, or to any contract, that is excluded or exempted under the Commodity Exchange Act, as provided in section 16(e)(2) of the Commodity Exchange Act, 7 U.S.C. § 16(e)(2), and, accordingly, each section of this Article shall be considered a "law that regulates or prohibits the operation of bucket shops" within the meaning of section 16(e)(2) of the Commodity Exchange Act."

SECTION 2. This act becomes effective October 1, 2001.

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — MAY 2, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
McNeil Chestnut	NC Off of Comm. Banks
DANIEL E. GARNER	NC, OFFICE OF COM'R OF BANKS
Barry Taylor - Brill	First Union Corporation
Bill Scoggin	Kennedy Covington
Peter Keber	Bank of America
Mark Deason	Capitol Group
Mike Calla	Self Help
Dick Carlton	Carlton & Alexander
Ken Melton	Alley Associates
Ken Kinion	American General
Reitzel Deaton	NC office Commissioner of Banks

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — MAY 2, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Otis M. Meacham	Deputy Commissioner of Banks
Hal D. Lingerfelt	Commissioner of Banks
John Jordan	Jordan, Price
Rob Schofield	NC Justice Ctr.
Stephanie Mann	NCAR
Mark Pearce	Self-Help
Roger Bone	Bone McAllester

FINANCIAL INSTITUTIONS

May 30, 2001
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSELS – MS. KAREN COCHRANE-BROWN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS – DIXIE EPPS AND JOYCE FULLER

SGT.-AT-ARMS – BOB FOWLER AND THOMAS WILDER

PAGES – NATASHA HICKS AND KATIE SMITH

S.B. #860 - INTERSTATE TRUST BUSINESS

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
MAY 30, 2001

The **House Committee on Financial Institutions** met on Wednesday, May 30,2001, at 10:00 a.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chairman Richard Morgan. The Co-Chairman recognized the Committee Counsels, Committee Assistants, the Sgt.-at-Arms and the two pages who were assigned to the meeting. The following members of the committee were present: Co-Chairman Morgan; Vice Chairman McAllister; Members: Reps. Allred, Brubaker, Buchanan, Cole, Culpepper, Dockham, Gibson, Harrington, Howard, McLawhorn, McMahan, Michaux, Miller, Smith, Wainwright, and Walend

S.B. #860 INTERSTATE TRUST BUSINESS. Co-Chairman Morgan recognized Sen. Clodfelter to present the bill. This bill will modernize the law governing trust business by providing statutory authority separate from the banking law for the formation and regulatory oversight of non-banking trust companies and private family trust companies. The bill would also authorize trust business on an interstate basis. The bill is a recommendation of the Commissioner of Banks and was a recommendation of the LRC's Committee on Non-depository Trust Companies and Family Trust Companies to the 2000 Session of the General Assembly. The bill also modifies the residency requirements for bank directors. After much discussion, Rep. Buchanan moved that **S.B. #860 BE GIVEN A FAVORABLE REPORT AND RECOMMENDED THAT THE BILL BE RE-REFERRED TO THE COMMITTEE ON FINANCE**

There being no further business, Co-Chairman Morgan adjourned the meeting at 10:30 a.m.

Co-Chairman Richard Morgan

Joyce A. Fuller, Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **CHURCH AND MORGAN** (Chair/Chairs) for the Committee on **FINANCIAL INSTITUTIONS.**

☒ Committee Substitute for
S.B. 860 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CHARTERING OF INDEPENDENT TRUST COMPANIES, TO PERMIT BANKS AND TRUST COMPANIES TO CONDUCT TRUST BUSINESS ON AN INTERSTATE BASIS, AND TO MODIFY THE RESIDENCY REQUIREMENTS FOR A BANK'S BOARD OF DIRECTORS.

☐ With a favorable report.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on ~~Appropriations~~ ☐ Finance ☒ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 3

SENATE BILL 860
Commerce Committee Substitute Adopted 5/02/01
Third Edition Engrossed 5/9/01

Short Title: Interstate Trust Business. (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CHARTERING OF INDEPENDENT TRUST COMPANIES, TO PERMIT BANKS AND TRUST COMPANIES TO CONDUCT TRUST BUSINESS ON AN INTERSTATE BASIS, AND TO MODIFY THE RESIDENCY REQUIREMENTS FOR A BANK'S BOARD OF DIRECTORS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 24.

"Trust Companies and Interstate Trust Business.

"Part 1. Definitions.

"**§ 53-301. Definitions.**

(a) Except as otherwise provided in this Article, or when the context clearly indicates that a different meaning is intended, the following definitions shall apply throughout this Article:

(1) 'Account' means the client relationship established with a trust institution involving the transfer of real or personal property to the trust institution or the assumption of duties by the trust institution concerning real or personal property.

(2) 'Act as a fiduciary' means:

a. To (i) act as trustee under a written instrument or by judicial appointment or order; (ii) receive money or other property as trustee for investment or reinvestment in real or personal property; (iii) act as custodian or custodial trustee under a gifts to minors act, a transfers to minors act, a custodial trust act, or similar statute; (iv) act as personal representative of the estate of a deceased person; (v) act as trustee, guardian, or conservator for the person or estate of an incompetent such as a minor or

incapacitated person, or in other circumstances in which a guardian may be appointed; or (vi) act in a capacity similar to one listed in (i) through (v), however such capacity may be designated under applicable law or governing instrument; or

b. To possess, purchase, sell, safekeep, or otherwise manage or administer property in any other fiduciary capacity.

(3) 'Affiliate' means a company that directly or indirectly controls, is controlled by, or is under common control with another company.

(4) 'Authorized trust institution' means any State trust company and any trust office or representative trust office of a trust institution located in this State that is not a bank.

(5) 'Bank' has the meaning set forth in 12 U.S.C. § 1813(a)(1), except that 'bank' does not include a trust company.

(6) 'Bank supervisory agency' means:

a. Any agency of another state or a home country with primary responsibility for chartering or supervising a trust institution; and

b. The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, a Federal Reserve Bank acting in a supervisory capacity over any bank or bank holding company, the Office of Thrift Supervision, and any successor to these agencies.

(7) 'Branch' has the meaning set forth in G.S. 53-1(1a).

(8) 'Charter' means a charter issued to a State trust company by the Commissioner or a charter, license, or other authority issued by the Commissioner or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state or home country, and the issuance of the charter, license, or other authority.

(9) 'Client' means a person to whom a trust institution owes a duty or obligation under an account.

(10) 'Commission' means the North Carolina State Banking Commission.

(11) 'Commissioner' means the Commissioner of Banks for the State of North Carolina.

(12) 'Company' includes a bank, trust company, corporation, partnership, association, limited liability company, trust, business trust, joint venture, foundation, pool, syndicate, unincorporated organization, or other form of entity not specifically listed herein.

(13) 'Control,' with respect to a State trust company, means:

a. The ownership of or ability or power to vote directly, acting through one or more other persons, or otherwise indirectly, ten

percent (10%) or more of the outstanding shares of a class of voting securities of the State trust company;

b. The ability to control, directly or indirectly, the election of a majority of the board of the State trust company; or

c. The power to exercise, directly or indirectly, a controlling influence over the management or policies of the State trust company.

(14) 'Debt security' means a marketable obligation evidencing indebtedness of a company in the form of a bond, note, debenture, or other debt instrument.

(15) 'Depository institution' means any company within any of the definitions of "insured depository institution" set forth in 12 U.S.C. § 1813(c).

(16) 'Equity capital' means the amount by which the total assets of a State trust company exceed its total liabilities.

(17) 'Equity security' means:

a. Stock, other than adjustable rate preferred stock and money market (auction rate) preferred stock;

b. A certificate of interest or participation in a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate;

c. A security immediately convertible at the option of the holder without payment of significant additional consideration into a security described by this subdivision;

d. A security carrying a warrant or right to subscribe to or purchase a security described by this subdivision; and

e. A certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision that evidences an existing or contingent equity ownership interest.

(18) 'Executive officer' means an officer of a company who is named an executive officer by the company or who participates in major policy-making functions of the company.

(19) 'Federally chartered savings association' means a company described in 12 U.S.C. § 1813(b)(2).

(20) 'Fiduciary record' means a matter written, transcribed, recorded, received, or otherwise in the possession or control of a trust institution, whether in physical, electronic, magnetic, or other form, that preserves information concerning an account or a client.

(21) 'Foreign bank' means a foreign bank, as defined in 12 U.S.C. § 1813(s)(1), except for a bank organized under the laws of a territory of the United States.

(22) 'Foreign trust institution' means a trust institution, other than a foreign bank, chartered in a foreign country.

(23) 'Hazardous condition' with respect to a trust institution means:

a. A refusal by the trust institution to permit examination of its books, papers, accounts, records, or affairs by the Commissioner or a duly appointed or authorized examiner of the Commissioner, or a refusal by the officers or directors of a trust institution to be examined under oath regarding its affairs;

b. A material violation by a trust institution of a condition of its chartering or an agreement entered into between the trust institution and the Commissioner; or

c. A circumstance or condition in which an unreasonable risk of loss is threatened to clients, creditors, or shareholders of a trust institution because the trust institution:

1. Has equity capital that is, or is in substantial danger of becoming, inadequate for the safe and sound conduct of its business without regard to whether it is, or is in substantial danger of becoming, insolvent;

2. Has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;

3. Violates or fails to comply with this Article, another statute or rule applicable to trust institutions, or any duly issued order of the Commissioner;

4. Is in a condition that renders the continuation of a particular business practice hazardous to its clients, creditors, or shareholders; or

5. Conducts business in an unsafe or unsound manner, which includes conducting business with:

I. Materially inexperienced or inattentive management;

II. Dangerous operating practices;

III. Materially infrequent or inadequate audits;

IV. Materially deficient administration of assets in relation to the volume and character of the assets it administers or the trust institution's responsibility for such assets;

V. Materially frequent or serious failures to adhere to sound administrative practices;

VI. Materially frequent or serious violations of applicable laws, rules, or terms of instruments governing accounts; or

VII. Materially serious self-dealing or conflicts of interest.

(24) 'Home country' means a foreign country in which a foreign trust institution is chartered.

(25) 'Home country regulator' means the bank supervisory agency with primary responsibility for chartering and supervising a foreign trust institution.

(26) 'Home state' means:

a. With respect to a federally chartered savings association and a national bank, the state in which the institution maintains its principal office;

b. With respect to a foreign bank, the home state of the foreign bank as determined in accordance with the International Banking Act of 1978, 12 U.S.C. §§ 3101, et seq., and Article 18A of this Chapter or, if there is no such home state, the state in which the foreign bank maintains its principal office in the United States; and

c. With respect to any other trust institution, the state or home country which chartered the institution.

(27) 'Home state regulator' means the bank supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.

(28) 'Host state' means a state other than the home state of a trust institution, or a foreign country, in which the trust institution maintains or seeks to establish or acquire and maintain a trust office or representative trust office.

(29) 'Initial capital' means the amount of equity capital required for approval of a charter pursuant to G.S. 53-337.

(30) 'Insolvent,' with respect to a State trust company, means a circumstance or condition in which a State trust company:

a. Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, without regard to whether its assets exceed its liabilities;

b. Has equity capital less than one-fourth of its initial capital, except as otherwise specified by the Commissioner; or

c. Has purported to make a voluntary assignment of its assets for the benefit of creditors or to take any action for protection against creditors under any bankruptcy or insolvency law.

(31) 'Jeopardized' means insolvent, in a hazardous condition, or in such other condition as the Commissioner determines warrants the use of procedures set forth in this Article relating to jeopardized State trust companies.

(32) 'License', with respect to a State trust company, means the authority granted by the Commissioner pursuant to G.S. 53-160.

(33) 'National bank' means a bank chartered under 12 U.S.C. § 21.

(34) 'Office' with respect to a trust institution means its principal office, a trust office, or a representative trust office, but not a branch.

(35) 'Out-of-state trust institution' means a trust institution that is neither a State trust institution nor a foreign trust institution.

(36) 'Person' means an individual or a company.

(37) 'Principal office' means:

a. With respect to a State trust company, a location, registered with the Commissioner as the State trust company's principal office, at which:

1. The State trust company does business; and

2. At least one executive officer of the State trust company maintains a customary place of work; and

b. With respect to a trust institution other than a State trust company, its principal place of business.

(38) 'Principal shareholder' means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, ten percent (10%) or more of the outstanding shares of any class of voting securities of a company.

(39) 'Private trust company' means a State trust company that is organized to engage in business with one or more family members and does not transact business with the general public, as defined in G.S. 53-363.

(40) 'Representative trust office' means an office at which a trust institution engages in trust marketing, but not trust business.

(41) 'Savings association' has the meaning set forth in 12 U.S.C. § 1813(b)(1).

(42) 'State' means any state of the United States, the District of Columbia, and any territory of the United States.

(43) 'State bank' means:

a. A bank organized under the provisions of this Chapter and authorized to act as a fiduciary by this State or

b. A foreign bank lawfully doing business in this State pursuant to Article 18A of this Chapter.

(44) 'State savings association' means a savings association organized under the laws of this State and authorized to act as a fiduciary pursuant to Chapter 54B or Chapter 54C of the General Statutes.

(45) 'State trust company' means a corporation organized under the provisions of this Article and a trust company previously organized under other provisions of Chapter 53 of the General Statutes to operate only as a trust company and not as a commercial bank.
(46) 'State trust company facility' has the meaning set forth in G.S. 53-340.
(47) 'State trust institution' means a trust institution organized under the laws of, or having its principal office in, this State.
(48) 'Subsidiary' means a company that is controlled by another company, and includes a subsidiary of a subsidiary.
(49) 'Territory of the United States' means any geographic area over which the United States exercises sovereignty.
(50) 'Trust business' means acting as a fiduciary or in other capacities permissible for a trust institution under G.S. 53-331.
(51) 'Trust company' means a trust institution that is neither a depository institution nor a foreign bank.
(52) 'Trust institution' means any company lawfully acting as a fiduciary in a state or in a foreign country.
(53) 'Trust office' means an office, other than the principal office, at which a trust institution acts as a fiduciary.
(54) 'Trust marketing' means the holding out by a company to the public by advertising, solicitation, or other means that the company is available to act as a fiduciary.
(55) 'Unauthorized trust activity' means:
a. Engaging in trust business within this State by a company other than one identified in G.S. 53-303; or
b. Maintenance of a representative trust office by an out-of-state trust institution without approval from or in violation of an order issued by the Commissioner.

(b) These definitions shall be liberally construed to accomplish the purposes of this Article. The Commission may adopt other definitions to accomplish the purposes of this Article.

(c) References to statutory laws of North Carolina and of the United States of America shall be deemed to refer to recodified, amended, predecessor, or successor statutes. References to agencies of North Carolina and of the United States of America shall be deemed to refer to predecessor or successor agencies.

"Part 2. Multistate Trust Institutions Act.

"Subpart A. General.

"**§ 53-302. Title and purposes.**

(a) This Part may be cited as the Multistate Trust Institutions Act.

(b) It is the express intent of this Part to permit trust institutions to engage in trust business on a multistate and international basis subject to the provisions of this Part.

"Subpart B. Companies Authorized to Engage in Trust Business.

"**§ 53-303. Companies authorized to engage in trust business.**

(a) No company shall engage in trust business in this State except:

(1) A State trust company;

(2) A State bank;

(3) A State savings association;

(4) A national bank having its principal office in this State;

(5) A federally chartered savings association having its principal office in this State;

(6) An out-of-state trust institution in accordance with and subject to the provisions of Subpart D of this Part;

(7) A foreign trust institution in accordance with and subject to the provisions of Subpart E of this Part; or

(8) A company otherwise authorized to engage in trust business or to act in a particular capacity described in G.S. 53-331(b)(2) under the laws of this State or of the United States.

(b) No company shall engage in unauthorized trust activity, and all companies shall engage in trust business in accordance with and subject to all applicable laws of this State.

"**§ 53-304. Activities not requiring a charter, license, or approval.**

Notwithstanding any other provision of this Article, a company does not act as a fiduciary; engage in trust business or in any other business requiring a charter, license, or approval under the provisions of this Chapter; or engage in unauthorized trust activity by:

(1) Acting in a manner authorized by law as an agent of a trust institution with respect to any activity that is not unauthorized trust activity;

(2) Rendering legal services in a manner authorized by the North Carolina State Bar;

(3) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(4) Receiving and distributing rents and proceeds of sales of real property in a manner authorized by the North Carolina Real Estate Commission;

(5) Engaging in securities transactions or providing investment advisory services in accordance with applicable securities laws;

(6) Engaging in the issuance, sale, or administration of an insurance or annuity product in a manner authorized by the North Carolina Department of Insurance;

(7) Engaging in the lawful sale of prepaid funeral benefits in accordance with and subject to Article 13D of Chapter 90 of the General Statutes or engaging in the lawful business of a perpetual care cemetery corporation in accordance with and subject to Chapter 65 of the General Statutes;

(8) Acting as trustee under a voting trust;

(9) Acting as fiduciary by an organization described in paragraphs (1) through (5) of section 170(c) or section 501(c) of the Internal Revenue Code of 1986, as amended, with respect to endowment funds or other funds owned, controlled, provided to, or otherwise made available to the organization with respect to its exempt purposes (including, without limitation, trust funds in which the organization has a beneficial interest).

(10) Engaging in other activities expressly excluded from the application of this Article by rule, order, or declaratory ruling of the Commissioner;

(11) Rendering services as a certified public accountant in a manner authorized by the North Carolina State Board of Certified Public Accountant Examiners;

(12) Provided the company is a trust institution and is not barred by order of the Commissioner from engaging in trust marketing in this State pursuant to G.S. 53-321(b), (i) marketing or soliciting in this State with respect to acting as a fiduciary outside this State; (ii) delivering money or other intangible assets to, and receiving money or other intangible assets for administration outside this State from, a person in this State; or (iii) accepting an account outside this State or otherwise engaging in trust business outside this State; or

(13) Receiving, holding, administering, or distributing real or personal property for or on behalf of another person solely incidental to a lawfully conducted activity or transaction.

"**§ 53-305. Trust business of State trust institution.**

A State trust institution may conduct any activities outside this State that are permissible for a trust institution in the host state, subject to the laws of this State and, in the case of a State bank or a State trust company, subject to rules, orders, or declaratory rulings of the Commissioner.

"**§ 53-306. Trust business of out-of-state trust institution.**

An out-of-state trust institution that establishes or acquires and maintains one or more trust offices or representative trust offices in this State under the provisions of this Part or that maintains one or more branches in this State may, subject to the provisions of this Part, conduct any activity at such a trust office, representative trust office, or branch that a State trust company or a State bank is authorized to conduct at a trust office, representative trust office, or branch under the laws of this State.

"**§ 53-307. Trust business of foreign trust institution.**

A foreign trust institution that establishes or acquires and maintains one or more trust offices in this State under the provisions of this Part may, subject to the provisions of this Part, also establish or acquire one or more representative trust offices and conduct any activity at the trust offices or representative trust offices that a State trust

company is authorized to conduct at trust offices or representative trust offices under the laws of this State.

"**§ 53-308. Name of trust institution.**

Subject to other provisions of applicable law, a person may register or reserve any name with the Secretary of State in connection with engaging or proposing to engage in trust business or trust marketing in this State, except that the Commissioner may determine that a name registered or reserved is potentially misleading to the public and require the use of a name that is not potentially misleading.

"**§ 53-309. Trust deposits of authorized trust institutions.**

(a) Subsection (b) of G.S. 36A-63 shall not apply to an authorized trust institution.

(b) In the absence of a contrary provision in an instrument governing an account, an authorized trust institution may deposit client funds with itself to satisfy its duties under G.S. 36A-63(a) provided:

(1) It maintains, as collateral for the deposits, a separate fund of readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five percent (125%) of the funds so deposited;

(2) The separate fund is designated as such; and

(3) The separate fund either is maintained under the control of another trust institution, a bank, or a government agency, or is held by the authorized trust institution for the benefit of the accounts with deposits secured by the separate fund; provided, that the Commissioner may require such a separate fund of an authorized trust institution that is insolvent, in a hazardous condition, or jeopardized, to be held by a separate trust institution or bank approved by the Commissioner.

(c) An authorized trust institution may make periodic withdrawals from or additions to the separate fund required by subsection (b) of this section as long as the required value is maintained. Income from the separate fund belongs to the authorized trust institution.

(d) Collateral is not required for a deposit under subsection (b) of this section to the extent the deposit is insured by the Federal Deposit Insurance Corporation.

"Subpart C. State Trust Company Trust Offices and Representative Trust Offices.

"**§ 53-310. Offices of State trust companies.**

(a) A State trust company may engage in trust business or trust marketing at its principal office and at each trust office as permitted by this Part.

(b) A State trust company may engage in trust marketing at a representative trust office as permitted by this Part.

(c) A State trust company may engage in trust business and trust marketing in out-of-state trust offices or representative trust offices to the same extent permitted for trust institutions located in the host state in which those out-of-state trust offices or

representative trust offices are located, subject to the laws of this State and as provided by rules, orders, or declaratory rulings of the Commissioner.

"**§ 53-311. State trust company principal office.**

(a) Each State trust company is required to maintain a principal office in this State and to register that principal office with the Commissioner by setting forth the current street address and telephone number of the principal office.

(b) Each executive officer at a principal office is an agent of the State trust company for service of process.

(c) Before changing the location of its principal office, a State trust company shall file a notice with the Commissioner setting forth the name of the State trust company, the current street address and telephone number of its principal office, the street address, and telephone number if known, of the proposed new principal office, and a copy of the resolution adopted by the board of directors or duly authorized committee of the board of directors of the State trust company authorizing the change. If the State trust company is unable to provide the Commissioner with the telephone number for the proposed new principal office at the time of the notice, it shall do so immediately after beginning to operate at the new principal office location.

(d) The change of principal office shall take effect on the thirty-first day following the date the Commissioner receives the notice described in subsection (c) of this section, unless prior to the thirty-first day following receipt of the notice, the Commissioner (i) establishes an earlier or later date, or (ii) notifies the State trust company that the notice raises issues that require additional information or additional time for analysis, or (iii) disapproves the proposed trust office or representative trust office.

(e) If the Commissioner gives a notification described in subsection (d) of this section, the State trust company may change the location of its principal office only on approval by the Commissioner. The Commissioner may disapprove the change of location if the Commissioner finds that the change will adversely affect the safe and sound operation of the State trust company.

"**§ 53-312. Trust offices; representative trust offices.**

(a) Before establishing or acquiring and maintaining a trust office or representative trust office in this State, a State trust company shall file a notice with the Commissioner, in the form required by the Commissioner, setting forth the name of the State trust company, the location of the proposed trust office or representative trust office, and whether the office will be a trust office or a representative trust office. The State trust company also shall furnish a copy of the resolution adopted by the board of directors or duly authorized committee of the board of directors of the State trust company authorizing the trust office or representative trust office and shall pay the filing fee, if any, set by rule.

(b) The State trust company may commence business at the trust office or representative trust office on the thirty-first day after the date the Commissioner receives the notice, unless the Commissioner (i) establishes an earlier or later date; (ii)

notifies the State trust company that the notice raises issues that require additional information or additional time for analysis; or (iii) disapproves the proposed trust office or representative trust office.

(c) If the Commissioner gives a notification described in subsection (b) of this section, the State trust company may establish the trust office or representative trust office only on approval by the Commissioner. The Commissioner may disapprove the proposed trust office or representative trust office if the Commissioner finds that the State trust company lacks sufficient resources to undertake the proposed expansion without adversely affecting its safety or soundness.

"**§ 53-313. Out-of-state trust offices and representative trust offices.**

(a) Before establishing or acquiring and maintaining a trust office or representative trust office in a host state, a State trust company shall file a notice with the Commissioner, in the form required by the Commissioner, that sets forth the name of the State trust company, the location of the proposed trust office or representative trust office, whether the office will be a trust office or a representative trust office, and whether the laws of the host state permit the trust office or representative trust office to be maintained by the State trust company. The State trust company also shall furnish a copy of the resolution adopted by the board of directors or duly authorized committee of the board of directors of the State trust company authorizing the out-of-state trust office or representative trust office and shall pay the filing fee, if any, set by rule.

(b) The State trust company may commence business at the trust office or representative trust office on the thirty-first day following the date the Commissioner receives the notice, unless the Commissioner (i) establishes an earlier or later date; (ii) notifies the State trust company that the notice raises issues that require additional information or additional time for analysis; or (iii) disapproves the proposed trust office or representative trust office.

(c) If the Commissioner gives a notification described in subsection (b) of this section, the State trust company may establish the trust office or representative trust office only on approval by the Commissioner. The Commissioner may disapprove the proposed trust office or representative trust office if the Commissioner finds that the State trust company lacks sufficient resources to undertake the proposed expansion without adversely affecting its safety or soundness.

"Subpart D. Out-of-State Trust Institution Trust Offices and Representative Trust Offices.

"**§ 53-314. Trust business at a branch or trust office.**

An out-of-state trust institution may engage in trust business in this State only if it (i) maintains a trust office in this State as permitted by this Subpart, (ii) was allowed to maintain a trust office in this State under laws, or rules or orders of the Commissioner in effect prior to the date of enactment of this Article, but only to the extent allowed and subject to all limitations and conditions imposed under those laws, rules, or orders, or (iii) is a depository institution that maintains a branch in this State.

"**§ 53-315. Establishing an interstate trust office.**

An out-of-state trust institution that obtains approval from the Commissioner in accordance with the provisions of this Subpart may establish and maintain a trust office in this State; provided that the Commissioner shall not grant that approval unless the home state of the out-of-state trust institution permits a State trust institution to establish and maintain a trust office in that home state under restrictions not materially greater than those imposed by this Article.

"**§ 53-316. Acquiring an interstate trust office.**

An out-of-state trust institution that obtains approval from the Commissioner in accordance with the provisions of this Subpart may acquire and maintain a trust office in this State; provided that the Commissioner shall not grant that approval unless the home state of the out-of-state trust institution permits a State trust institution to acquire and maintain a trust office in that home state under restrictions not materially greater than those imposed by this Article.

"**§ 53-317. Requirement of notice.**

Before establishing or acquiring and maintaining a trust office in this State, an out-of-state trust institution shall provide, or cause its home state regulator to provide, notice to the Commissioner, in the form required by the Commissioner, along with copies of any applications, notices, or similar filings made with the home state regulator regarding the trust office. The notice shall be preceded or accompanied by:

(1) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with any applicable requirements of Article 15 of Chapter 55 of the General Statutes;

(2) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with any applicable requirements of its home state regulator for maintenance of capital, for expansion within the borders of the home state, and for acquiring or establishing and maintaining each trust office in this State;

(3) Evidence satisfactory to the Commissioner that the out-of-state trust institution is not in a hazardous condition;

(4) A copy of the resolution adopted by the board of directors of the out-of-state trust institution (or similar governing body or a duly-authorized committee thereof) authorizing the trust office; and

(5) Payment of any fee set by rule.

"**§ 53-318. Action on notice.**

(a) The out-of-state trust institution may commence business in this State at the trust office on the sixty-first day following the date the Commissioner receives the notice described in G.S. 53-317 unless the Commissioner, within 60 days of receiving the notice:

(1) Specifies an earlier or later date for commencing business,

(2) Extends the period of review on a determination that the notice raises issues that require additional information or additional time for analysis; or

(3) Disapproves the proposed trust office.

(b) If the Commissioner gives a notification described in subdivision (2) of subsection (a) of this section, the out-of-state trust institution may establish the trust office only on approval by the Commissioner. The Commissioner may disapprove the proposed trust office if the Commissioner finds that the out-of-state trust institution lacks sufficient resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the requirements of G.S. 53-315 or G.S. 53-316 have not been satisfied.

"**§ 53-319. Additional trust offices; representative trust offices.**

(a) An out-of-state trust institution that maintains a trust office in this State may establish or acquire and maintain additional trust offices or one or more representative trust offices in this State to the same extent that a State trust institution may establish or acquire and maintain trust offices or representative trust offices in this State and shall follow the procedures for establishing or acquiring and maintaining trust offices or representative trust offices set forth in G.S. 53-312.

(b) An out-of-state trust institution that does not maintain a trust office in this State shall file a notice with the Commissioner, in the form required by the Commissioner, before establishing or acquiring a representative trust office in this State. The notice shall be preceded or accompanied by:

(1) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with any applicable requirements of Article 15 of Chapter 55 of the General Statutes;

(2) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with any applicable requirements of its home state regulator for maintenance of capital, for expansion within the borders of the home state, and for acquiring or establishing and maintaining each representative trust office in this State;

(3) Evidence satisfactory to the Commissioner that the out-of-state trust institution is not in a hazardous condition;

(4) A copy of the resolution adopted by the board of directors of the out-of-state trust institution (or similar governing body or a duly authorized committee thereof) authorizing the representative trust office;

(5) The proposed location of each proposed representative trust office; and

(6) Payment of any fee set by rule.

(c) The out-of-state trust institution may commence business at the representative trust office on the thirty-first day following the date the Commissioner receives the notice described in subsection (b) of this section, unless the Commissioner, within 30 days of receiving the notice:

(1) Specifies an earlier or later date for commencing business;

(2) Extends the period of review on a determination that the notice raises issues that require additional information or additional time for analysis; or

(3) Disapproves the proposed representative trust office.

(d) If the Commissioner gives a notification described in subdivision (2) of subsection (c) of this section, the out-of-state trust institution may commence business at the representative trust office only on approval by the Commissioner. The Commissioner may disapprove the representative trust office if the Commissioner finds that the out-of-state trust institution lacks sufficient resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the requirements of G.S. 53-315 or G.S. 53-316 have not been satisfied.

(e) An out-of-state trust institution that was allowed to maintain a representative trust office in this State under laws, or rules or orders of the Commissioner in effect prior to the effective date of this Article may continue to do so, but only to the extent allowed and subject to all limitations and conditions imposed under those laws, rules, or orders.

"**§ 53-320. Examinations; periodic reports; cooperative agreements; assessment of fees.**

(a) The Commissioner may examine any trust office or representative trust office maintained in this State by an out-of-state trust institution to determine whether the trust office or representative trust office is being operated in compliance with the laws of this State and in accordance with safe and sound practices. The pertinent provisions of Part 4 of this Article shall apply to these examinations.

(b) The Commissioner may require periodic reports regarding any out-of-state trust institution that maintains a trust office or representative trust office in this State pursuant to this Subpart. The required reports shall be provided by the trust institution or by the home state regulator. Any reporting requirements shall be (i) consistent, to the extent practicable, with the reporting requirements applicable to State trust companies and (ii) appropriate for the purpose of enabling the Commissioner to carry out the Commissioner's responsibilities under the provisions of this Article. The pertinent provisions of Part 4 of this Article shall apply to these reports.

(c) The Commissioner may enter into cooperative, coordinating, and information-sharing agreements with bank supervisory agencies, including agreements arranged by an organization composed of, affiliated with, or representing one or more bank supervisory agencies, with respect to the periodic supervision and examination of any trust office or representative trust office of an out-of-state trust institution in this State, or any trust office or representative trust office of a State trust institution in any host state. The Commissioner may accept and rely upon a report of examination and report of investigation of a bank supervisory agency in lieu of conducting a separate examination or investigation.

(d) The Commissioner may enter into agreements with any bank supervisory agency supervising (i) a State trust institution engaging in trust business outside this

State or (ii) an out-of-state trust institution maintaining a trust office or representative trust office in this State to engage the services of the agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by this subsection.

(e) The Commissioner may enter into joint examinations or joint enforcement actions with bank supervisory agencies supervising any trust office or representative trust office maintained in this State by an out-of-state trust institution or any trust office or representative trust office maintained by a State trust institution in any host state; provided, that the Commissioner may at any time take actions independently if the Commissioner considers the actions to be necessary or appropriate to carry out the Commissioner's responsibilities under the provisions of this Article or to ensure compliance with the laws of this State.

(f) Each out-of-state trust institution that maintains one or more trust offices or representative trust offices in this State may be assessed and, if assessed, shall pay supervisory and examination fees as provided by rules of the Commissioner. The fees may be shared with bank supervisory agencies or any organization composed of, affiliated with, or representing one or more bank supervisory agencies as agreed between those bank supervisory agencies and organizations and the Commissioner.

"**§ 53-321. Enforcement.**

(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

(1) That a trust office maintained by an out-of-state trust institution in this State is being operated in violation of the laws of this State or any rule, order, or declaratory ruling issued by the Commissioner, or in an unsafe and unsound manner, or that the out-of-state trust institution does not meet or no longer meets the requirements of this Subpart for maintaining a trust office in this State; or

(2) That an out-of-state trust institution is engaged in unauthorized trust activity.

In either event, the Commissioner may take any enforcement actions the Commissioner would be authorized to take if the trust office or the out-of-state trust institution were a State trust company and may issue an order temporarily or permanently prohibiting the out-of-state trust institution from engaging in trust business in this State.

(b) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine by order that an out-of-state trust institution maintaining a representative trust office in this State does not meet or no longer meets the requirements of this Subpart for maintaining a representative trust office in this State. The order shall be effective on the date of issuance or any other date the Commissioner determines.

(c) In cases involving extraordinary circumstances requiring immediate action, the Commissioner may take any action permitted by subsection (a) or (b) of this section without notice or opportunity for hearing but shall promptly afford a subsequent hearing upon an application to rescind the action taken.

(d) The Commissioner shall promptly give notice to the home state regulator and any other bank supervisory agency supervising the out-of-state trust institution of each enforcement action taken against an out-of-state trust institution and may consult and cooperate with other bank supervisory agencies in pursuing and resolving the enforcement action.

"**§ 53-322. Notice of transactions that cause a change in control.**

Each out-of-state trust institution that maintains a trust office or representative trust office in this State, or the home state regulator of the trust institution, shall give at least 30 days' notice or, in the case of an emergency transaction, as much notice as practicable, to the Commissioner of:

(1) Any merger, consolidation, share exchange, or other transaction that would cause a change in control of an out-of-state trust institution (i) that would be subject to Subpart D of Part 3 of this Article if the out-of-state trust institution were a State trust company or (ii) is required to be filed with any bank supervisory agency;

(2) Any transfer of all or substantially all of the accounts or account assets of the out-of-state trust institution to another person; or

(3) The closing or transfer of any trust office or representative trust office in this State.

"Subpart E. Foreign Trust Institution Trust Offices and Representative Trust Offices.

"**§ 53-323. Foreign trust institution application for trust office or representative trust office.**

Before establishing or acquiring and maintaining a trust office in this State, a foreign trust institution shall make application to the Commissioner for permission to do so in the English language and in the form required by the Commissioner. The application shall be preceded or accompanied by:

(1) Evidence satisfactory to the Commissioner of compliance with any applicable requirements of Article 15 of Chapter 55 of the General Statutes;

(2) Evidence satisfactory to the Commissioner of compliance by the foreign trust institution with any applicable requirements of its home country regulator for maintenance of capital, for expansion within the borders of its home country or within a political subdivision of its home country, and for acquiring or establishing and maintaining the trust office in this State;

(3) Evidence satisfactory to the Commissioner that the foreign trust institution is not in a hazardous condition;

(4) A copy of the resolution adopted by the board of directors of the foreign trust institution, or similar governing body or a duly-authorized committee thereof, authorizing the trust office; and

(5) Payment of any fee set by rule.

The Commissioner may require any materials not written in the English language to be translated, and the translation certified in a manner satisfactory to the Commissioner, at the expense of the foreign trust institution.

"**§ 53-324. Conditions for approval.**

(a) A foreign trust institution may engage in trust business in this State only on approval by the Commissioner of an application described in G.S. 53-323, which may be given upon conditions required by the the Commissioner for prudential reasons consistent with any applicable international agreements to which the United States is a party.

(b) The Commissioner may deny approval of the application if the Commissioner finds that the foreign trust institution lacks sufficient resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the management, integrity, or reputation of the foreign trust institution does not justify approval. The Commissioner also may deny approval if the Commissioner is unable to determine from the application materials whether the foreign trust institution possesses sufficient resources to undertake the proposed expansion without adversely affecting its safety or soundness or whether the management, integrity, or reputation of the foreign trust institution justifies approval.

"**§ 53-325. Additional trust offices and representative trust offices.**

A foreign trust institution that maintains a trust office in this State under the provisions of this Subpart may establish or acquire and maintain additional trust offices or representative trust offices in this State in the manner provided by G.S. 53-319 for out-of-state trust institutions, except that the Commissioner may require any additional information and impose any additional conditions as the Commissioner deems necessary for prudential reasons consistent with any applicable international agreements to which the United States is a party.

"**§ 53-326. Examinations; periodic reports; cooperative agreements; assessment of fees.**

(a) The Commissioner may examine any trust office or representative trust office maintained in this State by a foreign trust institution to determine whether the trust office or representative trust office is being operated in compliance with the laws of this State and in accordance with safe and sound practices. The pertinent provisions of Part 4 of this Article shall apply to these examinations.

(b) The Commissioner may require periodic reports regarding any foreign trust institution that maintains a trust office or representative trust office in this State. The required reports shall be provided in the English language by the trust institution or by its home country regulator. The reporting requirements shall be those the Commissioner considers appropriate for the purpose of enabling the Commissioner to carry out the

Commissioner's responsibilities under the provisions of this Article for prudential reasons consistent with any applicable international agreements to which the United States is a party. The pertinent provisions of Part 4 of this Article shall apply to these reports.

(c) The Commissioner may enter into cooperative, coordinating, and information-sharing agreements with bank supervisory agencies supervising foreign trust institutions, including agreements arranged by an organization composed of, affiliated with, or representing one or more bank supervisory agencies, with respect to the periodic supervision and examination of any trust office or representative trust office of a foreign trust institution in this State, or any trust office or representative trust office of a State trust institution engaged in trust business or trust marketing in a foreign country. The Commissioner may accept and rely upon a report of examination and report of investigation of a bank supervisory agency in lieu of conducting a separate examination or investigation of a foreign trust institution.

(d) The Commissioner may enter into agreements with bank supervisory agencies supervising (i) a State trust institution engaging in trust business in a foreign country or (ii) a foreign trust institution maintaining a trust office or representative trust office in this State to engage the services of the bank supervisory agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the bank supervisory agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by this section.

(e) The Commissioner may enter into joint examinations or joint enforcement actions with bank supervisory agencies supervising any trust office or representative trust office maintained in this State by a foreign trust institution or any trust office or representative trust office maintained by a State trust institution in any foreign country; provided, that the Commissioner may at any time take actions independently if the Commissioner considers the actions to be necessary or appropriate to carry out the Commissioner's responsibilities under the provisions of this Article or to ensure compliance with the laws of this State.

(f) Each foreign trust institution that maintains one or more trust offices or representative trust offices in this State may be assessed and, if assessed, shall pay supervisory and examination fees as provided by rules of the Commissioner. The fees may be shared with bank supervisory agencies or with any organization composed of, affiliated with, or representing one or more bank supervisory agencies, as agreed between the bank supervisory agencies and organizations and the Commissioner.

"**§ 53-327. Enforcement.**

(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

(1) That a trust office or representative trust office maintained by a foreign trust institution in this State is being operated in violation of the laws of this State or any rule, order, or declaratory ruling issued by the

Commissioner, or in an unsafe and unsound manner, or that the foreign trust institution does not meet or no longer meets the requirements of this Subpart for maintaining a trust office or representative trust office in this State; or

(2) That a foreign trust institution is engaged in unauthorized trust activity.

In either event, the Commissioner may take any enforcement actions the Commissioner would be authorized to take if the foreign trust institution were a State trust company and may issue an order temporarily or permanently prohibiting the foreign trust institution from engaging in trust business or trust marketing in this State.

(b) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine by order that a foreign trust institution maintaining a representative trust office in this State does not meet or no longer meets the requirements of this Subpart for maintaining a representative trust office in this State. The order shall be effective on the date of issuance or any other date the Commissioner determines.

(c) In cases involving extraordinary circumstances requiring immediate action, the Commissioner may take any action permitted by subsection (a) or (b) of this section without notice or opportunity for hearing but shall promptly afford a subsequent hearing upon request to rescind the action taken.

(d) The Commissioner shall promptly give notice to the home country regulator and any other bank supervisory agency supervising the foreign trust institution of each enforcement action taken against a foreign trust institution and may consult and cooperate with bank supervisory agencies in pursuing and resolving the enforcement action.

"**§ 53-328. Notice of transactions that cause a change in control.**

Each foreign trust institution that maintains a trust office or representative trust office in this State, or the home country regulator of the foreign trust institution, shall give at least 30 days' notice (or, in the case of an emergency transaction, as much notice as practicable) to the Commissioner, in the form required by the Commissioner, of:

(1) Any merger, consolidation, share exchange, or other transaction that would cause a change of control of a foreign trust institution:

a. That would be subject to Subpart D of Part 3 of this Article if the foreign trust institution were a State trust company; or

b. Is required to be filed with any bank supervisory agency;

(2) Any transfer of all or substantially all of the accounts or account assets of the foreign trust institution to another person; or

(3) The closing or transfer of any trust office or representative trust office in this State.

"**§ 53-329. International agreements.**

If any provision of this Article concerning foreign trust institutions, or the application of that provision, is found by any competent adjudicatory body to violate any international agreement to which the United States is a party, the provision shall be

deemed modified only to the extent and only in the particular circumstances necessary to make the provision as modified comply with the international agreement, and the remaining provisions of this Article shall not be affected and shall continue to apply to foreign trust institutions.

"Part 3. State Trust Company Charter Act.

"Subpart A. General.

"**§ 53-330. Title and purposes.**

(a) This Part may be cited as the State Trust Company Charter Act.

(b) It is the express intent of this Part to provide for the chartering of trust companies apart from the provisions of Article 2 of this Chapter and to permit trust companies to engage in trust business subject to the provisions of this Article.

"Subpart B. Organization and Powers of State Trust Company.

"**§ 53-331. Organization and powers of State trust company.**

(a) Subject to the other provisions of this Part, one or more persons may organize and charter a State trust company, which may be incorporated in the manner described in this Part and in no other way.

(b) Subject to G.S. 53-313 and G.S. 53-336(b) and other applicable provisions of State and federal law, a State trust company may:

(1) Act as a fiduciary within or outside this State;

(2) Act within or outside this State as agent, advisory agent, assignee, assignee for the benefit of creditors, attorney-in-fact, authenticating agent, bailee, bond or indenture trustee, conservator, conversion agent, curator, custodian, escrow agent, exchange agent, fiscal or paying agent, financial adviser, investment adviser, investment manager, managing agent, purchase agent, receiver, registrar, safekeeping agent, subscription agent, transfer agent, warrant agent, or in similar capacities generally performed by corporate trustees, and in so acting to possess, purchase, sell, invest, reinvest, safekeep, or otherwise manage or administer real or personal property of other persons;

(3) Engage in trust marketing within this State; and

(4) Exercise the powers of a business corporation organized under North Carolina law and any incidental powers that are reasonably necessary to enable it to fully exercise, in accordance with commonly accepted fiduciary customs and usages, a power conferred in this Article.

"**§ 53-332. Articles of incorporation of State trust company.**

The articles of incorporation of a State trust company shall be signed and acknowledged by or on behalf of each organizer and shall contain:

(1) The information required to be set forth in G.S. 55-2-02(a) and, except for telephone information, G.S. 53-311(c); and

(2) Any provision consistent with G.S. 55-2-02(b) and other applicable law that the organizers elect to set forth in the articles of incorporation for the regulation of the internal affairs of the State trust company.

"**§ 53-333. Application for State trust company charter and permission to incorporate State trust company.**

(a) An application for a State trust company charter and permission to incorporate the State trust company shall be made to the Commissioner in the form required by the Commissioner and shall be supported by information, data, and records that the Commissioner requires. The application shall be accompanied by the fee set by the Commissioner by rule.

(b) Upon receipt of the application, the Commissioner shall at once conduct an examination of all relevant facts connected with the formation of the proposed State trust company. The Commissioner may consider the following factors:

(1) The proposed market or markets to be served;

(2) Whether the proposed organizational and capital structure and the amount of initial capital appear adequate in relation to the proposed business and market or markets;

(3) Whether the anticipated volume and nature of business indicate a reasonable probability of success and profitability based on the market or markets proposed to be served;

(4) Whether the proposed officers and directors, as a group, have sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed State trust company will be free from improper or unlawful influence and otherwise will operate in compliance with law, and that success of the proposed State trust company is reasonably probable; and

(5) Whether the proposed name of the proposed State trust company is likely to mislead the public as to its character or purpose or is the same as a name already adopted by an existing bank, savings association, or trust institution in this State, or so similar thereto as to be likely to mislead the public.

(c) The failure of an applicant to furnish required information, data, other material, or the required fee within 30 days after a request may be considered an abandonment of the application.

"**§ 53-334. Notice and investigation of charter application.**

(a) The Commissioner shall notify the organizers when the application is complete and accepted for filing and all required fees have been paid.

(b) The Commissioner shall investigate the application and inquire into the identity and character of each proposed director, officer, and principal shareholder. Notwithstanding any laws to the contrary, information in the application bearing on the character, or information about the personal finances, of an existing or proposed organizer, officer, director, or shareholder is confidential and not subject to public disclosure.

"**§ 53-335. Decision on charter application and hearing.**

(a) The Commissioner, based on the application and investigation described in this Subpart, shall enter an order approving or denying approval of the application.

(b) If the Commissioner orders that the proposed State trust company may be formed, the Commissioner shall issue a State trust company charter and a certification to the Secretary of State permitting the incorporation of the State trust company. The Commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter.

(c) Any order entered by the Commissioner with respect to a charter application shall be subject to review by the Commission for entry of final agency decision.

"**§ 53-336. Issuance of charter.**

(a) A proposed State trust company shall not be incorporated or engage in trust business or trust marketing until it receives a charter issued by the Commissioner. The Commissioner shall not issue the charter until the State trust company certifies that it has:

(1) Received cash or United States government securities having a market value on the date of capitalization in at least the full amount of required initial capital from subscriptions for the issuance of shares;

(2) Elected the initial officers and directors named in the application for charter or other officers and directors approved by the Commissioner; and

(3) Complied with all other requirements of this Subpart relative to the organization of a State trust company.

(b) The charter issued by the Commissioner shall set forth the trust powers of the State trust company, which may be stated as:

(1) All powers granted to a State trust company in this State; or

(2) Specific powers that the State trust company chooses and is authorized by the Commissioner to exercise.

(c) If a State trust company does not open and engage in trust business within six months after the date it receives its charter, or within such further period as may be extended by the Commissioner, the Commissioner may cancel the charter.

"**§ 53-337. Required initial capital.**

(a) The Commissioner shall not issue a charter to a proposed State trust company having initial capital of less than two million dollars ($2,000,000), except as provided in subsection (b) of this section.

(b) The Commissioner may require additional initial capital for a proposed State trust company if the Commissioner finds the proposed scope or type of operation of a proposed State trust company requires additional initial capital for the safe and sound operation of the State trust company. The Commissioner may reduce the amount of minimum initial capital required for a proposed State trust company if the Commissioner finds the proposed scope or type of operation of a proposed State trust company may be formed with reduced initial capital consistent with the safe and sound

operation of the State trust company. The safety and soundness factors to be considered by the Commissioner in the exercise of the Commissioner's discretion include:

(1) The nature and type of business proposed to be conducted;
(2) The nature and liquidity of assets proposed to be held in a corporate capacity;
(3) The amount of fiduciary assets projected to be under management;
(4) The type of fiduciary assets proposed to be held and the proposed depository of the assets;
(5) The complexity of fiduciary duties and degree of discretion proposed to be undertaken;
(6) The competence and experience of proposed management;
(7) The extent and adequacy of proposed internal controls;
(8) The proposed presence or absence of annual unqualified audits by an independent certified public accountant;
(9) The reasonableness of business plans for retaining or acquiring additional equity capital; and
(10) The existence and adequacy of insurance proposed to be obtained by the trust company for the purpose of protecting its clients, beneficiaries, and grantors.

"**§ 53-338. Subordinated notes or debentures.**

The amount of any outstanding notes or debentures that are subordinated to creditors or classes of creditors of the State trust company may be treated as equity capital of the State trust company for purposes of determining equity capital adequacy, hazardous condition, or insolvency, and for other purposes, as provided by rules, orders, or declaratory rulings of the Commissioner.

"**§ 53-339. Application of laws relating to general business corporations.**

Chapter 55 of the General Statutes applies to a State trust company to the extent not inconsistent with this Article. Except for the filing of annual reports and statement of change of registered agent or registered office, unless expressly authorized by this Article or a rule adopted by the Commission, a State trust company shall not take an action authorized by Chapter 55 of the General Statutes that requires a filing with the Secretary of State without first obtaining the approval of the Commissioner.

"Subpart C. Investments and Activities.

"**§ 53-340. Investment in State trust company facilities.**

(a) A State trust company may invest in one or more State trust company facilities consistent with the safe and sound operation of a State trust company.

(b) For the purposes of this Part, 'State trust company facility' means real estate owned, or leased to the extent the lease or the leasehold improvements are capitalized, by a State trust company for the purposes of:

(1) Providing space for State trust company employees, officers, and directors to perform their duties and space for appropriate parking;

(2) Conducting trust business, including meeting the reasonable needs and convenience of the State trust company's customers, employees, officers, and directors, and providing for necessary computer operations, data processing, maintenance, and record retention and storage;

(3) Future expansion of the State trust company's facilities; or

(4) Conducting another activity authorized by law or by rules, orders, or declaratory rulings of the Commissioner.

(c) Without the approval of the Commissioner, a State trust company shall not, within the first three years following issuance of its charter, directly or indirectly, invest an amount in excess of one-half of its initial capital in State trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided by rules, orders, or declaratory rulings of the Commissioner, in computing this limitation, a State trust company shall include:

(1) Its direct investment in State trust company facilities;

(2) Any investment in a company with an interest in a State trust company facility;

(3) Any indebtedness incurred on State trust company facilities by an affiliate of the State trust company.

Except as otherwise provided by rules, orders, or declaratory rulings of the Commissioner, in computing this limitation, a State trust company may exclude an amount included under subdivisions (1) through (3) of this subsection to the extent any lease of a facility from the company holding title to the facility is capitalized by the State trust company.

(d) Real estate acquired under subdivision (3) of subsection (b) of this section ceases to be a State trust company facility if it is not used for a purpose listed in subdivision (1), (2), or (4) of subsection (b) of this section on the third anniversary of the date of its acquisition unless the Commissioner grants approval to hold the real estate for a longer period.

"**§ 53-341. Other real estate.**

(a) A State trust company shall not acquire real estate other than a State trust company facility for its own account except:

(1) Securitized interests in real estate and obligations secured by real estate;

(2) As necessary to avoid or minimize a loss on an investment previously made in good faith; or

(3) As provided by rules, orders, or declaratory rulings of the Commissioner.

(b) To the extent reasonably necessary to avoid or minimize loss on real estate acquired as permitted by subsection (a) of this section or under G.S. 53-340, a State trust company may exchange real estate for other real estate or personal property, invest additional funds in or improve such real estate, or acquire additional real estate.

(c) Except as provided in subsection (d) of this section, a State trust company shall dispose of any real estate acquired as permitted by subdivision (2) of subsection (a) of this section or under G.S. 53-340:

(1) In the case of real estate acquired under subdivision (2) of subsection (a) of this section, on or before the fifth anniversary of:

a. The date it was acquired; or

b. The date it ceases to be used as a State trust company facility if it began to be so used after its acquisition.

(2) In the case of real estate acquired under G.S. 53-340, on or before the third anniversary of the date it ceases to be a State trust company facility as provided by G.S. 53-340.

(d) The Commissioner may grant one or more extensions of time for disposing of real estate if the Commissioner determines that:

(1) The State trust company has made a good faith effort to dispose of the real estate and has been unable to do so on reasonably advantageous terms; or

(2) Disposal of the real estate otherwise would be detrimental to the State trust company.

"**§ 53-342. Securities and other investments.**

(a) A State trust company may invest its corporate funds in any type or character of equity securities or debt securities subject to the limitations provided by this section.

(b) Unless the Commissioner approves maintenance of a lesser amount, a State trust company shall invest and maintain an amount equal to at least forty percent (40%) of its equity capital in unencumbered cash, cash equivalents, and readily marketable securities.

(c) Subject to subsections (d) and (e) of this section, the total investment in equity and investment securities of any one issuer, obligor, or maker held by a State trust company for its own account shall not exceed an amount equal to fifteen percent (15%) of the State trust company's equity capital. The Commissioner may authorize investments in excess of this limitation if the Commissioner concludes that the safe and sound operation of a State trust company would not be adversely affected by a proposed investment exceeding this limitation.

(d) In calculating compliance with the investment limits set forth in subsection (c) of this section, a State trust company shall not be required to combine:

(1) The State trust company's pro rata share of the securities of an issuer in the portfolio of a collective investment vehicle with the State trust company's pro rata share of the securities of that issuer held by another collective investment vehicle in which the State trust company has invested; or

(2) The State trust company's own direct investment in the securities of an issuer with the State trust company's pro rata share of the securities of

that issuer held by collective investment vehicles in which the State trust company has invested under the provisions of this section.

(e) Notwithstanding subsection (c) of this section, a State trust company may purchase for its own account, without limitation and subject only to the exercise of prudent judgment:

(1) Bonds and other general obligations of a state, an agency, or political subdivision of a state, the United States, or an agency or instrumentality of the United States;

(2) A debt security that this State, an agency or political subdivision of this State, the United States, or an agency or instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;

(3) Securities that are offered and sold under 15 U.S.C. § 77d(5);

(4) Mortgage-related securities as defined in 15 U.S.C. § 78c(a);

(5) Investment securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Agricultural Mortgage Association, or the Federal Farm Credit Banks Funding Corporation; and

(6) Investment securities issued or guaranteed by the North American Development Bank.

(f) The Commissioner may allow State trust companies to make other investments of its corporate funds not specified in this Subpart by rules, orders, or declaratory rulings.

"**§ 53-343. Prohibited distributions, acquisitions, liens, or pledges.**

A State trust company shall not make any distribution to its shareholders, acquire its own shares, acquire a lien upon its own shares, or pledge its own assets while an order of the Commissioner prohibiting such distributions, acquisitions, liens, or pledges is in effect.

"**§ 53-344. Subsidiaries.**

(a) Before acquiring, establishing, or performing activities through a subsidiary, a State trust company shall file a notice with the Commissioner, in the form required by the Commissioner, describing in detail the proposed activities of the subsidiary, the amount of the State trust company's proposed investment in the subsidiary, and the State trust company's proposed ownership interest in the subsidiary.

(b) The State trust company may acquire or establish a subsidiary or begin performing activities in an existing subsidiary 30 days following the date the Commissioner receives the notice, unless the Commissioner:

(1) Establishes an earlier or later date;

(2) Notifies the State trust company that the notice raises issues that require additional information or additional time for analysis; or

(3) Disapproves the acquisition, establishment, or performance of activities through the subsidiary.

(c) If the Commissioner gives a notification described in subdivision (2) of subsection (b) of this section, the State trust company may acquire, establish or conduct activities through the subsidiary only on approval by the Commissioner. The Commissioner may disapprove the subsidiary if the Commissioner finds that the State trust company lacks sufficient resources to undertake the proposed expansion or perform the activity without adversely affecting its safety or soundness.

(d) The Commissioner may make the establishment, acquisition, or performance of new activities through a subsidiary conditional and shall include any such conditions in an order.

(e) The provisions of this section, rather than G.S. 53-342, shall apply to the establishment of a subsidiary by a State trust company.

(f) Changes in ownership or control of a subsidiary of a State trust company shall be made only upon the approval of the Commissioner obtained in accordance with the procedures set forth in this section.

"**§ 53-345. Engaging in commerce prohibited.**

Except as otherwise provided by this Part, or by rules, orders, or declaratory rulings of the Commissioner, a State trust company shall not engage in trade or commerce by buying, selling, or otherwise dealing in goods, or by conducting business other than trust business and trust marketing, except as necessary to fulfill a fiduciary obligation to a client.

"**§ 53-346. Lending and lease financing; conversion to State bank.**

(a) Except as may be appropriate for extensions of credit in connection with trust or other account relationships, and as provided in and subject to the provisions of Article 5 of Chapter 36A of the General Statutes and other provisions of applicable law, a State trust company shall not engage in a loan business or in lease financing transactions as the party extending credit.

(b) Notwithstanding any other provision of this Chapter, a State trust company may, with the approval of the Commissioner, convert to a State bank by following the procedures and requirements set forth in Article 2 of this Chapter, subject to any modifications to those procedures and requirements that are necessary and appropriate for the conversion of a State trust company. The Commissioner may make modifications to procedures or requirements of Article 2 of this Chapter by rule, order or declaratory ruling.

"Subpart D. Ownership; Governance; Mergers.

"**§ 53-347. Acquisition of control.**

(a) Except as this section otherwise expressly permits, a person shall not, without the approval of the Commissioner, directly or indirectly acquire control of a State trust company.

(b) This Subpart does not prohibit a person from contracting to acquire control of a State trust company subject to required approvals.

(c) This Subpart does not require the approval of the Commissioner for the acquisition of securities in the following circumstances:

(1) The acquisition of securities in connection with securing, collecting, or satisfying a debt previously contracted for in good faith if the acquiring person files notice of acquisition of control with the Commissioner, in the form required by the Commissioner, at least 10 days before the person votes the securities acquired;

(2) The acquisition of additional voting securities in any class or series by a controlling person who previously has complied with and received approval under the provisions of this Article or who was identified as a controlling person in a prior application filed with and approved by the Commissioner if the acquiring person files notice of acquisition of those securities with the Commissioner, in the form required by the Commissioner, at least 10 days before the person votes the securities acquired;

(3) An acquisition or transfer of securities by operation of law, will, or intestate succession if the acquiring person files notice of acquisition of control with the Commissioner, in the form required by the Commissioner, at least 10 days before the person votes the securities acquired;

(4) An acquisition of securities by gift, unless the gift is made for the purpose of circumventing this section, if the acquiring person files notice of acquisition of control with the Commissioner, in the form required by the Commissioner, at least 10 days before the person votes the securities acquired; or

(5) A transaction exempted by the Commissioner by rules, orders, or declaratory rulings because (i) the transaction is not within the purposes of this Article, or (ii) regulation of the transaction is not necessary or appropriate to achieve the objectives of this Article.

(d) Information provided under the provisions of subsection (c) of this section shall be subject to G.S. 53-348(c), and persons providing that information shall be subject to G.S. 53-348(d).

(e) Upon receiving a notice described in subsection (c) of this section, the Commissioner may, on or before the tenth day after the acquiring person files the notice, notify the acquiring person of objection to the voting of securities by the acquiring person or of a request for further information concerning the acquisition of control. If the Commissioner notifies the acquiring person of the objection or request for further information, the acquiring person may vote the shares only on approval by the Commissioner and:

(1) The acquiring person shall follow the procedures prescribed in this Subpart for an application to acquire control of a State trust company;

(2) The Commissioner may request any information that may be requested under the procedures prescribed in this Subpart in connection with an application to acquire control of a State trust company; and

(3) For purposes of determining a quorum of shareholders of a State trust company, the shares shall be treated as authorized but unissued shares unless (i) the Commissioner approves the application to vote the securities or (ii) the acquiring person no longer has the power to vote the shares, either directly or indirectly.

"**§ 53-348. Application regarding acquisition of control.**

(a) A person seeking approval to acquire control of a State trust company shall file with the Commissioner:

(1) An application in the form required by the Commissioner;

(2) Any filing fee required by rule; and

(3) All information required by rule or that the Commissioner requires in connection with a particular application in order to make an informed decision to approve or reject the proposed acquisition of control.

(b) If any group of individuals or entities acting in concert seek approval to acquire control, the information the Commissioner may require under the provisions of this Subpart may be required of each member of the group.

(c) Notwithstanding any laws to the contrary, information bearing on the character or information about the personal finances of an existing or proposed shareholder of a State trust company or other individual is confidential and not subject to public disclosure.

(d) If a person seeking approval to acquire control is not a North Carolina resident, a North Carolina corporation, or an out-of-state corporation qualified to do business in this State, the Commissioner may require the person to appoint a resident agent for service of process.

"**§ 53-349. Decision on acquisition of control.**

(a) Not later than the sixtieth day following receipt of the application, the Commissioner shall either approve or deny the proposed acquisition of control.

(b) The Commissioner may deny an acquisition of control if:

(1) The financial condition of the person seeking approval to acquire control, or any member of a group seeking approval to acquire control, might jeopardize the financial stability of the State trust company or the interests of its clients;

(2) Investigation of the character, competence, general fitness, experience, or integrity of the person seeking approval to acquire control, or any member of a group seeking approval to acquire control, shows that the proposed acquisition of control would not be in the best interests of the clients of the State trust company;

(3) Plans or proposals to operate, liquidate, or sell the State trust company or its assets following the acquisition of control are not in the best interests of the State trust company's clients;

(4) The State trust company would not be solvent, have adequate equity capital, or be in compliance with the laws of this State after the acquisition of control; or

(5) The person seeking approval to acquire control has failed to furnish all information required by the Commissioner.

(c) If an application filed under the provisions of this section is approved by the Commissioner, the transaction may be consummated. Any written commitment from the person seeking approval to acquire control made as a condition for approval of the application is enforceable against the State trust company and the person acquiring control.

"**§ 53-350. Appeal.**

Any order entered by the Commissioner with respect to an application for acquisition or control of a State trust company shall be subject to review by the Commission for entry of a final agency decision.

"**§ 53-351. Report of changes in chief executive officer or directors.**

Each State trust company shall report to the Commissioner within 48 hours, on the forms and with the information required by the Commissioner, any changes in the chief executive officer or the directors of the State trust company, including in its report a statement of the past and current business and professional affiliations of each new chief executive officer or director.

"**§ 53-352. Board of directors.**

(a) All corporate powers of a State trust company shall be exercised under the authority of, and the business and affairs of a State trust company shall be managed under the direction of, its board of directors. Without the approval of the Commissioner, the board shall consist of not less than five directors. The shareholders of a State trust company, at any shareholders' meeting, may authorize not more than two additional directorships which may be left unfilled and to be filled in the discretion of the directors of the State trust company during the interval between shareholders' meetings. Except as specifically provided otherwise in this section, the number, election, term, and classification of the directors of a State trust company shall be governed by the provisions of Chapter 55 of the General Statutes.

(b) Before each term to which a person is elected to serve as a director of a State trust company, the person shall submit an affidavit for filing in the minutes of the State trust company stating that the person:

(1) Accepts the position;

(2) Will not knowingly violate, or knowingly permit an officer, director, or employee of the State trust company to violate, any law applicable to the conduct of business of the State trust company; and

(3) Will diligently perform the duties of a director.

(c) A person designated with a title such as advisory director is not considered a director if that person:

(1) Is not elected by the shareholders of the State trust company; and

(2) Does not vote on matters before the board of directors or any committee of the board and is not counted for purposes of determining a quorum of the board or any committee of the board.

"**§ 53-353. Required board meetings.**

The board of directors of a State trust company shall hold at least one regular meeting each quarter. At each regular meeting, the board shall review and approve, or disapprove and correct, the minutes of the prior meeting and review the operations, activities, and financial condition of the State trust company. The board may designate committees from among its members to perform these duties and approve or disapprove the committees' reports at each regular meeting. All material actions of the board shall be recorded in its minutes.

"**§ 53-354. Officers.**

The board of directors shall annually appoint the officers of the State trust company who shall serve at the pleasure of the board. The contract rights of officers, if any, shall be governed by applicable provisions of Chapter 55 of the General Statutes and general law. The State trust company shall have a chief executive officer primarily responsible for the execution of board policies and operation of the State trust company. The State trust company also shall have an officer responsible for the maintenance and storage of all corporate books and records of the State trust company and for required attestation of signatures. These positions shall not be held by the same person. The board may appoint any other officers of the State trust company, including assistants to the officers required by this section, the board considers necessary or appropriate.

"**§ 53-355. Certain criminal offenses.**

(a) An officer, director, employee, or shareholder of a State trust company commits an offense if the person knowingly:

(1) Conceals information or a fact, or removes, destroys, or conceals a book or record of the State trust company for the purpose of concealing information or a fact, from the Commissioner or an agent of the Commissioner; or

(2) For the purpose of concealing information or a fact, removes or destroys any book or record of the State trust company that is material to a pending or anticipated legal or administrative proceeding.

(b) An officer, director, or employee of a State trust company commits an offense if the person knowingly makes a false entry in the books or records or in any report or statement of the State trust company.

(c) An offense under the provisions of this section shall be a Class H felony.

"**§ 53-356. Responsibility of directors.**

(a) The standard of conduct for directors shall be as set forth in G.S. 55-8-30.

(b) Any director of a State trust company who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of such State trust company, any of the provisions of this Article shall be held personally and individually liable for all damages which the State trust company, its shareholders, or

any other person has sustained in consequence of the violation. Any aggrieved shareholder of any State trust company in liquidation may prosecute an action for the enforcement of the provisions of this section. Only one such action may be brought. The procedure shall follow, as much as possible, that prescribed by Article 3 of Chapter 44A of the General Statutes, relative to suits on bonds of contractors with municipal corporations.

"**§ 53-357. Record keeping.**

A State trust company shall keep its fiduciary records separate and distinct from its other records. The fiduciary records shall contain all material information relative to each account as appropriate under the circumstances.

"**§ 53-358. Bonding requirements; reports of apparent crime.**

(a) The board of directors of a State trust company shall require protection and indemnity for the State trust company and its clients in amounts established by rules, orders, or declaratory rulings of the Commissioner, or otherwise in reasonable amounts, against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses, with corporate insurance or surety companies:

(1) Authorized to do business in this State; or

(2) Acceptable to the Commissioner and otherwise lawfully permitted to issue coverage against those losses in this State.

(b) Except as otherwise provided by rules, orders, or declaratory rulings of the Commissioner, coverage required under subsection (a) of this section shall include each director, officer, and employee of the State trust company without regard to whether the person receives salary or other compensation.

(c) A State trust company that is the victim of a robbery, has a shortage of corporate or account assets in excess of five thousand dollars ($5,000), or is the victim of an apparent or suspected misapplication of its corporate property or account assets in any amount shall report the robbery, shortage, or apparent or suspected misapplication to the Commissioner within 48 hours after the time it is discovered. The initial report may be oral if a written report is made promptly following the oral report. Neither the State trust company nor any director, officer, employee, or agent of the State trust company is subject to any liability for providing any information in any such report in good faith.

"**§ 53-359. Merger, share exchange, or asset transfer authority.**

(a) With the approval of the Commissioner, a State trust company may merge or exchange its shares with, or acquire or be acquired through a merger or share exchange with, another company, or may transfer to another company all or substantially all of its assets and liabilities, or may acquire from another company all or substantially all of its assets and liabilities.

(b) A merger or share exchange authorized by subsection (a) of this section, shall be governed by Article 11 of Chapter 55 of the General Statutes and G.S. 53-17. An acquisition or transfer of assets authorized by subsection (a) of this section shall be governed by Article 12 of Chapter 55 of the General Statutes and G.S. 53-17.

"**§ 53-360. Merger, share exchange, or asset transfer application.**

(a) A copy of the proposed articles of merger or share exchange, or asset transfer agreement, and an application in the form required by the Commissioner, shall be filed with the Commissioner. The Commissioner shall investigate the condition of the parties proposing to engage in the merger, share exchange, or asset transfer and may require the submission of additional information.

(b) The Commissioner may approve the merger or share exchange if:

(1) Each resulting trust institution will be solvent and have adequate capitalization;

(2) Each resulting trust institution appears able and ready to comply substantially with the statutes and rules relative to its organization;

(3) Each resulting State trust company will be a 'domestic corporation' as that term is defined in G.S. 55-1-40(4);

(4) All fiduciary obligations and liabilities of each trust institution that is a party to the merger, share exchange, or asset transfer have been discharged properly or otherwise have been or will be assumed or retained properly by a person;

(5) Each surviving, new, acquiring, or transferring party that is not authorized to engage in trust business will not engage in trust business and appears able and ready to comply substantially with applicable laws and rules; and

(6) All conditions imposed by the Commissioner have been satisfied or otherwise resolved.

"**§ 53-361. Notice and investigation of merger, share exchange, or asset transfer; decision, hearing, and appeal.**

(a) The Commissioner shall notify the parties to the proposed merger, share exchange, or asset transfer when the application is complete and all required fees have been paid. Promptly following this notification, the parties shall provide notice to clients who may be affected by the proposed merger, share exchange, or asset transfer in the form and manner specified by the Commissioner.

(b) At the expense of the parties to the proposed merger, share exchange, or asset transfer, the Commissioner may investigate the proposed transaction, including the character of the proposed directors, officers, and principal shareholders of each resulting trust institution and of any other person proposed to succeed to the accounts of the applying institutions. Notwithstanding any laws to the contrary, information bearing on the character or information about the personal finances of an existing or proposed organizer, officer, director, or shareholder is confidential and not subject to public disclosure.

(c) Based on the application and investigation, the Commissioner shall enter an order approving or denying approval of the proposed merger, share exchange, or asset transfer not later than the sixtieth day following the date the Commissioner notifies the

parties that the application is complete, unless extraordinary circumstances require a longer period of review.

(d) Any written commitment made by a person proposing to engage in the merger, share exchange, or asset transfer as a condition for approval of the application is enforceable against that person.

(e) Any order entered by the Commissioner under the provisions of this section shall be subject to review by the Commission for entry of a final agency decision.

"**§ 53-362. Rights of dissenters to mergers, share exchanges, or asset transfers.**

A shareholder of a State trust company may dissent from the proposed merger, share exchange, or asset transfer to the extent allowed under, and by following the procedures prescribed by, Article 13 of Chapter 55 of the General Statutes.

"Subpart E. Private Trust Companies.

"**§ 53-363. Private trust companies.**

(a) The following definitions apply in this Subpart:

(1) 'Designated relative' means the individual required to be named in the application under G.S. 53-364(a)(5) requesting an exemption from certain provisions of this Act pursuant to G.S. 53-364.

(2) 'Family member' means the designated relative and

a. Any individual within the fifth degree of lineal kinship to the designated relative computed in accordance with G.S. 104A-1;

b. Any individual within the ninth degree of collateral kinship to the designated relative computed in accordance with G.S. 104A-1;

c. The spouse of the designated relative and of any individual qualifying as a family member under sub-subdivision a. and b. of this subdivision;

d. A company controlled by one or more family members;

e. A trust established by (i) a family member or (ii) an individual who is not a family member if income or principal of the trust could be distributed currently to or for the benefit of a family member;

f. The estate of a family member; or

g. A charitable foundation or other charitable entity created by a family member.

For purposes of this subdivision, a legally adopted individual shall be treated as a natural child of the adoptive parents.

(3) 'Transact business with the general public' means to engage in any sales, solicitations, arrangements, agreements, or transactions to provide trust business services, whether or not for a fee, commission, or other type of remuneration, to more than 35 persons who are not family members, except that rules, orders, or declaratory rulings of the Commissioner may provide for other circumstances in which a State

trust company either does or does not transact business with the general public. For the purposes of this subdivision, an estate, a trust, or any other legal entity having multiple beneficiaries or owners shall be deemed to constitute one person.

(b) A private trust company engaging in trust business in this State shall comply with all provisions of this Article applicable to a State trust company unless expressly exempted from this Article by the Commissioner pursuant to this section or prior to the enactment of this Article.

(c) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of G.S. 53-333(b), 53-337(a), 53-340, 53-341, 53-342, 53-345, 53-346, and 53-394(b). The Commissioner may grant the exemption request in whole or in part. The Commissioner also may issue rules, orders, or declaratory rulings granting exemptions to all private trust companies, or to private trust companies that meet specified conditions.

(d) The Commissioner may examine or investigate the private trust company or proposed private trust company in connection with the application for exemption. Unless the application presents novel or unusual questions, the Commissioner shall approve or deny the application for exemption no later than the sixty-first day after the date the Commissioner considers the application complete and accepted for filing. The Commissioner may require the submission of additional information in order to make an informed decision to approve or reject the proposed exemption.

(e) Any exemption granted under the provisions of this section may be made subject to conditions or limitations imposed by the Commissioner consistent with this Subpart, and those conditions or limitations shall be included in an order.

(f) Rules, orders, or declaratory rulings of the Commissioner may provide for other circumstances that justify exemption from specific provisions of this Article, specifying the provisions of this Act that are subject to the exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exemptions.

"**§ 53-364. Requirements to apply for and maintain status as a private trust company.**

(a) A private trust company or a proposed private trust company requesting an exemption from the provisions of this Article pursuant to G.S. 53-363 shall file an application with the Commissioner, in the form required by the Commissioner, containing, preceded, or accompanied by:

(1) An application fee as set by rules of the Commissioner;

(2) A statement under oath of the reasons for requesting the exemption;

(3) A statement under oath showing that the private trust company is not currently transacting business with the general public and that the company will not transact business with the general public without the approval of the Commissioner;

(4) A listing of the specific provisions of the Act from which exemption is requested; and

(5) The name of the designated relative whose relationship to other individuals determines whether the individuals are family members under G.S. 53-363(a)(2). The designated relative must be living and 18 years of age or older at the time the application is made.

(b) The Commissioner may make further inquiry and investigation as the Commissioner deems appropriate. Notwithstanding any other law to the contrary, information bearing on actual or proposed accounts of the private trust company or proposed private trust company applying for the exemption is confidential and not subject to public disclosure.

(c) To maintain its status as a private trust company and to maintain any exemptions from the provisions of this Article granted by the Commissioner, a private trust company shall file with the Commissioner an annual certification that it is in compliance with the provisions of this Subpart and the conditions and limitations of all exemptions granted. This annual certification shall be filed in the form required by the Commissioner and accompanied by any fee required by the Commissioner by rule. The annual certification shall be filed on or before December 31 of each year. The Commissioner may examine or investigate the private trust company periodically as necessary to verify the certification.

(d) In any transaction involving a private trust company for which an application is required under G.S. 53-360, any exemption from the provisions of this Article granted to the private trust company shall automatically terminate upon the consummation of the transaction unless the Commissioner approves the continuation of the exemption.

(e) The Commissioner may revoke any exemption from the provisions of this Article granted to a private trust company in the following circumstances:

(1) An officer or director of the private trust company makes a false statement under oath on any document required to be filed by this Article or by any rules or orders of the Commissioner;

(2) The private trust company fails to submit to an examination as required by G.S. 53-367;

(3) An officer or director of the private trust company withholds requested information from the Commissioner; or

(4) The private trust company violates any provision of this Subpart or fails to meet any condition on which the exemption is based.

(f) If the Commissioner determines from examination or other credible evidence that a private trust company has violated any of the requirements of this Subpart or fails to meet any condition or limitation on which an exemption from the provisions of this Article is based, the Commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the private trust company that the private trust company's exemptions from the provisions of this Article will be revoked unless the private trust company corrects the violation or failure or shows cause why any

exemptions should not be revoked. The notification shall state grounds for the revocation with reasonable certainty and shall advise of an opportunity for a hearing. The notice shall state the date upon which the revocation shall become effective absent a correction or showing of cause why the exemption should not be revoked, which shall not be before the thirtieth day after the date the notification is mailed or delivered, except as provided in subsection (g) of this section. The revocation shall take effect for the private trust company on the date stated in the notice if the private trust company does not request a hearing in writing before the effective date. After the revocation takes effect, the private trust company shall be subject to all of the requirements and provisions of this Article applicable to a State trust company.

(g) If the Commissioner determines from examination or other credible evidence that a private trust company appears to be engaging or attempting to engage in acts intended, designed, or likely to deceive or defraud the public, the Commissioner may shorten or eliminate the 30-day notice period specified in subsection (f) of this section, but shall promptly afford a subsequent hearing upon request to rescind the action taken.

(h) If the private trust company does not comply with all of the provisions of this Article or correct any failure to meet any condition or limitation on which an exemption is based within the notice period specified in subsection (f) of this section, the Commissioner may institute any action or remedy prescribed by this Article or any applicable rule.

"**§ 53-365. Conversion to public trust company.**

(a) Before transacting business with the general public, a private trust company shall file a notice on a form prescribed by the Commissioner, which shall set forth the name of the private trust company and an acknowledgment that any exemption granted or otherwise applicable to the private trust company pursuant to G.S. 53-363 shall cease to apply once the Commissioner terminates private trust company status. The private trust company shall furnish a copy of the resolution adopted by its board of directors authorizing the private trust company to commence transacting business with the general public, and shall pay the filing fee, if any, prescribed by rule of the Commissioner.

(b) The private trust company may commence transacting business with the general public on the thirty-first day after the date the Commissioner receives the notice, unless the Commissioner:

(1) Establishes an earlier or later date;

(2) Notifies the private trust company that the notice raises issues that require additional information or additional time for analysis; or

(3) Disapproves the termination of private trust company status.

(c) If the Commissioner gives a notification described in subdivision (2) of subsection (b) of this section, the private trust company status may be terminated only on approval by the Commissioner.

(d) The Commissioner may deny approval of the proposed termination of private trust company status if the Commissioner finds that the private trust company lacks

sufficient resources to undertake the proposed conversion without adversely affecting its safety or soundness or if the Commissioner determines that the private trust company could not within a reasonable period be in compliance with any provision of this Article from which it previously had been exempted pursuant to G.S. 53-363.

"Part 4. Applicable Law; Enforcement Actions.

"Subpart A. Supervision and Examination.

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

(a) Except as otherwise provided in this Article, the following provisions of this Chapter shall apply to authorized trust institutions:

(1) G.S. 53-14;
(2) G.S. 53-16;
(3) G.S. 53-17;
(4) G.S. 53-68;
(5) G.S. 53-77.3;
(6) G.S. 53-85;
(7) Article 8 of this Chapter, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of:
  a. G.S. 53-95;
  b. G.S. 53-104;
  c. G.S. 53-105;
  d. G.S. 53-106; and
  e. G.S. 53-107.1(a), (b) and (d).
(8) Article 9 of this Chapter, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of G.S. 53-119.
(9) Article 10 of this Chapter, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of G.S. 53-135, and except that G.S. 53-131 and G.S. 53-132 shall not apply to authorized trust institutions.
(10) Article 14 of this Chapter.

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

(c) Activities of authorized trust institutions for clients shall not be considered the sale or issuance of checks under G.S. 53-194.

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

(e) Notwithstanding any other provision of this Chapter, a State trust company:

(1) Is a 'banking entity' for purposes of G.S. 53-127;

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

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

(4) Is a financial institution similar to a bank.

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

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

"**§ 53-367. Commissioner shall have supervision over authorized trust institutions and shall examine.**

Every authorized trust institution shall be under the supervision of the Commissioner. The Commissioner may periodically examine and require reports from authorized trust institutions, and shall execute and enforce, through examiners and any other agents as are now or may hereafter be created or appointed, all laws and all rules, orders, and declaratory rulings relating to authorized trust institutions. All authorized trust institutions shall conduct their business in a manner consistent with all laws and all rules, orders, and declaratory rulings that may be adopted or issued by the Commissioner relating to authorized trust institutions.

"**§ 53-368. Assessment of State trust companies.**

(a) For the purpose of operating and maintaining the office of the Commissioner, each State trust company shall pay into the office of the Commissioner, within 10 days

after notice, an annual assessment of six thousand dollars ($6,000) plus one dollar ($1.00) per one hundred thousand dollars ($100,000) of assets held for its accounts, exclusive of nonsecuritized real estate interests. For purposes of this assessment, the amount of assets held for accounts shall be determined as of the close of business on December 31 of each year.

(b) If an application for merger, share exchange, sale of assets, change of control, conversion, or a similar transaction occasions an examination or if the Commissioner determines that the financial condition or manner of operation of a State trust company warrants further examination or an increased level of supervision, a State trust company may be subject to an additional assessment not to exceed the amount required of all State trust companies by subsection (a) of this section.

(c) Except as set forth in this section, fees and assessments of a State trust company shall be governed by G.S. 53-122. Fees and assessments collected under the provisions of this section shall be considered to be part of the total fees collected under G.S. 53-122(d).

"Subpart B. Enforcement Orders; Trust Company Management.

"**§ 53-369. Administrative orders; penalties for violation; increase of equity capital.**

(a) In addition to any other powers conferred by this Chapter, the Commissioner may:

(1) Order any authorized trust institution, or affiliate thereof, or any director, officer, or employee of an authorized trust institution, to cease and desist violating any provision of this Article or any rule issued thereunder.

(2) Order any authorized trust institution, or affiliate thereof, or any director, officer, or employee of an authorized trust institution, to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of the assets of an authorized trust institution, or is likely to jeopardize or otherwise seriously prejudice the interests of the clients, creditors, shareholders, or the public in their relationships with the authorized trust institution.

(3) Order any company to cease engaging in unauthorized trust activity.

(4) Enter orders described in G.S. 53-321, 53-327, and 53-343.

(b) The Commissioner may impose a civil money penalty of not more than one thousand dollars ($1,000) for each violation of an order issued under subdivision (1) of subsection (a) of this section. The Commissioner may impose a civil money penalty of not more than five hundred dollars ($500.00) per day for each violation of a cease and desist order issued under subdivision (2) or (3) of subsection (a) or this section. The clear proceeds of civil money penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c) The Commissioner may order that a State trust company in a hazardous condition increase its equity capital to a level that is adequate for the safe and sound

conduct of its business. The order shall specify the period of time for meeting the requirement to increase equity capital, which period of time may be extended by further order of the Commissioner.

"**§ 53-370. Notice and opportunity for hearing.**

Consistent with Chapter 150B of the General Statutes, notice and opportunity for hearing shall be provided before the Commissioner may act under the provisions of this Subpart. In cases involving extraordinary circumstances requiring immediate action, however, the Commissioner may take action without a hearing, but shall promptly afford a subsequent hearing upon request to rescind the action taken.

"**§ 53-371. Removal of directors, officers, and employees.**

The Commissioner may require the immediate removal from office of any officer, director, or employee of any State trust company, who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the State trust company, or who persistently violates the laws of this State or the rules, orders, and declaratory rulings issued by the Commissioner.

"Part 5. Dissolution and Receivership; Conservatorship; Jeopardized State Trust Companies.

"Subpart A. Voluntary Dissolution and Liquidation.

"**§ 53-372. Required vote of shareholders.**

With the approval of the Commissioner, a State trust company may go into voluntary liquidation, be closed, and surrender its charter and franchise as a corporation of this State by the affirmative vote of its shareholders owning two-thirds of its stock.

"**§ 53-373. Corporate procedure.**

Shareholder action to liquidate a State trust company shall be taken at a meeting of the shareholders duly called by resolution of the board of directors. Notice of the meeting, stating the purpose of the meeting, shall be mailed to each shareholder, addressed to the shareholder's last known residence at least 10 days prior to the date of the meeting. If the shareholders, by the required vote, elect to liquidate a trust company, a certified copy of all proceedings of the meeting at which the action was taken, verified by the oath of the president and secretary, shall be transmitted to the Commissioner for approval.

"**§ 53-374. Authority to liquidate; publication.**

If the Commissioner approves the liquidation, the Commissioner shall issue to the State trust company, under the Commissioner's seal, a permit for liquidation. No permit shall be issued by the Commissioner until the Commissioner is satisfied that provision has been made by the State trust company to satisfy and pay off all creditors and to transfer all client accounts and fiduciary records to successor fiduciaries in the manner provided by G.S. 53-383(c). If not so satisfied, the Commissioner shall refuse to issue a permit, and shall be authorized to take possession of the State trust company and its assets and business and to hold and liquidate the State trust company in the manner provided in this Part. When the Commissioner approves the voluntary liquidation of a State trust company, the directors of the State trust company shall notify clients of the

State trust company in the manner prescribed by the Commissioner and shall cause to be published in a newspaper in the county in which the principal office of the trust company is located, or if no newspaper is published in that county, then in a newspaper having a general circulation in that county, a notice that the State trust company is closing down its affairs and going into liquidation and that creditors of the State trust company shall present their claims for payment. The notice shall be published once a week for four consecutive weeks.

"**§ 53-375. Examination and reports.**

When any State trust company is in the process of voluntary liquidation, it shall be subject to examination by the Commissioner and shall furnish any reports required by the Commissioner.

"**§ 53-376. Unclaimed property.**

All unclaimed property remaining with a State trust company voluntarily liquidated under the provisions of this Subpart shall be subject to the provisions of Chapter 116B of the General Statutes.

"Subpart B. Seizure by Commissioner; Involuntary Dissolution and Liquidation.

"**§ 53-377. When Commissioner may take charge.**

The Commissioner may take possession of the business and property of any State trust company whenever it appears that the trust company:

(1) Is in a hazardous condition;

(2) Has become insolvent or is in substantial danger of becoming insolvent;

(3) Has sold or attempted to sell substantially all of its assets or has merged or attempted to merge its business with another entity without meeting the requirements of this Article;

(4) Has dissolved or liquidated or attempted to dissolve or liquidate without meeting the requirements of this Article; or

(5) Has suspended operations.

"**§ 53-378. Directors may act.**

A State trust company may place its assets and business under the control of the Commissioner by a resolution of a majority of its directors upon notice to the Commissioner, and, upon taking possession of the State trust company, the Commissioner shall retain possession thereof until the State trust company is authorized by the Commissioner to resume business or until the affairs of the State trust company are fully liquidated as provided in this Subpart. No State trust company shall make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the Commissioner as provided in this Subpart; and any other purported general assignment for the benefit of creditors by a State trust company shall be void.

"**§ 53-379. Notice of seizure; bar to attachment of liens.**

When the Commissioner takes possession of any State trust company under G.S. 53-377 or G.S. 53-378, the Commissioner shall, within 48 hours, file with the clerk of the superior court in the county where the principal office of the State trust company is

located a notice of the action which shall state the reason for the action, and which shall be deemed the equivalent of a summons and complaint against the State trust company in an action in the superior court except that it shall not be necessary to serve the notice. The taking possession of any State trust company shall be effective on the date when the authority is first exercised and from and after that time all assets and property of the State trust company, of whatever nature, shall be deemed to be in possession of the Commissioner, and the exercise of the authority shall operate as a bar to any attachment or other legal proceeding against the State trust company or its assets. After the Commissioner's exercise of authority, no lien shall attach in any manner binding or affecting any of the assets of the State trust company, and every purported transfer or assignment made thereafter by the State trust company, or by its authority, of the whole or any part of its assets, shall be null and void; and the Commissioner shall be substituted in place of the State trust company in any civil actions or proceedings pending at the time of the exercise of the authority.

"**§ 53-380. Notice to trust institutions, corporations, and others holding assets; existing liens.**

Upon taking possession of the assets and business of any State trust company, the Commissioner shall forthwith give notice, by mail or otherwise, of the action to all banks, clearing corporations, brokers, trust institutions, or other persons or corporations holding, or having in possession, any assets of the State trust company. No lien against any assets of the State trust company shall be enforced in any manner other than as provided in this Article after the Commissioner has taken possession of the State trust company.

"**§ 53-381. Permission to resume business.**

(a) After the Commissioner has taken possession of a State trust company under the provisions of this Subpart, the State trust company may resume business only upon approval and subject to terms and conditions specified by the Commissioner.

(b) When possession of a State trust company has been taken pursuant to either G.S. 53-377 or G.S. 53-378, the terms and conditions under which it may resume business shall be fully stated in writing, and a copy thereof shall be filed with the clerk of superior court of the county in which the action is pending.

(c) Notwithstanding subsections (a) and (b) of this section, no State trust company possessed by the Commissioner under the provisions of this Article shall resume trust business unless and until the State trust company has been completely restored to solvency and it clearly appears to the Commissioner that the State trust company may be reopened with safety to the clients, creditors, and shareholders of the State trust company and to the public.

(d) If the Commissioner determines that the State trust company shall not resume business, the State trust company shall be liquidated in accordance with the provisions of this Part and shall cancel the charter and revoke the license of the State trust company as provided in G.S. 53-414.

"**§ 53-382. Remedy for seizure; answer to notice; injunction; appeal; and motions.**

(a) Whenever any State trust company of which the Commissioner has taken possession under G.S. 53-377 shall deem itself aggrieved thereby, it may file an answer to the notice as in other civil actions and may also, upon notice to the Commissioner, apply to the resident or presiding judge of the superior court for an injunction to enjoin further proceedings by the Commissioner. The judge of the superior court may cite the Commissioner to show cause why further proceedings should not be enjoined and, after hearing the allegations and proof of the parties with respect to the condition of the State trust company, may dismiss an application for injunction or may enjoin further proceedings under the provisions of this section by the Commissioner. If the judge enjoins further action of the Commissioner and permits the reopening of the State trust company, the judge may require of the State trust company a surety bond as the judge deems necessary, payable to the Commissioner for the sole benefit of the creditors and clients of the State trust company and upon any terms the judge deems proper. Either party has the right to appeal a decision as in other civil actions.

(b) The State trust company or any person interested may be heard by motion as to actions taken or proposed to be taken by the Commissioner, but the judge hearing the motion shall enter an order as in the judge's discretion will best serve the parties interested.

"**§ 53-383. Collection of debts and claims; Commissioner succeeds to all property of the State trust company.**

(a) Upon taking possession of the assets and business of any State trust company, the Commissioner is authorized to collect all money due the State trust company and to do any other acts necessary to conserve its assets and property. The Commissioner shall collect all debts due and claims belonging to the State trust company, and by order of the court may sell, compromise, or compound any bad or doubtful debt or claim or sell the real and personal property of the State trust company on any terms provided by the order. Where the sale is made under power contained in any mortgage or lien bond or other paper wherein the title is retained for sale and the terms of sale set out, sale may be made under that authority.

(b) Upon taking possession of any State trust company under the provisions of this section, the Commissioner shall have the possession and the right to the possession of all the property, assets, choses in action, rights, and privileges of the State trust company. The property rights and privileges shall vest in the Commissioner absolutely for the purpose of liquidating, selling, or conveying the property rights and privileges, together with all other incidental rights, privileges, and powers necessary for the right of conveyance and sale.

(c) Upon taking possession of any State trust company under the provisions of this section, the Commissioner shall administer each account of the State trust company on a temporary basis until either (i) a successor to the State trust company is appointed or the account is terminated in the manner provided by the terms of its governing instrument consistent with applicable law, or by applicable law in the absence of a provision in the governing instrument, or (ii) the Commissioner has granted the State

trust company permission to resume business under the provisions of G.S. 53-381. The Commissioner may take appropriate steps for the appointment of successors or termination of accounts as the Commissioner deems necessary as to some or all of the accounts of the State trust company. If the governing instrument or other applicable law do not prescribe methods for appointing successors, or if the methods prescribed are unfeasible, the applicable law for appointment of a successor shall be as set forth in G.S. 53-399.

(d) The officers and directors of any State trust company that is in the possession of the Commissioner under this Part shall not exercise any powers declared by this Subpart to be vested in the Commissioner.

"**§ 53-384. Bond of the Commissioner; surety; condition; minimum penalty.**

Upon taking possession of any State trust company, the Commissioner shall execute and file a bond payable to this State for the benefit of creditors, clients, and shareholders of the State trust company, with some surety company as surety thereon, with the clerk of the superior court of the county in which the action is pending, conditioned upon the faithful performance of all duties imposed upon the Commissioner under the provisions of this Subpart with respect to the State trust company, the penal sum of the bond to be fixed by order of the Commissioner, which in no case shall be less than two hundred fifty thousand dollars ($250,000). Any person interested, by motion in the pending action, shall be heard by the resident or presiding judge of the superior court as to the sufficiency of the bond. The judge hearing the motion may fix the bond.

"**§ 53-385. Inventory.**

Within 90 days after the filing of a notice described in G.S. 53-279, the Commissioner shall file an inventory of the assets and liabilities, not including assets and liabilities held in accounts of the State trust company, of the State trust company. A copy of the inventory shall be filed with the clerk of the superior court of the county in which the action is pending, and a copy shall be kept on file with the State trust company. The inventory shall be open for inspection during usual business hours, provided that nothing herein shall require the State trust company to remain open unnecessarily.

"**§ 53-386. Notice and time for filing claims.**

Notice shall be given by advertisement once a week for four consecutive weeks in a newspaper published in the county where the principal office of the State trust company is located, or if no newspaper is published in the county, then in some newspaper having a general circulation in the county, calling on all persons who may have claims against the State trust company to present them to the Commissioner at the principal office of the State trust company, and within the time to be specified in the notice which time shall not be less than 90 days from the date of the first publication. A copy of this notice shall be mailed to all persons whose names appear as creditors upon the books of the State trust company. Affidavit by the Commissioner to the effect that the notice was mailed shall be conclusive evidence thereof. For purposes of this section, clients and

accounts of the State trust company shall not be considered creditors of the State trust company as to the assets held by the State trust company for the benefit of its accounts.

"**§ 53-387. Power to reject claims; notice; affidavit of service; action on claims.**

If the Commissioner doubts the validity of any claim, the Commissioner may reject the claim, in whole or in part, and serve notice of the rejection upon the claimant, either personally or by certified mail, and an affidavit of the service of the notice shall be filed in the office of the clerk of the superior court of the county in which the action is pending and shall be conclusive evidence of the notice. Any action or suit upon a rejected claim shall be brought by the claimant against the Commissioner in the superior court of the county in which the action is pending within 90 days after service, or the action or suit shall be barred. Objections to any claim not rejected by the Commissioner may be made by any person interested by filing the objection in the pending action and by serving a copy thereof on the Commissioner. The Commissioner, after investigation, shall either allow the objection and reject the claim, or disallow the objection. If the objection is not allowed and the claim is not rejected, the Commissioner shall file a notice in the pending action and serve the notice upon the person making the claim and the person objecting to the claim. Within 10 days after the notice is filed, the person filing objection by motion in the pending action may question the validity of the claim, and the questions of law and issues of fact shall thereupon be determined as in other civil actions.

"**§ 53-388. List of claims presented, copies, and proviso.**

Upon the expiration of the time fixed for presentation of claims, the Commissioner shall make a full and complete list of the claims presented, including and specifying any claims that have been rejected. One copy shall be filed in the office of the clerk of the superior court of the county in which the action is pending, and one copy shall be kept on file with the inventory in the principal office of the State trust company for examination. Any indebtedness against any State trust company which has been established or recognized as a valid liability of the State trust company before it went into liquidation, for which no claimant has filed claim, or any liability for which a claim has been filed and rejected, shall be listed by the Commissioner in the office of the clerk of the superior court of the county in which the action is pending. Any claim that may be presented after the expiration of the time fixed for the presentation of claims in the notice provided in G.S. 53-386 shall, if allowed, share pro rata in the distribution but only as to those assets of the State trust company in the hands of the Commissioner that are undistributed at the time the claim is presented.

"**§ 53-389. Declaration of dividends; order of preference in distribution.**

(a) At any time after the expiration of the date fixed by the Commissioner for the presentation of claims against the State trust company, and from time to time thereafter, the Commissioner may declare and pay dividends to the creditors and shareholders of the State trust company. In paying and calculating dividends, all disputed claims shall be taken into account, but no dividend shall be paid upon the disputed claims until the

claims have been finally determined. The following shall be the order of preference in the distribution of the assets of any State trust company liquidated hereunder:

(1) State, county, and federal taxes owed and fees due the Commissioner other than those due under the provisions of this Subpart;

(2) Wages and salaries due officers and employees of the State trust company for a period of not more than four months;

(3) Expenses of liquidation, including those described in G.S. 53-391 and G.S. 53-395;

(4) Amounts due creditors, honoring the priorities of valid security interests and subject to orders of the court concerning disputes among creditors;

(5) Amounts due shareholders.

(b) A statement of all dividends paid shall be filed in the office of the clerk of the superior court of the county in which the action is pending, and the statements shall show the expenses deducted and the disputed claims in determining dividends.

"**§ 53-390. Deposit of funds collected.**

All funds collected by the Commissioner, in liquidating any State trust company, shall be deposited from time to time in a bank as may be selected by the Commissioner and shall be subject to withdrawal by check of the Commissioner.

"**§ 53-391. Employment of counsel, accountants, and other experts; compensation.**

The Commissioner, for the purpose of exercising any power under the provisions of this Subpart, may (i) employ any liquidating agents, attorneys, accountants, consultants, and clerks necessary to properly conduct the business of or liquidate and distribute the assets of a State trust company; (ii) fix the compensation for the agents, attorneys, accountants, consultants, and clerks; and (iii) pay the compensation of those persons out of the assets of the State trust company. Provided, that all expenditures described in this section shall be approved by the resident or presiding judge in the county in which the action is pending. Payments made by the Commissioner pursuant to this section shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes. As used in this Subpart, the term 'Commissioner' includes the Commissioner's duly appointed agents.

"**§ 53-392. Unclaimed dividends held in trust.**

Unclaimed dividends for claims described in subdivisions (a)(1) through (a)(4) of G.S. 53-389 shall be held by the Commissioner in trust for the claimants to whom the dividends are owed; and the dividends so held by the Commissioner shall be paid over to the persons entitled to the dividends when they furnish satisfactory evidence of their right to the dividends. In case of doubtful or conflicting claims, the Commissioner may apply to the superior court, by motion in the pending action, for an order from the resident or presiding judge of the superior court directing the payment of the dividends so claimed. Issues of fact raised by motion may, upon request of any claimant, be determined as in other civil actions. Interest earned on any unclaimed dividends so held shall be applied toward defraying the expenses incurred in the distribution of the

unclaimed dividends. The balance of interest, if any, shall be deposited and held as other funds to the credit of the Commissioner. After the Commissioner has held any unclaimed dividends in trust under the provisions of this statute for the creditors of the liquidated State trust company for a period of three years following the resumption of business by or cancellation of the charter of the State trust company, the unclaimed dividends shall be subject to the provisions of Chapter 116B of the General Statutes. Upon payment of unclaimed dividends to the State Treasurer, the Commissioner shall be fully discharged from all further liability therefor.

"**§ 53-393. Action by the Commissioner following full settlement.**

Whenever the Commissioner has paid all duly proven and allowed claims described in subdivisions (a)(1) through (a)(4) of G.S. 53-389, has made proper provision for unclaimed and unpaid and disputed claims, and has other assets of the State trust company, the Commissioner shall, unless the State trust company is granted permission to resume business in accordance with G.S. 53-381, call a meeting of the shareholders of the State trust company by giving notice thereof by publication once a week for four consecutive weeks in a newspaper published in the county, or if no newspaper is published in the county, then in a newspaper having general circulation in the county, and by mailing a copy of the notice to each shareholder's address as it appears on the books of the State trust company. Affidavit of the mailing of the notice herein required and of the newspaper as to the publication shall be conclusive evidence of notice hereunder. At the meeting, any shareholders may be represented by proxy and the shareholders shall elect, by a majority vote of the shares present, an agent or agents who shall be authorized to receive from the Commissioner all the remaining assets of the State trust company. The shareholders also may specify the means of resolving disputes between multiple agents and appointing successors to the agent or agents. The Commissioner shall cause to be transferred and delivered to the agent, or agents, all the remaining assets of the State trust company. The Commissioner shall thereupon cause to be filed in the office of the clerk of the superior court of the county in which the action is pending a full and complete report of all transactions showing the assets of the State trust company so transferred together with the name of the agent or agents giving receipt for the assets; and the filing of the report shall act as a full and complete discharge of the Commissioner from all further liabilities to the shareholders of the State trust company by reason of the liquidation of the State trust company. The agent shall convert the assets coming into the agent's hands into cash, except as otherwise provided by the court upon motion in the cause made by a shareholder of the State trust company, and shall make distribution to the shareholders of the State trust company as herein provided. The agent shall file semiannually a report of all transactions with the superior court of the county in which the State trust company is located, and with the Commissioner, and shall be allowed for the services such fees, not in excess of five percent (5%) of receipts and disbursements, as may be fixed by the court. In case of death, removal, or refusal to act of any agent or agents elected by the shareholders, the Commissioner or any interested person may seek an order from the resident or presiding

judge in the county in which the action is pending appointing a successor to the agent or agents as determined by the shareholders or, if no method was set forth by the shareholders, as determined by the court to be in the best interests of the shareholders. The court in its discretion may either appoint a successor or order the call of a further meeting of shareholders for the election of a successor and make any orders that are appropriate.

"**§ 53-394. Annual report of the Commissioner; items included; reports of condition of State trust companies.**

(a) The Commissioner shall file, as a part of an annual report to the Governor, a list of the names of any State trust companies of which possession was taken and liquidated in the preceding year, the sum of unclaimed assets with respect to each State trust company, and all depositories of all sums coming into the hands of the Commissioner under the provisions of this Part.

(b) The Commissioner shall, from time to time, compile and make available for public inspection reports showing the condition of State trust companies.

"**§ 53-395. Compensation of the Commissioner's office.**

The office of the Commissioner, for services rendered in connection with the duties described in this Subpart, shall be entitled to actual expenses incurred in connection with the liquidation of each State trust company, including a reasonable sum for the time of the examiners and other agents of the Commissioner. The Commissioner may adopt rules or orders for fixing these expenses.

"**§ 53-396. Exclusive method of liquidation.**

No State trust company shall be liquidated other than as provided in this Part.

"**§ 53-397. Disposition of books and records.**

All fiduciary records relating to the administration of particular accounts shall be turned over to the successors in charge of administration of the accounts. All other books, papers, and records of a State trust company that has been finally liquidated shall be deposited by the receiver in the office of the clerk of the superior court of the county in which the action is pending, or in any other place as in the clerk's judgment, after consultation with the Commissioner, will provide for the proper safekeeping and protection of those books, papers, and records. Such books, papers, and records shall be held subject to the orders of the clerk of the superior court of the county in which the action is pending, including orders necessary for preserving the confidentiality of any information relating to accounts contained in those books, papers, and records.

"**§ 53-398. Destruction of books and records.**

(a) After the expiration of five years from the date of filing, in the office of the clerk of the superior court of the county in which the action is pending, of a final order approving the liquidation of a State trust company and the delivery to the clerk or into the clerk's custody of books, papers, records of the State trust company, the books, papers, and records may be destroyed by the clerk of the superior court of the county in which the action is pending.

(b) After five years from the filing by the Commissioner of a final report of liquidation of any insolvent State trust company, the Commissioner, by and with the consent of the Commission, may destroy the records of any State trust company held in the office of the Commissioner in connection with the liquidation of the State trust company. However, in connection with any unpaid dividends, the Commissioner shall preserve the records or other evidence of indebtedness of the State trust company with reference to the unpaid dividends until the dividends have been paid.

(c) Nothing in this section shall be construed to authorize the destruction by the clerk of superior court of any county or by the Commissioner of any of the formal records of liquidation or the records made in the office of the Commissioner with reference to the liquidation.

"**§ 53-399. Petition for new trustee.**

Any person interested in any account, either as trustee, beneficiary, client, or otherwise, may petition the clerk of superior court of the county in which court accountings are filed or, if there is no such county, the county in which the account is being administered, for a new trustee or other successor to a State trust company in all cases in which use of the procedures set forth in this Part are employed. The petition and the order appointing a new trustee or other successor may relate to any number of accounts administered by the State trust company. Except as specified in this section, the procedure shall be as provided in Chapter 36A of the General Statutes for the appointment of successor trustees.

"**§ 53-400. Report to the Secretary of State.**

The Commissioner shall, on or before the first day of each year, file with the Secretary of State a report showing any State trust companies under liquidation in this State and the names of any auditors or attorneys employed in connection with the liquidation of these State trust companies, together with the amounts paid or contracted to be paid to each of the auditors or attorneys. If any attorney has been employed on a fee contingent upon recovery, the report shall set forth the material terms of the fee arrangements.

"Subpart C. Conservatorship.

"**§ 53-401. Provisions for conservator; duties and powers.**

Whenever the Commissioner deems it necessary in order to conserve the assets of a State trust company for the benefit of clients or creditors, the Commissioner may appoint a conservator for the State trust company and require of the conservator a bond with any surety the Commissioner deems necessary and proper in an amount deemed sufficient by the Commissioner. The conservator, under the direction of the Commissioner, shall take possession of the fiduciary records and other books, records, and assets of every description of the State trust company placed under conservatorship and take actions necessary to conserve those assets pending further disposition of its business as provided by law. Except as provided in G.S. 53-405, the conservator shall have all rights, powers, and privileges, subject to the approval of the Commissioner, now possessed by or given to the Commissioner under the provisions of Subpart B and

Subpart D of this Part. All expenses of the conservator shall be paid out of the assets of the State trust company under conservatorship and shall be a lien thereon which shall be prior to any other lien provided by law. The compensation of the conservator shall be determined by the Commissioner and shall be based on the time and experience of the conservator and the complexity of the conservatorship. Compensation of the conservator shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

"**§ 53-402. Examination.**

The Commissioner shall examine the affairs of a State trust company placed under conservatorship in the manner deemed necessary by the Commissioner to oversee the conservatorship.

"**§ 53-403. Termination of conservatorship.**

If the Commissioner is satisfied that the conservatorship may be terminated with safety to the clients, creditors, and shareholders of the State trust company, and to the public, the Commissioner may terminate the conservatorship of a State trust company and permit the company to resume the transaction of its business, subject to such terms, conditions, restrictions, and limitations as the Commissioner prescribes.

"**§ 53-404. Rights and liabilities of conservator.**

A conservator appointed pursuant to the provisions of this Subpart is subject to the provisions of G.S. 53-331 and to the penalties prescribed by G.S. 53-129 and G.S. 53-355.

"**§ 53-405. Naming of conservator not liquidation.**

No power conferred in this Subpart upon the Commissioner, when exercised, shall be deemed as an act of possession for the purposes of liquidation; and whenever the Commissioner shall, with reference to any State trust company for which a conservator is appointed, deem that liquidation is necessary, the Commissioner shall exercise the powers for the purposes of liquidation as provided in Subpart B of Part 5 of this Article.

"Subpart D. Sale of Assets; Issuance of Preferred Stock by Jeopardized State Trust Company.

"**§ 53-406. Sale of assets by board of jeopardized State trust company.**

(a) With the Commissioner's approval, the board of directors of a jeopardized State trust company, acting without shareholder approval and notwithstanding any other provision of this Article or any other law, or any of the provisions of the articles of incorporation or bylaws of the State trust company, may cause the State trust company to sell to one or more buyers all or substantially all of its assets, including the right to control and act as fiduciary for accounts established with the trust company, if the Commissioner finds:

(1) The interests of the State trust company's clients, creditors, and shareholders are jeopardized by the continued operation of the State trust company; and

(2) The sale is in the best interests of the State trust company's clients and creditors.

(b) Sales under the provisions of this section shall include assumptions and promises by one or more buyers to pay or otherwise discharge, except as provided in G.S. 53-407:

(1) All of the State trust company's liabilities to clients and creditors;

(2) All of the State trust company's liabilities for salaries of the State trust company's employees incurred before the date of the sale;

(3) Expenses incurred by the Commissioner arising out of the supervision or sale of the State trust company; and

(4) Taxes owed and fees and assessments due the Commissioner's office.

(c) This section does not limit the power of a State trust company to buy and sell assets in the ordinary course of business.

(d) This section does not affect the Commissioner's right to take action under another law or sale under other provisions of this Article.

"**§ 53-407. Authority to act as disbursing agent.**

If a purchasing trust institution acts under a written agency contract that (i) is approved by the Commissioner; (ii) specifically names each creditor and the amount to be paid each; and (iii) limits the agency to the purely ministerial act of paying creditors the amounts due them as determined by the selling institution and does not involve discretionary duties or authority other than the identification of the creditors named, then the purchasing trust institution:

(1) May rely on the contract of agency and the instructions included in it; and

(2) Is not responsible for:

a. Any error made by the selling institution in determining its liabilities, the creditors to whom the liabilities are due, or the amounts due the creditors; or

b. Any preference that results from the payments made under the contract of agency and the instructions included in it.

"**§ 53-408. Payment to creditors.**

Payment to a creditor of the selling institution of the amount to be paid under the terms of a contract of agency described in G.S. 53-407 may be made by the purchasing trust company by (i) opening an agency account in the name of the creditor; (ii) crediting the account with the amount to be paid the creditor under the terms of the agency contract; and (iii) mailing or personally delivering a duplicate ticket evidencing the credit to the creditor at the creditor's address shown in the records of the selling institution.

"**§ 53-409. Issuance of preferred shares by jeopardized trust company.**

Notwithstanding any other provisions of this Article or any other laws, and notwithstanding any of the provisions of its articles of incorporation or bylaws, any jeopardized State trust company may, with the approval of the Commissioner, and by vote of shareholders owning a majority of the shares of such State trust company, upon not less than two days' notice given by registered mail pursuant to action taken at a

meeting of its board of directors (which may be held upon not less than one day's notice) issue shares of preferred stock in such amount, with such voting rights, with such preferences, at such dividend rate, and with such other rights and limitations as shall be approved by the Commissioner. A copy of the minutes of such directors' and shareholders' meetings, certified by the proper officer and under the corporate seal of the State trust company, and accompanied by the written approval of the Commissioner, shall be immediately filed in the office of the Secretary of State, and when so filed, shall be deemed and treated as an amendment to the articles of incorporation of such State trust company. For purposes of this section, a State trust company shall be considered jeopardized when it is critical that the State trust company obtain additional equity capital to avoid, or to cease to be in, a hazardous condition, and other means of raising additional equity capital do not appear to be feasible. No issue of preferred shares shall be valid until the amount of all shares so issued shall have been paid for in full in cash, except as may otherwise be specifically approved by the Commissioner. The provisions of this section do not limit the authority of a State trust company to issue shares as provided under other applicable law.

"Part 6. Authority, Hearings, Enforcement, and Severability.

"**§ 53-410. Commissioner to act under authority of the Commission.**

All the powers, duties, and functions granted to or imposed upon the Commissioner by law shall be exercised under the direction and supervision of the Commission. Wherever provision is made in this Article authorizing and permitting the Commissioner to make rules, the words 'the Commissioner' shall be construed to mean the Commission.

"**§ 53-411. Rules.**

The Commission may adopt rules in accordance with Chapter 150B of the General Statutes to carry out the provisions of this Article relating to authorized trust institutions and to ensure safe and conservative management of authorized trust institutions under its supervision, taking into consideration the appropriate interests of the clients, creditors, shareholders, and the public in their relations with the authorized trust institutions.

"**§ 53-412. Commissioner hearings; appeals.**

(a) This section does not grant a right to a hearing to a person that is not otherwise granted by governing law.

(b) The Commissioner may convene a hearing to receive evidence and argument regarding any matter before the Commissioner for decision or review under the provisions of this Article. The hearing shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

(c) Disputes over decisions and actions of the Commissioner under the provisions of this Article shall be 'contested cases' as defined in G.S. 150B-2(2).

(d) Except as expressly provided otherwise by this Chapter, an order of the Commissioner may be appealed to the Commission for review. The Commission may affirm, modify, or reverse a decision of the Commissioner.

(e) Appeals from the Commission shall be to the Wake County Superior Court and shall proceed as provided in G.S. 53-92.

"**§ 53-413. Civil enforcement.**

The Commissioner may bring any appropriate civil action against any person the Commissioner believes has committed or is about to commit a violation of this Article or a rule, order, or declaratory ruling of the Commissioner pertaining to this Article.

"**§ 53-414. Cancellation of charter.**

Whenever a merger, share exchange, sale of assets, liquidation, or other transaction occurs by which a State trust company ceases to exist or ceases to be eligible for a charter, the Commissioner shall cancel the State trust company's charter, revoke its license, and provide notice of the revocation in the manner provided in G.S. 53-163. The filing, in the office of the Secretary of State, of a certified copy of the cancellation under seal of the Commissioner shall authorize the cancellation of the charter of the State trust company, subject, however, to its continued existence, as provided by this Article and the general law relative to corporations, for the purpose of winding up and liquidating its business and affairs.

"**§ 53-415. Severability.**

If any provision of this Article, or its application, is found by any court of competent jurisdiction in the United States to be invalid as to any trust institution or other person or circumstance, or to be superseded by federal law, the provision shall be deemed modified only to the extent and only in the particular circumstances necessary to render the provision valid, and the remaining provisions of this Article shall not be affected and shall continue to apply to any trust institution or other person or circumstance."

SECTION 2. G.S. 53-2 reads as rewritten:

"**§ 53-2. How incorporated.**

Any number of persons, not less than five, who may be desirous of forming a company and engaging in the business of establishing, maintaining, and operating banks of discount and deposit to be known as commercial banks, ~~or operating banks engaged in doing a trust and fiduciary business,~~ shall be incorporated in the manner following and in no other way; that is to say, such persons shall, by a certificate of incorporation under their hands and seals set forth:

(1) The name of the corporation; no name shall be used already in use by another existing corporation organized under the laws of this State or of the Congress, or so nearly similar thereto as to lead to uncertainty or confusion.

(2) The location of its principal office in this State.

(3) ~~The nature of its business, whether that of a commercial bank, trust company, or a combination of both such classes of business.~~Whether it will do trust business as well as the business of a commercial bank.

(4) The amount of its authorized common capital stock, the number of shares into which it is divided, the par value of each share; and the amount of common capital stock with which it will commence

business. The amount of capital required to charter a bank shall be determined as herein set forth by the Commissioner of Banks who shall give due consideration to (i) the population of the proposed bank's trade area, (ii) the total deposits of those depository financial institutions already operating in the proposed bank's trade area, (iii) the economic conditions and outlook within the proposed bank's trade area, (iv) the business experience and reputation of the proposed bank's management, (v) the business experience and reputation of the proposed bank's incorporators and proposed directors, (vi) the type and nature of business activities proposed to be engaged in, and (vii) the proposed bank's projected deposit growth and profitability. Except as otherwise provided, the amount of common capital stock required to charter a bank shall not be less than two million dollars ($2,000,000); provided, however, such amount of capital may be increased or decreased in the discretion of the Commissioner of Banks who, after considering the above enumerated criteria, determines that a greater capital requirement is necessary or that a smaller capital requirement will provide a sufficient capital base. In addition to the required capital, every bank shall have a paid in surplus of at least fifty percent (50%) of its common capital stock. The capital and paid in surplus required to charter a bank shall be exclusive of any organizational expenses. This subdivision shall not apply to banks organized and doing business prior to its adoption or amendment; provided, however, the Banking Commission is hereby authorized and directed to adopt rules ~~and regulations~~ to keep any original required minimum capital funds intact to the end that they remain in and with the bank as a protection for depositors.

(5) The names and post-office addresses of subscribers for stock, and the number of shares subscribed by each; the aggregate of such subscriptions shall be the amount of the capital with which the company will commence business.

(6) Period, if any, limited for the duration of the company."

SECTION 3. Article 14 of Chapter 53 reads as rewritten:

"Article 14.

"Banks Acting in a Fiduciary Capacity.

"**§ 53-159. Bank may act as fiduciary.**

Any bank licensed by the Commissioner of Banks, where such powers or privileges are granted it in its charter, may be guardian, trustee, assignee, receiver, executor or administrator or act in another fiduciary capacity in this State without giving any bond; and the clerks of the superior courts, or other officers charged with the duty or clothed with the power of making such appointments, are authorized to appoint such bank to any such office.

"**§ 53-159.1. Power of fiduciary or custodian to deposit securities in a clearing corporation.**

Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity, any bank or trust company holding securities in a fiduciary capacity or as a custodian or agent is authorized to deposit or arrange for the deposit of such securities in a clearing corporation as defined in G.S. 25-8-102. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank or trust company acting as a fiduciary or as a custodian or managing agent shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities. A bank or trust company so depositing securities pursuant to this section shall be subject to such rules ~~and regulations~~ as, in the case of State-chartered institutions, the State Banking Commission and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. A bank or trust company acting as custodian or agent for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company in such clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation for its account as such fiduciary. This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any bank or trust company holding securities as a fiduciary or as a custodian or managing agent acting on May 15, 1973, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not such fiduciary, custodian or agent owns capital stock of such clearing corporation. The fiduciary shall personally be liable for any loss to the trust resulting from an act of such nominee in connection with such securities so deposited.

"**§ 53-160. License to do business.**

Before any such bank or trust company is authorized to act in any fiduciary capacity without bond, it must be licensed by the Commissioner of Banks of the State. For such license the licensee shall pay to the State Banking Commission an annual license fee of two hundred dollars ($200.00), which shall be remitted to the State Treasurer for the use of the Commissioner of Banks in the supervision of banks and trust companies acting in a fiduciary capacity, insofar as it may be necessary, and the surplus, if any, shall remain in the State treasury for the use of the general fund of the State: Provided, however, that a national bank which has been granted trust powers by the Comptroller of the Currency

or his duly authorized agent shall be annually licensed as required in this section and shall be granted a certificate of solvency which will meet the provisions of G.S. 53-162 without examination by the Commissioner of Banks as required in G.S. 53-161.

"**§ 53-161. Examination as to solvency.**

The Commissioner of Banks shall examine into the solvency of such bank, and shall, if he deem it necessary, at the expense of the bank, make or cause to be made an examination at its home office of its assets and liabilities. Examinations of trust institutions other than banks shall be as provided in Article 24 of this Chapter.

"**§ 53-162. Certificate of solvency.**

After any ~~such~~ bank has been licensed by the Commissioner of Banks, a certificate issued by the Commissioner of Banks, showing the bank to be solvent to an amount not less than one hundred thousand dollars ($100,000), shall authorize such bank to act in a fiduciary capacity without bond. There shall be no charge for the seal of this certificate.

"**§ 53-163. Clerk of superior court notified of license and revocation.**

The Commissioner of Banks, upon granting license to any such ~~bank,~~ bank or trust company, shall immediately notify the clerk of the superior court of each county in the State that ~~such~~ the bank or trust company has been licensed under this Article, and, whenever the Commissioner of Banks is satisfied that any bank or trust company licensed by ~~him~~ the Commissioner has become insolvent, or is in imminent danger of insolvency, ~~he~~ the Commissioner shall revoke the license granted to ~~such~~ that bank and notify the clerk of the superior court of each county in the State of the revocation. After such notification, the right of any such bank or trust company to act in a fiduciary capacity shall cease."

SECTION 4. G.S. 55-15-05(a) reads as rewritten:

"(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this State subject, however, to the right of the State to revoke the certificate as provided in this Chapter. A foreign ~~corporation, however, is not eligible or entitled to~~ corporation may qualify in this State as executor, administrator, or guardian, or as trustee under the will of any person domiciled in this State at the time of ~~his death,~~that person's death only in accordance with applicable provisions of Article 24 of Chapter 53. ~~except that a foreign corporation chartered under the banking laws of Georgia, South Carolina, Tennessee or Virginia or as a national banking association in any said states may act as testamentary trustee, or executor in this State if:~~

~~(1) It has a bona fide capital of at least two hundred and fifty thousand dollars ($250,000) actually paid in;~~

~~(2) It is authorized to act in such fiduciary capacity in the state in which it is incorporated or if such foreign corporation be a national banking association in the state in which it has its principal place of business; and~~

~~(3) Any bank or other corporation organized under the laws of this State or a national banking association having its principal place of business in this State is permitted by law to act in such fiduciary capacity in the~~

~~state in which such foreign corporation seeking to act in this State is organized or in which it has its principal place of business if it is a national banking association without further showing or qualification other than that it is authorized to act in such fiduciary capacity in this State and upon compliance with the laws of such other state, if any, concerning service of process on nonresident fiduciaries.~~

~~Unless assets of the estate are to be removed from within the State of North Carolina, such foreign corporations seeking to act as testamentary trustee, or executor in this State, upon qualifying to act in such fiduciary capacity, shall not be required by law to give bond except as required of a resident corporate fiduciary in like circumstances. No officer, employee or agent of any such foreign corporation shall be eligible or entitled to serve as testamentary trustee, or executor in this State whether such officer, employee, or agent is a resident or nonresident of this State if such officer, employee or agent is acting as testamentary trustee or executor on behalf of any such foreign corporation except when such foreign corporation itself shall be eligible to so serve.~~

A foreign corporation qualifying as testamentary trustee or executor under the provisions of this section shall appoint a process agent and file such appointment with the court as required by G.S. 28A-4-2(4)."

SECTION 5. G.S. 53-25 reads as rewritten:

"**§ 53-25. Trust terminated on insolvency of trustee bank.**

Whenever any bank ~~or trust company~~ created under the laws of this State, which has heretofore been, or shall hereafter be, appointed trustee in any indenture, deed of trust or other instrument of like character, executed to secure the payment of any bonds, notes or other evidences of indebtedness, has been or shall be by reason of insolvency, or for any other cause provided by law, taken over for liquidation by the Commissioner of Banks of this State or by any other legally constituted authority, the powers and duties of such bank ~~or trust company~~ as trustee in any such instrument shall, upon the entry of an order of the clerk of the superior court appointing a successor trustee, upon a petition as hereinafter provided, immediately cease and determine."

SECTION 6. G.S. 53-1 reads as rewritten:

"**§ 53-1. 'Bank,' 'surplus,' 'undivided profits,' and other words defined.**

Except as otherwise specifically provided in this Chapter, the~~The~~ following definitions shall be applied to the terms used in this Chapter:

(1) Bank. – The term "bank" shall be construed to mean any corporation, other than savings and loan associations, savings banks, industrial banks, and credit unions, receiving, soliciting or accepting money or its equivalent on deposit as a business.

(1a) Branch. – The term "branch" means an office of any bank in which deposits are received, monies are paid, and loans are made. Any of the functions or services authorized to be engaged in by a bank may be carried out in a branch.

(2) Demand Deposits. – The term "demand deposits" means all deposits, the payment of which can be legally required within 30 days.

(3) Insolvency. – The term "insolvency" means:

a. When a bank cannot meet its deposit liabilities as they become due in the regular course of business;

b. When the actual cash market value of its assets is insufficient to pay its liabilities to depositors and other creditors;

c. When its reserve shall fall under the amount required by this Chapter, and it shall fail to make good such reserve within 30 days after being required to do so by the Commissioner of Banks; or

d. Whenever the undivided profits and surplus shall be inadequate to cover losses of the bank, whereby an impairment of the capital stock is created.

(3a) Limited Service Facility. – The term "limited service facility" means an office of a bank in which deposits are received, monies are paid, or other duties and functions of a teller are performed. Loan applications shall be taken in a limited service facility but notes may not be executed nor loan proceeds disbursed in a limited service facility.

(4) Net Earnings. – The term "net earnings" means the excess of the gross earnings of any bank over the expenses and losses chargeable against such earnings during any dividend period.

(5) Practical Banker. – The term "practical banker" means an officer or employee of a bank actively engaged in performing duties in managing or supervising or assisting in managing or supervising the conducting of a banking business, including any such banker who is in a retired status from such duties.

(6) Surplus. – The term "surplus" means a fund created pursuant to the provisions of this Chapter by a bank from payments by stockholders or from its net earnings or undivided profits which, to the amount specified and by any additions thereto set apart and designated as such, is not available for the payment of dividends, and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

(7) Time Deposits. – The term "time deposits" means all deposits, the payment of which cannot be legally required within 30 days.

(8) Undivided Profits. – The term "undivided profits" means the credit balance of the profit and loss account of any bank.

(9) Unimpaired Capital Fund. – The term "unimpaired capital fund" means the total of the amount of unimpaired common stock, preferred stock, surplus, undivided profits, reserve for contingencies and other capital reserves (excluding accrued dividends on preferred stock and

limited life preferred stock), mandatory convertible instruments, allowance for possible loan losses, and the amount of capital debentures or notes, convertible or otherwise, having an average original maturity of at least seven years, which have been specifically designated as part of the bank's unimpaired capital fund by resolution duly adopted by the board of directors of the bank; provided, that upon payment of such capital debentures or notes or upon accumulation of funds in a sinking fund for amortization of such debentures or notes, unimpaired capital fund shall be reduced by the amount of such payment or accumulation. The terms and conditions of any issue of or prepayment of capital debentures or notes must have the prior written approval of the Commissioner of Banks affirming that in his opinion such issue or prepayment is in the best interest of the depositors, creditors and stockholders of the bank."

SECTION 7. Trust companies organized under Article 1 of Chapter 53 of the General Statutes shall hereafter be governed by this Article and may take such steps as may be necessary or appropriate to conform to the provisions hereof. The Commissioner shall allow a period of up to one year for this transition.

SECTION 8. G.S. 53-80 reads as rewritten:

"§ 53-80. Qualifications of directors.

Every director of a bank doing business under this Chapter shall be the owner and holder of shares of stock in the bank representing not less than one thousand dollars ($1,000) book value as of the last business day of the calendar year immediately prior to the election of such director. For the purpose of this section, book value shall consist of common capital stock, unimpaired surplus, undivided profits, and reserves for contingencies if any such reserves are segregations of capital. Where directors are appointed during the interval between stockholders' meetings pursuant to the provisions of G.S. 53-67, such directors shall hold the required qualifying shares as of the time of their appointment. Notwithstanding the proviso at the end of this section, where the bank is a wholly owned subsidiary, the required qualifying shares shall be shares in the parent corporation, whether or not the bank was doing business before February 18, 1921. And every such director shall hold the shares in the director's own name unpledged and unencumbered in any way. Provided, however, shares of the bank or parent corporation stock held in an individual retirement account or other retirement account of a bank director, over which the director has investment authority, shall be considered qualifying shares for the purpose of this section. The office of any director at any time violating any of the provisions of this section shall immediately become vacant, and the remaining directors shall declare that director's office vacant and proceed to fill such vacancy forthwith. Not less than one-half of the directors of every bank doing business under this Chapter shall be residents of the State of North ~~Carolina~~ Carolina or any state in which the bank has a branch: Provided, that as to banks doing business before February 18, 1921, the requirements as to amount of stock owned by a

director shall not apply unless the Commissioner of Banks shall rule that the director is not bona fide discharging the director's duties."

SECTION 9. This act becomes effective July 1, 2001, and applies to acts or omissions occurring and agreements or contracts entered into on or after that date.

SENATE BILL 860:
Interstate Trust Business.

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Senator Clodfelter/Warren
Date:	May 30, 2001	**Summary by:**	O. Walker Reagan
Version:	Third Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 860 would modernize the law governing trust business by providing statutory authority separate from the banking law for the formation and regulatory oversight of non-bank trust companies and private family trust companies. The bill would also authorize trust business on an interstate basis. The bill is a recommendation of the Commissioner of Banks and was a recommendation of the LRC's Committee on Nondepository Trust Companies and Family Trust Companies to the 2000 Session of the General Assembly. The bill also modifies the residency requirements for bank directors.***

CURRENT LAW: Commercial trust operations as trust companies are currently authorized and regulated under the banking laws as a bank. The trust company must be chartered as a bank, even if the company does not accept deposits, and must comply with numerous banking regulations despite the fact that the trust company does not engage in accepting deposits or making loans.

BILL ANALYSIS: Senate Bill 860 would simplify trust company regulatory law under a separate regulatory Article requiring trust companies to only have to comply with the trust regulation provisions of the law, and not other banking regulations governing banking operations trust companies do not engage in, while ensuring the same adequate capitalization and safety and soundness oversight by the Commissioner of Banks as is required under current law.

Part 1 (pages 1-7) contains the definitions applicable to the new Article.

Part 2 (pages 7-20) enacts the Multistate Trust Institutions Act which allows NC banks and trust companies to engage in a trust business on an interstate and international basis and allows banks and trust companies outside of NC to do business here provided their home states allow our banks and trust companies to do trust business there. This includes the rights of the Commissioner to examine the out-of-state trust companies operating in NC and NC trust companies' operations out-of-state.

Part 3 (pages 20-37) enacts the State Trust Company Charter Act that sets out the requirements for chartering a state-chartered trust company. This Act includes minimum capitalization of $2,000,000. Like for banks, the Commissioner has authority to increase or decrease the minimum capitalization amount on specific grounds. This Act also defines permissible investments for trust companies' capital, requires at least 40% of the equity capital to be in liquid assets, and prohibits lending and lease financing. This Part also sets out special provisions applicable to private or family trust companies. (See page 33).

Part 4 (pages 37-40) sets out the enforcement authority of the Commissioner that is consistent with the enforcement powers under the current banking laws and the Administrative Procedures Act. This part provides for the assessment of trust companies for the cost of supervision the same as for banks -- $6000, plus $1 for each $100,000 of assets per year, exclusive of real estate.

Part 5 (pages 40-51) provides for the dissolution, or in the event of a failure, the Commissioner may place the trust company into a receivership or conservatorship under court supervision.

Part 6 (pages 51-52) clarifies the Commissioner's authority, hearing procedures, and general enforcement powers.

Sections 2 through 6 of the bill make conforming changes to other statutes.

Section 7 allows for a one-year transition period for existing trust companies chartered as banks to comply with the new law.

Section 8 provides that not less than one-half of the directors of a bank incorporated in NC must be residents of this State or the state in which the bank has a branch. Under current law, not less than one-half of the directors must be residents of this State.

EFFECTIVE DATE: The bill becomes effective July 1, 2001.

KEY POINTS OF S.860 (INTERSTATE TRUST BUSINESS)
PREPARED FOR REP. WALTER CHURCH

Senate Bill 860 accomplishes the following objectives:

- It allows North Carolina financial institutions to offer trust services outside of this State on a reciprocal basis;
- Permits North Carolina to appropriately regulate out-of-state financial institutions that offer trust services in this State;
- Creates a North Carolina charter for trust companies that do not offer commercial bank services and provides for the appropriate regulation of those companies;
- Makes North Carolina competitive with other states that allow chartering of "private trust companies," which operate primarily for the benefit of a family group, and provides for appropriate regulation of private trust companies;
- Establishes a level playing field in trust services for all North Carolina financial institutions; and
- Preserves the rights of existing financial institutions offering trust services.

Senate Bill 860:

- Has previously been through an LRC Study and has been further refined to meet the needs and concerns of the Study Commission and interested parties involved.
- Approximately 30 states allow interstate trust business. About 15 have adopted this form of the law and a number of others have it under consideration.
- Section 1 creates a new Article 24 in Chapter 53, the banking laws. Sections 2 through 7 make technical and conforming changes in existing law. Section 8 includes an amendment to the banking laws requested by the Commissioner of Banks, and Section 9 makes the act effective July 1, 2001.

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — MAY 30, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hal Lingerfelt	Commissioner of Banks
Robert Thomas	Asst. A.G. Rep. Comm. Bks.
Walter Cherry	Bone & Assoc.
Richard Vinroot	Robinson Bradshaw & Hinson PA
DANIEL GARNER	OFFICE OF THE COM'R OF BANKS
OTIS M. MEACHAM	Deputy Commissioner of Banks
WOODY WEBB	The Robinson Cobb Law Firm
[illegible]	NCCCA
Jonny Fulbright	Hunton & Williams
Helen Savage	AARP
Kiki Dunton	NCPIRG

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — MAY 30, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McMillan	MFAS P.A.
Paul H. Stock	NC Bankers Assn.
Dan Duncan	VFCSA
Bobby S Holden	Comm. Bk Svc.
Michelle Frazier	NC Bar Assoc.

FINANCIAL INSTITUTIONS

JUNE 13, 2001
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSELS – MS. KAREN COCHRANE-BROWN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS – DIXIE EPPS AND JOYCE FULLER

SGT.-AT-ARMS – DONNELL LEATHERS AND BOB FOWLER

PAGES – SAVANH CRESS, LEIA HARRIS AND PETE SILLIMAN

H.B. #1106 – MORTGAGE LENDING ACT – REP. CHURCH

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
JUNE 13, 2001

The **House Committee on Financial Institutions** met on Wednesday, June 13, 2001, at 10:00 a.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chairman Richard Morgan. The Co-Chairman recognized the three pages who were assigned to the meeting. The following members of the committee were present: Co-Chairmen Church and Morgan; Vice Chairman McAllister; Members: Reps. Cole, Dockham, Harrington, Howard, McMahan, Michaux, Miller, and Walend.

H.B. #1106 – MORTGAGE LENDING ACT. Co-Chairman Morgan recognized Co-Chairman Church to present the bill. This bill was initiated by the mortgage banking and broker industry as an alternate to the current registration act., It was submitted to the Commissioner of Banks for review, and the Commissioner's comments and recommendations were incorporated into the bill. Therefore, it has the support of his Office. Co-Chairman Church requested that this bill be put into a Sub-Committee. Co-Chairman Morgan appointed the following to the committee: Reps. Brubaker, Cole, Dockham, Howard, Michaux and Smith

There being no further business, Co-Chairman Morgan adjourned the meeting at 10:05 a.m.

Co-Chairman Walter Church, Sr. Co-Chairman Richard Morgan

Joyce A. Fuller, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1106

Short Title:	Enact Mortgage Lending Act.	(Public)
Sponsors:	Representatives Church, Morgan, Cole, Brubaker, and Hill.	
Referred to:	Financial Institutions.	

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO ENACT THE MORTGAGE LENDING ACT TO GOVERN MORTGAGE BROKERS AND BANKERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 53 of the General Statutes is repealed.

SECTION 2. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 19A.

"Mortgage Lending Act.

"**§ 53-243.01. Definitions.**

The following definitions apply in this Article:

(1) Act as a mortgage broker. – The act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, of accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, engaging in tablefunding of mortgage loans, or generating leads or referrals for mortgage loans through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

(2) Act as a mortgage lender. – The act of engaging in the business of making mortgage loans for compensation or gain.

(3) Branch manager. – The individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker.

(4) Branch office. – An office of the licensee acting as a mortgage broker or mortgage banker that is separate and distinct from the licensee's principal office.

(5) Commissioner. – The North Carolina Commissioner of Banks and the Commissioner's designees.

(6) Control. – The power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, association, or trust.

(7) Exempt person. – The term includes any of the following:

a. Any agency of the federal government or any state or municipal government granting first mortgage loans under specific authority of the laws of any state or the United States.

b. Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer.

c. Any lender authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system, life insurance company, savings institution, or credit union, under the laws of the United States, this State, or any other state.

d. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan.

e. Any officer or employee of an exempt person described in sub-subdivision c. of this subdivision.

f. Any person who, as seller, receives in one calendar year no more than five mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation.

g. The North Carolina Housing Finance Agency as established by Article 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Article 122D of the General Statutes.

(8) Licensee. – A loan officer, mortgage broker, or mortgage banker who is licensed pursuant to this Article.

(9) Loan officer. – A natural person who, in exchange for compensation as an employee of another person, accepts or offers to accept applications for mortgage loans. The definition of loan officer shall not include any exempt person described in sub-subdivision (5)b. of this section.

(10) Make a mortgage loan. – To close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan.

(11) Managing principal. – A person who meets the qualifications of G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker.

(12) Mortgage banker. – A person who acts as a mortgage lender as that term is defined in subdivision (2) of this section. However, the definition does not include a person who acts as a mortgage lender only in tablefunding transactions.

(13) Mortgage broker. – A person who acts as a mortgage broker as that term is defined in subdivision (1) of this section.

(14) Mortgage loan. – A loan made to a natural person or persons primarily for personal family or household use, primarily secured by either a mortgage or a deed of trust on residential real property located in North Carolina.

(15) Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities however organized.

(16) Qualified lender. – A person who is engaged as a mortgage lender in North Carolina and is either a supervised or a nonsupervised institution, as these terms are defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.

(17) Qualified person. – A person who is employed as a registered loan officer by a mortgage broker, qualified lender, or mortgage banker or who is an officer, director, shareholder, partner, member, or manager of a registered mortgage broker, qualified lender, or mortgage banker.

(18) Residential real property. – Real property located in the State of North Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units.

(19) Tablefunding. – A transaction where a licensee closes a loan in its own name with funds provided by others and the loan is assigned simultaneously with or within one business day of the funding of the loan to the mortgage lender providing the funding.

"**§ 53-243.02. License required; licensee records.**

(a) Other than an exempt person, it is unlawful for any person in this State to act as a mortgage broker or mortgage banker, or directly or indirectly to engage in the business of a mortgage broker or a mortgage banker, without first obtaining a license from the Commissioner under the provisions of this Article.

(b) It is unlawful for any natural person to engage in the solicitation and acceptance of applications for mortgage loans without first obtaining a license as a loan officer issued by the Commissioner under the provisions of this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a loan officer unless the loan officer is licensed as a loan officer under this Article. Exempt persons shall not be subject to this subsection.

(c) The license of a loan officer is not effective during any period when that person is not employed by a mortgage broker or mortgage banker licensed under this

Article. When a loan officer ceases to be employed by a mortgage broker or mortgage banker licensed under this Article, the loan officer and the mortgage broker or mortgage banker licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. A loan officer shall not be employed simultaneously by more than one mortgage broker or mortgage banker licensed under this Article.

(d) Each mortgage broker and mortgage banker licensed under this Article shall maintain on file with the Commissioner a list of all loan officers who are employed with the mortgage broker or mortgage banker.

"**§ 53-243.03. Review by Banking Commission.**

The Banking Commission may review any rule, regulation, order, or article of the Commissioner adopted pursuant to or with respect to the provisions of this Article, and any person aggrieved by any rule, regulation, order, or article may appeal to the Banking Commission for review upon giving notice in writing 20 days after the rule, regulation, order, or article that is the subject of the complaint is adopted or issued. Notwithstanding any other provision of law, any party aggrieved by a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92.

"**§ 53-243.04. Rule-making authority.**

The Banking Commission may adopt any rules necessary to carry out the provisions of this Article, to provide for the protection of the borrowing public, and to instruct mortgage lenders in interpreting this Article.

"**§ 53-243.05. Qualifications for licensure; issuance.**

(a) Any person other than an exempt person desiring to obtain a license as a loan officer, mortgage banker, or mortgage broker shall make written application for licensure to the Commissioner on forms prescribed by the Commissioner. In accordance with rules adopted by the Commission, the application shall contain any information the Commissioner deems necessary regarding the following:

(1) The applicant's name and address.

(2) The applicant's form and place of organization, if applicable.

(3) The applicant's proposed method of and locations for doing business, if applicable.

(4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including: (i) a description of any injunction or administrative order by any state or federal authority to which the person is or has been subject; (ii) a conviction of a misdemeanor including any aspect of the residential mortgage lending business; (iii) any convictions of misdemeanors or felonies involving fraudulent dealings or moral turpitude.

(5) The applicant's financial condition, credit history, and business history.

(b) In addition to the requirements imposed by the Commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:

(1) Be at least 18 years of age.

(2) Have satisfactorily completed, within the three years immediately preceding the date application is made, a mortgage lending fundamentals course approved by the Commissioner. The course shall consist of at least eight hours of classroom instruction in subjects related to mortgage lending approved by the Commissioner. In addition, the applicant shall have satisfactorily completed a written examination approved by the Commissioner or possess residential mortgage lending education or experience in residential mortgage lending transactions that the Commissioner deems equivalent to the course.

(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

(1) If the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose by rule.

(2) If the applicant is a general or limited partnership, at least one of its general partners shall have the experience as described under subdivision (1) of this subsection.

(3) If the applicant is a corporation, at least one of its principal officers shall have the experience as described under subdivision (1) of this subsection.

(4) If the applicant is a limited liability company, at least one of its managers shall have the experience as described under subdivision (1) of this subsection.

(d) Each applicant shall identify one person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.

(e) Every applicant for initial licensure shall pay a filing fee of one thousand dollars ($1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars ($50.00) for licensure as a loan officer.

(f) A mortgage banker shall post a surety bond in the amount of one hundred fifty thousand dollars ($150,000) and a mortgage broker shall post a surety bond in the amount of fifty thousand dollars ($50,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money or monetary value in connection with a mortgage loan. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond that is required. An audited financial statement showing a net worth of two hundred fifty

thousand dollars ($250,000) or more shall be accepted in lieu of any bond required. No bond shall be required of any supervised or any nonsupervised institution, as defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.

(g) Any partner, member, shareholder, officer, or other person occupying a similar position with an applicant at the time of the application and who meets the requirements under subsection (c) of this section shall be issued a license as a loan officer without further action under this Article.

(h) Each branch office of a mortgage broker or mortgage banker licensed under the provisions of this Article shall be issued a separate license. A licensed mortgage broker or mortgage banker shall file with the Commissioner an application on a form prescribed by the Commissioner that identifies the address of the branch and the branch manager. A filing fee of one hundred dollars ($100.00) shall be assessed by the Commissioner for each branch office issued a license.

(i) Upon determining that an applicant meets the qualifications for licensure, the Commissioner shall issue a license to the applicant.

"**§ 53-243.06. License renewal; termination.**

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 30th day of June following issuance or on any other date that the Commissioner may determine. The license shall become invalid after that date unless renewed. A license may be renewed 45 days prior to the expiration date by paying to the Commissioner a renewal fee as follows:

(1) Licensed mortgage bankers shall pay an annual fee of five hundred dollars ($500.00), and one hundred dollars ($100.00) for each branch office.

(2) Licensed mortgage brokers shall pay an annual fee of five hundred dollars ($500.00), and one hundred dollars ($100.00) for each branch office.

(3) Licensed loan officers shall pay an annual fee of fifty dollars ($50.00).

(b) If a license is not renewed prior to the applicable expiration date, then an additional two hundred fifty dollars ($250.00) shall be assessed as a late fee to any renewal. In the event a licensee fails to obtain a reinstatement of the license within 90 days after the date the license expires, the Commissioner may require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(c) Licenses issued under this Article are not assignable. Control of a licensee shall not be acquired through a stock purchase or other device without the prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to G.S. 53-243.11 are applicable to the acquiring person.

"**§ 53-243.07. Continuing education.**

(a) As a condition of license renewal, the Commissioner may adopt rules to require continuing education of licensees under this Article for the purpose of enhancing

the professional competence and professional responsibility of mortgage bankers, mortgage brokers, and loan officers. The rules may include criteria for:

(1) The content of continuing education courses.
(2) Accreditation of continuing education sponsors and programs.
(3) Accreditation of videotape or other audiovisual programs.
(4) Computation of credit.
(5) Special cases and exemptions.
(6) General compliance procedures.
(7) Sanctions for noncompliance.

(b) Annual continuing professional education requirements shall be determined by the Commissioner. However, the requirements shall not exceed eight credit hours within a one-year period.

"**§ 53-243.08. Managing principals and branch managers.**

Each mortgage broker or mortgage banker licensed under this Article shall have a managing principal who operates the business under that person's full charge, control, and supervision. Each branch office of a mortgage broker or mortgage banker licensed under this Article shall have a branch manager who meets the requirements under G.S. 53-243.05(c). The managing principal for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its managing principal or branch manager designated for each branch. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.11 until the licensee complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this Article.

"**§ 53-243.09. Offices; address changes; display of license.**

(a) Each mortgage broker licensee shall maintain and transact business from a principal place of business in this State. A principal place of business in this State shall consist of at least one enclosed room or building of stationary construction in which negotiations of mortgage loan transactions of others may be conducted and carried on in privacy and in which all of the books, records, and files pertaining to mortgage loan transactions relating to borrowers in this State are maintained. However, the Commissioner may, by rule, impose terms and conditions under which the records and files may be maintained outside of this State.

(b) A mortgage banker or mortgage broker licensee shall report any change of address of the principal place of business or any branch office within 15 days after the change.

(c) Each mortgage broker or mortgage banker licensed under this Article shall display in plain view the certificate of licensure issued by the Commissioner in its principal office and in each branch office. Each loan officer licensed under this Article

shall display in each branch office in which the officer acts as a loan officer the certificate of licensure issued by the Commissioner.

"**§ 53-243.10. Prohibited activities.**

In addition to the activities prohibited under other provisions of this Article, it shall be unlawful for any person in the course of any mortgage loan transaction:

(1) To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.

(2) To refuse improperly to issue a satisfaction of a mortgage.

(3) To fail to account for or to deliver to any person any personal property obtained in connection with a mortgage loan, such as money, including money provided by a borrower for a real estate appraisal or a credit report, funds, deposit, check, draft, mortgage, or other document or thing of value, which has come into his or her possession and that is not his or her property or that he or she is not in law or equity entitled to retain.

(4) To pay any commission, share, split, or compensation in connection with a mortgage loan: (i) to any person who is engaged in the mortgage brokerage or mortgage banking business in violation of this Article; or (ii) to any unlicensed person, other than an exempt person, acting as a loan officer, mortgage broker, or mortgage lender.

(5) To charge or collect any fee or rate of interest prohibited by Chapter 24 of the General Statutes in connection with a mortgage loan.

(6) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants.

(7) To fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.

(8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person, in connection with the making of or purchase or sale of any mortgage loan.

(9) To fail promptly to pay when due reasonable fees to a licensed appraiser or licensed land surveyor for appraisal or survey services that are:

a. Requested from the appraiser or surveyor in writing by the mortgage broker or mortgage banker or an employee of the mortgage broker or mortgage banker; and

b. Performed by the appraiser in connection with the origination or closing of a mortgage loan for a customer or the mortgage broker or mortgage banker.

"**§ 53-243.11. Disciplinary authority.**

(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee, if the Commissioner finds:

(1) That the order is in the public interest.

(2) That the applicant, licensee, or any partner, member, manager, officer, director, loan officer, managing broker, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee:

a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement which, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

b. Has willfully violated or willfully failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.

c. Has been convicted, within the past 10 years, of any misdemeanor involving mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.

e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage broker or mortgage banker.

f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage or mortgage banking industry denying or revoking that person's license as a mortgage broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker.

g. Does not meet the qualification requirements under G.S. 53-243.05 or any bond or capital requirements imposed by the Commissioner, by rule, under the provisions of this Article.

h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or mortgage banker who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.

i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial

order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected.

(b) The Commissioner may, by order, summarily postpone or suspend the license of a licensee pending final determination of any proceeding under this section. Upon entering the order, the Commissioner shall promptly notify the applicant or licensee that the order has been entered and the reasons for the order. The Commissioner shall calendar a hearing within 15 days after the Commissioner receives a written request for a hearing. If a licensee does not request a hearing and the Commissioner does not request a hearing, the order will remain in effect until it is modified or vacated by the Commissioner. If a hearing is requested or ordered by the Commissioner, after notice of and opportunity for hearing, the Commissioner may modify or vacate the order or extend it until final determination.

(c) The Commissioner may, by order, impose a civil penalty upon a licensee or any partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee for any violation of this Article. The civil penalty shall not exceed ten thousand dollars ($10,000) for each violation of this Article by a mortgage broker or mortgage banker. The Commissioner may impose a civil penalty of up to ten thousand dollars ($10,000) for each violation of this Article by a person other than a licensee or exempt person.

(d) In addition to other powers under this Article, upon finding that any action of a person is in violation of this Article, the Commissioner may order the person to cease from the prohibited action. If the person subject to the order fails to appeal the order of the Commissioner in accordance with G.S. 53-240 and continues to engage in the prohibited action in violation of the Commissioner's order, the person shall be subject to a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation of the Commissioner's order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a licensee for the licensee's failure to comply with an order of the Commissioner.

(e) Unless otherwise provided, all actions and hearings under this Article shall be governed by Chapter 150B of the General Statutes.

(f) When a licensee is accused of any act, omission, or misconduct that would subject the licensee to disciplinary action, the licensee, with the consent and approval of the Commissioner, may surrender the license and all the rights and privileges pertaining to it for a period of time established by the Commissioner. A person who surrenders a license shall not be eligible for or submit any application for licensure as a mortgage broker or mortgage banker during the period the license is surrendered.

(g) If the Commissioner has reasonable grounds to believe that a licensee or other person has violated the provisions of this Article or that facts exist that would be the basis for an order against a licensee or other person, the Commissioner may at any time, either personally or by a person duly designated by the Commissioner, investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of any licensee or other person relating to the complaint or matter under investigation. The Commissioner and all persons duly designated by the Commissioner may issue subpoenas to require the attendance of and to examine under

oath all persons whose testimony the Commissioner deems relative to the person's business. The reasonable cost of this investigation or examination shall be charged against the licensee.

(h) In addition to the rights described under this section, the Commissioner may require a licensee to pay to a borrower or other individual any amounts received by the licensee or its employees in violation of Chapter 24 of the General Statutes.

(i) If the Commissioner finds that the managing principal, branch manager, or loan officer of a licensee had knowledge of or participated in any activity that results in the entry of an order under this section suspending or withdrawing the license of a licensee, the Commissioner may prohibit the managing broker or loan officer from serving as a managing broker or loan officer for any period of time the Commissioner deems necessary.

"**§ 53-243.12. Records; escrow funds or trust accounts.**

(a) The Commissioner shall keep a list of all applicants for licensure under this Article that includes the date of application, name, and place of residence and whether the license was granted or refused.

(b) The Commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective loan officers and a roster of exempt persons required to file a notice under G.S. 53-243.02. The rosters shall: (i) be kept on file in the office of the Commissioner; (ii) contain information regarding all orders or other action taken against the licensees, loan officers, and other persons; and (iii) be open to public inspection.

(c) Every licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed in rules adopted by the Commissioner. All records shall be preserved for three years unless the Commissioner, by rule, prescribes otherwise for particular types of records. The recordkeeping requirements imposed by the Commissioner or this subsection shall not be greater than those imposed by applicable federal law.

(d) If the information contained in any document filed with the Commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall promptly file a correcting amendment to the information contained in the document.

(e) A licensee shall maintain in a segregated escrow fund or trust account any funds which come into the licensee's possession, but which are not the licensee's property and which the licensee is not entitled to retain under the circumstances. The escrow fund or trust account shall be held on deposit in a federally insured financial institution.

"**§ 53-243.13. Validity of mortgage loan.**

A violation of any provision of this Article shall not invalidate the loan transaction or create liability for a subsequent holder of the loan who purchased the loan without knowledge of the violation. Failure to comply with the provisions of this Article shall not affect the validity or enforceability of any mortgage loan. However, this section shall not be construed as a limitation on the rights of a borrower to pursue any available remedy to redress a loss suffered as a result of the violation of this Article."

SECTION 3. G.S. 53-99(b)(7b) reads as rewritten:

"(7b) Records of examinations and investigations of registrants under the Mortgage ~~Bankers and Brokers Act, Article 19 of this Chapter;~~ Lending Act, Article 19A of this Chapter;".

SECTION 4. G.S. 66-106 reads as rewritten:

"**§ 66-106. Definitions.**

For purposes of this Article the following definitions apply:

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

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

Provided, that this Article shall not apply to any party approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, a National Mortgage Association or any federal agency; nor to any 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 insurance company registered with and licensed by the North Carolina Insurance Commissioner; nor, with respect to residential mortgage loans, to any residential mortgage banker or mortgage broker ~~registered with the Commissioner of Banks pursuant to Article 19 of Chapter 53 or exempt from such registration pursuant to G.S. 53-234(6);~~ licensed pursuant to Article 19A of Chapter 53 of the General Statutes or exempt from licensure pursuant to G.S. 53-243.01(7) and G.S. 53-243.02; nor to any attorney-at-law, public accountant, or dealer registered under the North Carolina Securities Act, acting in the professional capacity for which such 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."

SECTION 5. All exempt persons described in G.S. 253-243.01(7), enacted by Section 1 of this act, who are engaged in the mortgage brokerage or mortgage banking business shall be required to file with the Commissioner, within 90 days of the effective date of this act or upon the commencement of mortgage brokerage or mortgage banking business in this State, a statement on a form prescribed by the Commissioner setting forth the name of the respective exempt person, the basis of the exempt status of the exempt person, the principal business address of the exempt person, and the State or federal regulatory authority responsible for its supervision, examination, or regulation, if any. In addition to any other measures the exempt person may be subject to under Article 19A of Chapter 53 of the General Statutes, enacted by Section 1 of this act, failure by an exempt person to file the required form shall not affect the exempt status of the person. However, the entity shall be subject to a civil penalty set by the Commissioner that shall not exceed the sum of two hundred fifty dollars ($250.00) for each year the form is not filed. No person required to file under

this section may transact business in this State as a mortgage banker or mortgage broker unless the person has filed the prescribed form with the Commissioner in accordance with this section.

SECTION 6.(a) Any person who, on the effective date of this act, is engaged in business and registered as a mortgage broker or mortgage banker shall not be required to file an application under G.S. 53-243.05, enacted by Section 1 of this act, and shall be entitled to issuance of a license under Article 19A of Chapter 53 of the General Statutes, enacted by Section 1 of this act.

SECTION 6.(b) Any qualified person who files, within 180 days after this act becomes effective, a sworn application with the Commissioner stating that he or she has met the definition of a qualified person under G.S. 53-243.01(17), enacted by Section 1 of this act, including a statement that he or she has not been convicted of any felony or any felony or misdemeanor involving moral turpitude, shall be issued a license as a loan officer from the Commissioner without having to meet the requirements for licensure under G.S. 53-243.05(b), enacted by Section 1 of this act.

SECTION 6.(c) Any qualified lender who files, within 90 days after this act becomes effective, a sworn statement with the Commissioner that consists of a list of its loan officers in North Carolina, the addresses of its principal office and each of its branches, and the names and addresses of the managing principal and each of its branch managers and states that no employee, loan officer, or individual with a controlling interest in the lender has been convicted of any felony or any misdemeanor involving moral turpitude, shall be issued a license as a mortgage banker from the Commissioner without having to meet the requirements for licensure under G.S. 53-243.05(c), enacted by Section 1 of this act.

SECTION 7. On or after July 1, 2003, any individual mortgage banker, mortgage broker, or loan officer desiring to renew a license shall offer evidence satisfactory to the Commissioner that he or she has complied with the continuing professional education requirements approved by the Commissioner pursuant to G.S. 53-243.07, enacted by Section 1 of this act.

SECTION 8. This act becomes effective July 1, 2002.

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — JUNE 13, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blair	Online Mortgage Reporting
JW Blair	" " "
SUSAN LUPTON	COALITION FOR RESPONSIBLE LENDING
Rob Schofield	N.C. Justice Ct.
Mike Calhoun	Self-Help
Martin Eakes	"
Josh Stein	NCAOG
Neal Chestnut	Asst. A.G. for Comm Bkrs.

FINANCIAL INSTITUTIONS

JUNE 20, 2001
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSELS – MS. KAREN COCHRANE-BROWN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS – DIXIE EPPS AND JOYCE FULLER

SGT.-AT-ARMS – MARTHA GADISON AND THOMAS WILDER

PAGES – KARLIE BRIGGS, LINDSEY CREECH, AND ERIC McCOMBS

S.B.#269 – AMEND INVESTMENT ADVISOR LAW – SEN. HOYLE
S.B. #815 – MORTGAGE AMORTIZATION CHARTS – SEN. BINGHAM

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
JUNE 20, 2001

The **House Committee on Financial Institutions** met on Wednesday, June 20, 2001, at 10:00 a.m. in Room 1425 in the State Legislative Building. The meeting was called to order by Co-Chairman Walter Church, Sr. Co-Chairman Church recognized the Sgt.-at-Arms and Pages who were assigned to the meeting. The following members of the Committee were present: Co-Chairmen Church and Morgan; Members: Reps. Buchanan, Gibson, Harrington, Howard, McLawhorn, McMahan, Michaux, Miller, Smith and Walend.

Rep. Church requested that Sen. Bingham, the sponsor of the bill, come forward to explain the **S.B. #815 – MORTGAGE AUTHORIZATION CHARTS.** This bill would require lenders of home loans to furnish the borrower at the time of loan application with standard information and examples of amortization of home loans reflecting various loan terms prepared by the Commissioner of Banks, and to provide the lenders an amortization schedule of the individual's loan at closing. Co-Chairman Church asked if there were any question, and being none, he stated that the Committee would not take a vote on the bill today.

Sen. Hoyle came forward to explain **S.B. #269 – AMEND INVESTMENT ADVISOR LAW.** This bill would change the definition of "investment advisor representative" to include a person who has a place of business in this State and is an "investment advisor representative" as defined under federal law; or is not a "supervised person" (as defined under federal law) who offers investment advisory services on behalf of an adviser. The bill would require investment advisor representatives and investment advisors to pay the costs associated with processing the filings mentioned above. Currently, the investment advisor representatives and investment advisors must pay filing fee and the payment of processing costs would be in addition to that fee. Rep. Smith moved that **S.B. #269 BE GIVEN A FAVORABLE REPORT.** This motion was seconded by Rep. Buchanan and the motion carried.

There being no further business, Co-Chairman Church adjourned the meeting at 10:10 a.m.

Co-Chairman Walter Church, Sr. Co-Chairman Richard Morgan

Joyce A. Fuller, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 815

Commerce Committee Substitute Adopted 4/25/01

Short Title: Mortgage Amortization Charts. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LENDERS TO PROVIDE APPLICANTS FOR HOME LOANS WITH AMORTIZATION CHARTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-1.1A is amended by adding a new subsection to read:

"(a1) Subject to federal requirements, at the time a person applies with a lender for a home loan, the lender shall provide the applicant with information and examples of amortization of home loans reflecting various terms in a form made available by the Commissioner of Banks and shall provide the person an amortization schedule for the person's home loan at closing. The Commissioner of Banks shall develop and make available to home loan lenders materials necessary to satisfy the provisions of this subsection."

SECTION 2. This act becomes effective October 1, 2001, and applies to loans applied for on or after that date.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **CHURCH AND MORGAN** (Chair/Chairs) for the Committee on **FINANCIAL INSTITUTIONS**.

☒ Committee Substitute for
S.B. 269 A BILL TO BE ENTITLED AN ACT TO AMEND THE DEFINITION OF INVESTMENT ADVISER REPRESENTATIVE; TO ALLOW MULTIPLE REGISTRATION OF INVESTMENT ADVISER REPRESENTATIVES FOR CERTAIN PURPOSES; AND TO REVISE THE REGISTRATION AND NOTICE FILING PROCEDURES.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 269
Commerce Committee Substitute Adopted 4/23/01

Short Title: Amend Investment Adviser Law-AB. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF INVESTMENT ADVISER REPRESENTATIVE; TO ALLOW MULTIPLE REGISTRATION OF INVESTMENT ADVISER REPRESENTATIVES FOR CERTAIN PURPOSES; AND TO REVISE THE REGISTRATION AND NOTICE FILING PROCEDURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78C-2(3) reads as rewritten:

"(3) "Investment adviser representative" means, with respect to any investment adviser registered under this Chapter, any partner, officer, director (or a person occupying a similar status or performing similar functions) or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

a. Makes any recommendations or otherwise renders advice regarding securities directly to clients,

b. Manages accounts or portfolios of clients,

c. Determines which recommendations or advice regarding securities should be given; provided, however if there are more than five such persons employed by or associated with an investment adviser, who do not otherwise come within the meaning of G.S. 78C-2(3)a., b., d., or e., then only the direct supervisors of such persons are deemed to be investment adviser representatives under G.S. 78C-2(3)c.,

d. Solicits, offers or negotiates for the sale of or sells investment advisory services, unless such person is a dealer or salesman registered under Chapter 78A of the General Statutes and the person would not be an investment adviser representative except for the performance of the activities described in G.S. 78C-2(3)d., or

e. Directly supervises investment adviser representatives as defined in G.S. 78C-2(3)a., b., c. (unless such investment adviser representatives are already required to register due to their role as supervisors by operation of G.S. 78C-2(3)c.), or d. in the performance of the foregoing activities.

~~With respect to any person that is registered or required to be registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3), "investment adviser representative" means any person who is defined as an "investment adviser representative" pursuant to rules or regulations adopted or promulgated by the Securities Exchange Commission pursuant to the Investment Advisers Act of 1940, and who has a place of business located in the State.~~

Notwithstanding this subdivision, the term "investment adviser representative" as used in this Chapter and as applied to a person who is employed by, or associated with, an investment adviser covered under federal law only includes an individual who (i) has a "place of business" in the State, as that term is defined in rules or regulations adopted or promulgated under section 203A of the Investment Advisers Act of 1940 by the United States Securities and Exchange Commission and (ii) either:

a. Is an "investment adviser representative" as that term is defined in rules or regulations adopted or promulgated under section 203A of the Investment Advisers Act of 1940 by the United States Securities and Exchange Commission; or

b. Is not a "supervised person" as that term is defined in rules or regulations adopted or promulgated under the Investment Advisers Act of 1940 by the United States Securities and Exchange Commission and who solicits, offers, or negotiates for the sale of, or who sells, investment advisory services on behalf of an adviser covered under federal law."

SECTION 2. G.S. 78C-16 reads as rewritten:

"**§ 78C-16. Registration and notice filing requirement.**

(a) It is unlawful for any person to transact business in this State as an investment adviser unless:

(1) The person is registered under this Chapter;

(2) The person's only clients in this State are investment companies as defined in the Investment Company Act of 1940, other investment advisers, investment advisers covered under federal law, dealers, banks, trust companies, savings institutions, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars ($1,000,000), and governmental agencies or instrumentalities, whether acting for themselves or as

trustees with investment control, or other institutional investors as are designated by rule or order of the Administrator; or

(3) The person has no place of business in this State, and during the preceding 12-month period has had not more than five clients, other than those specified in subdivision (2) of this subsection, who are residents of the State.

(a1) It is unlawful for any person to transact business in this State as an investment adviser representative unless:

(1) The person is registered under this Chapter; or

(2) The person is an investment adviser representative employed by or associated with an investment adviser exempt from registration under subdivision (2) or (3) of subsection (a) of this section; or

(3) The person is an investment adviser representative employed by or associated with an investment adviser covered under federal law that is exempt from the notice filing requirements of G.S. 78C-17(a1).

(b) It is unlawful for any person required to be registered as an investment adviser under this Chapter to employ an investment adviser representative unless the investment adviser representative is registered under this Chapter. The registration of an investment adviser representative is not effective during any period when the investment adviser representative is not employed by (i) an investment adviser registered under this Chapter; or (ii) an investment adviser covered under federal law who has made a notice filing pursuant to the provisions of G.S. 78C-17(a1). When an investment adviser representative begins or terminates employment or association with an investment adviser who is registered under this Chapter, the investment adviser shall notify promptly the Administrator. When an investment adviser representative begins or terminates employment or association with an investment adviser covered under federal law, the investment adviser representative shall, and the investment adviser may, notify promptly the Administrator.

(b1) No investment adviser representative may be registered with more than one investment adviser registered under this Chapter or investment adviser covered under federal law unless each of the investment advisers which employs or associates the investment adviser representative is under common ownership or control.

(b2) Notwithstanding subsection (b1) of this section, an investment adviser representative may be registered with more than one investment adviser registered under this Chapter or investment adviser covered under federal law for the purposes of soliciting, offering, or negotiating for the sale of, or for selling investment advisory services for or on behalf of, those investment advisers. If an investment adviser representative is registered with more than one investment adviser pursuant to this subsection, the representative shall be registered separately with each investment adviser for whom the representative solicits business and shall provide in writing to each person solicited any information disclosing the terms of any compensation arrangement that is related to the representative's solicitation or referral activities and that is required by the Administrator pursuant to rule or order. The Administrator may,

by rule or order, specify supervisory procedures consistent with regulations adopted by the United States Securities and Exchange Commission applicable to investment advisers who compensate persons for referrals of business.

(c) Every registration or notice filing expires December 31 of each year unless renewed.

(d) It is unlawful for any investment adviser covered under federal law to conduct advisory business in this State unless the investment adviser covered under federal law complies with the provisions of G.S. 78C-17(a1)."

SECTION 3. G.S. 78C-17 reads as rewritten:

"**§ 78C-17. Registration and notice filing procedures.**

(a) An investment adviser, or investment adviser representative may obtain an initial or renewal registration by filing with the Administrator or the Administrator's designee an application together with a consent to service of process pursuant to ~~G.S. 78C-46(b).~~ G.S. 78C-46(b) and paying any reasonable costs charged by the designee for processing the filings. The application shall contain whatever information the Administrator by rule requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications and business history of the applicant; in the case of an investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) The applicant's financial condition and history; and

(6) Any information to be furnished or disseminated to any client or prospective client.

If no denial order is in effect and no proceeding is pending under G.S. 78C-19, registration becomes effective at noon of the 30th day after an application is filed. The Administrator may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the 30th day after the filing of any amendment. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions.

(a1) The Administrator may require investment advisers covered under federal law to file with the Administrator any documentation filed with the Securities and Exchange Commission as a condition of doing business in this State. This subsection does not apply to (i) an investment adviser covered under federal law whose only clients are those described in G.S. 78C-16(a)(2), or (ii) an investment adviser covered under federal law who has no place of business in this State, and during the preceding 12-month period has had not more than five clients, other than those described in G.S.

78C-16(a)(2), who are residents of this State. A notice filing under this section may be renewed by (i) filing documents required by the Administrator and filed with the Securities and Exchange Commission, prior to the expiration of the notice filing, and (ii) paying the fee required under subsection (b1) of this section. A notice filed under this section may be terminated by the investment adviser by providing the Administrator notice of the termination, which shall be effective upon receipt by the Administrator.

(b) Every applicant for initial or renewal registration shall pay a filing fee of two hundred dollars ($200.00) in the case of an investment adviser, and forty-five dollars ($45.00) in the case of an investment adviser representative. When an application is denied or withdrawn, the Administrator shall retain the fee.

(b1) Every person acting as an investment adviser covered under federal law in this State shall pay an initial filing fee of two hundred dollars ($200.00) and a renewal notice filing fee of two hundred dollars ($200.00).

(b2) Any person required to pay a fee under this section may transmit through any designee any fee required by this section or by the rules adopted pursuant to this section.

(c) A registered investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(d) The Administrator may by rule establish minimum net capital requirements not to exceed one hundred thousand dollars ($100,000) for registered investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a), which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(e) The Administrator may by rule require registered investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts up to one hundred thousand dollars ($100,000), subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a), and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any investment adviser whose minimum net capital, which may be defined by rule, exceeds one hundred thousand dollars ($100,000). Every bond shall provide for suit thereon by any person who has a cause of action under G.S. 78C-38 and, if the Administrator by rule or order requires, by any person who has a cause of action not arising under this Chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations of G.S. 78C-38(d)."

SECTION 4. G.S. 78C-20 reads as rewritten:

"**§ 78C-20. Alternative methods of registration.**

(a) ~~The Administrator may by rule or order provide an alternative method of registration by which any investment adviser or investment adviser representative may satisfy the requirements of this Article by furnishing the information otherwise required to be filed pursuant to this Article. The Administrator may provide for, among other~~

~~things, alternative filing periods for investment advisers and investment adviser representatives, elimination of the issuance of a paper license and alternative methods for the payment and collection of initial or renewal filing fees, which shall be known as "alternative filing fees". The alternative filing fees shall be the same as provided in G.S. 78C-17(b).~~ All applications for initial and renewal registrations or notice filings required under G.S. 78C-17 shall be filed with the Investment Adviser Registration Depository (IARD) operated by the National Association of Securities Dealers.

~~(b) The Administrator may not adopt an alternative method of registration unless its purpose is to facilitate a central registration depository whereby investment advisers and investment adviser representatives can centrally or simultaneously register and pay fees for all states in which they plan to transact business that require registration. The Administrator may enter into an agreement with or otherwise facilitate an alternative method of registration with any national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934, any national securities exchange registered under the Securities Exchange Act of 1934, or any national association of state securities administrators or similar association to effectuate the provisions of this section.~~

(c) Nothing in this section shall be construed to prevent the exercise of the authority of the Administrator as provided in G.S. 78C-19."

SECTION 5. This act becomes effective October 1, 2001, and applies to applications for initial or renewal registrations and notice filings filed on or after that date.

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — **Name of Committee**

JUNE 20, 2001 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David A. Massey	SECRETARY OF STATE
Patricia Norman	Secretary of State
Allan C.J. Russ	S.O.S.
McNeil Chestnut	Asst. A-G - For Comm Bkg.
Rob Schofield	NC Justice Ctr.
Larry Heckner	Household Financial Group
Dick Carlton	Carlton + Alexander
Barbara Canada	MFSS, PA
Mike Calla	Self-Help
Paul Stock	NC Bankers Assn.
David Barnes	Poyner + Spruill LLP

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — JUNE 20, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Scoggin	Kennedy Covington

VISITOR REGISTRATION SHEET

Financial Institutions — Name of Committee

6/20/01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID MASSEY	SECRETARY OF STATE
Patricia Norman	Secretary of State
Margaret Westbrook	Kennedy Covington

2001-2002

HOUSE FINANCIAL INSTITUTIONS

MINUTES

FINANCIAL INSTITUTIONS
JULY 11, 2001
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSELS – MS. KAREN COCHRANE-BROWN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS – BONNIE JONES AND JOYCE FULLER

SGT.-AT-ARMS – MR. JACK DOSSENBACH AND MR. THOMAS WILDER

PAGES – HEATHER CREECY, JASMINE ROSE AND BRANDON MABRY

S.B. 815 - MORTGAGE AMORTIZATION CHARTS – SEN. BINGHAM
H.B. 1071 – PROCEDURE FOR DELAYED DEPOSIT CHECKS. –REP. BUCHANAN
H.B. 1365 – IMPROVE REGULATION OF PAYDAY LENDERS – REP. BADDOUR

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
JULY 11, 2001

The **House Committee on Financial Institutions** met on Wednesday, July 11, 2001, at 10:00 a.m. in Room 1228 in the State Legislative Building. The meeting was called to order by Co-Chairman Walter Church, Sr. Co-Chairman Church recognized the Committee Counsels, Committee Assistants, Sgt-at-Arms and Pages who were assigned to the meeting. The following members of the Committee were present: Co-Chairmen Church and Morgan; Vice-Chair McAllister; Members: Reps. Allred, Brubaker, Buchanan, Cole, Culpepper, Dockham, Gibson, Harrington, Howard, McLawhorn, McMahan, Michaux, Miller, Wainwright, and Walend.

Rep. Church stated that the Committee would take up **THE PROPOSED HOUSE COMMITTEE SUBSTITUTE FOR S.B. #815 – MORTGAGE AUTHORIZATION CHARTS.** Rep Buchanan made a motion that the Committee adopt the House Committee Substitute for discussion. Sen. Bingham, the sponsor of the bill, came forward to explain this bill. This Proposed House Committee Substitute would require lenders of home loans to furnish the borrower at the time of loan application with standard information and examples of amortization of home loans reflecting various loan terms prepared by the Commissioner of Banks, and an amortization schedule of the individual's loan at closing, when the home loan is a fixed rate home loan. Rep. Howard moved that **S.B. #815 BE GIVEN A FAVORABLE REPORT AS TO HOUSE COMMITTEE SUBSTITUTE BILL AND UNFAVORABLE TO ORIGINAL BILL.** This motion was seconded by Rep. Buchanan and the motion carried.

Mr. Church turned the meeting over to the Vice-Chair McAllister since Mr. Church was a sponsor of the next bill to be taken up. Mr. Walker Reagan, Committee Counsel, came forward to explain **THE PROPOSED COMMITTEE SUBSTITUTE FOR HOUSE BILL #1071 PROCEDURE FOR DELAYED DEPOSIT CHECKS.** This Proposed Committee Substitute would remove the July 31, 2001 sunset on the delayed deposit provisions of the check cashing law and would add additional consumer protection provisions for delayed deposit transactions. The bill would also raise the licensing and license renewal fees by $50.00 a year. After much discussion, a vote on this bill was delayed until the next meeting of the Committee.

Ms. Karen Cochrane-Brown, Committee Counsel, was asked to come forward and explain **H.B.#1365 – IMPROVE REGULATION OF PAYDAY LENDERS.** This bill removes the sunset from the provisions of the Check Casher Act, which relate to postdated or delayed deposit checks. This bill also increases the licensing fees for licensees who offer deferred deposit check cashing services, establishes a 30 day minimum term for a deferred deposit transaction, decreases the fees that may be charged to consumers by licensees, authorizes a one-time extension fee of 5% of the cash advance, limits the number of transactions per customer, and reduces the collection fee that can be charged for returned checks cashed under this Article. The provisions

authorizing deferred deposit transactions will sunset on July 31, 2004. After much discussion, and realizing the similarity between these two bills, it was suggested that the Committee Counsels do a chart comparing the two bills and to try and find out what rates national banks charge. They stated that they would have this information ready for the next meeting.

There being no further business, Co-Chairman Church adjourned the meeting at 10:55 a.m.

Co-Chairman Walter Church, Sr.

Co-Chairman Richard Morgan

Joyce A. Fuller, Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **CHURCH AND MORGAN** (Chair/Chairs) for the Committee on **FINANCIAL INSTITUTIONS**.

☒ Committee Substitute for
S.B. 815 A BILL TO BE ENTITLED AN ACT TO REQUIRE LENDERS TO PROVIDE APPLICANTS FOR HOME LOANS WITH AMORTIZATION CHARTS

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☑ With a favorable report as to committee substitute bill ~~(#_____)~~, ☑ which changes the ~~title~~, unfavorable as to (original bill) ~~(Committee Substitute Bill #_____), (and recommendation that the committee substitute bill #_____) be re-referred to the Committee on~~ .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 815
Commerce Committee Substitute Adopted 4/25/01

Short Title: Mortgage Amortization Charts.	(Public)
Sponsors:	
Referred to:	

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LENDERS TO PROVIDE APPLICANTS FOR HOME LOANS WITH AMORTIZATION CHARTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-1.1A is amended by adding a new subsection to read:

"(a1) Subject to federal requirements, at the time a person applies with a lender for a home loan, the lender shall provide the applicant with information and examples of amortization of home loans reflecting various terms in a form made available by the Commissioner of Banks and shall provide the person an amortization schedule for the person's home loan at closing. The Commissioner of Banks shall develop and make available to home loan lenders materials necessary to satisfy the provisions of this subsection."

SECTION 2. This act becomes effective October 1, 2001, and applies to loans applied for on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 815

Commerce Committee Substitute Adopted 4/25/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S815-CSRU-71 [v.1]

7/6/2001 12:38:59 PM

Short Title: Mortgage Amortization Charts. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LENDERS TO PROVIDE APPLICANTS FOR HOME LOANS WITH AMORTIZATION INFORMATION AND AMORTIZATION CHARTS FOR FIXED RATE HOME LOANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-1.1A is amended by adding a new subsection to read:

"(a1) Subject to federal requirements, at the time a person applies with a lender for a home loan, the lender shall provide the applicant with information and examples of amortization of home loans reflecting various terms in a form made available by the Commissioner of Banks and, for fixed rate home loans only, shall provide the person an amortization schedule for the person's home loan at closing. The Commissioner of Banks shall develop and make available to home loan lenders materials necessary to satisfy the provisions of this subsection."

SECTION 2. This act becomes effective October 1, 2001, and applies to loans applied for on or after that date.

SENATE BILL 815:
Mortgage Amortization Charts.

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Senator Bingham
Date:	July 11, 2001	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S815-CSRU-71		

SUMMARY: ***The Proposed House Committee Substitute for Senate Bill 815 would require lenders of home loans to furnish the borrower at the time of loan application with standard information and examples of amortization of home loans reflecting various loan terms prepared by the Commissioner of Banks, and an amortization schedule of the individual's loan at closing, when the home loan is a fixed rate home loan.***

CURRENT LAW: Currently State law requires disclosure of the amount of a home loan, the applicable interest rate and the amount of the monthly payments at the time of closing. Federal law requires greater disclosures of the total loan costs, the effective interest rate based on upfront fees paid on the loan and the total payment of principal and interest for the life of the loan both at the time of application and at closing. Federal law requires that a borrower whose loan is subject to private mortgage insurance be provided with an amortization schedule at the time of closing.

BILL ANALYSIS: Senate Bill 815 would require upon application that a lender of a home loan furnish the loan applicant with information and examples of amortization of home loans reflecting various terms on a standard form provided by the Commissioner of Banks. The bill also requires that the borrower be furnished a personalized amortization schedule for the individual's actual loan at the time of closing when the borrower is getting a fixed rate loan. A home loan is a loan of less than $300,000 secured by a first mortgage on a single-family dwelling. The Commissioner of Banks is directed to develop and make available to home loan lenders materials necessary to satisfy this law. It is not clear what the effect of a violation of this provision would be.

EFFECTIVE DATE: The bill becomes effective October 1, 2001 and applies to loans applied for on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 815
Commerce Committee Substitute Adopted 4/25/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S815-PCS6326-RU-71

Short Title: Mortgage Amortization Charts. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LENDERS TO PROVIDE APPLICANTS FOR HOME LOANS WITH AMORTIZATION INFORMATION AND AMORTIZATION CHARTS FOR FIXED RATE HOME LOANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-1.1A is amended by adding a new subsection to read:

"(a1) Subject to federal requirements, at the time a person applies with a lender for a home loan, the lender shall provide the applicant with information and examples of amortization of home loans reflecting various terms in a form made available by the Commissioner of Banks and, for fixed rate home loans only, shall provide the person an amortization schedule for the person's home loan at closing. The Commissioner of Banks shall develop and make available to home loan lenders materials necessary to satisfy the provisions of this subsection."

SECTION 2. This act becomes effective October 1, 2001, and applies to loans applied for on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1071*
PROPOSED COMMITTEE SUBSTITUTE H1071-CSRU-53 [v.10]

7/10/2001 3:17:53 PM

Short Title: Procedure for Delayed Deposit Checks. (Public)

Sponsors:

Referred to:

April 10, 2001

A BILL TO BE ENTITLED

AN ACT TO FURTHER REGULATE DELAYED DEPOSIT TRANSACTIONS BY PROVIDING ADDITIONAL CONSUMER PROTECTIONS, DISCLOSURES, CONSUMER CREDIT COUNSELING AND TO REMOVE THE SUNSET FROM THE DELAYED DEPOSIT PROVISIONS REGULATING CHECK-CASHING BUSINESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-276 reads as rewritten:

"**§ 53-276. License required.**

No person or other entity may engage in the business of cashing checks, drafts, or money orders for consideration without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments. No person or other entity may act as an agent or facilitator for the purpose of making deferred deposit loans as authorized by G.S. 53-281 without first obtaining a license under this Article, regardless of whether the principal making the loan would have been required to obtain a license."

SECTION 2. G.S. 53-281(c) reads as rewritten:

"(c) Each postdated or delayed deposit check cashed by a licensee shall be documented by a written agreement that has been signed by the customer and the licensee. The written agreement ~~shall~~ shall:

(1) ~~contain~~ Contain a statement of the total amount of any fees charged, expressed both as a dollar amount and as an effective annual percentage rate (APR).

(2) ~~The written agreement shall authorize~~ Authorize the licensee to defer deposit of the personal check until a specific date not later than 31 days from the date the check is cashed. A licensee may extend the agreed date of deposit at no additional fee as an accommodation to the customer.

(3) Advise the customer that the customer has the right to rescind the delayed deposit transaction at no cost to the customer on or before the close of the following business day.

(4) Advise the customer that improprieties in the transaction or in the collection process may be referred to the Commissioner of Banks and state the address and telephone number of the Commissioner.

(5) Include the following notice set in at least 10-point type:

"STATE LAW PROHIBITS YOU FROM HAVING MORE THAN $300.00 OUTSTANDING IN DELAYED DEPOSIT CHECKS AT ONE TIME. FAILURE TO ABIDE BY THIS LAW MAY CREATE FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY. YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION ON OR BEFORE THE CLOSE OF THE FOLLOWING BUSINESS DAY.""

SECTION 3. G.S. 53-281 is amended by adding the following four new subsections to read:

"(f) The licensee shall provide the customer with a brochure prepared and published by the Commissioner of Banks. The brochure shall inform the customer of the relative cost of this form of credit, availability of other forms of credit, the customer's right to obtain credit counseling and stop collection efforts, how to make complaints about a licensee and other matters as the Commissioner may from time to time believe are necessary or beneficial to customers.

(g) If a customer is unable to pay the amount due pursuant to a delayed deposit transaction, the customer may seek assistance from an authorized consumer credit counselor in establishing a comprehensive debt management repayment plan for the customer. A licensee shall accept any reasonable installment repayment plan offered by an authorized consumer credit counselor, on behalf of the customer, that provides for the repayment of the amounts owed the licensee. Once a plan is offered to a licensee by an authorized consumer credit counselor, a licensee shall suspend any collection activities initiated by the licensee until, and only if, the customer does not comply with the repayment plan. For the purposes of this subsection, an 'authorized consumer credit counselor' is a credit counselor who is in good standing with the National Foundation of Credit Counselors or who is accredited by the Council on Accreditation of Services for Families and Children.

(h) A licensee shall not use the criminal process to collect a delayed deposit transaction.

(i) No licensee shall make more than three delayed deposit transactions with the same customer in any one calendar quarter. No licensee shall make more than ten delayed deposit transactions with the same customer in any calendar year.

(j) No licensee shall knowingly enter into a delayed deposit transaction with any customer who has in the aggregate more than three hundred dollars ($300.00) in delayed deposit transactions outstanding with any other licensees. Prior to the time a database is

implemented under subsection (k) of this section, the licensee shall make reasonable inquiry of the customer to determine whether the customer has more than three hundred dollars ($300.00) outstanding in delayed deposit checks.

(k) On or before August 1, 2002, the Commissioner of Banks shall implement a common database with real-time access through an Internet connection for licensees to verify whether delayed deposit transactions are outstanding for a particular person. Licensees shall access the database before entering into each delayed deposit transaction in a format that the commissioner shall require by rule. The Commissioner may impose a fee not to exceed $.35 per transaction to access the database. A licensee may rely on the information contained in the database as accurate and shall not be subject to any penalty or liability as a result of relying on inaccurate information contained in the database. The Commissioner of Banks may adopt rules to administer and enforce the provisions of this subsection."

SECTION 4. G.S. 53-282 reads as rewritten:

"**§ 53-282. Record keeping; receipt requirements.**

(a) Every person required to be licensed under this Article shall maintain in its offices the following records:

(1) Delayed deposit checks currently held for deposit.

(2) A daily transaction journal, or an equivalent record, of both traditional check cashing and delayed deposit check-cashing transactions.

(3) The written receipt required by G.S. 53-282(b).

(4) The customer agreement required by G.S. 53-281.

(5) A history card, or its equivalent, for each customer that reflects the time, date, and amount of each delayed deposit transaction for that customer during the most recent three-year period. The history card shall also state whether each delayed deposit check was deposited or redeemed for cash.

(6) Bank statements of the licensee. – If the statements are not maintained on the premises of the licensee, the statements shall be made available immediately upon request of the Commissioner.

~~Every person required to be licensed under this Article~~ In addition to the records required in this subsection, each licensee shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require. The books, accounts, and records shall be maintained separate from any other business in which the person is engaged, and shall be retained for a period ~~prescribed by the Commissioner.~~ of three years.

(b) The licensee shall ensure that each customer cashing a check shall be provided a receipt showing the name or trade name of the licensee, the transaction date, amount of the check, and the fee charged.

(c) The Commissioner may examine the books, accounts, and records in order to determine whether the person is complying with this Article and rules adopted pursuant thereto. The cost of the examination shall be paid by the licensee and shall be

determined by applying the hourly rate for special examinations adopted by the State Banking Commission by regulation.

(d) The Commissioner may require each licensee to submit any data or information, including information concerning delayed deposit loan transactions, which the Commissioner deems necessary to report on the check-cashing industry."

SECTION 5. G.S. 53-283 reads as rewritten:

"**§ 53-283. Prohibited practices.**

No person required to be licensed under this Article shall do any of the following:

(1) Charge fees in excess of those authorized under this Article.

(2) Engage in the business of making loans of money, or extensions of credit, or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items, except as expressly provided by G.S. 53-281.

(3) Use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation.

(4) Conduct business at premises or locations other than locations licensed by the Commissioner.

(5) Engage in unfair, deceptive, or fraudulent practices.

(6) Cash a check, draft, or money order made payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the executive entity of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

(7) Use or threaten to use the criminal process to collect a delayed deposit check, except as provided in G.S. 53-281(h)."

SECTION 6. G.S. 53-284(a) reads as rewritten:

"(a) The Commissioner may suspend or revoke any license or licenses issued pursuant to this Article if, after notice and opportunity for hearing, the Commissioner issues written findings that the licensee has engaged in any of the following conduct:

(1) Violated this Article or applicable State or federal law or rules.

(2) Made a false statement on the application for a license under this Article.

(3) Refused to permit investigation by the Commissioner authorized under this Article.

(4) Failed to comply with an order of the Commissioner.

(5) Demonstrated incompetency or untrustworthiness to engage in the business of check cashing.

(6) Been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

(7) Failed to comply with the Commissioner's request for assistance in resolving a complaint."

SECTION 7. G.S. 53-278 reads as rewritten:

"§ 53-278. Application for license; investigation; application fee.

(a) An application for licensure under this Article shall be in writing, under oath, and on a form prescribed by the Commissioner. The application shall set forth all of the following:

(1) The name and address of the applicant.

(2) If the applicant is a firm or partnership, the name and address of each member of the firm or partnership.

(3) If the applicant is a corporation, the name and address of each officer, director, registered agent, and principal.

(4) The addresses of the locations of the business to be licensed.

(5) Other information concerning the financial responsibility, background experience, and activities of the applicant and its members, officers, directors, and principals as the Commissioner requires.

(b) The Commissioner may make such investigations as the Commissioner deems necessary to determine if the applicant has complied with all applicable provisions of this Article and State and federal law.

(c) The application shall be accompanied by payment of a ~~two hundred fifty dollar ($250.00)~~ three hundred dollar ($300.00) application fee and a five hundred dollar ($500.00) investigation fee. These fees are not refundable or abatable, but, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part thereof.

(d) Licenses shall expire annually and may be renewed upon payment of a license fee of ~~two hundred fifty dollars ($250.00)~~ three hundred dollars ($300.00) plus a fifty dollar ($50.00) fee for each branch location certificate issued under a license. "

SECTION 8. Section 3 of S.L. 1997-391 reads as rewritten:

"Section 3. This act becomes effective ~~October 1, 1997, and the provisions of G.S. 53-281 shall expire on July 31, 2001.~~October 1, 1997."

SECTION 9. Sections 8 and 9 of this act become effective July 31, 2001. The remainder of this act becomes effective October 1, 2001.

HOUSE BILL 1071:
Procedure for Delayed Deposit Checks.

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Rep. Buchanan
Date:	July 10, 2001	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute H1071-CSRU-53[v.10]		

SUMMARY: ***The Proposed Committee Substitute for HB 1071 would remove the July 31, 2001 sunset on the delayed deposit provisions of the check cashing law and would add additional consumer protection provisions for delayed deposit transactions. The bill would also raise the licensing and license renewal fees by $50 a year.***

CURRENT LAW: Article 22 of Chapter 53 of the General Statutes requires that certain persons who cash checks for a fee must be licensed as a check cashing business. G.S. 53-281, which is set to expire on July 1, 2001, allows licensed check cashing businesses to advance cash for a fee for postdated or delayed deposit checks. The deposit can be delayed for up to 31 days, the maximum amount of the check is limited to $300 and the maximum fee for this service is 15% of the face amount of the check. Also another delayed deposit check cannot be used to payoff an earlier delayed deposit check.

BILL ANALYSIS: Section 1 of the bill requires any person who acts as an agent or facilitator for delayed deposit loans to be licensed.

Section 2 adds additional provisions the delayed deposit agreement must contain in addition to those currently required, including notice that the customer has a right to rescind without penalty through the close of the following business day, the right to report improprieties in any transaction to the Commissioner of Banks, and notice of the limitation in the law that a person can have no more than $300 in delayed deposit checks outstanding at any one time.

Section 3 would add six new subsections to the requirements for delayed deposit transactions as set out in G.S. 53-281. Subsection (f) would require that the customer be given a disclosure brochure from the Commissioner of Banks. Subsection (g) permits a customer who is unable to repay a check on time to avoid civil collection actions by seeking the advise and abiding by a debt repayment plan established through an authorized consumer credit counselor. Subsection (h) prohibits the use of criminal process to collect a delayed deposit transaction. Subsection (i) limits the number of delayed deposit transactions made to the same customer to 3 transactions per calendar quarter and 10 transactions per year. Subsection (j) prohibits a check casher from knowingly entering into a delayed deposit transaction with a customer who has more than $300 in delayed deposit transactions outstanding and requires the check casher to make reasonable inquiry of the customer with regards to these outstanding loans. Subsection (k) requires the Commissioner of Banks to implement a statewide Internet accessible database by August 1, 2002 for the registration and retrieval of delayed deposit transactions. It also allows the Commissioner to charge $.35 per transaction to access the database.

Section 4 amends the record keeping laws for check cashers to include a list of delayed deposit checks held for deposit, receipts, delayed deposit agreements, history cards and bank statements.

Section 5 prohibits the use or threatened use of criminal prosecution to collect payment on delayed deposit checks

Section 6 adds as additional grounds for disciplinary action on a licensee by the Commissione failure to comply with the Commissioner's request for assistance in resolving a complaint and failing to cooperate in any investigation.

Section 7 raises the application and annual license renewal fees from $250 to $300.

Section 8 removes the sunset on the delayed deposit provisions.

EFFECTIVE DATE: Section 8 of the bill removing the sunset becomes effective July 31, 2001. The remainder of the bill becomes effective October 1, 2001

HOUSE BILL 1365

Short Title:	Improve Regulation of Payday Lenders.	(Public)
Sponsors:	Representative Baddour.	
Referred to:	Financial Institutions, if favorable, Finance.	

April 23, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN PROVISIONS OF THE CHECK CASHER ACT RELATING TO POSTDATED OR DELAYED DEPOSIT CHECKS AND TO REMOVE THE SUNSET FROM THAT PROVISION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-275 reads as rewritten:

"**§ 53-275. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration. Check-cashing service shall also mean any person or entity engaged in the business of making, originating, processing, or accepting or transmitting applications for deferred deposit transactions whether the transactions are done directly or in conjunction with another person or entity.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.

(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a consumer in return for a check dated on the date it was written and agrees to hold the check for a period of days prior to deposit or presentment, or accepts a postdated check and agrees to hold the check for deposit or presentment at least until the date written on the check. The term shall also include any such arrangement in which a person pays a cash

advance in return for an authorization from a consumer for a draft or electronic debit rather than a check.

(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.

(6) "Person" means an individual, partnership, association, or corporation."

SECTION 2. G.S. 53-276 reads as rewritten:

"**§ 53-276. License required.**

No person or other entity may engage in the business of cashing checks, drafts, or money orders for consideration without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment ~~instruments.~~ instruments, or by using drafts or electronic debits to collect on the instrument."

SECTION 3. G.S. 53-277 reads as rewritten:

"**§ 53-277. Exemptions.**

(a) This Article shall not apply to:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any ~~state;~~ state and maintaining a place of business in this State; and

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars ($2.00) is charged for the service.

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

SECTION 4. G.S. 53-278 reads as rewritten:

"**§ 53-278. Application for license; investigation; application fee.**

(a) An application for licensure under this Article shall be in writing, under oath, and on a form prescribed by the Commissioner. The application shall set forth all of the following:

(1) The name and address of the applicant.

(2) If the applicant is a firm or partnership, the name and address of each member of the firm or partnership.

(3) If the applicant is a corporation, the name and address of each officer, director, registered agent, and principal.

(4) The addresses of the locations of the business to be licensed.

(5) Other information concerning the financial responsibility, background experience, and activities of the applicant and its members, officers, directors, and principals as the Commissioner requires.

(b) The Commissioner may make such investigations as the Commissioner deems necessary to determine if the applicant has complied with all applicable provisions of this Article and State and federal law.

(c) The application shall be accompanied by payment of a two hundred fifty dollar ($250.00) application fee and a five hundred dollar ($500.00) investigation fee. If the applicant intends to offer deferred deposit check-cashing services under G.S. 53-281, the application fee shall be five hundred dollars ($500.00) and the investigation fee shall be one thousand dollars ($1,000). These fees are not refundable or abatable, but, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part thereof.

(d) Licenses shall expire annually and may be renewed upon payment of a license fee of two hundred fifty dollars ($250.00) plus a fifty dollar ($50.00) fee for each branch location certificate issued under a license. For any licensee who offers deferred deposit check-cashing under G.S. 53-281, the renewal fee shall be five hundred dollars ($500.00) plus a two hundred fifty dollar ($250.00) fee for every branch location certificate."

SECTION 5. G.S. 53-281 reads as rewritten:

"**§ 53-281. ~~(Expires July 31, 2001)~~ Postdated or ~~delayed~~ deferred deposit ~~checks.~~transactions.**

(a) A licensee may defer the deposit of a personal check cashed for a customer for ~~up to 31~~ a minimum period of 30 days pursuant to the provisions of this section.

(b) The face amount of any postdated or ~~delayed~~ deferred deposit check cashed pursuant to this section shall not exceed three hundred dollars ($300.00).

(c) Each ~~postdated or delayed deposit check cashed by a licensee~~ deferred deposit transaction shall be documented by a written agreement that has been signed by the customer and the licensee. The written agreement shall contain a statement of the cash advance and the total amount of any fees charged, expressed both as a dollar amount and as an effective annual percentage rate (APR). The written agreement shall authorize the licensee to defer deposit of the personal check until a specific date ~~not later than 31~~ at least 30 days from the date the check is cashed. The written agreement shall contain the following specific disclosures:

(1) The address and telephone number of the Office of the Commissioner of Banks with a statement that the licensee is licensed by the Commissioner of Banks and that the consumer may file a complaint with the Commissioner if the consumer believes the licensee has acted improperly or unlawfully.

(2) The consumer may not be prosecuted for a worthless check violation if the check is returned for insufficient funds but the consumer may be liable for a fifteen dollar ($15.00) worthless check fee.

(3) The consumer has the right to contact a consumer credit counseling service for counseling or a debt management repayment program if the consumer is unable to pay on the deferred deposit transaction when it becomes due.

(d) A licensee shall not directly or indirectly charge any fee or other consideration for cashing a postdated or ~~delayed~~ deferred deposit check in excess of ~~fifteen per cent (15%)~~ thirteen percent (13%) of the ~~face amount of the check.~~cash advance for the first check cashed for a customer in a calendar year. For every subsequent check cashed for the same customer in the same calendar year, the fee shall decrease by one percent (1%), so that the maximum fee for the second check shall be twelve percent (12%), the maximum fee for the third check shall be eleven percent (11%), the maximum fee for the fourth check shall be ten percent (10%), and the maximum fee for the fifth check shall be nine percent (9%). Upon the request of a customer made prior to the deposit of the check by the licensee, the licensee shall extend the date for deposit of the check for a period of 14 days beyond the time set forth in the agreement. The licensee may charge an additional fee for such an extension of up to five percent (5%) of the cash advanced to the customer. If a customer obtains an extension, the licensee shall not enter into another deferred deposit transaction with that customer for a period of at least 14 days after the conclusion of the extension period. Only one extension fee may be charged for an outstanding check.

(e) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same licensee or any affiliate of the licensee. Except for the one-time extension fee authorized by subsection (d) of this section, ~~A~~ a licensee shall not, for any additional consideration, renew or otherwise extend any postdated or ~~delayed~~ deferred check or withhold such check from deposit for any period beyond the time set forth in the written agreement with the customer. A licensee may agree with its customer at any time to defer deposit or collection of a check without additional consideration.

(f) No licensee may make more than two deferred deposit transactions with the same customer in any one calendar quarter. No licensee may make more than five deferred deposit transactions with the same customer in any calendar year.

(g) No licensee shall knowingly enter into a deferred deposit transaction with any customer who has in the aggregate more than three hundred dollars ($300.00) in deferred deposit transactions outstanding with any other licensees. The licensee shall use available information databases or make reasonable inquiry of the customer to determine whether the customer has more than three hundred dollars ($300.00) outstanding in deferred deposit checks.

(h) A licensee may collect a fee for a returned check pursuant to G.S. 25-3-506, but the fee shall not exceed fifteen dollars ($15.00) if the check is returned for insufficient funds. Only one such fee may be collected per check.

(i) The Commissioner shall prepare and distribute to all licensees a consumer information sheet or pamphlet to educate consumers about deferred deposit lending. The informational materials shall include information on the responsible use of deferred deposit transactions, the costs of deferred deposit transactions, the limitations on the number of transactions, and the dollar amount of outstanding checks, the fact that the consumer cannot be prosecuted for a deferred deposit insufficient funds check, the availability of consumer credit counseling services and debt repayment alternatives, and the procedure for filing consumer complaints with the Commissioner. The

Commissioner's informational materials shall be made available by the licensee in a conspicuous place at each location that offers deferred deposit check-cashing and shall be presented to each customer before the deferred deposit transaction is executed. The costs of producing, printing, and distributing the materials shall be paid out of licensing fees collected from licensees."

SECTION 6. G.S. 53-282 reads as rewritten:

"**§ 53-282. Record keeping; receipt requirements.**

(a) Every person required to be licensed under this Article shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require. The books, accounts, and records shall be maintained separate from any other business in which the person is engaged, and shall be retained for a period prescribed by the Commissioner.

(b) The licensee shall ensure that each customer cashing a check shall be provided a receipt showing the name or trade name of the licensee, the transaction date, amount of the check, and the fee charged.

(c) The Commissioner may examine the books, accounts, and records in order to determine whether the person is complying with this Article and rules adopted pursuant thereto. The cost of the examination shall be paid by the licensee and shall be determined by applying the hourly rate for special examinations adopted by the State Banking Commission by regulation.

(d) The Commissioner may require licensees to submit any data or information, including information concerning deferred deposit transactions, which is reasonably available to the licensee and which the Commissioner deems necessary to the performance of his oversight duties."

SECTION 7. G.S. 53-283 reads as rewritten:

"**§ 53-283. Prohibited practices.**

No person required to be licensed under this Article shall do any of the following:

(1) Charge fees in excess of those authorized under this ~~Article.~~Article, or originate, process, or accept or transmit applications for deferred deposit transactions for which the fees exceed those permitted in this Article.

(2) Engage in the business of making loans of money, or extensions of credit, or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items, except as expressly provided by G.S. 53-281.

(3) Use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation.

(4) Conduct business at premises or locations other than locations licensed by the Commissioner.

(5) Engage in unfair, deceptive, or fraudulent practices.

(6) Cash a check, draft, or money order made payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the executive entity of the payee

clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

(7) Use or threaten to use the criminal process to collect on a check in a deferred deposit transaction that is returned or may be returned for insufficient funds.

(8) Make more than one deferred deposit transaction to a customer at the same time or accept or hold more than one deferred deposit instrument from a customer at the same time."

SECTION 8. G.S. 53-284(a) reads as rewritten:

"**§ 53-284. Suspension and revocation of license; grounds; procedure.**

(a) The Commissioner may suspend or revoke any license or licenses issued pursuant to this Article if, after notice and opportunity for hearing, the Commissioner issues written findings that the licensee has engaged in any of the following conduct:

(1) Violated this Article or applicable State or federal law or rules.

(2) Made a false statement on the application for a license under this Article.

(3) Refused to permit investigation by the Commissioner authorized under this Article.

(4) Failed to comply with an order of the Commissioner.

(5) Demonstrated incompetency or untrustworthiness to engage in the business of check cashing.

(6) Been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

(7) Failed to comply with the Commissioner's request for assistance in resolving a complaint.

(8) Failed to cooperate with any investigation conducted by the Commissioner."

SECTION 9. G.S. 53-286 reads as rewritten:

"**§ 53-286. Civil penalties and restitution.**

(a) The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties shall not exceed one thousand dollars ($1,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers.

(b) Any deferred deposit check-cashing agreement, the making or collecting of which violates any provision of this Article, or rule adopted thereunder, except as a result of accidental or bona fide error of computation, shall be void, and the licensee or any other party acting by or through a licensee shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to the transaction."

SECTION 10. Section 3 of S.L. 1997-391 reads as rewritten:

"Section 3. This act becomes effective ~~October 1, 1997, and the provisions of G.S. 53-281 shall expire on July 31, 2001.~~ October 1, 1997."

SECTION 11. Section 10 of this act becomes effective when it becomes law. The remainder of this act becomes effective October 1, 2001, and the provisions of G.S. 53-281, as amended by Section 5 of this act, shall expire on July 31, 2004.

HOUSE BILL 1365:
Improve Regulation of Payday Lenders

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Rep. Baddour
Date:	May 2, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1365 removes the sunset from the provisions of the Check Casher Act, which relate to postdated or delayed deposit checks. This bill also increases the licensing fees for licensees who offer deferred deposit check cashing services, establishes a 30 day minimum term for a deferred deposit transaction, decreases the fees that may be charged to consumers by licensees, authorizes a one-time extension fee of 5% of the cash advance, limits the number of transactions per customer, and the reduces the collection fee that can be charged for returned checks cashed under this Article. The provisions authorizing deferred deposit transactions will sunset on July 31, 2004.***

CURRENT LAW:

In 1997, the General Assembly authorized the Commissioner of Banks to regulate the business of check cashing. The law also authorized businesses to cash personal checks that are postdated or delayed deposit, so long as the face amount does not exceed $300. The customer and the business must enter a written agreement, which states the fees charged both as a dollar amount and as an effective annual percentage rate, and the deposit may not be deferred for more than 31 days.

BILL ANALYSIS:

Section 1. – Adds a new definition to Act. Deferred deposit transaction means a check cashing or similar ***loan*** transaction in which a cash advance is paid to a consumer in exchange for a postdated or deferred deposit check, and where there is a written agreement not to present the check until a specified date.

Section 2. – Clarifies that the Act also applies to electronic transactions.

Section 3. – Limits the exemption from the Act to other financial institutions that maintain a place of business in the State.

Section 4. – Increases the application fee for those who offer deferred deposit check-cashing services from $250 to $500, and the investigation fee from $500 to $1,000. In addition, the renewal fee for these businesses is increased from $250 to $500, and from $50 per branch location to $250 for each branch location.

Section 5. – Makes substantial changes to G.S. 53-281 which authorizes postdated or deferred deposit transactions, including:

- Requiring that the deposit must be deferred for a minimum period of 30 days. Under current law, the deposit cannot be deferred more than 31 days. The amendment eliminates the maximum term for these transactions, which would now be governed by the agreement.
- Requiring that the agreement contain specific disclosures, such as how to file complaints with the Commissioner of Banks, that the consumer cannot be criminally prosecuted for a returned check, and that the consumer can contact a consumer counseling service if the consumer is unable to pay.

- Decreasing the fees that a licensee can charge from 15% per transaction (with no limit on the number of transactions) to 13% for the first transaction in the year and decreasing by 1% for each subsequent transaction in the same year. The licensee could not make more than two transactions with the same customer in one calendar quarter and no more than five transactions in the year.
- Authorizing the licensee to extend the deposit of the check for a period of 14 days beyond the date set in the agreement, upon the request of the customer, and to charge an additional fee of five percent of the cash advance. Only one such extension per check is allowed. However, the licensee can agree to an extension without consideration at any time.
- Limiting the licensee from entering a transaction with a customer who has more than $300 in transactions outstanding with all licensees.
- Restricting the collection fee for returned checks to $15. G.S. 25-3-506 authorizes a $25 fee for all other returned checks.
- Directing the Commissioner to provide a consumer information pamphlet and requiring licensees to present it to customers before executing a transaction.

Section 6. – Directs licensees to submit information requested by the Commissioner concerning deferred deposit transactions.

Section 7. – Adds (i) using of the criminal process to collect returned checks, and (ii) making more than one deferred deposit transaction to the same customer at the same time, to the list of prohibited practices.

Section 8. – Adds failing to comply with a request for assistance from the Commissioner and failing to cooperate with an investigation to the list of conduct for which a license may be suspended or revoked.

Section 9. – Adds a provision that willful violation of the Article shall void the agreement and extinguish the licensee's right to collect any principal or charges under the agreement.

Section 10. – Removes the sunset from the provision relating to deferred deposit transactions that was originally placed in the law in 1997.

Section 11. – Makes section 10 effective immediately; makes the remainder of the act effective October 1, 2001, and provides that G.S. 53-281, as amended by section 5 of the act shall expire on July 31, 2004.

COALITION FOR RESPONSIBLE LENDING

Protecting Home Ownership

Coalition for Responsible Lending
Position Statement on Payday Lending
July 11, 2001

1. Payday lending must be dramatically reformed or else the temporary payday loan authority should be sunset.

2. Sunset should not be extended without these dramatic reforms. Extension for 1 year will cause $100 million of fees to be extracted from families of modest means.

3. At the least, reform should include:

   - Minimum loan term of 90 days -- According to the Bank Commissioner, 73% of payday loans are for a term of two weeks or less. Since this is not enough time for borrowers to get back on their feet, the loan is rolled over many times. The borrower ends up paying a $45 rollover fee just to keep the same loan outstanding every two weeks.

   - Minimum cooling off period of 30 days to keep people off the debt treadmill. Loans are not used for isolated emergencies since 90% of total payday loans come from customers taking five or more loans per year.

   - Maximum of 36% interest rate -- Current rates up to 500% are immoral and abusive.

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Payday Lending Members in Coalition for Responsible Lending

Organizational Members

AARP, North Carolina	Raleigh	Bob Jackson
Affordable Housing Coalition of Asheville and Buncombe C	Asheville	Karen Kiehna
Bob Ipock and Associates, Inc.	Gastonia	Bob Ipock
Carolina Mountains Credit Union	Brevard	Diane Rogers
Caswell Credit Union	Yanceyville	Gladys Blackman
CCCS of Fayetteville, Goldsboro & Lumberton	Fayetteville	Patricia Tyson
CCCS of the Carolina Foothills, Inc.	Spindale	Kristen Carr
College Heights Credit Union	Fayetteville	Terri Peoples
Community Credit Union	Waynesville	Randall Crawford
Community Reinvestment Association of North Carolina	Durham	Peter Skillern
Consumer Credit Counseling Service of Forsyth County	Winston Salem	Pamela Gagner
Consumer Credit Counseling Service of Western NC	Asheville	Peter Laroche
Credit Counseling Agencies of North Carolina	Spindale	Kristen Carr
Credit Counselors of North Carolina	Raleigh	Lorraine McCurdy
Durham Affordable Housing Coalition	Durham	Lorisa Seibel
Durham Regional Financial Center	Durham	Glyndola Massenburg-Beasley
El Centro Hispano	Durham	Ivan Parra
El Centro Latino	Carrboro	Mauricio Castro
El Pueblo, Inc.	Raleigh	Andrea Bazan Manson
Firestone Credit Union	Wilson	Phillip Ayscue
First Flight Federal Credit Union	Havelock	Chris Lindelof
Food Lion Credit Association CU	Salisbury	John McGrail
Fort Bragg Federal Credit Union	Fayetteville	David Elliott
Gateway Community Development Corporation	Henderson	Evon Smith
Inter Neighborhood Council	Durham	Michael Shiflett
Latino Community Credit Union	Durham	John Herrera
Lexington Housing CDC	Lexington	Lou Adkins
Marine Federal Credit Union	Jacksonville	Craig Chamberlin
Navy Federal Credit Union	Merrifield	Brian McDonnell
NC Association of CDCs	Raleigh	Susan Perry Cole
NC Community Development Initiative	Raleigh	Abdul Rasheed
NC Council of Churches	Raleigh	George Reed
NC Equity	Raleigh	Susan Markham
NC Fair Housing Center	Raleigh	Stella Adams
NC Fair Share	Raleigh	Lynice Williams
NC Institute for Minority Economic Development	Durham	Andrea Harris
NC Justice & Community Development Center	Raleigh	Rob Schofield
NC Local Government Employees FCU	Raleigh	Maurice Smith
NC Low Income Housing Coalition	Raleigh	Constance Stancil

NC Minority Support Center	Durham	Linwood Cox
NC PIRG	Chapel Hill	Kiki Dunton
NC Senior Citizens Federation	Henderson	Inez Myles
NC State AFL-CIO	Raleigh	James Andrews
North Carolina Consumers Council, Inc.	Raleigh	Michael Rulison
North Carolina Hunger Network	Raleigh	Shirley McClain
North Carolina NAACP	Greensboro	Rev. Marvin Richmond
Northeastern CDC	Camden	Maria Kaml
People's Alliance	Durham	Stacey Mataxis
Perquimans Credit Union	Hertford	Tracy Bowser
Piedmont Aviation Credit Union	Winston Salem	Tom Welch
Pitt County Housing Coalition	Greenville	DeDe Carney
Safeguarding Against Fleecing the Elderly (SAFE)	Winston-Salem	Brenda Humphrey
Sampson County Minorities	Clinton	Homer Marshall
Sandhills Interfaith Hospitality Network	Aberdeen	Susan Bellew
Self-Help Credit Union	Durham	Martin Eakes
Senior Financial Care	Spindale	Glenda Quade
Senior Financial Care	Winston-Salem	Wayne Oppel
Seymour Johnson Federal Credit Union	Goldsboro	Robert McKenzie
Southeast Community CU	Wilmington	Teresa Hill
St. Luke Credit Union	Windsor	Cheryl Jones
St. Raphael Catholic Church	Raleigh	Ellen Schloemer
State Employees' Credit Union	Raleigh	Jim Blaine
The Advocacy for the Poor	Winston-Salem	Ginny Britt
The Brewer Law Firm	Raleigh	Victoria Wright
The Law Offices of John T. Orcutt	Durham	Edward Boltz
United Family Services, Consumer Credit Counseling	Charlotte	Barbara Robinson
Winston-Salem City Employees CU	Winston Salem	Sam Whitehurst
Winston-Salem Fireman's Credit Union	Winston-Salem	J.C. Higgins

68 organizations representing 2,415,588 members

Remarks of Kathy Bryan

Good morning, **my name is Kathy Bryan. I am a New Bern native.** Like many of the people you represent, I work full-time and am a single parent. By telling my story, I hope you will see that payday lending should not be allowed in North Carolina.

I got my first payday loan back in the late 90s to help out when money was tight. I needed to pay some bills, including tuition for my son and payday loans seemed like a quick fix. At the time, we didn't have a payday lender in New Bern, but I knew from the television advertisements that they had some in Greenville. I went there and they were very friendly and it was very easy to get the money I needed.

I paid the bills, but then realized that it was going to be harder than I thought to pay them back. **How could I pay them back when the amount I owed was more than twice what I made?** At one point, I had six loans I kept juggling from different payday lenders and all the money just went to pay off other payday lenders. I owed money to payday lenders in New Bern, Greenville, and Kinston. It got so bad that I couldn't pay my power bill or my phone bill.

That's when I decided I could not take any more loans. I paid $105 to my bank to stop payments on my checks. But, even that didn't work. The payday lenders put the checks back through under a different name and were able to cash them anyway. Now, I get calls at home and work about these loans all the time. Even my employer gets faxes about them.

It is really frustrating for me, because I think that the payday lenders are just a way to take advantage of people who can't go to the bank and borrow money. They may seem like a quick fix, but really, they are just another problem. I hope you will use your votes to make sure no one else has to wind up owing more than they make, like I did. Thank you.

Kathy Bryan will speak at the 7/11/2001 House Financial Institutions Committee meeting at 10AM in room 1425 of the Legislative Building. She will be available for questions immediately after the hearing. During the following days, she can be reached by phone at work at 252-637-9502 (x109) or at home at 252-638-5510.

Remarks of Teresa Mason

My name is Teresa Mason and I was born and raised in Granville County. I work full-time and am very involved in my church. I am here to talk about my experience as a payday borrower. I want you to understand my situation so that you can understand why payday lending needs to change in this state.

Like many people who borrow from payday lenders, I found myself in a budget crunch and thought that payday loans would provide me with a quick fix. But these loans turned out to be disastrous. **Just after Christmas a few years ago, I experienced a six-week gap between paychecks. I thought I could just get one payday loan to help me out and pay it off right away.**

But, after the first loan, I found myself with more and more problems that I thought payday lending could help me fix. I borrowed money to help fix the car, to pay for a doctor's appointment, and even to pay for dry cleaning that I needed to keep up a professional appearance at work. But rather than solve my problems, these loans just made my situation worse.

You see, I was in a position with a good salary when I first started taking payday loans. But, then after an automobile accident limited what I could do at work, I was forced to accept a different position with lower pay. After that, the expenses got out of control. It was especially hard to keep up with the payday loans. **It got to the point where I had four payday loans for $300 each just to pay off the fees on other payday loans. Eventually, these loans and other debts forced me into bankruptcy.**

These payday loans didn't solve my problems. They only made them worse. I hope that each of you will use your power as an elected official to stop payday lenders from helping people climb into a spiral of debt. Thank you.

Teresa is available to speak with members of the media, she can be reached at work during the day at 919-575-3070.

My Experience with Payroll Advance Companies
July 10, 2001

My name is William Morris and I live in Raleigh, NC. I have lived in Raleigh for most of my life. I am 28 and a high school graduate. Like many of your constituents, I work hard and have worked for the same company for 6 years. I suffer from epilepsy and take large doses of medication.

There was a time that I didn't have the work I needed to pay my bills. I turned to the paycheck advance company to get me over the hump. It was real easy to get the money. It seemed like a good deal to me. One thing led to another and I never seemed to be able to catch up. I ended up having to go to other paycheck advance companies to pay off previous advances. I ended up owing 7 different paycheck advance companies more than I could pay.

Since April 2000, I have borrowed $17,364.28 and paid an average Annual Percentage Rate of **452.74% interest**. I work for $9.50 an hour and generally work 34 hours a week (more when I can get it). I didn't realize what was happening to me or that I was paying this much until I finally asked my father for help.

They make it real easy to borrow money and don't talk about annual percentage rate. They just talk about how much you can get. My Dad explained that the Annual Percentage Rate (APR) was established by the government to keep people from being deceived.

I kept thinking I could straighten my finances out and was too embarrassed to go to my family for help. It was easy to go to these places and get more loans. They were real nice to me until I got to the point of not being able to keep up. Then **they told me** that if I didn't make my checks good that they would turn them over for collection and **I could be arrested** for passing bad checks. ***That sure scared me!*** If I was arrested and went to jail I would lose my job and since I couldn't pay my bills I guess I would have to stay in jail.

I finally had to tell my Dad about my problem. He is helping me. It's not what I want, but I have moved back home until I can get straightened out and pay my bills.

I feel like it is too easy to borrow money from these paycheck advance places and they don't really explain how much it is really costing you. Then when you finally can't pay any more, they threaten you and scare you. My Dad helped me pay them off so that I wouldn't be arrested, but when I talked to a bankruptcy attorney she explained that they couldn't really do that! ***Why did they tell me that? It's just not right!***

William is available to speak with members of the media. He can be reached at 919-872-7635.

What N.C. Credit Counselors say about Payday Loans

Professionals in credit counseling know the difference between bill consolidation and predatory lending tactics. They see people who are overcommitted to payday lenders. The industry will say that extending the current law keeps people from having to borrow from loansharks. Counselor Celeste Collins calls payday lending "like legalized loansharking." Here's what the credit counselors say:

Ms. Lou Adkins is a certified housing counselor in Lexington who primarily serves low and moderate income renters who want to buy a home. "Though Lexington only has 19,000 residents, it has several payday lenders. I think they target our town because we are primarily low-income and have a lot of renters. People from the community sometimes see payday lending as a quick fix, but, really, when someone takes out a payday loan they are creating more problems than they solve. **Once they borrow from a payday lender, they are locked in—every payday they take out more and more loans just to keep up."**

She adds, "We do housing counseling for everyone, not just people who are in trouble, so we see people in all different situations, and many people who come to our program have multiple payday loans—and these are people actively looking to improve their situation. One of the first things we do is to help our clients climb out of the payday loans that are holding them back. Frankly, **I haven't seen a single instance where payday lending has helped more than it has hurt."** (Available by phone at 336-236-1675).

Ms. Celeste Collins is a credit counselor with the Consumer Credit Counseling Service of Western North Carolina in Asheville. "The biggest problem people have is understanding what they are getting into and understanding how they are going to pay these loans back. Everyone thinks things are going to get better and everything will go great and I can pay it back. **But, because of the short term of the loan and the high fee, in a month they can have a $100 in fees and these are families that are living on the edge.** If you are talking about a married couple each can borrow and then you are talking about $200 in fees a month—which is more than most budgets can handle. Faced with this mounting debt, many people just take out more payday loans so that they can pay the additional fees. The first time I saw a client with payday loans, she had 5 and her husband had 5. That meant they were paying close to $900 a month in fees. I called the banking commission because I didn't think they could be legal. **They feel like legalized loan sharking**. It is great to say they can have one payday loan at a time, but it just doesn't work that way." (Available by phone at 828-255-5166)

Ms. Rebekah O'Connell, a counselor in the Triangle, is quoted in a book on Payday lending published by the Community Reinvestment Association of North Carolina as saying "It'd be great if it was the middle class and it was just the plumber and all they need is $200 this one time to get them by. But that's just not the reality. **These are people who are really not making it .... They're not fixing a blown tire or a pipe—they're paying the rent."**

NC Payday Lending Issues
Coalition for Responsible Lending, July 3, 2001

Payday lending must be dramatically reformed or else the temporary payday loan authority should be sunset.

Sunset should not be extended without these dramatic reforms. Extension for 1 year will cause $100 million of fees to be extracted from families of modest means.

NC payday lending problem is large, growing, and preventable

- NC has more than 10% of nation's payday loan outlets (1,100 of 10,000), even though NC has less than 3% of the nation's population.
- Charged $96 million in fees for $14 million of average outstanding payday loans
- Payday offices knew the risk of sunset and have abused the NC authorization.
- Payday lenders get borrowers stuck paying $45 fee every 2 weeks just to keep same $255 loan outstanding, abusing existing statutory prohibitions against "flipping" by providing a new loan the same day the old one is due.
  - 90% of total payday loans comes from customers caught on flipping treadmill (5 or more payday loans per year)
  - "Average" borrower has 7 payday loans per year with **single** payday lender, 14 payday loans per year if average borrower uses 2 different companies.
  - 16% of borrowers have 18 or more transactions per year with one lender, accounting for 36% of total payday loans.

1. **Reform at a minimum must prevent "flipping" of payday loans through:**
   (a) **Minimum loan term of 90 days** – Borrower must have time to work out of the financial emergency. Otherwise, just caught on a debt treadmill.
   (b) **Minimum "cooling off" period of 30 days** between payday loans.
   (c) **One payday loan at a time** – no rationale for $300 loan ceiling if borrowers get multiple loans at one time from different lenders. Lender has duty to verify. Don't criminalize the borrower by having them "certify" no other loans. Use credit bureau or central database like Florida.

2. **Alternatively, reduce 400%+ interest rate on payday loans to less than 100% rate.**
   - Payday loans are indeed loans and should be treated as loans
   - NC legislative policy limits small loans to 36% annual interest rate; no fees
   - Wells Fargo offers payday loans at 1/3 of typical NC payday loan rates

Out-of-state banks claiming federal preemption of NC must be challenged, regardless of whether existing payday lending authority is sunset, reformed, or left unchanged

- OCC and OTS have refused to support "rent-a-charter" by payday lenders
- For example, Eagle National Bank (1% of payday fee) claims preemption on behalf of its "agent" Dollar Financial (99% of payday fee)

Alternatives for emergency cash needs exist

- SECU offers salary advance program: no fees, 11.75% interest, and free counseling. SECU's 800,000 members represent 20% of total NC checking account holders.
- Banks and credit unions to offer small lines of credit; checking overdraft protection
- Finance companies have authority to make small loans at 36% interest.

Let's end legal loan sharking

BY SKIP ALSTON
AND CHUCK WINFREE

The N.C. General Assembly has an opportunity this session to protect our state's consumers.

In 1997, it enacted legislation allowing "payday advance" businesses to operate in this state. These businesses, which are licensed by the state Commissioner of Banks, accept post-dated checks and agree to wait up to two weeks to deposit them. The checks may be up to $300, and the operator pays the customer the amount of the check, in cash. However, the lender is allowed to withhold 15 percent of the amount of the check in exchange for the two-week delay in deposit. This fee, withheld for a two-week extension of credit, is a rate of a whopping 457 percent annually.

Alston

Winfree

Since 1997, these businesses have mushroomed. A casual review of the Greensboro phone book reveals dozens of willing lenders, some with as many as five offices in Greensboro alone. With triple digit returns, it is easy to see why. It is also easy to see how they can afford extensive marketing and lobbying in Raleigh.

Mercifully, the legislation permitting this practice contained a sunset provision. If the General Assembly does not act by July 31, 2001, to repeal or extend the sunset provision, this practice will no longer be legal.

The N.C. Check Cashers, the industry association, is lobbying for repeal of the sunset provision. We call upon the General Assembly to stand up for the consumers of this state and consign this form of exploitation to the fate it deserves.

The Commissioner of Banks, who is required by law to monitor these businesses, has reported, based primarily on spot checks, nearly 9,000 violations of the law by the operators of these businesses. These violations ranged from failing to disclose the true interest rate to initiating criminal prosecutions on the basis of worthless checks when the loans could not be repaid. The commissioner was unable to report on whether consumers were receiving funds from one lender to pay another, but the current law does not prohibit that practice.

The commissioner did find that consumers were using this service as a form of revolving credit, with 59,000 consumers using these services 19 or more times a year. These hapless consumers, if they gave 19 postdated checks for $300 for 19 back-to-back two-week loans, paid $855 in fees in order to borrow $255 for 38 weeks. Though this may not offend the conscience of the operators of these businesses, we hope it shocks the public and our legislators into action.

The industry argues that banning this practice would deny consumers their only means of receiving credit. Though it is possible that some of these consumers would be unable to obtain credit at a reasonable rate, it is more likely that the consumers do not realize that they are paying more than 450 percent in annual interest. Moreover, the industry seeks to dismantle consumer protections in order to vindicate the public's inalienable right to be exploited. We can only imagine their next consumer innovation: "Give us a post-dated check for $100, and we'll give you $85 in lottery tickets."

The courts in many states are wrestling with the legitimacy of payday advance schemes. For example, the Arkansas Supreme Court ruled March 22 that the statute authorizing payday advance loans, under terms very similar to those in North Carolina, violated provisions of the Arkansas State Constitution prohibiting usury. North Carolina has no such constitutional provision; its framers entrusted consumer protection to the General Assembly.

While litigation continues in other states over payday advance loans, one thing is crystal clear: They are exploitation, pure and simple. Financial desperation, coupled with confusion over the true costs, yield unconscionable profits.

Tolerating this practice is unworthy of a society that claims to value its most vulnerable. We encourage the General Assembly, and the Guilford delegation in particular, to let the sun set on this sorry chapter of consumer exploitation. We also encourage other concerned citizens to voice their disapproval to their elected representatives.

Skip Alston is a Democratic Guilford County commissioner and president of the North Carolina NAACP. Attorney Chuck Winfree is a former Republican Guilford County commissioner.

NEWS & RECORD, *Sunday, April 8, 2001*

Winston – Salem Chronicle
Winston – Salem, NC

May 3, 2001

Businesses that prey on the poor are booming

Whether by design or mere happenstance, the payday lending industry is thriving by prying on poor people, especially poor people with black or brown skin. Given the thumbs-up to run amok in African-American communities by the General Assembly more than three years ago, cash-advance businesses can be found next to pawnshops and check-cashing businesses, two other industries that have benefited from the vulnerability and circumstances of poor people.

The General Assembly should have been able to look down the road and see what type of monster it was creating. Legislators should have been able to predict that poor people would be trapped in the payday lending system after using it once or twice for emergencies. Payday lenders are hostile toward those who call them loan sharks and they should be. The truth is often painful, but there are people performing the same services in a back alley without a General Assembly bill to back them up and it's considered illegal.

Our lawmakers should focus on more laws that protect poor people rather than opening a Pandora's box like the payday lending industry. There is so much to become enraged about when it comes to poor people and companies that claim they are helping them. There are any number of rent-to-own stores that say they give those with credit chances to own furniture, televisions and computers, when other companies will not.

What they do not like to tout in their fast-paced television spots is that they charge double or sometimes even triple the price that middle-to-upper-income Americans pay at Wal-Mart or Best Buy. But many poor people have no other options. They are sucked in by these legalized scams every day, many paying weekly payments on merchandise that they'll finance for years.

America, the land of opportunity, sadly offers few of those opportunities if your income is below the poverty line. The opportunities are eaten up by people who have discovered that the sure way to make a few dollars is by investing in or starting businesses that take advantage of opportunity-less people. Check 'n Go, a payday lender, recently ran an ad in American Banker urging large banks to invest in the company. The ad promises big profits and expanded opportunities. Surely some big banks have already latched onto the payday lending business. But if the big banks truly served their customers there would no need for payday lenders or rent-to-own stores.

In July, the General Assembly will have the chance to either slay or tame the monster it created. Legislators should sharpen their swords and draw blood.

NEWS & RECORD, *Monday, May 21, 2001*

Payday lending still seductive, exorbitant

A new Georgetown University study paints a prettier picture of payday lenders than you might expect.

Conducted by the McDonough School of Business, the study represents the first independent, comprehensive look at the industry, which fills a need for small, short-term loans, but at astronomical interest rates. The consumer writes a personal check for the borrowed amount, plus a fee (in North Carolina, 15 percent of the face value of the check, which can translate to an annual percentage rate of more than 450 percent). The lender agrees to delay depositing the check, usually for two weeks, but up to 31 days.

Although the industry has done brisk business in North Carolina, it can exploit clients in much the way easy-to-get, pre-approved credit cards can. Yet the new study, which polled a national sample of customers, offers some vindication for payday lenders. Among its findings:

• More than 75 percent of those customers reported that they were pleased with their most recent transaction.

• Ninety percent said they understood the cost of the loans, and 78 percent said the cost of the loans was related to them as an APR.

• Seventy-nine percent insisted that they, and not lenders, are responsible for managing their spending and borrowing habits.

Fair enough. So should the General Assembly renew the law that allows payday lenders to do business here?

We've said no before and the Georgetown study does not change our minds. The borrowing rates are still too high and consumers still appear oblivious to less expensive and even cost-free ways to stretch their finances (including budgeting more effectively).

The study confirms the need for a reasonable source of small, convenient short-term loans. It also portrays these institutions as more forthright about their terms than some credit-card companies, which bury their interest rates in fine print.

Still, even a ripoff cloaked in candor is a ripoff. According to the study, customers oppose limits on the number of payday advances they may obtain in a year's time. Such a thirst for easy outs often masks deeper financial issues. "Anytime a quick-fix option becomes available, it's natural for us to take the path of least resistance," says Paul McCollum, a counselor with Consumer Credit Counseling Service of Greater Greensboro. "If the root cause is not dealt with, you're just putting a Band-Aid on the situation."

Better to stress consumer awareness and education than open the flood gates to bad decisions. The General Assembly should end payday lending in North Carolina altogether — or at least tame its indecent liberties with tougher regulation.

THE NEWS & OBSERVER
WEDNESDAY, MAY 23, 2001

Paydays of reckoning

State Treasurer Richard Moore has taken a brave stand for people who struggle to stretch their paychecks and against loan practices that profit from their desperation.

Moore is right to insist that payday lenders reduce their 15 percent loan fees and limit the number of outstanding loans customers may have. Now, a borrower writes a check of up to $300 and postdates it six to 31 days later, and gives it to the lender who takes out a 15 percent maximum fee. The customer receives the remainder in cash and covers the check the next time he is paid. Renewing such a loan is illegal in North Carolina, but consumer advocates have found that people who don't have the money to cover their checks too often pay another 15 percent for the privilege of writing the lender another postdated check.

Sixteen percent of payday borrowers conduct 18 or more back-to-back transactions, the Community Reinvestment Association of North Carolina found recently. Reducing fees and the number of permissible transactions, as Moore proposes, would help protect these vulnerable customers.

The treasurer is right, too, to use the leverage of a July 31 expiration date on the North Carolina law that sanctions payday loans. Any loan companies that can't agree to Moore's reasonable reforms won't be missed.

That would be especially true if Moore's meetings with conventional bankers result in greater consumer access to lower-cost, short-term loans. It's refreshing to watch a chairman of the state Banking Commission wield that clout on behalf of ordinary Tar Heels.

How Payday Lenders Make Their Money

Community Reinvestment Association of North Carolina
Peter Skillern, Executive Director

Wednesday, April 18, 2001

> **"I never did have the $300 to go on and pay the pay day lender, so I kept renewing – just for that one time. Now I know that I spent more than $2,000 over a two-year period, just for that one $261 loan."**
>
> **Constance Odim, Borrower**

The Community Reinvestment Association of North Carolina (CRA*NC) is a nonprofit advocacy agency promoting and protecting community wealth. We fulfill this mission through public education, community capacity building, research, litigation and advocacy. Since 1986, CRA*NC has worked to increase consumers access to fair and affordable credit. In the year 2001, its work was recognized by the National Community Reinvestment Coalition James Rouse Excellence Award for outstanding work in the field of community reinvestment.

The author, Peter Skillern, is Executive Director of CRA*NC. Skillern holds a Masters in City and Regional Planning from the University of North Carolina at Chapel Hill and received his bachelor's degree with highest honors from the University of California at Santa Cruz. He has over 15 years experience in the field of housing and community development and is a Fellow in both the William B. Friday Fellowship for Human Relations and the Eisenhower International Exchange Fellowship.

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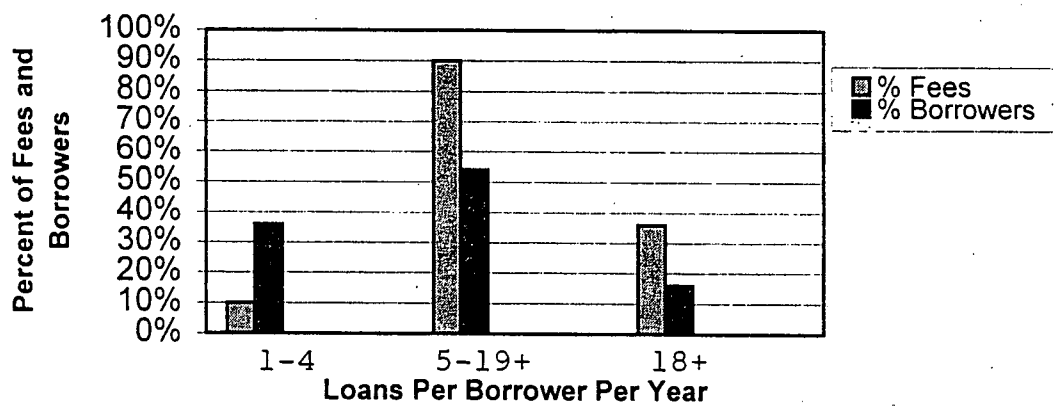
HOW PAYDAY LENDERS MAKE THEIR MONEY

Repeat business is the key to profits for North Carolina's payday lenders, who make 90% of their revenue from borrowers making multiple transactions a year. This explains how loans become abusive for consumers, why lenders fight restrictions, and why North Carolina consumer advocates support reforming or prohibiting payday lenders. This analysis uses data reported by payday lenders on their 1999 activities to the North Carolina Banking Commission to explain the payday lending business model.

Contrary to the payday lending industry's assertion that payday lending is for occasional one-time use, the business model seeks to generate multiple transactions from each borrower.

Borrowers who conduct more transactions become increasingly profitable for lenders.[1] Over 90% of all transactions were by borrowers making five or more transactions in a year. Over half of all borrowers used the service seven times or more. In 1999, the 2.9 million payday lending transactions were generated by fewer than 420,000 borrowers.[2]

Share of Payday Lending Fees Paid By Repeat Borrowers, North Carolina 1999



Lenders' profits come disproportionately from high-frequency borrowers.

In 1999, one in six borrowers (16%) conducted 18 or more transactions a year, generating more than one-third (36%) of payday lenders' total revenue. By contrast, the 13% of borrowers who used payday lending one time generated less than 2% of the fees.

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[1] Community Reinvestemnt Association of North Carolina Frequency and Fees Distribution Table based on frequency table IIIf of the N.C. Banking Commission Report to the General Assembly on Payday Lending.

[2] *North Carolina Banking Commission Report to the General Assembly on Payday Lending*. Table III D and Table III F. www.banking.state.nc.us (February 22, 2001).

Payday lenders use short repayment terms (14 days or less) to trigger repeat loan transactions and increase interest rates.

The short term of the loans is used as a mechanism to increase repeat transactions. More than 72% of loans were for less than 14 days. All loans generate the same flat 15% fee, but the short term increases the annual percentage rate significantly. A 14 day loan APR is 460%. A 6-day loan is equal to an APR of 1,073.53%.[3]

The borrower who cannot repay at the end of the short period will likely take out a new loan to avoid defaulting. This triggers a new 15% fee.

Borrowers who renew or roll over their loans can pay more money in fees than the amount they borrowed.

Borrowers who pay a fee to extend the loan – or cash out and renew it as a back to back transaction – are essentially flipping the loan. The borrower's debt amount remains relatively constant, but the fees increase with each transaction. After conducting seven or more transactions, a borrower has paid more in fees than the actual loan amount.

A parallel example would be if a mortgage company lent $100,000 for a home, but had the borrower renew the loan every year for a high fee. At the end of ten years, the lender could claim to have lent $1 million, when in fact it had renewed the same amount of credit ten times to the same borrower. The capital assets lent and the liability of the borrower did not change, but the fees for each loan increased.

Flipping loans dramatically increases the lenders' return on assets compared to other credit services.

In an evaluation of Eagle Bank, a nationally chartered bank that conducts payday lending, the Office of the Comptroller found that the bank used $2 million to generate 466,000 loans in a year – a six to one ratio of capital to loans made. Using the 6 to 1 ratio, N.C. payday lenders would need only $12.5 million to generate 2.9 million transactions.

If the average loan is 10 days, the APR is 644%. Based on this interest rate, the payday lending industry could on average have $15 million in capital assets outstanding to generate $96.5 million in fees reported to the N.C. Banking Commission. By comparison, a credit card company with $100 million in capital assets outstanding at 21% interest rate would generate only $21 million in income a year. In other words, while a credit card company earns $.21 on each dollar in capital assets lent, a payday lender earns $6.00 for every dollar it lends.

In North Carolina in 1999, 2.9 million checks were cashed totaling $650 million in loan transactions. However, because much of this volume represents small loans flipped repeatedly for the same borrowers, the actual amount of capital lent is much lower.

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[3] N.C. Banking Commission report to the General Assembly on Payday Lending. Table IIIc.

Payday lenders are able to lend without credit checks because fees far exceed risk.

Although each repeat transaction increases the risk of default, it actually *decreases* the lenders' risk of losing capital. This is because the accumulating fees soon exceed the amount lent. For example, a borrower who conducts 7 transactions will pay the lender 105% of the loan amount in fees, paying the principal borrowed back, plus some in fees. More than 50% of North Carolina borrowers used payday loans seven times or more.

In 1999, NC payday lenders reported a write off of $9.9 million in loans, which represents about 10% of the $98 million fees generated. The volume of transactions and resulting high fees allow lenders to lend without credit checks or people's ability to repay. Fees generated by repeat transactions far exceed losses.

A significant number of borrowers, who are trapped in a cycle of debt, patronize several lenders at the same time, generating a disproportionate share of fees.

The Center for Community Capitalism at the University of North Carolina at Chapel Hill surveyed households earning less than $30,000 and found that of households using payday lenders, 11% borrowed from one payday outlet to pay another.

These borrowers disproportionately generate fees for the industry, by multiplying the number of transactions they can make – and thus the fees they can generate. One borrower, using 4 lenders ten times, generates 40 transactions.[4]

> **"I have four payday lenders. On a monthly basis I pay $350 worth of interest. That's my car payment, right there in interest. I am making two car payments, but I have only one car."**
>
> **Larry Smith, Borrower**

A weak regulatory environment helps lenders and hurts borrowers.

The Check Cashiers Act of 1997 Article 22 53-281 (e) states, "A licensee shall not, for any consideration, renew or otherwise extend any postdated or delayed check or withhold such check from deposit for any period beyond the time set forth in the written agreement with the customer."

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[4] Larry Smith quote from Too Much Month at the End of the Paycheck, Payday Lending in North Carolina. Community Reinvestment Association of North Carolina and the Center for Community Capitalism Frank Hawkins Institute for Private Enterprise, University of North Carolina at Chapel Hill.. www.cra-nc.org. January, 2001, p. 19.

The North Carolina Banking Commission did not enforce the North Carolina law's prohibition on renewals - paying off an old loan and obtaining a new one the same day for essentially the same amount of principal. Without regulatory enforcement, 59,000 borrowers conducted 19 or more transactions a year.

The effect on borrowers who conduct multiple transactions all year is to effectively pay at 460% effective interest – repaying $1,380 in fees for a $200 loan. CRA*NC asserts that this is a violation of the protections of the Consumer Finance Act, which limits small consumer loan interest rates to 36%.

Likewise in other states, enforcement of consumer protections has been difficult or ineffective. The Illinois Department of Financial Institutions found that despite their state's clear restriction of no more than three rollovers, payday lenders avoided the prohibition by claiming that these "rollovers" were new transactions.

According to the N.C. Banking Commission, payday lending branches were evaluated less than once a year. Nonetheless, through sampling of lenders' files from 1998 to 2000, the Commission - which currently cannot levy fines or penalties for violations - found 9,000 violations and $550,000 in over charges to consumers.

While consumer education is clearly needed, it is also clear that protections for borrowers can not depend purely on education as only 44 consumers filed complaints.

Some payday lenders increase profits by avoiding existing state rules through federal pre-emption.

Eagle National Bank and Goleta National Bank are two nationally chartered institutions that use local agents to make payday loans at higher rates than state laws would otherwise permit. North Carolina has forty outlets, such outlets use federal pre-emption to charge 20% transaction fees rather than the state regulated 15%.

Balancing lender profits with consumer protections is difficult.

The current business model relies on high fees and multiple transactions increasing the cost of credit with each transaction until fees exceed the actual loan amount. The Community Reinvestment Association of North Carolina believes that payday lenders' profit model has inherent usury features. Policy reforms seek to lower fees and reduce transactions through limits on the number of transactions, minimum loan terms, cooling off periods, and prohibition on concurrent multi-site transactions. If the payday lending industry cannot operate under these reforms, then it is a form of credit transaction that should be prohibited.

Regardless of the particular policy outcome, strong regulatory enforcement is essential in assuring the legislature's intent. Without credible enforcement, no policy framework will address the economic incentives of high returns at the expense of consumers found in the business model of payday lending.

Distribution of Frequency of Transactions and Fees Generated 1999 Payday Lending

Frequency of Customer Usage	Number of Customers	Number of Transactions	Fees Generated	% of Total Generated	Cumulative % Fees Generated	Percentage of Borrowers	Cumulative % of Borrowers
1	55422	55,422.00	$ 1,516,294.14	2%	1.57%	13%	13.21%
2	38507	77,014.00	$ 2,107,031.08	2%	3.75%	9%	22.39%
3	30734	92,202.00	$ 2,522,560.57	3%	6.36%	7%	29.71%
4	28470	113,880.00	$ 3,115,650.40	3%	9.59%	7%	36.49%
5	24612	123,060.00	$ 3,366,806.62	3%	13.07%	6%	42.36%
6	23711	142,266.00	$ 3,892,264.83	4%	17.10%	6%	48.01%
7	20328	142,296.00	$ 3,893,085.61	4%	21.13%	5%	52.86%
8	19916	159,328.00	$ 4,359,065.21	5%	25.64%	5%	57.60%
9	17238	155,142.00	$ 4,244,540.16	4%	30.04%	4%	61.71%
10	16467	164,670.00	$ 4,505,217.34	5%	34.70%	4%	65.63%
11	14997	164,967.00	$ 4,513,342.98	5%	39.37%	4%	69.21%
12	16218	194,616.00	$ 5,324,511.92	6%	44.88%	4%	73.07%
13	11038	143,494.00	$ 3,925,861.77	4%	48.95%	3%	75.70%
14	10020	140,280.00	$ 3,837,929.73	4%	52.92%	2%	78.09%
15	8884	133,260.00	$ 3,645,869.09	4%	56.69%	2%	80.21%
16	8164	130,624.00	$ 3,573,750.59	4%	60.39%	2%	82.16%
17	8130	138,210.00	$ 3,781,296.46	4%	64.31%	2%	84.09%
18	7763	139,734.00	$ 3,822,991.68	4%	68.26%	2%	85.94%
19	58982	1,120,658.00	$ 30,660,155.80	32%	100.00%	14%	100.00%
Total	*419,601.00*	*3,531,123.00*	*$ 96,608,226.00*	*100%*		100.00%	

Data Source: NC Banking Commission Report on Payday Lending February 22, 2001

Analysis by the Community Reinvestment Association of North Carolina 3-13-2001

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OFFICE OF THE COMMISSIONER OF BANKS

REPORT

TO THE GENERAL ASSEMBLY

ON PAYDAY LENDING

February 22, 2001

REPORT OF THE COMMISSIONER OF BANKS TO THE NORTH CAROLINA GENERAL ASSEMBLY ON THE SUBJECT OF PAYDAY LENDING FEBRUARY 22, 2001

I. Consumer Complaints

Consumers register written complaints with the Commissioner of Banks. Complaints are evaluated and investigated with a view towards protecting consumers and ensuring compliance with laws and regulations. Since the Check Cashing Act became effective on October 1, 1997, the Office of the Commissioner of Banks ("OCOB") has recorded these payday lending complaints which came directly from consumers:

1997	none
1998	5
1999	12
2000	27
TOTAL:	44

One licensee accumulated five complaints; the complaints were spread among 24 licensees. The complaints shown here were strictly limited to complaints arising from consumers and relating directly to payday lending.

Recommendations:

1. In addition to the disclosures currently mandated by law and regulation, the statute should provide for licensees to distribute to consumers a brochure prepared and published by the Commissioner of Banks. The brochure should inform consumers of the complaint mechanism, the relative cost of this form of credit, availability of other forms of credit, the right of the consumer to elect credit counseling and stop collection efforts, and such other matters as the Commissioner may from time to time believe are necessary or beneficial to consumers.

2. The law should provide that failure to comply with the Commissioner's request for assistance in resolving a complaint is grounds for imposition of a civil money penalty and suspension or revocation of license.

3. The law should prohibit a lender from the use or threatened use of criminal process to collect a delayed deposit check, unless the NSF check resulted from the customer committing fraud.

4. The law should permit a lender, solely as an accommodation to the borrower, to modify the contract and extend the agreed date of deposit, but at no additional fee.

II. Unfair or Deceptive Trade Practices

While "unfair or deceptive acts or practices" has been expansively defined under N.C.G.S. § 75-1.1(a), we are aware of no reported cases yet which apply that law to payday lending. We have interpreted the Legislature's request for evidence of unfair or deceptive trade practices to include violations of Article 22 of Chapter 53. Most of these violations were discovered during our examinations of properly licensed payday lenders. We have also included in this category, however, violations which were discovered during our investigations of unlicensed payday lenders.

Examiners from the Office of the Commissioner of Banks performed 713 examinations of all licensed Check Cashing Businesses during 1998, 1999, and 2000; they recorded 8,911 violations of N.C.G.S. § 53-281, broken out as follows:

Table II (A) **N.C.G.S. § 53-281 Violations**

	§ 53-281(a)		§ 53-281(b)		§ 53-281(c)		§ 53-281(d)		§ 53-281(e)		Total #	Total
	Total #	Impact	Total #	Impact	Total #	Impact	Total #	Impact	Total #	Impact		
1998	0	$0.00	119	$68,215.85	215	$0.00	0	$0.00	1851	$228,102.23	2185	$296,318.08
1999	18	$0.00	475	$15,135.54	1813	$0.00	29	$688.00	8	$375.00	2343	$16,198.54
2000	30	$0.00	1968	$237,639.59	2368	$0.00	15	$2.99	2	$90.00	4383	$237,732.58
Totals	48	$0.00	2562	$320,990.98	4396	$0.00	44	$690.99	1861	$228,567.23	8911	$550,249.20

Notes: 1) N.C.G.S. § 53-281**(a)** allows a deposit to be delayed for up to 31 days; § 53-281**(b)** limits the face amount of the delayed deposit check to $300; § 53-281**(c)** states the requirements for the contract between borrower and payday lender; § 53-281**(d)** limits fees to 15% of the face amount of the check; § 53-281**(e)** prohibits roll-overs or extensions. 2) For this chart, "impact" means dollar violations: the difference between lawful fees and actual fees charged.

We have also conducted 10 detailed investigations of unlicensed payday lenders. These investigations came about as a result of OCOB inquiries, consumer complaints, and complaints from licensees about unlicensed competitors. As might be expected, violations of law by unlicensed payday lenders were too numerous to capture in meaningful data. Of those 10 investigations of unlicensed payday lenders, five were resolved by signed consent orders. These five unlicensed lenders brought their operations into legal compliance, applied for a license, and commenced lawful business. Four matters are still pending; one ceased operations entirely. As of December 31, 2000, refunds to consumers from these unlicensed payday lenders had been paid in the amount of $195,631.89.

Recommendations:

1. The Legislature should modify the language of existing N.C.G.S. § 53-281(d) from "face amount of the check" to "amount of credit extended." This change will simplify interest calculations and end the collection of interest on the fee already paid for the loan.

2. The law should restrict the amount of credit extended to $300. No lender shall accept transactions which, in the aggregate, exceed this limit. No lender may require a borrower to prepare more than one check per delayed deposit transaction.

III. Frequency of Repeat Use by Individuals

The Consolidated 1999 Annual Report of Check Cashing Businesses shows that 201 responded to the Commissioner's request for data. There were 220 check cashing licensees in business at year end; however, seventeen licensees ceased operations without filing a report. One licensee never commenced operations, and revocation proceedings have begun against the remaining licensee who failed to report. The 201 respondents operated 1,017 locations in 1999. Of the 201 licensed check cashers reporting, 59 licensees engaged in regular check cashing only; the remaining 142 reporting licensees engaged in payday lending transactions. Of these 142 payday lenders, 55 did delayed deposit transactions only; they did not offer regular check cashing services. Information derived from this 1999 data is shown below in tabular form.

Table III (A) shows the size distribution of delayed deposit check cashing transactions for 1999. It shows that 66.99% of the total transactions were for an amount at or near the $300 maximum face amount.

Table III (A) **Size Distribution**

Face Amount of the Check	Number of Delayed Deposit Transactions*	Percentage of Total
$100 or less	243,853	8.38%
$101 to 200	716,955	24.63%
$201 to 300	1,949,558	66.99%
Total	2,910,366	100%

Note: The figures in this table are compiled from reports submitted by 1999 licensees and are unaudited by the Commissioner of Banks.

Table III (B) shows the term of these transactions, or the number of days between the day the cash advance is made and the day the customer's check is deposited. The data shows that while our statute contemplated a 31 day term for these loans, 72.79% of the loans are for 14 days or less. As a result, the borrower pays a 15% fee for a loan whether it is for 31 days or for 14 or fewer days. The effect of the term on the customer's annual percentage rate, or "APR," is demonstrated in the final column Table III (B).

Table III (B) **Term Distribution, with APR**

Term (days)	Number of Delayed Deposit Transactions*	Percentage of Total	APR range
1 to 7	285,958	9.83%	6441.18%---920.17%
8 to 14	1,832,462	62.96%	805.15%---460.08%
15 to 21	582,370	20.01%	429.41%---306.72%
22 to 28	87,097	2.99%	292.78%---230.04%
29 or more	122,479	4.21%	222.11%---207.78% (at 31days)
Total	2,910,366	100%	

Notes: 1) APR Calculation Method: (Fee Amount / Cash Advance) X (365 / Term in Days) X 100 = APR
2) Maximum fee is assumed (15% of the face amount of the check).

*Note: The figures in this table are compiled from reports submitted by 1999 licensees and are unaudited by the Commissioner of Banks.

When the term of the loan is shortened but the fee remains the same, the APR (which is the effective cost of the loan) goes up. The APR for a given term is shown in Table III (C) below. The APR figures shown in Table III (B) and Table III (C) below are based on a fee of 15% of the face amount of the check. The effective cost of the loan climbs steeply when the very short term loan is repeated at the same fee. To take a typical example, if a borrower takes a 14 day loan for a $300 face amount ($255 advance) on day one and then takes another on day 15, then the borrower's total fees would be $90, at a 460.08 % APR for each of the two successive loans. Had the customer done one transaction at the outset for the maximum period of 31 days, there would have been a single fee of $45, at a 207.78 % APR.

Table III (C) **APR According to Term of Loan**

Days	APR	Days	APR	Days	APR	Days	APR
1	6441.18%	9	715.69%	17	378.89%	25	257.65%
2	3220.59%	10	644.12%	18	357.84%	26	247.74%
3	2147.06%	11	585.56%	19	339.01%	27	238.56%
4	1610.29%	12	536.76%	20	322.06%	28	230.04%
5	1288.24%	13	495.48%	21	306.72%	29	222.11%
6	1073.53%	14	460.08%	22	292.78%	30	214.71%
7	920.17%	15	429.41%	23	280.05%	31	207.78%
8	805.15%	16	402.57%	24	268.38%		

Notes: 1) APR Calculation Method: (Fee Amount / Cash Advance) X (365 / Term in Days) X 100 = APR
2) Maximum fee is assumed (15% of the face amount of the check).

Table III (D) shows additional summary data. In 1999, 142 payday lenders accounted for 2,910,366 delayed deposit check cashing transactions. Data for regular check cashing and for payday lending in 1999 are shown side by side for comparison.

Table III (D) **All Check Cashing Activity***

	Regular Check Cashing	Payday Lending
Total number and dollar amount of undeposited checks held at December 31, 1999:	# 3,669	# 140,344
	$1,358,023	$34,476,536
Total number and dollars (face amount) of checks cashed:	# 2,143,306	# 2,910,366
	$750,826,639	$649,506,935
Total dollar amount of fees collected for checks cashed:	$17,317,922	$96,608,226
Total number and dollar amount of returned (NSF) checks:	# 4,756	# 166,558
	$10,085,303	$36,477,592
Total dollar amount of additional fees collected for returned (NSF) checks:	$2,857,776	$1,842,941
Total dollar amount of net charge offs (losses):	$2,908,236	$9,878,891

*Note: The figures in this table are compiled from reports submitted by 1999 licensees and are unaudited by the Commissioner of Banks.

Summary for the combined businesses shows that there were 2,227 employees in North Carolina with a total payroll for the year of $29.56 million. Total income (before taxes) derived from the combined businesses was $5,595,157. We observed rapid growth and then some consolidation in the industry as shown in Table III (E) below:

Table III (E) **Growth in All Check Cashing Licensees and Branches**

Year	Number of Licensees	Number of Branches
1997 (from 10/1/97)	71	307
1998	158	730
1999	220	1119
2000	242	1204

Table III (F) on page 6 reflects data that relate directly to frequency of use. The data is merely the sum of all companies reporting. It reflects only the total usage of given customers at a given company in a year. It does not show how frequently customers used multiple transactions at several companies concurrently. The table collects all payday loan transactions; it is impossible to know, without obtaining data which would identify individual borrowers, how many of the transactions are back to back.

The summary data shows that 36.49% of the borrowers at a given company used payday lending four or fewer times during the year; 65.63% used it 10 or fewer times. As one might expect, there are some who use the service in an isolated instance; 22.39% of the customers used the company only once or twice during the year. But, there are some consumers who are using delayed deposit transactions as a source of revolving credit; 10.06% of the customers used this source of credit 19 or more times at the same company during the year.

Recommendations:

1. The law should require that licensees provide data as to operations upon request of the Commissioner so that monitoring of the three items contained in this report can continue.

2. The Legislature should consider some limits on back-to-back or repeated transactions so as to allow for an orderly work-out. Roll-overs, however, should continue to be prohibited.

ble III (F)

Frequency of Use in 1999*

Customer Usage	Number of Customers Using the Delayed Deposit Service	Percentage	Cumulative Percentage
1 time	55,422	13.21%	13.21%
2 times	38,507	9.18%	22.39%
3 times	30,734	7.32%	29.71%
4 times	28,470	6.79%	36.49%
5 times	24,612	5.87%	42.36%
6 times	23,711	5.65%	48.01%
7 times	20,328	4.84%	52.86%
8 times	19,916	4.75%	57.60%
9 times	17,238	4.11%	61.71%
10 times	16,467	3.92%	65.63%
11 times	14,997	3.57%	69.21%
12 times	16,218	3.87%	73.07%
13 times	11,038	2.63%	75.70%
14 times	10,020	2.39%	78.09%
15 times	8,884	2.12%	80.21%
16 times	8,164	1.95%	82.16%
17 times	8,130	1.94%	84.09%
18 times	7,763	1.85%	85.94%
19 or more times	58,982	14.06%	100.00%
Total	419,601	100%	

*Note: The figures in this table are compiled from reports submitted by 1999 licensees and are unaudited by the Commissioner of Banks.

Fax This Completed Application to: 1-610-667-9662

IMPORTANT! Make sure your fax includes: 1. A Voided Check 2. Current Bank Statement 3. Current Pay Stub

Thank you for submitting your Tele Cash™ Application.

We appreciate your business and will process your application immediately.

Please complete the application and fax with: Voided Check, Current Bank Statement, and Current Pay Stub. Please print in black ink.

PERSONAL INFORMATION			
Name:			Home Phone:
Address:			Cell Phone: ( )
City:	State:	Zip:	Fax number:
How long have you lived at this address:	Rent ☐	Own ☐	Email Address:
Social Security Number:			Birth Date:

EMPLOYMENT and BANK INFORMATION			
Employer:	Hire Date:		Your Work Phone:
How long have you worked here:	What is your position:		
What is your supervisor's name:	Supervisor's Phone Number: ( )		Shift/Hours:
How much is your take home pay each pay period:* $		Yearly Income:* $	Other Income:*$
Are you paid: Weekly ☐ Bi-weekly ☐ Twice Monthly ☐		Monthly ☐	Next Pay Date: 2nd Pay Date:
Checking Account #:		Is your paycheck direct deposited to your checking account:	Yes ☐ No ☐
How did you hear about us:			

*Or other sources of income periodically deposited to your account. However, alimony, child support or, separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

2 REFERENCES – MUST BE RELATIVES NOT LIVING WITH YOU		
Name	Phone Number with Area Code	Relationship
1.		
2.		

IMPORTANT. PLEASE DO NOT FILL IN - FOR OFFICE USE ONLY			
Loan Amt: $	Fee Amt: $	Loan Deposit Date:	Loan Due Date:
Pay Period: W ☐ BW ☐ TM ☐ M ☐		Approved By:	
ABA#		Account#	

AGREEMENT TO ARBITRATE ALL DISPUTES: By signing below and to induce us, County Bank of Rehoboth Beach, Delaware, to process and consider your application for a loan, you and we agree that any and all claims, disputes or controversies that we or our servicers or agents have against you or that you have against us, our servicers, agents, directors, officers and employees, that arise out of your application for a loan, the Loan Note or Agreement that you must sign to obtain the loan, this agreement to arbitrate all disputes, collection of the loan, or alleging fraud or misrepresentation, whether under the common law or pursuant to federal or state statute or regulation, or otherwise, including the matters subject to arbitration, shall be resolved by binding individual (and not class) arbitration by and under the Code of Procedure of the National Arbitration Forum ("NAF") in effect at the time the claim is filed. This agreement to arbitrate all disputes shall apply no matter by whom or against whom the claim is filed. Rules and forms of the NAF may be obtained and all claims shall be filed at any NAF office, on the World Wide Web at www.arb-forum.com, or at National Arbitration Forum, P.O. Box 50191, Minneapolis, Minnesota 55405. *If you are unable to pay the costs of arbitration, your arbitration fees will be waived by the NAF.* Any arbitration hearing, if one is held, will take place at a location near your residence. This arbitration agreement is made pursuant to a transaction involving interstate commerce. It shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16. Judgment upon the award may be entered by any party in any court having jurisdiction. This Agreement to Arbitrate All Disputes is an independent agreement and shall survive the closing and repayment of the loan for which you are applying. **NOTICE: YOU AND WE WOULD HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE DISPUTES THROUGH A COURT AND HAVE A JUDGE OR JURY DECIDE THE DISPUTES BUT HAVE AGREED INSTEAD TO RESOLVE DISPUTES THROUGH BINDING ARBITRATION.**

AGREEMENT NOT TO BRING, JOIN OR PARTICIPATE IN CLASS ACTIONS: To the extent permitted by law, by signing below you agree that you will not bring, join or participate in any class action as to any claim, dispute or controversy you may have against us or our agents, servicers, directors, officers, assigns, and employees. You agree to the entry of injunctive relief to stop such a lawsuit or to remove you as a participant in the suit. You agree to pay the attorney's fees and court costs we incur seeking such relief. This agreement is not a waiver of any of your rights and remedies to pursue a claim individually and not as a class action in binding arbitration as provided above. This agreement not to bring or participate in class actions is an independent agreement and shall survive the closing and repayment of the loan for which you are applying.

BY SIGNING THIS APPLICATION you certify that all of the information provided above is true, complete and correct and provided to us, County Bank of Rehoboth Beach, Delaware, for the purpose of inducing us to make the loan for which you are applying. By signing below you also agree to the Agreement to Arbitrate All Disputes and the Agreement Not To Bring, Join Or Participate in Class Actions. You acknowledge receiving the Privacy Policy and Notice of your Right to Cancel on the next page. We have retained TC Services Corp., (the "Company") to assist in processing your Application and to service your loan. By signing below you authorize us and the Company to share information in your Application and with regard to the processing, funding, servicing, repayment and collection of your loan. (This Application will be deemed incomplete and will not be processed by us unless signed by you below.)

President, County Bank

Printed Name of Applicant _____ Date _____ X _____ Signature of Applicant

Please fax this signed application and all required documents to fax 1-610-667-9662

1. Voided Check 2. Current Bank Statement 3. Current Pay Stub

Loans made by County Bank of Rehoboth Beach, Delaware.
Member FDIC. An Equal Opportunity Lender.

NOTICE: SEE THE NEXT PAGE FOR IMPORTANT INFORMATION.

COUNTY BANK OF REHOBOTH BEACH, DELAWARE / TELE CASH

LOAN PAYMENT INSTRUCTION FORM

YOU WILL BE ABLE TO MAKE PAYMENT ARRANGEMENTS 24 HOURS A DAY WITH OUR EASY TO USE AUTOMATED SYSTEM.

TO MAKE PAYMENT ARRANGEMENTS CALL 1-800-992-9200 AND PRESS ONE. THEN FOLLOW THE VOICE PROMPTS AND ENTER YOUR SOCIAL SECURITY NUMBER.

PLEASE REMEMBER THAT YOU MUST FAX BACK YOUR SIGNED DOCUMENT NO LATER THAN THREE FULL BUSINESS DAYS BEFORE YOUR LOAN IS DUE TO AVOID THE ENTIRE AMOUNT BEING DEBITED FROM YOUR ACCOUNT. NO PAYMENT ARRANGEMENTS WILL BE ACCEPTED IF WE DO NOT RECEIVE YOUR SIGNED DOCUMENT. NO EXCEPTIONS!

PLEASE FILL IN ALL AREAS WHERE THERE IS AN (X) AND SIGN THE DOCUMENT WHERE THERE IS AN (X). IF ALL (X)'s ARE NOT COMPLETED AND SIGNED WE WILL BE UNABLE TO PROCESS YOUR LOAN.

IF YOU HAVE ANY PROBLEMS OR QUESTIONS AFTER YOU HAVE USED OUR AUTOMATED SYSTEM PLEASE CALL 1-800-992-9200 AND PRESS FIVE TO SPEAK WITH A CUSTOMER REPRESENTATIVE MONDAY THRU FRIDAY 8:15 – 5:00 PM.

WHAT ARE MY PAYMENT OPTIONS?

1) **PAY THE FINANCE CHARGE ONLY:**
We will only debit the finance charge due on your up-coming payday. We will send you one new document, a Loan Note and Disclosure Statement. You must SIGN and FAX back the Loan Note and Disclosure Statement no later than three full business days prior to your up-coming payday. Remember you will still owe your original loan amount along with another finance charge on your following payday.

IMPORTANT – you may only us this option four times. On the fifth time and each time thereafter you must make a minimum payment of fifty dollars towards your loan balance plus your finance charge until the loan is paid in full. You then will have to wait seven days to reactivate your loan if you choose this option.

2) **PAY THE FINANCE CHARGE AND A PAYMENT TOWARDS YOUR LOAN AMOUNT:**
We will only debit the finance charge due plus a payment towards the loan amount on your up-coming payday. The loan payments must be in increments of $50.00 (for example: $50.00, $100.00, $150.00, etc.). We will send you one new document, a Loan Note and Disclosure Statement. You must SIGN and FAX back the Loan Note and Disclosure Statement no later than three full business days prior to your up-coming payday. REMEMBER: You will still owe a finance charge plus your new loan balance on your following payday.

3) **PAY YOUR LOAN IN FULL:**
You do not have to call us. We will debit the loan amount plus the finance charge on your up-coming payday. Once we receive all monies from your bank account your loan will be considered paid in full. To receive your next loan, wait three business days after your account has been debited and call us at 1-800-992-9200, press three (3) on our automated system enter your social security number and follow the voice prompts.

THANK YOU FOR USING TELE CASH

TC REV 6-2001

COUNTY BANK OF REHOBOTH BEACH, DELAWARE / TELE CASH

NEW APPLICANT INFORMATION

WHAT DO YOU NEED TO QUALIFY:

- You must have a steady source of income of at least $1,500 per month, or a minimum of $800 per month in Social Security or other benefits income.
- You must have worked at your current job for at least 3 months if you have direct deposit of your paycheck, or at least 6 months if you don't have direct deposit, or you must be able to show other reoccurring income payments over the same periods.
- You must have a checking account with your name printed on the checks or bank statement.
- You must be able to be contacted at work.
- You must be able to be reached in the evenings up to 9:00 p.m.
- You must have access to a fax machine.
- You must be at least 18 years of age.
- You must not be delinquent on a prior Loan from County Bank.

IF YOU QUALIFY:

- Neatly complete the LOAN APPLICATION in black pen. All questions must be answered.
- FAX the **loan application** along with a copy of your **personal check** marked "void", a copy of your **most recent bank statement**, and a copy of your most recent **paystub** to us at **1-610-667-9662**.

WHAT WE WILL DO:

- We will review your application and supporting documentation.
- A customer service representative will call you to discuss your application and loan note if information is incomplete or missing.
- If your application is approved, you will be contacted to discuss the terms of the loan. A loan note will be faxed to you and must be returned promptly to have the funds deposited to your account.
- If you get all forms back to us promptly, you could receive the money in your account the next business day.
- **If you have any questions please call us 1-800-992-9200 and select option 3.**
- **Thank You**

TC-Rev-6-2001 FORM 10b

Our Commitment To You!

Once we receive your Completed Application, a Tele Cash Customer Service Representative will process it immediately. If approved, your loan amount will be deposited directly into your personal checking account for your personal use. Tele Cash is committed to assisting you in any way we can with your short-term loan needs.

Thank you!

TC Services Corp.

Customer Care Department

SHORT TERMS LOANS PROVIDE CASH NEEDED TO MEET IMMEDIATE SHORT-TERM CASH FLOW PROBLEMS. THEY ARE NOT A SOLUTION FOR LONGER TERM FINANCIAL PROBLEMS FOR WHICH OTHER KINDS OF FINANCING MAY BE MORE APPROPRIATE. YOU MAY WANT TO DISCUSS YOUR FINANCIAL SITUATION WITH A NONPROFIT FINANCIAL COUNSELING SERVICE IN YOUR COMMUNITY.

Privacy Policy

PRIVACY POLICY. Protecting your privacy is important to County Bank and our employees. We want you to understand what information we collect and how we use it. In order to provide our customers with short term loans as effectively and conveniently as possible, we use technology to manage and maintain customer information. The following policy serves as a standard for all County Bank employees for collection, use, retention, and security of nonpublic personal information related to our short term loan programs.

WHAT INFORMATION WE COLLECT. We may collect "nonpublic personal information" about you from the following sources: information we receive from you on applications or other loan forms, such as your name, address, social security number, assets and income; information about your loan transactions with us, such as your payment history and loan balances; and information we receive from third parties, such as consumer reporting agencies and other lenders, regarding your creditworthiness and credit history. "Nonpublic personal information" is nonpublic information about you that we obtain in connection with providing a short term loan to you or a list derived using that information. For example, as noted above, nonpublic personal information includes your name, social security number, payment history, and the like.

WHAT INFORMATION WE DISCLOSE. We are permitted by law to disclose nonpublic personal information about you to third parties in certain circumstances. For example, we may disclose nonpublic personal information about your short term loan to consumer reporting agencies and to government entities in response to subpoenas. Moreover, we may disclose all of the nonpublic personal information about you that we collect, as described above, to financial service providers that perform services on our behalf, such as the marketers and servicers of your short term loan, and to financial institutions with which we have joint marketing arrangements. Such disclosures are made as necessary to effect, administer and enforce the loan you request or authorize. Otherwise, we do not disclose nonpublic financial information about our customers or former customers to anyone, except as permitted by law.

If you become an inactive customer, we will continue to adhere to the privacy policies and practices described in this notice.

OUR SECURITY PROCEDURES. We also take steps to safeguard customer information. We restrict access to nonpublic personal information about you to those of our and our servicer's employees who need to know that information to provide short term loans to you. We maintain physical, electronic and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

YOU WILL BE CHARGED ADDITIONAL FEES IF YOU REFINANCE THIS LOAN. As an example, suppose you borrow $200 for 14 days at an APR of 782.14%. The Finance Charge would be $60.00. If you did not repay the loan at maturity but chose instead to refinance the balance by obtaining a new loan in the same amount and for an additional 14-day period, you would incur an additional Finance Charge of $60.00. So, if you refinance the $200 loan 4 times, the total Finance Charge you would be required to pay would be $240.00. Moreover, if there were insufficient funds in your bank account on the date we attempted to effect an ACH debit entry to pay all or part of what you owe, you would incur a Return Item Fee of $30.00. Your bank may also impose fees for returning ACH entries unpaid and, if this practice persists, may even cancel your deposit account.

RIGHT TO CANCEL: YOU MAY CANCEL THIS LOAN WITHOUT COST OR FURTHER OBLIGATION TO US, IF YOU DO SO BY 2 pm EASTERN TIME ON THE BUSINESS DAY AFTER YOU FAX THE SIGNED DISCLOSURE TO US.

To cancel, you must call us at 1-800-992-9200 to alert us of your intention to cancel. You must also complete the information in this box, and sign and fax it to us at 1-610-667-9662. If you follow these procedures but there are insufficient funds available in your deposit account to enable us to reverse the transfer of loan proceeds at the time we effect an ACH debit entry of your checking account, your cancellation will not be effective and you will be required to pay the loan and our charges on the scheduled maturity date.

YOU WISH TO CANCEL. You authorize us to initiate ACH debit entries to your checking account in the amount of the loan proceeds we deposited therein at your request.

Print Name _____ Signature _____ Social Security Number _____ Date _____

STOP: DO NOT SIGN OR FAX THIS PAGE

UNLESS YOU INTEND TO CANCEL YOUR LOAN!

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — JULY 11, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Julian Brown	NCIMED - POB 1331 - Durham, NC 27702
Keith B. Corbett	CRL - P.O. Box 1405 Durham, N.C. 27702
Deborah Goldstein	CRL Durham, NC 27702
Mike Calhoun	Self-Help Durham NC
Otis Carter	Carter & Associates
Mike Okun	NC State AFL-C/O
Reginald Johnson	SELF-HELP DURHAM, N.C.
Dan Blorn	NC Minority Support Center, Durham
Julia White	NC Attorney Generals office
Alan Reberg	Raleigh Mennonite Church
Theresa Jones	Cash Advance USA 4229 Louisburg Rd. Raleigh
Regina Ogletree	Check n Go of N.C. 8917 New Bern Ave Suite 63

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — **Name of Committee**

JULY 11, 2001 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ERIN CROSSFIELD	SELF-HELP 301 W Main, Durham
Chris Johnson	Urgent Money Service
JEFF JOHNSON	URGENT MONEY SERVICE G'BORO, NC
Jacqueline King	Urgent Money Service 306 W. JT Rd. Gso. 27406
Mark Pearce	Self-Help
Malcolm White	CRL
Kiki Denton	NCFIRA
JW Blair	NCCCA
Jenny Byrd	NCCCA
Scott Palmer	CRA-NC
Frances Clement	CRA-NC
Eddy Clemons	DAHC, Durham, NC

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — JULY 11, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Randy Chambers	Latino Community Credit Union/El Pueblo, Inc.
RICH LEE	DURHAM AFFORDABLE HOUSING COALITION
IVAN PARRA	HISPANIC CENTER LATINO COMMUNITY CREDIT UNION
Helen Moore	Center for Comm Self Help
Bill Rowe	NC Justice Center + NC Low Income Housing Coalition
Stephen Burzio	NC Justice Center
Kate Hightower	Durham Affordable Housing Coalition
Lucy Melvin	Coalition for Responsible Lending
[signature]	NCCCA
[signature]	Cancer Citizens / State Worker
Rodney E. Oldham	Office of Commissioner of Banks

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — **Name of Committee**

JULY 11, 2001 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Bullock	Vance Co NAACP 155 Woods Booth Rd Henderson NC 27537
Rev. W. Marvin Richmond	NC NAACP - 122 N. Elm St Suite 520 - Greensboro, N.C. 27401 - P.O. Box 20547
Ray Moore	B+B Cash Advance 211 B. West Broad Ave, Rockingham, NC
Ben Burr	B+B Cash Advance 211 B West Broad Ave Rockingham, NC 28379
Deborah Moore	Same
Helen Savage	AARP, NC, 225 Hillsborough
Cailla Kajter	"
Dexter Joyner	AARP Cap. Co/City Task force
Otene Ogles	AARP/Capital City Task Force
Monia Thomas	Vance Co. 111 Northwoods Road Henderson, NC 27536
Michelle Wright	Vance Co. 202 College St Henderson N.C. 27536

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — JULY 11, 2001
Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
J. Howard Fritz	NCIMED, P.O. Box 1331, Durham, NC
LINDA Gunn	NCIMED
Verona P. Edmond	NCIMED
Kristi Hyman	NCDOJ
DAVID BARNES	Poyner + Spruill, LLP
STEVE ROBERTS	AARP
Andrea Harris	NAACP
Fred Yates	NAACP
Richard C Hutch	AARP
James Andrews	NC State AFL-CIO
Doris Weaver	NCCWA Political Council
DAVID BECK	Coalition for Responsible Lending
Stephanie Manson	NCAR
Brad Lovin	NC Manufactured Housing Inst
Dan Schlin-	NC Credit Union League
REITZEL DEATON	NC OFFICE of the Commissioner of BANKS
Constance Odim	Community Reinvestment Assoc of NC
Mary Mountcastle	Coalition for Responsible Lending
Eric Stein	"
Margaret R. Westbrook	Kennedy Covington
David Stoch	NC Banker's Assn.
Mary Nemeth	Poyner + Spruill

VISITOR REGISTRATION SHEET

Financial Institutions — Wednesday — 7-11-01

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Michael Richman	N.C. Consumers Council, Inc
Bob Godley	Self - Check Cashing
Kathy Bryan	Self
Keith Ernst	Self-Help
Lynn Banner	N4O
Sondra Ashe	NCNN
Kenneth Peebles	Durham Regional Financial Center
Tom Colex	CWA 6,50
Kevin Williams	ABMG
Marcus Becton	Self-Help
Johnny Smith	self
Ellen Schlosser	St. Raphael Catholic Church
Keri Ann Harris	2 PAC / AA
Hilton Cancel	El Pueblo, Inc
Carole Lawler	EGNS

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — JULY 11, 2001
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	[illegible]
Alfred Ripley	Self-Help Credit Union
William Webster	Community Financial Services Association
[illegible]	Postal Services Plus
Gary D Robertson	AP
Paul Woolverton	Fayetteville Observer

FINANCIAL INSTITUTIONS
JULY 18, 2001
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSELS – MS. KAREN COCHRANE-BROWN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS – DIXIE EPPS AND JOYCE FULLER

SGT.-AT-ARMS –MAXINE HOLLEY AND MARTHA PARRISH

PAGES – MARGARET BROOKS, ASHLEY MARTISON, AND NICK BYRNE

H.B. 1106 – ENACT MORTGAGE LENDING ACT

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
JULY 18, 2001

The **House Committee on Financial Institutions** met on Wednesday, July 18, 2001, at 10:00 a.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chairman Richard Morgan. Rep. Morgan recognized the Committee Counsels, Committee Assistants, the Pages and the Sgt.-at Arms who were assigned to the meeting The following members of the committee were present: Co-Chairmen Church and Morgan; Reps. Brubaker, Buchanan, Cole, Dockham, Gibson, Harrington, Howard, McLawhorn, McMahan, Michaux, Miller, Smith, and Walend.

Co-Chairman Morgan moved that the Committee Substitute for S.B. #1106 be adopted for discussion. Rep. Morgan then called on Rep. Ronnie Smith, Chair of the Financial Institutions Sub-committee to make a report on the **PROPOSED COMMITTEE SUBSTITUTE FOR H.B. #1106 – ENACT MORTGAGE LENDING ACT.** He stated that after considerable debate, the committee made a motion and passed the Proposed Committee Substitute of H.B. #1106 which the full committee will now take up. Rep. Morgan then recognized the Honorable Roy Cooper, Attorney General, to come forward. Mr. Cooper stated that his office was satisfied with this bill The Commissioner of Banks, Mr. Hal Lingerfelt, stated that the Banking Commission supported the bill. Co-Chairman Morgan asked that Mr. Walker Reagan, Committee Co-Counsel, come forward to explain the bill. The Proposed Committee Substitute for House Bill #1106 would repeal the existing registration of mortgage bankers and brokers and replace it with a licensing law for mortgage lenders and mortgage brokers. After Discussion, Rep. Smith moved that **H.B.#1106 BE GIVEN A FAVORABLE REPORT WITH A RE-REFERRAL TO THE COMMITTEE ON FINANCE.**

There being no further business, Co-Chairman Morgan adjourned the meeting at 10:20 a.m.

Co-Chairman Walter G. Church, Sr.

Co-Chairman Richard Morgan

Joyce A. Fuller, Committee Assistant

FINANCIAL INSTITUTIONS SUB-COMMITTEE REPORT

The Financial Institutions Sub-committee appointed to make a recommendation to the full committee on HB 1106 – ENACT MORTGAGE LENDING ACT met on Tuesday, July 17, 2001 at 1:00 p.m. in Room 1228 of the Legislative Building. The following members attended: Rep. Ronnie Smith - Chair, Rep. Harold Brubaker, Rep. Nelson Cole, Rep. Jerry Dockham, Rep. Julia Howard and Rep. Mickey Michaux.

After considerable debate the committee made a motion and passed House Proposed Committee Substitute H1106-CSRO-32 [v.3], which the full committee will now take up.

Rep. Ronnie Smith
Chair

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **CHURCH AND MORGAN** (Chair/Chairs) for the Committee on **FINANCIAL INSTITUTIONS.**

☐ Committee Substitute for
H.B. 1106 A BILL TO BE ENTITLED AN ACT TO ENACT THE MORTGAGE LENDING ACT TO GOVERN MORTGAGE BROKERS AND BANKERS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☑ With a favorable report as to committee substitute bill (~~#_____~~), ☐ ~~which changes the title~~, unfavorable as to (original bill) (~~Committee Substitute Bill #_____~~), (and recommendation that the committee substitute bill ~~#_____~~) be re-referred to the Committee on Finance.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1106
PROPOSED COMMITTEE SUBSTITUTE H1106-CSRO-32 [v.5]

7/17/2001 7:54:06 PM

Short Title: Enact Mortgage Lending Act. (Public)

Sponsors:

Referred to:

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO ENACT THE MORTGAGE LENDING ACT TO GOVERN MORTGAGE BROKERS AND BANKERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 53 of the General Statutes is repealed.

SECTION 2. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 19A.

"Mortgage Lending Act.

"**§ 53-243.01. Definitions.**

The following definitions apply in this Article:

(1) Act as a mortgage broker. – The act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, of accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, engaging in tablefunding of mortgage loans, or generating leads or referrals for mortgage loans through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

(2) Act as a mortgage lender. – The act of engaging in the business of making mortgage loans for compensation or gain.

(3) Branch manager. – The individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker.

(4) Branch office. – An office of the licensee acting as a mortgage broker or mortgage banker that is separate and distinct from the licensee's principal office.

(5) Commissioner. – The North Carolina Commissioner of Banks and the Commissioner's designees. For purposes of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.

(6) Control. – The power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, association, or trust.

(7) Employee. – An individual, who has an employment relationship, acknowledged by both the individual and the mortgage broker or mortgage banker and is treated as an employee for purposes of compliance with the federal income tax laws.

(8) Exempt person. – The term includes any of the following:

a. Any agency of the federal government or any state or municipal government granting first mortgage loans under specific authority of the laws of any state or the United States.

b. Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer.

c. Any lender authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system, savings institution, or credit union, under the laws of the United States, this State, or any other state; and with regards to provisions concerning mortgage lenders, life insurance companies licensed to do business in North Carolina.

d. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan.

e. Any officer or employee of an exempt person described in sub-subdivision c. of this subdivision when acting in the scope of employment for the exempt person.

f. Any person who, as seller, receives in one calendar year no more than five mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation.

g. The North Carolina Housing Finance Agency as established by Article 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Article 122D of the General Statutes.

h. Any nonprofit corporation qualifying under section 501(c)(3) of the Internal Revenue Code which makes mortgage loans to promote home ownership or home improvements for the disadvantaged, provided that such corporation is not primarily in the business of soliciting or brokering mortgage loans.

(9) Licensee. – A loan officer, mortgage broker, or mortgage banker who is licensed pursuant to this Article.

(10) Loan officer. – An individual who, in exchange for compensation as an employee of another person, accepts or offers to accept applications for mortgage loans. The definition of loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.

(11) Make a mortgage loan. – To close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan.

(12) Managing principal. – A person who meets the requirements of G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker.

(13) Mortgage banker. – A person who acts as a mortgage lender as that term is defined in subdivision (2) of this section. However, the definition does not include a person who acts as a mortgage lender only in tablefunding transactions.

(14) Mortgage broker. – A person who acts as a mortgage broker as that term is defined in subdivision (1) of this section.

(15) Mortgage loan. – A loan made to a natural person or persons primarily for personal, family or household use, primarily secured by either a mortgage or a deed of trust on residential real property located in North Carolina.

(16) Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities however organized.

(17) Qualified lender. – A person who is engaged as a mortgage lender in North Carolina and is either a supervised or a nonsupervised institution, as these terms are defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.

(18) Qualified person. – A person who is employed as a registered loan officer by a mortgage broker, qualified lender, or mortgage banker or who is an officer, director, shareholder, partner, member, or manager of a registered mortgage broker, qualified lender, or mortgage banker.

(19) Residential real property. – Real property located in the State of North Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units.

(20) Tablefunding. – A transaction where a licensee closes a loan in its own name with funds provided by others and the loan is assigned simultaneously to the mortgage lender providing the funding within one business day of the funding of the loan.

"**§ 53-243.02. License required; licensee records.**

(a) Other than an exempt person, it is unlawful for any person in this State to act as a mortgage broker or mortgage banker, or directly or indirectly to engage in the business of a mortgage broker or a mortgage banker, without first obtaining a license from the Commissioner under the provisions of this Article.

(b) It is unlawful for any natural person to engage in the solicitation and acceptance of applications for mortgage loans without first obtaining a license as a loan officer issued by the Commissioner under the provisions of this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a loan officer unless the loan officer is licensed as a loan officer under this Article. Exempt persons shall not be subject to this subsection.

(c) The license of a loan officer is not effective during any period when that person is not employed by a mortgage broker or mortgage banker licensed under this Article. When a loan officer ceases to be employed by a mortgage broker or mortgage banker licensed under this Article, the loan officer and the mortgage broker or mortgage banker licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. A loan officer shall not be employed simultaneously by more than one mortgage broker or mortgage banker licensed under this Article.

(d) Each mortgage broker and mortgage banker licensed under this Article shall maintain on file with the Commissioner a list of all loan officers who are employed with the mortgage broker or mortgage banker.

(e) No person, other than an exempt person, shall hold himself or herself out as a mortgage banker, a mortgage broker, or loan officer, unless such person is licensed in accordance with this Article.

"**§ 53-243.03. Review by Banking Commission.**

The Banking Commission may review any rule, regulation, order, or article of the Commissioner adopted pursuant to or with respect to the provisions of this Article, and any person aggrieved by any rule, regulation, order, or article may appeal to the Banking Commission for review upon giving notice in writing 20 days after the rule, regulation, order, or article that is the subject of the complaint is adopted or issued. Notwithstanding any other provision of law, any party aggrieved by a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92.

"**§ 53-243.04. Rule-making authority.**

The Banking Commission may adopt any rules when it deems necessary to carry out the provisions of this Article, to provide for the protection of the borrowing public, and to instruct mortgage lenders or brokers in interpreting this Article.

"**§ 53-243.05. Qualifications for licensure; issuance.**

(a) Any person, other than an exempt person, desiring to obtain a license as a loan officer, mortgage banker, or mortgage broker shall make written application for licensure to the Commissioner on forms prescribed by the Commissioner. In accordance with rules adopted by the Commission, the application shall contain any information the Commissioner deems necessary regarding the following:

(1) The applicant's name and address and social security number.

(2) The applicant's form and place of organization, if applicable.

(3) The applicant's proposed method of and locations for doing business, if applicable.

(4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including: (i) a description of any injunction or administrative order by any state or federal authority to which the person is or has been subject; (ii) a conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the residential mortgage lending business; (iii) any felony convictions.

(5) With respect to an application for licensing as a mortgage banker or broker, the applicant's financial condition, credit history, and business history; and with respect to the application for licensing as a loan officer, the applicant's credit history and business history.

(b) In addition to the requirements imposed by the Commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:

(1) Be at least 18 years of age.

(2) Have satisfactorily completed, within the three years immediately preceding the date application is made, a mortgage lending fundamentals course approved by the Commissioner. The course shall consist of at least eight hours of classroom instruction in subjects related to mortgage lending approved by the Commissioner. In addition, the applicant shall have satisfactorily completed a written examination approved by the Commissioner or possess residential mortgage lending education or experience in residential mortgage lending transactions that the Commissioner deems equivalent to the course.

(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

(1) If the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other

experience or competency requirements as the Commissioner may impose by rule.

(2) If the applicant is a general or limited partnership, at least one of its general partners shall have the experience as described under subdivision (1) of this subsection.

(3) If the applicant is a corporation, at least one of its principal officers shall have the experience as described under subdivision (1) of this subsection.

(4) If the applicant is a limited liability company, at least one of its managers shall have the experience as described under subdivision (1) of this subsection.

(d) Each applicant shall identify one person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.

(e) Every applicant for initial licensure shall pay a filing fee of one thousand dollars ($1,000) for licensure as a mortgage broker or mortgage banker, or fifty dollars ($50.00) for licensure as a loan officer.

(f) A mortgage banker shall post a surety bond in the amount of one hundred fifty thousand dollars ($150,000) and a mortgage broker shall post a surety bond in the amount of fifty thousand dollars ($50,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee under this Article. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Consumer claims shall be given priority in recovering from the bond. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond that is required. An audited financial statement showing a net worth of two hundred fifty thousand dollars ($250,000) or more shall be accepted in lieu of any bond required.

(g) Any partner, member, shareholder, officer, or other person occupying a similar position with an applicant at the time of the application and who meets the requirements under subsection (c) of this section shall be issued a license as a loan officer without further action under this Article.

(h) Each principal office and each branch office of a mortgage broker or mortgage banker licensed under the provisions of this article shall be issued a separate license. A licensed mortgage broker or mortgage banker shall file with the commissioner an application on a form prescribed by the Commissioner that identifies the address of the principal office and each branch office and branch manager. A filing fee of one hundred dollars ($100.00) shall be assessed by the Commissioner for each office issued a license.

(i) If the Commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character and general fitness of the

applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly, the Commissioner shall issue a license to the applicant.

"**§ 53-243.06. License renewal; termination.**

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 30th day of June following issuance or on any other date that the Commissioner may determine. The license shall become invalid after that date unless renewed. A license may be renewed 45 days prior to the expiration date by paying to the Commissioner a renewal fee as follows:

(1) Licensed mortgage bankers shall pay an annual fee of five hundred dollars ($500.00), and one hundred dollars ($100.00) for each branch office.

(2) Licensed mortgage brokers shall pay an annual fee of five hundred dollars ($500.00), and one hundred dollars ($100.00) for each branch office.

(3) Licensed loan officers shall pay an annual fee of fifty dollars ($50.00).

(b) If a license is not renewed prior to the applicable expiration date, then an additional two hundred fifty dollars ($250.00) in addition to the renewal fee under subsection (a) of this section shall be assessed as a late fee to any renewal. In the event a licensee fails to obtain a reinstatement of the license within 90 days after the date the license expires, the Commissioner may require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(c) Licenses issued under this Article are not assignable. Control of a licensee shall not be acquired through a stock purchase or other device without the prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to G.S. 53-243.11 are applicable to the acquiring person.

"**§ 53-243.07. Continuing education.**

(a) As a condition of license renewal, the Commissioner may adopt rules to require continuing education of licensees under this Article for the purpose of enhancing the professional competence and professional responsibility of mortgage bankers, mortgage brokers, and loan officers. The rules may include criteria for:

(1) The content of continuing education courses.

(2) Accreditation of continuing education sponsors and programs.

(3) Accreditation of videotape or other audiovisual programs.

(4) Computation of credit.

(5) Special cases and exemptions.

(6) General compliance procedures.

(7) Sanctions for noncompliance.

(b) Annual continuing professional education requirements shall be determined by the Commissioner. However, the requirements shall not exceed eight credit hours within a one-year period.

"**§ 53-243.08. Managing principals and branch managers.**

Each mortgage broker or mortgage banker licensed under this Article shall have a managing principal who operates the business under that person's full charge, control, and supervision. Each branch office of a mortgage broker or mortgage banker licensed under this Article shall have a branch manager who meets the requirements under G.S. 53-243.05(c). The managing principal for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its managing principal or branch manager designated for each branch. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.11 until the licensee complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this Article.

"**§ 53-243.09. Offices; address changes; display of license.**

(a) Each mortgage broker licensee shall maintain and transact business from a principal place of business in this State. A principal place of business in this State shall consist of at least one enclosed room or building of stationary construction in which negotiations of mortgage loan transactions of others may be conducted and carried on in privacy and in which all of the books, records, and files pertaining to mortgage loan transactions relating to borrowers in this State are maintained. However, the Commissioner may, by rule, impose terms and conditions under which the records and files may be maintained outside of this State.

(b) A mortgage banker or mortgage broker licensee shall report any change of address of the principal place of business or any branch office within 15 days after the change.

(c) Each mortgage broker or mortgage banker licensed under this Article shall display in plain view the certificate of licensure issued by the Commissioner in its principal office and in each branch office. Each loan officer licensed under this Article shall display in each branch office in which the officer acts as a loan officer the certificate of licensure issued by the Commissioner.

"**§ 53-243.10. Mortgage broker duties.**

A mortgage broker, including any mortgage broker licensee and any person required to be licensed as a mortgage broker under this Article, shall, in addition to duties imposed by other statutes or at common law:

(1) Safeguard and account for any money handled for the borrower;

(2) Follow reasonable and lawful instructions from the borrower;

(3) Act with reasonable skill, care, and diligence; and

(4) Make reasonable efforts, with lenders with whom the broker regularly does business to secure a loan that is reasonably advantageous to the

borrower considering all the circumstances, including the rates, charges, and repayment terms of the loan and the loan options for which the borrower qualifies with such lenders.

"**§ 53-243.11. Prohibited activities.**

In addition to the activities prohibited under other provisions of this Article, it shall be unlawful for any person in the course of any mortgage loan transaction:

(1) To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.

(2) To refuse improperly to issue a satisfaction of a mortgage.

(3) To fail to account for or to deliver to any person any funds, documents or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage banker, broker or loan officer is not entitled to retain under the circumstances.

(4) To pay, receive, or collect in whole or in part any commission, fee or other compensation for brokering a mortgage loan in violation of this Article, including a mortgage loan brokered by any unlicensed person other than an exempt person.

(5) To charge or collect any fee or rate of interest or to make or broker any mortgage loan with terms or conditions or in a manner contrary to the provisions of Chapter 24 of the General Statutes.

(6) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants.

(7) To fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.

(8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person, in connection with the brokering or making of, or purchase or sale of, any mortgage loan.

(9) To fail promptly to pay when due reasonable fees to a licensed appraiser for appraisal services that are:

a. Requested from the appraiser in writing by the mortgage broker or mortgage banker or an employee of the mortgage broker or mortgage banker; and

b. Performed by the appraiser in connection with the origination or closing of a mortgage loan for a customer or the mortgage broker or mortgage banker.

(10) To broker a mortgage loan which contains a prepayment penalty if the principal amount of the loan is $150,000 or less.

"**§ 53-243.12. Disciplinary authority.**

(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee, if the Commissioner finds both of the following:

(1) That the order is in the public interest.

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, managing broker, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.

c. Has been convicted of any felony, or, within the past 10 years, has been convicted of any misdemeanor involving mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.

e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage broker or mortgage banker.

f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage or mortgage banking industry denying or revoking that person's license as a mortgage broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker.

g. Does not meet the qualifications, or the financial responsibility, character or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.

h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or mortgage banker who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.

i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected.

(b) The Commissioner may, by order, summarily postpone or suspend the license of a licensee pending final determination of any proceeding under this section. Upon entering the order, the Commissioner shall promptly notify the applicant or licensee that the order has been entered and the reasons for the order. The Commissioner shall calendar a hearing within 15 days after the Commissioner receives a written request for a hearing. If a licensee does not request a hearing and the Commissioner does not request a hearing, the order will remain in effect until it is modified or vacated by the Commissioner. If a hearing is requested or ordered by the Commissioner, after notice of and opportunity for hearing, the Commissioner may modify or vacate the order or extend it until final determination.

(c) The Commissioner may, by order, impose a civil penalty upon a licensee or any partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee for any violation of this Article. The civil penalty shall not exceed ten thousand dollars ($10,000) for each violation of this Article by a mortgage broker or mortgage banker. The Commissioner may impose a civil penalty of up to ten thousand dollars ($10,000) for each violation of this Article by a person other than a licensee or exempt person.

(d) In addition to other powers under this Article, upon finding that any action of a person is in violation of this Article, the Commissioner may order the person to cease from the prohibited action. If the person subject to the order fails to appeal the order of the Commissioner in accordance with G.S. 53-243.03, or if the person appeals and the appeal is denied or dismissed, and the person continues to engage in the prohibited action in violation of the Commissioner's order, the person shall be subject to a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation of the Commissioner's order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a licensee for the licensee's failure to comply with an order of the Commissioner.

(e) Unless otherwise provided, all actions and hearings under this Article shall be governed by Chapter 150B of the General Statutes.

(f) When a licensee is accused of any act, omission, or misconduct that would subject the licensee to disciplinary action, the licensee, with the consent and approval of the Commissioner, may surrender the license and all the rights and privileges pertaining to it for a period of time established by the Commissioner. A person who surrenders a

license shall not be eligible for or submit any application for licensure under this Article.

(g) If the Commissioner has reasonable grounds to believe that a licensee or other person has violated the provisions of this Article or that facts exist that would be the basis for an order against a licensee or other person, the Commissioner may at any time, either personally or by a person duly designated by the Commissioner, investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of any licensee or other person relating to the complaint or matter under investigation. The reasonable cost of this investigation or examination shall be charged against the licensee.

(h) The Commissioner may issue subpoenas to require the attendance of and to examine under oath all persons whose testimony the Commissioner deems relative to the person's business.

(i) The Commissioner may from time to time, at the expense of the Commissioner's Office, conduct routine examinations of the books and records of any licensee in order to determine the compliance with this Article and any rules adopted pursuant to the authority of G.S. 53-243.04.

(j) In addition to the rights described under this section, the Commissioner may require a licensee to pay to a borrower or other individual any amounts received by the licensee or its employees in violation of Chapter 24 of the General Statutes.

(k) If the Commissioner finds that the managing principal, branch manager, or loan officer of a licensee had knowledge or reasonably should have had knowledge of, or participated in, any activity that results in the entry of an order under this section suspending or withdrawing the license of a licensee, the Commissioner may prohibit the managing broker or loan officer from serving as a managing broker or loan officer for any period of time the Commissioner deems necessary.

"**§ 53-243.13. Records; escrow funds or trust accounts.**

(a) The Commissioner shall keep a list of all applicants for licensure under this Article that includes the date of application, name, and place of residence and whether the license was granted or refused.

(b) The Commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective loan officers and a roster of exempt persons required to file a notice under G.S. 53-243.02. The rosters shall: (i) be kept on file in the office of the Commissioner; (ii) contain information regarding all orders or other action taken against the licensees, loan officers, and other persons; and (iii) be open to public inspection.

(c) Every licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed in rules adopted by the Commissioner. All records shall be preserved for three years unless the Commissioner, by rule, prescribes otherwise for particular types of records. The recordkeeping requirements imposed by the Commissioner or this subsection shall not be greater than those imposed by applicable federal law.

(d) If the information contained in any document filed with the Commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall promptly file a correcting amendment to the information contained in the document.

(e) A licensee shall maintain in a segregated escrow fund or trust account any funds which come into the licensee's possession, but which are not the licensee's property and which the licensee is not entitled to retain under the circumstances. The escrow fund or trust account shall be held on deposit in a federally insured financial institution.

"**§ 53-243.14. Criminal penalty.**

A violation of G.S. 53-243.02 is a Class I felony. Each transaction involving the unlawful making or brokering of a mortgage loan is a separate offense."

SECTION 3. G.S. 53-99(b)(7b) reads as rewritten:

"(7b) Records of examinations and investigations of registrants under the Mortgage ~~Bankers and Brokers Act, Article 19 of this Chapter;~~ Lending Act, Article 19A of this Chapter;".

SECTION 4. G.S. 66-106 reads as rewritten:

"**§ 66-106. Definitions.**

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

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

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

(b) ~~Provided, that~~ Except for mortgage loans as defined in G.S. 53-243.01(15), this Article shall not apply to any party approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, a National Mortgage Association or any federal agency; nor to any 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 insurance company registered with and licensed by the North Carolina Insurance Commissioner; nor, with respect to residential mortgage loans, to any residential mortgage banker or mortgage broker ~~registered with the Commissioner of Banks pursuant to Article 19 of Chapter 53 or exempt from such registration pursuant to G.S. 53-234(6);~~ licensed pursuant to Article 19A of Chapter 53 of the General Statutes or exempt from licensure pursuant to G.S. 53-243.01(8) and G.S. 53-243.02; nor to any attorney-at-law, public accountant, or dealer registered under the North Carolina Securities Act, acting in the professional capacity for which such 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."

SECTION 5(a). All exempt persons described in G.S. 53-243.01(8), enacted by Section 2 of this act, who are engaged in the mortgage brokerage or mortgage banking business shall be required to file with the Commissioner, within 90 days of the effective date of this act or upon the commencement of mortgage brokerage or mortgage banking business in this State, a statement on a form prescribed by the Commissioner setting forth the name of the respective exempt person, the basis of the exempt status of the exempt person, the principal business address of the exempt person, and the State or federal regulatory authority responsible for its supervision, examination, or regulation, if any.

(b) In addition to any other measures the exempt person may be subject to under Article 19A of Chapter 53 of the General Statutes, enacted by Section 2 of this act, failure by an exempt person to file the required form shall not affect the exempt status of the person. However, the entity shall be subject to a civil penalty set by the Commissioner that shall not exceed the sum of two hundred fifty dollars ($250.00) for each year the form is not filed. No person required to file under this section may transact business in this State as a mortgage banker or mortgage broker unless the person has filed the prescribed form with the Commissioner in accordance with this section.

SECTION 6(a). Any person who, on the effective date of this act, is engaged in business and registered as a mortgage broker or mortgage banker shall not be required to file an application under G.S. 53-243.05, enacted by Section 2 of this act, and shall be entitled to issuance of a license under Article 19A of Chapter 53 of the General Statutes, enacted by Section 2 of this act.

(b). Any qualified person who files, within 90 days after this act becomes effective, a sworn application with the Commissioner stating that he or she has met the definition of a qualified person under G.S. 53-243.01(18), enacted by Section 2 of this act, including a statement that he or she has not been convicted of any felony or any felony or any misdemeanor involving moral turpitude, shall be issued a license as a loan officer from the Commissioner without having to meet the training requirements for licensure under G.S. 53-243.05(b), enacted by Section 2 of this act.

(c) Any qualified lender who files, within 90 days after this act becomes effective, a sworn statement with the Commissioner that consists of a list of its loan officers in North Carolina, the addresses of its principal office and each of its branches, and the names and addresses of the managing principal and each of its branch managers and states that no employee, loan officer, or individual with a controlling interest in the lender has been convicted of any felony or any misdemeanor involving moral turpitude, shall be issued a license as a mortgage banker from the Commissioner without having to meet the experience requirements for licensure under G.S. 53-243.05(c), enacted by Section 2 of this act.

SECTION 7. On or after July 1, 2003, any individual mortgage banker, mortgage broker, or loan officer desiring to renew a license shall offer evidence satisfactory to the Commissioner that he or she has complied with the continuing professional education requirements approved by the Commissioner pursuant to G.S. 53-243.07, enacted by Section 2 of this act.

SECTION 8. Unless inconsistent with the provisions of Article 19 of Chapter 53 of the General Statutes as enacted in Section 2 of this act, the rules adopted pursuant to former Article 19 of Chapter 53 of the General Statutes governing mortgage bankers and brokers shall remain in effect until superseded by rules adopted under Article 19A of Chapter 53 of the General Statutes as enacted in Section 2 of this act.

SECTION 9. The Legislative Research Commission may study the implementation and enforcement of this act, and the Act to Prohibit Predatory Lending, enacted in the 1999 Session of the General Assembly, (S.L. 1999-332), to determine whether they have successfully reduced predatory lending practices, and whether further reforms may be necessary or appropriate. The Commission may report its findings and recommendations to the 2001 General Assembly, 2002 Regular Session, or to the 2003 General Assembly.

SECTION 10. Sections 1 through 8 of this act become effective July 1, 2002. The remainder of this act is effective when it becomes law.

HOUSE BILL 1106:
Enact Mortgage Lending Act.

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Rep. Church
Date:	July 17, 2001	**Summary by:**	O. Walker Reagan,
Version:	H1106-CSRO-32 [v.5]		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1106 would repeal the existing registration of mortgage bankers and brokers and replace it with a licensing law for mortgage lenders and mortgage brokers.***

CURRENT LAW: Current law requires mortgage bankers and mortgage brokers to register with the Commissioner of Banks unless the banker or broker is exempt from the law. The registration requirements do not provide for uniform standards, education, or experience. The law does not require any surety bond and only gives the Commissioner limited authority to enforce the prohibitions under the statute.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1106 repeals the existing registration law, Article 19 of Chapter 53, and replaces it with a licensing statute. Mortgage bankers, mortgage brokers, and loan officers are required to be licensed before engaging in the business of mortgage lending or mortgage brokering, unless exempt. The bill exempts from the provisions of the bill depository institutions (banks, wholly owned subsidiaries of banks, savings and loans, credit unions), life insurance companies for mortgage lending purposes only, governmental lenders, nonprofits who make mortgage loans, persons who make no more than 5 loans a year, and real estate brokers who do not receive compensation for making loans.

To be licensed, an applicant must show evidence of financial responsibility (bonding), branch office information, evidence of employee training and experience, legal corporate organization, and pay the necessary fees. The Commissioner shall license any person whose qualifications, experience, business history, and credit history are satisfactory. A loan officer must be 18 and completed within the previous 3 years an approved mortgage lending fundamentals course. A mortgage broker or banker must have at least 3 years of residential lending experience. The financial responsibility requirements are a surety bond of $150,000 for mortgage bankers and $50,000 for mortgage brokers. Licenses must be renewed annually. The Commissioner is also directed to adopt rules for continuing education for mortgage bankers, brokers and loan officers, not to exceed 8 hours per year.

The bill also requires each mortgage broker and banker to designate a managing principal for all offices and a separate branch manager for each branch office. The bill also specifies record keeping and reporting requirements, and branch offices requirements. The new G.S. 53-243.10 specifies the mortgage broker's duties to include safeguarding borrowers money, acting with reasonable skill, care and diligence, and making reasonable efforts to secure loans reasonably advantageous to the borrower. The bill details the specific prohibited activities (G.S. 53-243.11), including brokering a loan with prepayment penalties if the loan is $150,000 or less. The bill specifies the powers of the Commissioner for disciplinary action for licensing violations including revocation of licenses and civil fines for violations. (G.S. 53-243.12).

G.S. 53-243.14 makes it a Class I felony to engage in mortgage brokering or mortgage banking, unless exempted, without being licensed.

G.S. 53-243.05(e) and (h), and G.S. 53-243.06, set out the various fees to be charged for th different licenses and branch offices.

Section 5 of the bill requires all persons engaged in mortgage brokerage or mortgage banking business exempt from the licensing requirements under this bill to register with the Commissioner or be subject to a civil fine of $250.

Section 6 provides for the transition provisions to allow any person registered as a mortgage banker or broker under existing law to automatically be eligible for licensure under this new law. Also within 90 days of the effective date of this law, a person can be licensed as a loan officer upon filing a sworn application. A qualified lender, within 90 days of the effective date, can also license all loan officers, managing principals, and principal and branch offices without having to meet the licensure requirements of the act by filing a sworn statement.

Section 9 authorizes the Legislative Research Commission to study the effects of this bill and the Predatory Lending Act and to report any recommendations to the 2002 Session of the General Assembly.

EFFECTIVE DATE: Sections 1 through 8 of the bill become effective July 1, 2002. The remainder of the bill is effective when the bill becomes law.

SPECIAL NOTES: The bill authorizes the Commissioner to charge licensing fees and therefore requires the bill to be rereferred to the Committee on Finance and therefore the bill is not subject to the April 26th crossover deadline. The bill as introduced was given a favorable assessment report by the Legislative Committee on New Licensing Boards.

SUMMARY OF HB. 1106

Short Title: Enact Mortgage Lending Act

Prepared for Reps. Church, Morgan, Cole, Brubaker, and Hill

Background

The current mortgage banking and broker registration law was first enacted in 1987. While it was designed to address abuses in the industry, with the tremendous growth in independent mortgage brokers and nonbank mortgage companies, the law has proven to be far less effective than anticipated.

House Bill 1106 was initiated by the mortgage banking and broker industry as an alternate to the current registration act. It was submitted to the Commissioner of Banks for review, and the Commissioner's comments and recommendations were incorporated into the bill. Therefore, it has the support of his Office.

Summary of the Bill

Section 1: Repeals current Art. 19 of Chapter 53.

Section 2: Substitutes a new Article 19A which provides for a comprehensive revision of current law, including individual licensure of mortgage lenders and brokers, requires supervision by managing principals, establishes continuing educational and bond requirements, expands prohibited activities and practices, and provides for record keeping and trust or escrow accounts.

Section 3: Makes a conforming change to privacy of investigations by the Commissioner of Banks.

Section 4: Makes a conforming change to the provisions for general loan brokers under Chapter 66.

Sections 5 through 6.(c): Makes provisions to grandfather existing registrants provided that they act within prescribed times, and provides other transition periods.

Section 7: Provides that after July 1, 2003, all licensees under the Act must meet continuing educational requirements.

Section8: Provides an effective date of July 1, 2001.

Highlights of the Bill

- Key terms are defined and exemptions from licensure are narrowed [G.S. § 53-243.01(1) - (19)]

- Qualification for a license are more thoroughly defined [G.S. § 53-243.05]

- License renewal, termination and continuing education (to be provided by rule) are expressly established [G.S. §§ 53-243.06 and .07]

- Provides that licensees must act under the supervision of a managing principal and each office must have a branch manager [G.S. §
- 53-243.08]

- Nine "prohibited activities" are defined, including new prohibitions against charging rates and fees prohibited by Chapter 24 of the General Statutes, and failure to pay certain third party providers [G.S. § 53-243.10]

- It provides the Commissioner of Banks with disciplinary authority, including suspension, revocation, and license denial authority, as well as the authority to impose civil money penalties of up to $10,000 per violation - - all subject to notice and opportunity for hearing consistent with the NC Administrative Procedures Act. The Commissioner also has the authority, under appropriate circumstances, to investigate and examine a licensee under the Act [G.S. § 53-243.11]

- Violation of the Act does not invalidate a loan transaction; however, it does not limit any rights a borrow may have to pursue any available remedy or to redress a loss suffered as the result of a violation of the Act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1106
PROPOSED COMMITTEE SUBSTITUTE H1106-PCS9315-RO-32

Short Title: Enact Mortgage Lending Act. (Public)

Sponsors:

Referred to:

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO ENACT THE MORTGAGE LENDING ACT TO GOVERN MORTGAGE BROKERS AND BANKERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 53 of the General Statutes is repealed.

SECTION 2. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 19A.

"Mortgage Lending Act.

"**§ 53-243.01. Definitions.**

The following definitions apply in this Article:

(1) Act as a mortgage broker. – The act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, of accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, engaging in tablefunding of mortgage loans, or generating leads or referrals for mortgage loans through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

(2) Act as a mortgage lender. – The act of engaging in the business of making mortgage loans for compensation or gain.

(3) Branch manager. – The individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker.

(4) Branch office. – An office of the licensee acting as a mortgage broker or mortgage banker that is separate and distinct from the licensee's principal office.

(5) Commissioner. – The North Carolina Commissioner of Banks and the Commissioner's designees. For purposes of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.

(6) Control. – The power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, association, or trust.

(7) Employee. – An individual, who has an employment relationship, acknowledged by both the individual and the mortgage broker or mortgage banker and is treated as an employee for purposes of compliance with the federal income tax laws.

(8) Exempt person. – The term includes any of the following:

a. Any agency of the federal government or any state or municipal government granting first mortgage loans under specific authority of the laws of any state or the United States.

b. Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer.

c. Any lender authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system, savings institution, or credit union, under the laws of the United States, this State, or any other state; and with regard to provisions concerning mortgage lenders, life insurance companies licensed to do business in North Carolina.

d. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan.

e. Any officer or employee of an exempt person described in sub-subdivision c. of this subdivision when acting in the scope of employment for the exempt person.

f. Any person who, as seller, receives in one calendar year no more than five mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation.

g. The North Carolina Housing Finance Agency as established by Article 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Article 122D of the General Statutes.

h. Any nonprofit corporation qualifying under section 501(c)(3) of the Internal Revenue Code which makes mortgage loans to promote home ownership or home improvements for the disadvantaged, provided that such corporation is not primarily in the business of soliciting or brokering mortgage loans.

(9) Licensee. – A loan officer, mortgage broker, or mortgage banker who is licensed pursuant to this Article.

(10) Loan officer. – An individual who, in exchange for compensation as an employee of another person, accepts or offers to accept applications for mortgage loans. The definition of loan officer shall not include any exempt person described in sub-subdivision (8)b. of this section.

(11) Make a mortgage loan. – To close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan.

(12) Managing principal. – A person who meets the requirements of G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker.

(13) Mortgage banker. – A person who acts as a mortgage lender as that term is defined in subdivision (2) of this section. However, the definition does not include a person who acts as a mortgage lender only in tablefunding transactions.

(14) Mortgage broker. – A person who acts as a mortgage broker as that term is defined in subdivision (1) of this section.

(15) Mortgage loan. – A loan made to a natural person or persons primarily for personal, family, or household use, primarily secured by either a mortgage or a deed of trust on residential real property located in North Carolina.

(16) Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities however organized.

(17) Qualified lender. – A person who is engaged as a mortgage lender in North Carolina and is either a supervised or a nonsupervised institution, as these terms are defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.

(18) Qualified person. – A person who is employed as a registered loan officer by a mortgage broker, qualified lender, or mortgage banker or who is an officer, director, shareholder, partner, member, or manager of a registered mortgage broker, qualified lender, or mortgage banker.

(19) Residential real property. – Real property located in the State of North Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units.

(20) Tablefunding. – A transaction where a licensee closes a loan in its own name with funds provided by others and the loan is assigned simultaneously to the mortgage lender providing the funding within one business day of the funding of the loan.

"**§ 53-243.02. License required; licensee records.**

(a) Other than an exempt person, it is unlawful for any person in this State to act as a mortgage broker or mortgage banker, or directly or indirectly to engage in the business of a mortgage broker or a mortgage banker, without first obtaining a license from the Commissioner under the provisions of this Article.

(b) It is unlawful for any natural person to engage in the solicitation and acceptance of applications for mortgage loans without first obtaining a license as a loan officer issued by the Commissioner under the provisions of this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a loan officer unless the loan officer is licensed as a loan officer under this Article. Exempt persons shall not be subject to this subsection.

(c) The license of a loan officer is not effective during any period when that person is not employed by a mortgage broker or mortgage banker licensed under this Article. When a loan officer ceases to be employed by a mortgage broker or mortgage banker licensed under this Article, the loan officer and the mortgage broker or mortgage banker licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. A loan officer shall not be employed simultaneously by more than one mortgage broker or mortgage banker licensed under this Article.

(d) Each mortgage broker and mortgage banker licensed under this Article shall maintain on file with the Commissioner a list of all loan officers who are employed with the mortgage broker or mortgage banker.

(e) No person, other than an exempt person, shall hold himself or herself out as a mortgage banker, a mortgage broker, or loan officer unless such person is licensed in accordance with this Article.

"**§ 53-243.03. Review by Banking Commission.**

The Banking Commission may review any rule, regulation, order, or article of the Commissioner adopted pursuant to or with respect to the provisions of this Article, and any person aggrieved by any rule, regulation, order, or article may appeal to the Banking Commission for review upon giving notice in writing 20 days after the rule, regulation, order, or article that is the subject of the complaint is adopted or issued. Notwithstanding any other provision of law, any party aggrieved by a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92.

"**§ 53-243.04. Rule-making authority.**

The Banking Commission may adopt any rules when it deems necessary to carry out the provisions of this Article, to provide for the protection of the borrowing public, and to instruct mortgage lenders or brokers in interpreting this Article.

"**§ 53-243.05. Qualifications for licensure; issuance.**

(a) Any person, other than an exempt person, desiring to obtain a license as a loan officer, mortgage banker, or mortgage broker shall make written application for licensure to the Commissioner on forms prescribed by the Commissioner. In accordance with rules adopted by the Commission, the application shall contain any information the Commissioner deems necessary regarding the following:

(1) The applicant's name and address and social security number.

(2) The applicant's form and place of organization, if applicable.

(3) The applicant's proposed method of and locations for doing business, if applicable.

(4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including: (i) a description of any injunction or administrative order by any state or federal authority to which the person is or has been subject; (ii) a conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the residential mortgage lending business; (iii) any felony convictions.

(5) With respect to an application for licensing as a mortgage banker or broker, the applicant's financial condition, credit history, and business history; and with respect to the application for licensing as a loan officer, the applicant's credit history and business history.

(b) In addition to the requirements imposed by the Commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:

(1) Be at least 18 years of age.

(2) Have satisfactorily completed, within the three years immediately preceding the date application is made, a mortgage lending fundamentals course approved by the Commissioner. The course shall consist of at least eight hours of classroom instruction in subjects related to mortgage lending approved by the Commissioner. In addition, the applicant shall have satisfactorily completed a written examination approved by the Commissioner or possess residential mortgage lending education or experience in residential mortgage lending transactions that the Commissioner deems equivalent to the course.

(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

(1) If the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other

experience or competency requirements as the Commissioner may impose by rule.

(2) If the applicant is a general or limited partnership, at least one of its general partners shall have the experience as described under subdivision (1) of this subsection.

(3) If the applicant is a corporation, at least one of its principal officers shall have the experience as described under subdivision (1) of this subsection.

(4) If the applicant is a limited liability company, at least one of its managers shall have the experience as described under subdivision (1) of this subsection.

(d) Each applicant shall identify one person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.

(e) Every applicant for initial licensure shall pay a filing fee of one thousand dollars ($1,000) for licensure as a mortgage broker or mortgage banker, or fifty dollars ($50.00) for licensure as a loan officer.

(f) A mortgage banker shall post a surety bond in the amount of one hundred fifty thousand dollars ($150,000) and a mortgage broker shall post a surety bond in the amount of fifty thousand dollars ($50,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee under this Article. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Consumer claims shall be given priority in recovering from the bond. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond that is required. An audited financial statement showing a net worth of two hundred fifty thousand dollars ($250,000) or more shall be accepted in lieu of any bond required.

(g) Any partner, member, shareholder, officer, or other person occupying a similar position with an applicant at the time of the application and who meets the requirements under subsection (c) of this section shall be issued a license as a loan officer without further action under this Article.

(h) Each principal office and each branch office of a mortgage broker or mortgage banker licensed under the provisions of this article shall be issued a separate license. A licensed mortgage broker or mortgage banker shall file with the commissioner an application on a form prescribed by the Commissioner that identifies the address of the principal office and each branch office and branch manager. A filing fee of one hundred dollars ($100.00) shall be assessed by the Commissioner for each office issued a license.

(i) If the Commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character, and general fitness of the

applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly, the Commissioner shall issue a license to the applicant.

"**§ 53-243.06. License renewal; termination.**

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 30th day of June following issuance or on any other date that the Commissioner may determine. The license shall become invalid after that date unless renewed. A license may be renewed 45 days prior to the expiration date by paying to the Commissioner a renewal fee as follows:

(1) Licensed mortgage bankers shall pay an annual fee of five hundred dollars ($500.00) and one hundred dollars ($100.00) for each branch office.

(2) Licensed mortgage brokers shall pay an annual fee of five hundred dollars ($500.00) and one hundred dollars ($100.00) for each branch office.

(3) Licensed loan officers shall pay an annual fee of fifty dollars ($50.00).

(b) If a license is not renewed prior to the applicable expiration date, then an additional two hundred fifty dollars ($250.00) in addition to the renewal fee under subsection (a) of this section shall be assessed as a late fee to any renewal. In the event a licensee fails to obtain a reinstatement of the license within 90 days after the date the license expires, the Commissioner may require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(c) Licenses issued under this Article are not assignable. Control of a licensee shall not be acquired through a stock purchase or other device without the prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to G.S. 53-243.11 are applicable to the acquiring person.

"**§ 53-243.07. Continuing education.**

(a) As a condition of license renewal, the Commissioner may adopt rules to require continuing education of licensees under this Article for the purpose of enhancing the professional competence and professional responsibility of mortgage bankers, mortgage brokers, and loan officers. The rules may include criteria for:

(1) The content of continuing education courses.

(2) Accreditation of continuing education sponsors and programs.

(3) Accreditation of videotape or other audiovisual programs.

(4) Computation of credit.

(5) Special cases and exemptions.

(6) General compliance procedures.

(7) Sanctions for noncompliance.

(b) Annual continuing professional education requirements shall be determined by the Commissioner. However, the requirements shall not exceed eight credit hours within a one-year period.

"**§ 53-243.08. Managing principals and branch managers.**

Each mortgage broker or mortgage banker licensed under this Article shall have a managing principal who operates the business under that person's full charge, control, and supervision. Each branch office of a mortgage broker or mortgage banker licensed under this Article shall have a branch manager who meets the requirements under G.S. 53-243.05(c). The managing principal for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its managing principal or branch manager designated for each branch. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.11 until the licensee complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this Article.

"**§ 53-243.09. Offices; address changes; display of license.**

(a) Each mortgage broker licensee shall maintain and transact business from a principal place of business in this State. A principal place of business in this State shall consist of at least one enclosed room or building of stationary construction in which negotiations of mortgage loan transactions of others may be conducted and carried on in privacy and in which all of the books, records, and files pertaining to mortgage loan transactions relating to borrowers in this State are maintained. However, the Commissioner may, by rule, impose terms and conditions under which the records and files may be maintained outside of this State.

(b) A mortgage banker or mortgage broker licensee shall report any change of address of the principal place of business or any branch office within 15 days after the change.

(c) Each mortgage broker or mortgage banker licensed under this Article shall display in plain view the certificate of licensure issued by the Commissioner in its principal office and in each branch office. Each loan officer licensed under this Article shall display in each branch office in which the officer acts as a loan officer the certificate of licensure issued by the Commissioner.

"**§ 53-243.10. Mortgage broker duties.**

A mortgage broker, including any mortgage broker licensee and any person required to be licensed as a mortgage broker under this Article, shall, in addition to duties imposed by other statutes or at common law:

(1) Safeguard and account for any money handled for the borrower;

(2) Follow reasonable and lawful instructions from the borrower;

(3) Act with reasonable skill, care, and diligence; and

(4) Make reasonable efforts, with lenders with whom the broker regularly does business to secure a loan that is reasonably advantageous to the

borrower considering all the circumstances, including the rates, charges, and repayment terms of the loan and the loan options for which the borrower qualifies with such lenders.

"**§ 53-243.11. Prohibited activities.**

In addition to the activities prohibited under other provisions of this Article, it shall be unlawful for any person in the course of any mortgage loan transaction:

(1) To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.

(2) To refuse improperly to issue a satisfaction of a mortgage.

(3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage banker, broker, or loan officer is not entitled to retain under the circumstances.

(4) To pay, receive, or collect in whole or in part any commission, fee, or other compensation for brokering a mortgage loan in violation of this Article, including a mortgage loan brokered by any unlicensed person other than an exempt person.

(5) To charge or collect any fee or rate of interest or to make or broker any mortgage loan with terms or conditions or in a manner contrary to the provisions of Chapter 24 of the General Statutes.

(6) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants.

(7) To fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.

(8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person, in connection with the brokering or making of, or purchase or sale of, any mortgage loan.

(9) To fail promptly to pay when due reasonable fees to a licensed appraiser for appraisal services that are:

a. Requested from the appraiser in writing by the mortgage broker or mortgage banker or an employee of the mortgage broker or mortgage banker; and

b. Performed by the appraiser in connection with the origination or closing of a mortgage loan for a customer or the mortgage broker or mortgage banker.

(10) To broker a mortgage loan which contains a prepayment penalty if the principal amount of the loan is one hundred fifty thousand dollars ($150,000) or less.

"**§ 53-243.12. Disciplinary authority.**

(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee, if the Commissioner finds both of the following:

(1) That the order is in the public interest.

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, managing broker, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.

c. Has been convicted of any felony, or, within the past 10 years, has been convicted of any misdemeanor involving mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.

e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage broker or mortgage banker.

f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage or mortgage banking industry denying or revoking that person's license as a mortgage broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker.

g. Does not meet the qualifications, or the financial responsibility, character, or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.

h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or mortgage banker who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.

i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected.

(b) The Commissioner may, by order, summarily postpone or suspend the license of a licensee pending final determination of any proceeding under this section. Upon entering the order, the Commissioner shall promptly notify the applicant or licensee that the order has been entered and the reasons for the order. The Commissioner shall calendar a hearing within 15 days after the Commissioner receives a written request for a hearing. If a licensee does not request a hearing and the Commissioner does not request a hearing, the order will remain in effect until it is modified or vacated by the Commissioner. If a hearing is requested or ordered by the Commissioner, after notice of and opportunity for hearing, the Commissioner may modify or vacate the order or extend it until final determination.

(c) The Commissioner may, by order, impose a civil penalty upon a licensee or any partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee for any violation of this Article. The civil penalty shall not exceed ten thousand dollars ($10,000) for each violation of this Article by a mortgage broker or mortgage banker. The Commissioner may impose a civil penalty of up to ten thousand dollars ($10,000) for each violation of this Article by a person other than a licensee or exempt person.

(d) In addition to other powers under this Article, upon finding that any action of a person is in violation of this Article, the Commissioner may order the person to cease from the prohibited action. If the person subject to the order fails to appeal the order of the Commissioner in accordance with G.S. 53-243.03, or if the person appeals and the appeal is denied or dismissed, and the person continues to engage in the prohibited action in violation of the Commissioner's order, the person shall be subject to a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation of the Commissioner's order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a licensee for the licensee's failure to comply with an order of the Commissioner.

(e) Unless otherwise provided, all actions and hearings under this Article shall be governed by Chapter 150B of the General Statutes.

(f) When a licensee is accused of any act, omission, or misconduct that would subject the licensee to disciplinary action, the licensee, with the consent and approval of

the Commissioner, may surrender the license and all the rights and privileges pertaining to it for a period of time established by the Commissioner. A person who surrenders a license shall not be eligible for or submit any application for licensure under this Article.

(g) If the Commissioner has reasonable grounds to believe that a licensee or other person has violated the provisions of this Article or that facts exist that would be the basis for an order against a licensee or other person, the Commissioner may at any time, either personally or by a person duly designated by the Commissioner, investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of any licensee or other person relating to the complaint or matter under investigation. The reasonable cost of this investigation or examination shall be charged against the licensee.

(h) The Commissioner may issue subpoenas to require the attendance of and to examine under oath all persons whose testimony the Commissioner deems relative to the person's business.

(i) The Commissioner may from time to time, at the expense of the Commissioner's office, conduct routine examinations of the books and records of any licensee in order to determine the compliance with this Article and any rules adopted pursuant to the authority of G.S. 53-243.04.

(j) In addition to the rights described under this section, the Commissioner may require a licensee to pay to a borrower or other individual any amounts received by the licensee or its employees in violation of Chapter 24 of the General Statutes.

(k) If the Commissioner finds that the managing principal, branch manager, or loan officer of a licensee had knowledge or reasonably should have had knowledge of, or participated in, any activity that results in the entry of an order under this section suspending or withdrawing the license of a licensee, the Commissioner may prohibit the managing broker or loan officer from serving as a managing broker or loan officer for any period of time the Commissioner deems necessary.

"**§ 53-243.13. Records; escrow funds or trust accounts.**

(a) The Commissioner shall keep a list of all applicants for licensure under this Article that includes the date of application, name, and place of residence and whether the license was granted or refused.

(b) The Commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective loan officers and a roster of exempt persons required to file a notice under G.S. 53-243.02. The rosters shall: (i) be kept on file in the office of the Commissioner; (ii) contain information regarding all orders or other action taken against the licensees, loan officers, and other persons; and (iii) be open to public inspection.

(c) Every licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed in rules adopted by the Commissioner. All records shall be preserved for three years unless the Commissioner, by rule, prescribes otherwise for particular types of records. The recordkeeping

requirements imposed by the Commissioner or this subsection shall not be greater than those imposed by applicable federal law.

(d) If the information contained in any document filed with the Commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall promptly file a correcting amendment to the information contained in the document.

(e) A licensee shall maintain in a segregated escrow fund or trust account any funds which come into the licensee's possession, but which are not the licensee's property and which the licensee is not entitled to retain under the circumstances. The escrow fund or trust account shall be held on deposit in a federally insured financial institution.

"**§ 53-243.14. Criminal penalty.**

A violation of G.S. 53-243.02 is a Class I felony. Each transaction involving the unlawful making or brokering of a mortgage loan is a separate offense."

SECTION 3. G.S. 53-99(b)(7b) reads as rewritten:

"(7b) Records of examinations and investigations of registrants under the Mortgage ~~Bankers and Brokers Act, Article 19 of this Chapter;~~ Lending Act, Article 19A of this Chapter;".

SECTION 4. G.S. 66-106 reads as rewritten:

"**§ 66-106. Definitions.**

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

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

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

(b) ~~Provided, that~~ Except for mortgage loans as defined in G.S. 53-243.01(15), this Article shall not apply to any party approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, a National Mortgage Association or any federal agency; nor to any 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 insurance company registered with and licensed by the North Carolina Insurance Commissioner; nor, with respect to residential mortgage loans, to any residential mortgage banker or mortgage broker ~~registered with the Commissioner of Banks pursuant to Article 19 of Chapter 53 or exempt from such registration pursuant to G.S. 53-234(6);~~ licensed pursuant to Article 19A of Chapter 53 of the General Statutes or exempt from licensure pursuant to G.S. 53-243.01(8) and G.S. 53-243.02; nor to any attorney-at-law, public accountant, or dealer registered under the North Carolina Securities Act, acting in the professional capacity for which such 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."

SECTION 5.(a) All exempt persons described in G.S. 53-243.01(8), enacted by Section 2 of this act, who are engaged in the mortgage brokerage or mortgage banking business shall be required to file with the Commissioner, within 90 days of the effective date of this act or upon the commencement of mortgage brokerage or mortgage banking business in this State, a statement on a form prescribed by the Commissioner setting forth the name of the respective exempt person, the basis of the exempt status of the exempt person, the principal business address of the exempt person, and the State or federal regulatory authority responsible for its supervision, examination, or regulation, if any.

SECTION 5.(b) In addition to any other measures the exempt person may be subject to under Article 19A of Chapter 53 of the General Statutes, enacted by Section 2 of this act, failure by an exempt person to file the required form shall not affect the exempt status of the person. However, the entity shall be subject to a civil penalty set by the Commissioner that shall not exceed the sum of two hundred fifty dollars ($250.00) for each year the form is not filed. No person required to file under this section may transact business in this State as a mortgage banker or mortgage broker unless the person has filed the prescribed form with the Commissioner in accordance with this section.

SECTION 6.(a) Any person who, on the effective date of this act, is engaged in business and registered as a mortgage broker or mortgage banker shall not be required to file an application under G.S. 53-243.05, enacted by Section 2 of this act, and shall be entitled to issuance of a license under Article 19A of Chapter 53 of the General Statutes, enacted by Section 2 of this act.

SECTION 6.(b) Any qualified person who files, within 90 days after this act becomes effective, a sworn application with the Commissioner stating that he or she has met the definition of a qualified person under G.S. 53-243.01(18), enacted by Section 2 of this act, including a statement that he or she has not been convicted of any felony or any misdemeanor involving moral turpitude, shall be issued a license as a loan officer from the Commissioner without having to meet the training requirements for licensure under G.S. 53-243.05(b), enacted by Section 2 of this act.

SECTION 6.(c) Any qualified lender who files, within 90 days after this act becomes effective, a sworn statement with the Commissioner that consists of a list of its loan officers in North Carolina, the addresses of its principal office and each of its branches, and the names and addresses of the managing principal and each of its branch managers and states that no employee, loan officer, or individual with a controlling interest in the lender has been convicted of any felony or any misdemeanor involving moral turpitude, shall be issued a license as a mortgage banker from the Commissioner without having to meet the experience requirements for licensure under G.S. 53-243.05(c), enacted by Section 2 of this act.

SECTION 7. On or after July 1, 2003, any individual mortgage banker, mortgage broker, or loan officer desiring to renew a license shall offer evidence satisfactory to the Commissioner that he or she has complied with the continuing professional education requirements approved by the Commissioner pursuant to G.S. 53-243.07, enacted by Section 2 of this act.

SECTION 8. Unless inconsistent with the provisions of Article 19 of Chapter 53 of the General Statutes as enacted in Section 2 of this act, the rules adopted pursuant to former Article 19 of Chapter 53 of the General Statutes governing mortgage bankers and brokers shall remain in effect until superseded by rules adopted under Article 19A of Chapter 53 of the General Statutes as enacted in Section 2 of this act.

SECTION 9. The Legislative Research Commission may study the implementation and enforcement of this act, and the Act to Prohibit Predatory Lending enacted in the 1999 Session of the General Assembly, (S.L. 1999-332), to determine whether they have successfully reduced predatory lending practices and whether further reforms may be necessary or appropriate. The Commission may report its findings and recommendations to the 2001 General Assembly, 2002 Regular Session, or to the 2003 General Assembly.

SECTION 10. Sections 1 through 8 of this act become effective July 1, 2002. The remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — JULY 18, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Canada	MFSS, PA
Michael B. Thompson	Dominion NC Power
Nicole Rosenberry	NC EQUITY
Margaret Westbrook	Kennedy Covington
David Beck	Coalition for Responsible Lending
[illegible]	NC Credit Union [illegible]
Helen Moone	CCL
Rob Schofield	NC Justice Ctr
Jack Kimbrell	NC Senior Tar Heel Legislature
Larry Heckner	Household Financial Group
Brad Lovin	NC MANUFactured Housing [illegible]

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — **Name of Committee**

JULY 18, 2001 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Ward	Pay Day Cash 4141 Trotter Ridge Rd Durham, NC 27707
Terry Sullivan	Pay Day Cash 3060-C Owen Dr Fayetteville NC
Vernetta Fields	Check n' Go 810 Spring Lane Sanford N.C.
Ann Robinson	Check N Go 610 Cedar Creek Road Fayetteville N.C 28303
Cam Cruz	RD MHL
DAVID BARNES	Poyner + Spruill LLP
Mike Calhoun	Self-Help
Mont Logan	Moore & Van Allen
John McMillan	MF&S P.A.
Peter Keber	Bank of America
Paul Stock	at Bankers Assn.

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — JULY 18, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Carlton	Carlton & Alexander, PLLC
Ronnie Lamm, JR	CitiFinancial/Citi Group Raf. N.C

FINANCIAL INSTITUTIONS
JULY 25, 2001
ROOM 643
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN

COMMITTEE ASSISTANTS – DIXIE EPPS AND JOYCE FULLER

SGT.-AT-ARMS –SHANNON BATTEN, JACK DOSSENBACH, THOMAS WILDER AND JAMES WORTH

PAGES –LAUREN CHEEK, ERICKA MADOX, JENNIFER ODOM, AND LAUREN PARNELL

H.B. 1071 – PROCEDURE FOR DEFERRED DEPOSIT CHECKS

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
JULY 25, 2001

The **House Committee on Financial Institutions** met on Wednesday, July 25,2001, at 10:00 a.m. in room 642 of the State Legislative Office Building. The meeting was called to order by Co-Chairman Richard Morgan. Rep. Morgan recognized the Committee Counsel, Committee Assistants, the Pages and the Sgt-at-Arms who were assigned to the meeting. The following members of the committee were present: Co-Chairmen Church and Morgan; Vice Chair McAllister; Reps. Buchanan, Cole, Culpepper, Dockham, Gibson, Harrington, Howard, McLawhorn, McMahan, Michaux, Miller, Smith, Wainwright and Walend.

Co-Chairman Morgan moved that the Committee Substitute for H.B.#1071 be adopted for discussion. The Proposed Committee Substitute would extend the July 31, 2001 sunset on the delayed deposit provisions of the Check Cashier act, until July 31, 2003, and would add additional consumer protection provisions for delayed deposit transactions. This version of the bill adds several provisions designed to prevent out-of-state lenders from circumventing North Carolina law. The bill also increases the licensing fees for licensees who offer deferred deposit check cashing services.

Rep. Morgan recognized the Commissioner of Banks, Mr. Hal Lingerfelt, who came forward and said that he and his staff were available to answer any questions that the committee may have regarding this bill. The Attorney General, Roy Cooper, was recognized and. he stated that the industry, as currently structured, needs significant reforms in order to better protect consumers. He also said that North Carolina consumers are better off with state laws that close the national bank loophole and ensure people have access to short-term credit for small amounts. That credit must be on fair terms that allow consumers to repay their debts. We don't want to shut down the industry – we want to change the rules so consumers can repay their debts and get back on their feet. He urged them to reform the industry: stop rollovers, extend the loan term and create a real way to report how much consumers owe.

Speaking for greater reform were: Skip Alston, NAACP; Martin Eakes, Coalition for Responsible Lending; and Andrea Harris, N.C. Institute for Minority Economic Development. Speaking for the industry were: Steve Grow, President, N.C. Check Cashing Assoc; Billy Webster, Community Financial Services Assoc.; and Willie Green, Owner – Operator America Cash Express.

Rep. Morgan stated that this bill needed to be put into a Sub-Committee and he appointed the following to the committee: Reps. Smith, Chairman; Baddour, Harrington, Howard, Michaux and Wainwright.

There being no further business, Co-Chairman Morgan adjourned the meeting at 11:15 a.m.

Co-Chairman Walter Church, Sr.

Co-Chairman Richard Morgan

Joyce A. Fuller, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1071*
PROPOSED COMMITTEE SUBSTITUTE H1071-CSRU-73 [v.3]

7/16/2001 5:50:02 PM

Short Title: Procedure for Deferred Deposit Checks. (Public)

Sponsors:

Referred to:

April 10, 2001

A BILL TO BE ENTITLED

AN ACT TO FURTHER REGULATE DEFERRED DEPOSIT TRANSACTIONS BY PROVIDING ADDITIONAL CONSUMER PROTECTIONS AND DISCLOSURES, AND TO EXTEND THE SUNSET FOR THE DELAYED DEPOSIT PROVISIONS REGULATING CHECK-CASHING BUSINESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-275 reads as rewritten:

"**§ 53-275. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(1a) "Cash advance" means the amount of cash or its equivalent, whether paid by direct payment or by electronic credit or deposit, provided to a customer in a deferred deposit transaction.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration. "Check-cashing service" shall also mean any person or entity engaged in the business of making, originating, processing, arranging, or accepting or transmitting applications for, deferred deposit transactions, whether the transactions are done directly for its own account or in conjunction with, or as agent for, another person or entity.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.

(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a customer in return for a payment device and agrees, for consideration, to hold the

payment device for a period of days prior to deposit, presentment, or withdrawal.

(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.

(5a) "Payment device" means an electronic or written check, draft, money order, authorization for an electronic debit or withdrawal, or other electronic or written instrument or order for the transmission or payment of money or monetary value, whether or not the instrument is negotiable.

(6) "Person" means an individual, partnership, association, or corporation."

SECTION 2. G.S. 53-276 reads as rewritten:

"**§ 53-276. License required.**

No person or other entity may ~~engage in the business of cashing checks, drafts, or money orders for consideration~~ operate a check-cashing service without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a ~~check~~ check, electronic credit or deposit, or other currency equivalent instead of currency when cashing payment ~~instruments.~~ devices."

SECTION 3. G.S. 53-277 reads as rewritten:

"**§ 53-277. Exemptions.**

(a) This Article shall not apply to:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; ~~and~~ except that the following shall apply to deferred deposit transactions under G.S. 53-281 entered into directly between such an entity and a North Carolina resident to the extent these provisions apply to licensees:

a. G.S. 53-281(a), (b), (e), (f), (g), (h), (i), (j), (k) and (l).

b. G.S. 53-283(a)(3), (5), (7), (8), (9), (10), (11), and (12).

c. G.S. 53-283(b).

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars ($2.00) is charged for the service.

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

SECTION 4. G.S. 53-278 reads as rewritten:

"**§ 53-278. Application for license; investigation; application fee.**

(a) An application for licensure under this Article shall be in writing, under oath, and on a form prescribed by the Commissioner. The application shall set forth all of the following:

(1) The name and address of the applicant.

(2) If the applicant is a firm or partnership, the name and address of each member of the firm or partnership.

(3) If the applicant is a corporation, the name and address of each officer, director, registered agent, and principal.

(4) The addresses of the locations of the business to be licensed.

(5) Other information concerning the financial responsibility, background experience, and activities of the applicant and its members, officers, directors, and principals as the Commissioner requires.

(b) The Commissioner may make such investigations as the Commissioner deems necessary to determine if the applicant has complied with all applicable provisions of this Article and State and federal law.

(c) The application shall be accompanied by payment of a two hundred fifty dollar ($250.00) application fee and a five hundred dollar ($500.00) investigation fee. If the applicant intends to offer deferred deposit transactions under G.S. 53-281, the application fee shall be five hundred dollars ($500.00) and the investigation fee shall be one thousand dollars ($1,000). These fees are not refundable or abatable, but, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part thereof.

(d) Licenses shall expire annually and may be renewed upon payment of a license fee of two hundred fifty dollars ($250.00) plus a fifty dollar ($50.00) fee for each branch location certificate issued under a license. For any licensee who offers deferred deposit transactions under G.S. 53-281, the renewal fee shall be five hundred dollars ($500.00) plus a two hundred fifty dollar ($250.00) fee for every branch location certificate.

(e) The Commissioner is authorized to allocate up to one-half the sums collected from application and licensing fees under this Article for consumer education and research, to be conducted by the Commissioner or another State agency, related to deferred deposit transaction services under G.S. 53-281. Consumer education shall include the preparation and dissemination of informational materials for customers of licensees."

SECTION 5. G.S. 53- 280 reads as rewritten:

"§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.

(a) Notwithstanding any other provision of law, no check-cashing business licensed under this Article shall directly or indirectly charge or collect fees or other consideration for check-cashing services in excess of the following:

(1) Three percent (3%) of the face amount of the check or five dollars ($5.00), whichever is greater, for checks issued by the federal

government, State government, or any agency of the State or federal government, or any county or municipality of this State.

(2) Ten percent (10%) of the face amount of the check or draft or five dollars ($5.00), whichever is greater, for personal ~~checks.~~checks or drafts.

(3) Five percent (5%) of the face amount of the check or five dollars ($5.00), whichever is greater, for all other checks, or for money orders.

(b) A licensee may not advance monies on the security of any check or draft unless the account from which the check or draft being presented is drawn is legitimate, open, and active. Except as provided by G.S. 53-281(a), any licensee who cashes a check or draft for a fee shall deposit the check or draft not later than three business days from the date the check or draft is cashed.

(c) A licensee shall ensure that in every location conducting business under a license issued under this Article, there is conspicuously posted and at all times displayed a notice stating the fees charged for cashing checks, drafts, and money orders. A licensee shall further ensure that notice of the fees currently charged at every location shall be filed with the Commissioner.

(d) A licensee shall endorse every check, draft, or money order presented by the licensee for payment in the name of the licensee. "

SECTION 6. G.S. 53-281 reads as rewritten:

"**§ 53-281. ~~(Expires July 31, 2001) Postdated or delayed~~ Deferred deposit ~~checks.~~transactions.**

(a) ~~A licensee may defer the deposit of a personal check cashed for a customer for up to 31 days pursuant to the provisions of this section.~~A deferred deposit transaction shall have a minimum term of 60 days from the date of the transaction.

(b) The face amount of any ~~postdated or delayed~~ deferred deposit ~~check~~ payment device cashed pursuant to this section shall not exceed three hundred dollars ($300.00).

(c) Each ~~postdated or delayed deposit check cashed by a licensee~~ deferred deposit transaction shall be documented by a written agreement that has been signed by the customer and the licensee. The licensee shall provide the customer with a copy of the agreement at the time it is executed. The written agreement shall contain a statement of the cash advance and the total amount of any fees charged, expressed both as a dollar amount and as an effective annual percentage rate ~~(APR).~~(APR) consistent with the requirements of the federal Truth in Lending Act. ~~The written agreement shall authorize the licensee to defer deposit of the personal check until a specific date not later than 31 days from the date the check is cashed.~~ The written agreement shall contain the following specific disclosures:

(1) The address and telephone number of the Office of the Commissioner of Banks with a statement that the licensee is licensed by the Commissioner of Banks and that the customer may file a complaint with the Commissioner if the customer believes the licensee has acted

improperly or unlawfully either in the transaction or in the collection process.

(2) That the customer may not be prosecuted for a worthless check violation if the check is returned for insufficient funds but the customer may be liable to the licensee for no more than one fifteen dollar ($15.00) worthless check fee.

(3) That the customer has the right to contact a consumer credit counseling service for counseling or a debt management repayment program if the customer is unable to pay on the deferred deposit transaction when it becomes due.

(4) That the customer has the right to rescind the delayed deposit transaction at no cost to the customer on or before the close of the following business day.

(d) A licensee shall not directly or indirectly charge any fee or other consideration for cashing a postdated or ~~delayed~~ deferred deposit ~~check~~ payment device in excess of fifteen per cent (15%) of the ~~face amount of the check.~~cash advance. A licensee shall not charge a customer any fees or other consideration related to a deferred deposit transaction unless specifically authorized by this Article.

(e) No ~~check~~ payment device cashed under the provisions of this section shall be repaid by the proceeds of another ~~check~~ payment device cashed by the same licensee or any affiliate of the licensee. A licensee shall not, for any additional consideration, renew or otherwise extend any postdated or ~~delayed check or withhold such check from deposit for any period beyond the time set forth in the written agreement with the customer.~~deferred payment device. A licensee may agree with its customer at any time to defer deposit or collection of a payment device without additional consideration.

(f) The customer shall have the right to rescind the delayed deposit transaction at no cost to the customer by giving written notice and returning the cash advanced on or before the close of the business day following the date of the deferred deposit transaction.

(g) After May 30, 2002, or upon the establishment by the Commissioner of the database described in G.S. 53-291, whichever occurs first, no licensee shall enter into a deferred deposit transaction with any customer who has had four deferred deposit transactions with any licensee or licensees within the previous twelve months. The licensee shall utilize the Commissioner's database described in G.S. 53-291 to establish compliance with this subsection. No licensee shall use or rely on a customer's certification or warranty as a means of compliance with this subsection.

(h) After May 30, 2002, or upon the establishment by the Commissioner of the database described in G.S. 53-291, whichever occurs first, no licensee shall enter into a deferred deposit transaction with any customer who would have in the aggregate, including the new transaction, more than three hundred dollars ($300.00) in deferred deposit transactions outstanding with any licensee or licensees. The licensee shall utilize the Commissioner's database to establish compliance with this subsection. No licensee

shall use or rely on a customer's certification or warranty as a means of compliance with this subsection.

(i) A licensee may collect a fee for a returned check pursuant to G.S. 25-3-506, but the fee shall not exceed fifteen dollars ($15.00) if the check is returned for insufficient funds. Only one fee may be collected or imposed per payment device.

(j) Any deferred deposit transaction made under the terms of this section shall be payable in a lump sum at the end of the term, except the customer, in the customer's sole discretion, may prepay the obligation in whole or in part without additional charge or fee prior to the end of the term.

(k) No licensee may make, originate, or arrange a deferred deposit transaction unless it maintains a place of business in this State.

(l) Notwithstanding any other provision of State law, no deferred deposit transaction agreement shall include any provision that waives any federal or State constitutional right of customers or limits the remedies of customers available in law or equity, whether acting individually or on behalf of others similarly situated, or their rights to civil discovery or appeal. In addition, no deferred deposit transaction agreement shall require a party to assert any claim against the party who prepared the agreement in a forum that is less convenient, more costly, or more dilatory for the resolution of the dispute than a judicial forum established in this State.

(m) The Commissioner shall prepare and distribute to all licensees a consumer information sheet or pamphlet to educate consumers about deferred deposit transaction. The informational materials shall include information on the responsible use of deferred deposit transactions, the costs of deferred deposit transactions, the limitations on the number of transactions, and the dollar amount of outstanding checks, the fact that the customer cannot be prosecuted for a deferred deposit insufficient funds check, the availability of consumer credit counseling services and debt repayment alternatives, and the procedure for filing consumer complaints with the Commissioner and other matters that may be helpful or beneficial to customers. The Commissioner's informational materials shall be made available by the licensee in a conspicuous place at each location that offers deferred deposit check-cashing and shall be presented to each customer before the deferred deposit transaction is executed. The costs of producing, printing, and distributing the materials shall be paid out of licensing fees collected from licensees.

(n) Effective July 31, 2002, this section shall only apply for purposes set forth in G.S. 53-277(a)(1). Also effective July 31, 2002, except as permitted under G.S. 53-277, the practice of making deferred deposit transactions shall be unlawful."

SECTION 7. G.S. 53-282 reads as rewritten:

"**§ 53-282. Record keeping; receipt requirements.**

(a) Every person required to be licensed under this Article shall maintain in its offices the following records:

(1) Delayed deposit payment devices currently held for deposit.

(2) A daily transaction journal, or an equivalent record, of both traditional check cashing and deferred deposit transactions.

(3) The written receipt required by G.S. 53-282(b).
(4) The customer agreement required by G.S. 53-281.
(5) A history card, or its equivalent, for each customer that reflects the time, date, and amount of each deferred deposit transaction for that customer during the most recent three-year period. The history card shall also state whether each deferred deposit payment device was deposited or redeemed for cash.
(6) Bank statements of the licensee. If the statements are not maintained on the premises of the licensee, the statements shall be made available immediately upon request of the Commissioner.

~~Every person required to be licensed under this Article~~ In addition to the records required in this subsection, each licensee shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require. The books, accounts, and records shall be maintained separate from any other business in which the person is engaged, and shall be retained for a period prescribed by the Commissioner.

(b) The licensee shall ensure that each customer cashing a ~~check~~ payment device shall be provided a receipt showing the name or trade name of the licensee, the transaction date, amount of the ~~check,~~ payment device, and the fee charged.

(c) The Commissioner may examine the books, accounts, and records in order to determine whether the person is complying with this Article and rules adopted pursuant thereto. The cost of the examination shall be paid by the licensee and shall be determined by applying the hourly rate for special examinations adopted by the State Banking Commission by regulation.

(d) The Commissioner may require licensees to submit any data or information, including information concerning deferred deposit transactions, which is reasonably available to the licensee and which the Commissioner deems necessary to the performance of his oversight duties."

SECTION 8. G.S. 53-283 reads as rewritten:

"**§ 53-283. Prohibited practices.**

(a) No person required to be licensed under this Article shall do any of the following:

(1) Charge fees in excess of those authorized under this ~~Article.~~Article, or originate, process, arrange, or accept or transmit applications for, deferred deposit transactions for which the fees exceed those permitted in this Article.
(2) Engage in the business of making loans of money, or extensions of credit, or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items, except as expressly provided by G.S. 53-281.
(3) Use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation.

(4) Conduct business at premises or locations other than locations licensed by the Commissioner.
(5) Engage in unfair, deceptive, or fraudulent practices.
(6) Cash a check, draft, or money order made payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the executive entity of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.
(7) Use or threaten to use the criminal process to collect on a payment device in a deferred deposit transaction that is returned or may be returned for insufficient funds.
(8) Make more than one deferred deposit transaction to a customer at the same time or accept or hold more than one deferred deposit payment device from a customer at the same time.
(9) In conjunction with another person or entity, originate, arrange or process, accept or transmit an application for a deferred deposit transaction that, except for federal preemption of State law, would be unlawful under this Article.
(10) Use any device or subterfuge to evade the requirements imposed on deferred deposit transactions by this Article.
(11) Obtain, or seek to obtain from a customer, a waiver of any of the rights or protections imposed by this Article.
(12) Fail to promptly, and in any event within 24 hours, report deferred deposit transactions to the database established by the Commissioner pursuant to section 53-291 when such database is operational.

(b) A violation of any of the provisions of this section or G. S. 53-281 shall constitute an unfair trade practice under G.S. 75-1.1."

SECTION 9. G.S. 53-284(a) reads as rewritten:

"**§ 53-284. Suspension and revocation of license; grounds; procedure.**

(a) The Commissioner may suspend or revoke any license or licenses issued pursuant to this Article if, after notice and opportunity for hearing, the Commissioner issues written findings that the licensee has engaged in any of the following conduct:
(1) Violated this Article or applicable State or federal law or rules.
(2) Made a false statement on the application for a license under this Article.
(3) Refused to permit investigation by the Commissioner authorized under this Article.
(4) Failed to comply with an order of the Commissioner.
(5) Demonstrated incompetency or untrustworthiness to engage in the business of check cashing.
(6) Been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

(7) Failed to comply with the Commissioner's request for assistance in resolving a complaint.

(8) Failed to cooperate with any investigation conducted by the Commissioner."

SECTION 10. G.S. 53-286 reads as rewritten:

"**§ 53-286. Civil penalties and restitution.**

(a) The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties shall not exceed one thousand dollars ($1,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers.

(b) Any deferred deposit transaction agreement, the making or collecting of which violates any provision of this Article, or rule adopted thereunder, except as a result of accidental or bona fide error of computation, shall be void, and the licensee or any other party acting by or through a licensee shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to the transaction."

SECTION 11. Article 22 of Chapter 53 is amended by adding the following sections to read:

"**§ 53-290. Arbitration agreements.**

(a) A deferred deposit transaction may not include terms that require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

(b) Subject to subsection (c) of this section, subsection (a) of this section shall not be construed as limiting the right of the customer and the lender to agree to arbitration or any other non-judicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

(c) No provision of any deferred deposit transaction shall be applied or interpreted so as to bar a customer from bringing an action in an appropriate court of competent jurisdiction pursuant to this Article or any other provision of law, for damages or other relief in connection with any alleged violation of this Article or any other law.

(d) Subsections (a) and (c) of this section shall not apply to the extent such State law limitations are preempted by federal law or regulation.

"**§ 53-291. Database for reporting of deferred deposit transactions.**

On or before May 1, 2002, the Commissioner shall implement a common database with real-time access through an Internet connection for check cashing services that offer deferred deposit transactions, as provided in this subsection. The Commissioner may contract with a private vendor at his discretion. The database must be accessible to the Commissioner and licensees to verify whether any deferred deposit transactions are outstanding for a particular customer. Licensees shall submit such data before entering into each deferred deposit transaction and upon the repayment of each deferred deposit

transaction in such format and with such identifying information as the Commissioner shall require, including the drawer's name, address, driver's license number, amount of the transaction, date of transaction, the date that the transaction is paid off, and such additional information as may be required by the Commissioner. The Commissioner may impose a fee not to exceed $.35 per transaction to access the database. A licensee may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying in good faith on information contained in the database. The Commissioner may adopt procedures to administer and enforce the provisions of this section and to assure that the database is used by licensees in accordance with this section.

"**§ 53-292. Choice of laws.**

A choice of law provision in a deferred deposit transaction contract which provides that the contract is to be interpreted pursuant to the laws of another state is against the public policy of this State and therefore void and unenforceable if the party against whom enforcement of the choice of law provisions is sought is a resident of this State at the time the contract is entered into. This provision may not be varied by agreement of the parties.

"**§ 53-293. Severability.**

The provisions of this Article shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of the Article shall not be affected thereby."

SECTION 12. Section 3 of S.L. 1997-391 reads as rewritten:

"Section 3. This act becomes effective ~~October 1, 1997, and the provisions of G.S. 53-281 shall expire on July 31, 2001.~~October 1, 1997."

SECTION 13. The Commissioner of Banks shall conduct appropriate examinations or surveys and report to the 2002 Session of the 2001 General Assembly on the practice of deferred deposit transactions. The Commissioner of Banks, in consultation with the Attorney General, shall report the Commissioner's findings and recommendations, including legislation, to the 2002 Session of the 2001 General Assembly on or before April 1, 2002.

SECTION 14. Sections 12, 13 and 14 of this act become effective July 31, 2001. The remainder of this act becomes effective October 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1071*
PROPOSED COMMITTEE SUBSTITUTE H1071-CSRU-73 [v.5]

7/24/2001 10:35:24 PM

Short Title: Procedure for Deferred Deposit Checks. (Public)

Sponsors:

Referred to:

April 10, 2001

A BILL TO BE ENTITLED

AN ACT TO FURTHER REGULATE DEFERRED DEPOSIT TRANSACTIONS BY PROVIDING ADDITIONAL CONSUMER PROTECTIONS AND DISCLOSURES, AND TO EXTEND THE SUNSET FOR THE DELAYED DEPOSIT PROVISIONS REGULATING CHECK-CASHING BUSINESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-275 reads as rewritten:

"**§ 53-275. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(1a) "Cash advance" means the amount of cash or its equivalent, whether paid by direct payment or by electronic credit or deposit, provided to a customer in a deferred deposit transaction.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration. "Check-cashing service" shall also mean any person or entity engaged in the business of making, originating, processing, arranging, or accepting or transmitting applications for, deferred deposit transactions, whether the transactions are done directly for its own account or in conjunction with, or as agent for, another person or entity.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.

(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a customer in return for a payment device and agrees, for consideration, to hold the

payment device for a period of days prior to deposit, presentment, or withdrawal.

(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.

(5a) "Payment device" means an electronic or written check, draft, money order, authorization for an electronic debit or withdrawal, or other electronic or written instrument or order for the transmission or payment of money or monetary value, whether or not the instrument is negotiable.

(6) "Person" means an individual, partnership, association, or corporation."

SECTION 2. G.S. 53-276 reads as rewritten:

"**§ 53-276. License required.**

No person or other entity may ~~engage in the business of cashing checks, drafts, or money orders for consideration~~ operate a check-cashing service without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a ~~check~~ check, electronic credit or deposit, or other currency equivalent instead of currency when cashing payment ~~instruments.~~ devices."

SECTION 3. G.S. 53-277 reads as rewritten:

"**§ 53-277. Exemptions.**

(a) This Article shall not apply to:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; ~~and~~ except that the following shall apply to deferred deposit transactions under G.S. 53-281 entered into directly between such an entity and a North Carolina resident to the extent these provisions apply to licensees:

a. G.S. 53-281(a), (b), (e), (f), (g), (h), (i), (j), (k) and (l).

b. G.S. 53-283(a)(3), (5), (7), (8), (9), (10), (11), and (12).

c. G.S. 53-283(b).

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars ($2.00) is charged for the service.

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

SECTION 4. G.S. 53-278 reads as rewritten:

"**§ 53-278. Application for license; investigation; application fee.**

(a) An application for licensure under this Article shall be in writing, under oath, and on a form prescribed by the Commissioner. The application shall set forth all of the following:

(1) The name and address of the applicant.

(2) If the applicant is a firm or partnership, the name and address of each member of the firm or partnership.

(3) If the applicant is a corporation, the name and address of each officer, director, registered agent, and principal.

(4) The addresses of the locations of the business to be licensed.

(5) Other information concerning the financial responsibility, background experience, and activities of the applicant and its members, officers, directors, and principals as the Commissioner requires.

(b) The Commissioner may make such investigations as the Commissioner deems necessary to determine if the applicant has complied with all applicable provisions of this Article and State and federal law.

(c) The application shall be accompanied by payment of a two hundred fifty dollar ($250.00) application fee and a five hundred dollar ($500.00) investigation fee. If the applicant intends to offer deferred deposit transactions under G.S. 53-281, the application fee shall be five hundred dollars ($500.00) and the investigation fee shall be one thousand dollars ($1,000). These fees are not refundable or abatable, but, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part thereof.

(d) Licenses shall expire annually and may be renewed upon payment of a license fee of two hundred fifty dollars ($250.00) plus a fifty dollar ($50.00) fee for each branch location certificate issued under a license. For any licensee who offers deferred deposit transactions under G.S. 53-281, the renewal fee shall be five hundred dollars ($500.00) plus a two hundred fifty dollar ($250.00) fee for every branch location certificate.

(e) The Commissioner is authorized to allocate up to one-half the sums collected from application and licensing fees under this Article for consumer education and research, to be conducted by the Commissioner or another State agency, related to deferred deposit transaction services under G.S. 53-281. Consumer education shall include the preparation and dissemination of informational materials for customers of licensees."

SECTION 5. G.S. 53- 280 reads as rewritten:

"§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.

(a) Notwithstanding any other provision of law, no check-cashing business licensed under this Article shall directly or indirectly charge or collect fees or other consideration for check-cashing services in excess of the following:

(1) Three percent (3%) of the face amount of the check or five dollars ($5.00), whichever is greater, for checks issued by the federal

government, State government, or any agency of the State or federal government, or any county or municipality of this State.

(2) Ten percent (10%) of the face amount of the check or draft or five dollars ($5.00), whichever is greater, for personal ~~checks.~~checks or drafts.

(3) Five percent (5%) of the face amount of the check or five dollars ($5.00), whichever is greater, for all other checks, or for money orders.

(b) A licensee may not advance monies on the security of any check or draft unless the account from which the check or draft being presented is drawn is legitimate, open, and active. Except as provided by G.S. 53-281(a), any licensee who cashes a check or draft for a fee shall deposit the check or draft not later than three business days from the date the check or draft is cashed.

(c) A licensee shall ensure that in every location conducting business under a license issued under this Article, there is conspicuously posted and at all times displayed a notice stating the fees charged for cashing checks, drafts, and money orders. A licensee shall further ensure that notice of the fees currently charged at every location shall be filed with the Commissioner.

(d) A licensee shall endorse every check, draft, or money order presented by the licensee for payment in the name of the licensee. "

SECTION 6. G.S. 53-281 reads as rewritten:

"**§ 53-281. ~~(Expires July 31, 2001) Postdated or delayed~~ Deferred deposit ~~checks.~~transactions.**

(a) ~~A licensee may defer the deposit of a personal check cashed for a customer for up to 31 days pursuant to the provisions of this section.~~A deferred deposit transaction shall have a minimum term of 60 days from the date of the transaction.

(b) The face amount of any ~~postdated or delayed~~ deferred deposit ~~check~~ payment device cashed pursuant to this section shall not exceed three hundred dollars ($300.00).

(c) Each ~~postdated or delayed deposit check cashed by a licensee~~ deferred deposit transaction shall be documented by a written agreement that has been signed by the customer and the licensee. The licensee shall provide the customer with a copy of the agreement at the time it is executed. The written agreement shall contain a statement of the cash advance and the total amount of any fees charged, expressed both as a dollar amount and as an effective annual percentage rate ~~(APR).~~(APR) consistent with the requirements of the federal Truth in Lending Act. ~~The written agreement shall authorize the licensee to defer deposit of the personal check until a specific date not later than 31 days from the date the check is cashed.~~ The written agreement shall contain the following specific disclosures:

(1) The address and telephone number of the Office of the Commissioner of Banks with a statement that the licensee is licensed by the Commissioner of Banks and that the customer may file a complaint with the Commissioner if the customer believes the licensee has acted

improperly or unlawfully either in the transaction or in the collection process.

(2) That the customer may not be prosecuted for a worthless check violation if the check is returned for insufficient funds but the customer may be liable to the licensee for no more than one fifteen dollar ($15.00) worthless check fee.

(3) That the customer has the right to contact a consumer credit counseling service for counseling or a debt management repayment program if the customer is unable to pay on the deferred deposit transaction when it becomes due.

(4) That the customer has the right to rescind the delayed deposit transaction at no cost to the customer on or before the close of the following business day.

(d) A licensee shall not directly or indirectly charge any fee or other consideration for cashing a postdated or ~~delayed~~ deferred deposit ~~check~~ payment device in excess of fifteen per cent (15%) of the ~~face amount of the check.~~cash advance. A licensee shall not charge a customer any fees or other consideration related to a deferred deposit transaction unless specifically authorized by this Article.

(e) No ~~check~~ payment device cashed under the provisions of this section shall be repaid by the proceeds of another ~~check~~ payment device cashed by the same licensee or any affiliate of the licensee. A licensee shall not, for any additional consideration, renew or otherwise extend any postdated or ~~delayed check or withhold such check from deposit for any period beyond the time set forth in the written agreement with the customer.~~deferred payment device. A licensee may agree with its customer at any time to defer deposit or collection of a payment device without additional consideration.

(f) The customer shall have the right to rescind the delayed deposit transaction at no cost to the customer by giving written notice and returning the cash advanced on or before the close of the business day following the date of the deferred deposit transaction.

(g) After May 30, 2002, or upon the establishment by the Commissioner of the database described in G.S. 53-291, whichever occurs first, no licensee shall enter into a deferred deposit transaction with any customer who has had four deferred deposit transactions with any licensee or licensees within the previous twelve months. The licensee shall utilize the Commissioner's database described in G.S. 53-291 to establish compliance with this subsection. No licensee shall use or rely on a customer's certification or warranty as a means of compliance with this subsection.

(h) After May 30, 2002, or upon the establishment by the Commissioner of the database described in G.S. 53-291, whichever occurs first, no licensee shall enter into a deferred deposit transaction with any customer who would have in the aggregate, including the new transaction, more than three hundred dollars ($300.00) in deferred deposit transactions outstanding with any licensee or licensees. The licensee shall utilize the Commissioner's database to establish compliance with this subsection. No licensee

shall use or rely on a customer's certification or warranty as a means of compliance with this subsection.

(i) A licensee may collect a fee for a returned check pursuant to G.S. 25-3-506, but the fee shall not exceed fifteen dollars ($15.00) if the check is returned for insufficient funds. Only one fee may be collected or imposed per payment device.

(j) Any deferred deposit transaction made under the terms of this section shall be payable in a lump sum at the end of the term, except the customer, in the customer's sole discretion, may prepay the obligation in whole or in part without additional charge or fee prior to the end of the term.

(k) No licensee may make, originate, or arrange a deferred deposit transaction unless it maintains a place of business in this State.

(l) Notwithstanding any other provision of State law, no deferred deposit transaction agreement shall include any provision that waives any federal or State constitutional right of customers or limits the remedies of customers available in law or equity, whether acting individually or on behalf of others similarly situated, or their rights to civil discovery or appeal. In addition, no deferred deposit transaction agreement shall require a party to assert any claim against the party who prepared the agreement in a forum that is less convenient, more costly, or more dilatory for the resolution of the dispute than a judicial forum established in this State.

(m) The Commissioner shall prepare and distribute to all licensees a consumer information sheet or pamphlet to educate consumers about deferred deposit transaction. The informational materials shall include information on the responsible use of deferred deposit transactions, the costs of deferred deposit transactions, the limitations on the number of transactions, and the dollar amount of outstanding checks, the fact that the customer cannot be prosecuted for a deferred deposit insufficient funds check, the availability of consumer credit counseling services and debt repayment alternatives, and the procedure for filing consumer complaints with the Commissioner and other matters that may be helpful or beneficial to customers. The Commissioner's informational materials shall be made available by the licensee in a conspicuous place at each location that offers deferred deposit check-cashing and shall be presented to each customer before the deferred deposit transaction is executed. The costs of producing, printing, and distributing the materials shall be paid out of licensing fees collected from licensees.

(n) Effective July 31, 2003, this section shall only apply for purposes set forth in G.S. 53-277(a)(1). Also effective July 31, 2003, except as permitted under G.S. 53-277, the practice of making deferred deposit transactions shall be unlawful."

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(3) The written receipt required by G.S. 53-282(b).
(4) The customer agreement required by G.S. 53-281.
(5) A history card, or its equivalent, for each customer that reflects the time, date, and amount of each deferred deposit transaction for that customer during the most recent three-year period. The history card shall also state whether each deferred deposit payment device was deposited or redeemed for cash.
(6) Bank statements of the licensee. If the statements are not maintained on the premises of the licensee, the statements shall be made available immediately upon request of the Commissioner.

~~Every person required to be licensed under this Article~~ In addition to the records required in this subsection, each licensee shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require. The books, accounts, and records shall be maintained separate from any other business in which the person is engaged, and shall be retained for a period prescribed by the Commissioner.

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(c) The Commissioner may examine the books, accounts, and records in order to determine whether the person is complying with this Article and rules adopted pursuant thereto. The cost of the examination shall be paid by the licensee and shall be determined by applying the hourly rate for special examinations adopted by the State Banking Commission by regulation.

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(1) Charge fees in excess of those authorized under this ~~Article.~~Article, or originate, process, arrange, or accept or transmit applications for, deferred deposit transactions for which the fees exceed those permitted in this Article.
(2) Engage in the business of making loans of money, or extensions of credit, or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items, except as expressly provided by G.S. 53-281.
(3) Use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation.

(4) Conduct business at premises or locations other than locations licensed by the Commissioner.
(5) Engage in unfair, deceptive, or fraudulent practices.
(6) Cash a check, draft, or money order made payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the executive entity of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.
(7) Use or threaten to use the criminal process to collect on a payment device in a deferred deposit transaction
(8) Make more than one deferred deposit transaction to a customer at the same time or accept or hold more than one deferred deposit payment device from a customer at the same time.
(9) In conjunction with another person or entity, originate, arrange or process, accept or transmit an application for a deferred deposit transaction that, except for federal preemption of State law, would be unlawful under this Article.
(10) Use any device or subterfuge to evade the requirements imposed on deferred deposit transactions by this Article.
(11) Obtain, or seek to obtain from a customer, a waiver of any of the rights or protections imposed by this Article.
(12) Fail to promptly, and in any event within 24 hours, report deferred deposit transactions to the database established by the Commissioner pursuant to section 53-291 when such database is operational.

(b) A violation of any of the provisions of this section or G. S. 53-281 shall constitute an unfair trade practice under G.S. 75-1.1."

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(a) The Commissioner may suspend or revoke any license or licenses issued pursuant to this Article if, after notice and opportunity for hearing, the Commissioner issues written findings that the licensee has engaged in any of the following conduct:

(1) Violated this Article or applicable State or federal law or rules.
(2) Made a false statement on the application for a license under this Article.
(3) Refused to permit investigation by the Commissioner authorized under this Article.
(4) Failed to comply with an order of the Commissioner.
(5) Demonstrated incompetency or untrustworthiness to engage in the business of check cashing.
(6) Been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

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(8) Failed to cooperate with any investigation conducted by the Commissioner."

SECTION 10. G.S. 53-286 reads as rewritten:

"**§ 53-286. Civil penalties and restitution.**

(a) The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties shall not exceed one thousand dollars ($1,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers.

(b) Any deferred deposit transaction agreement, the making or collecting of which violates any provision of this Article, or rule adopted thereunder, except as a result of accidental or bona fide error of computation, shall be void, and the licensee or any other party acting by or through a licensee shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to the transaction."

SECTION 11. Article 22 of Chapter 53 is amended by adding the following sections to read:

"**§ 53-290. Arbitration agreements.**

(a) A deferred deposit transaction may not include terms that require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

(b) Subject to subsection (c) of this section, subsection (a) of this section shall not be construed as limiting the right of the customer and the lender to agree to arbitration or any other non-judicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

(c) No provision of any deferred deposit transaction shall be applied or interpreted so as to bar a customer from bringing an action in an appropriate court of competent jurisdiction pursuant to this Article or any other provision of law, for damages or other relief in connection with any alleged violation of this Article or any other law.

(d) Subsections (a) and (c) of this section shall not apply to the extent such State law limitations are preempted by federal law or regulation.

"**§ 53-291. Database for reporting of deferred deposit transactions.**

On or before May 1, 2002, the Commissioner shall implement a common database with real-time access through an Internet connection for check cashing services that offer deferred deposit transactions, as provided in this subsection. The Commissioner may contract with a private vendor at his discretion. The database must be accessible to the Commissioner and licensees to verify whether any deferred deposit transactions are outstanding for a particular customer. Licensees shall submit such data before entering into each deferred deposit transaction and upon the repayment of each deferred deposit

transaction in such format and with such identifying information as the Commissioner shall require, including the drawer's name, address, driver's license number, amount of the transaction, date of transaction, the date that the transaction is paid off, and such additional information as may be required by the Commissioner. The Commissioner may impose a fee not to exceed $.35 per transaction to access the database. A licensee may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying in good faith on information contained in the database. The Commissioner may adopt procedures to administer and enforce the provisions of this section and to assure that the database is used by licensees in accordance with this section.

"**§ 53-292. Choice of laws.**

A choice of law provision in a deferred deposit transaction contract which provides that the contract is to be interpreted pursuant to the laws of another state is against the public policy of this State and therefore void and unenforceable if the party against whom enforcement of the choice of law provisions is sought is a resident of this State at the time the contract is entered into. This provision may not be varied by agreement of the parties.

"**§ 53-293. Severability.**

The provisions of this Article shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of the Article shall not be affected thereby."

SECTION 12. Section 3 of S.L. 1997-391 reads as rewritten:

"Section 3. This act becomes effective ~~October 1, 1997, and the provisions of G.S. 53-281 shall expire on July 31, 2001.~~October 1, 1997."

SECTION 13. The Commissioner of Banks shall conduct appropriate examinations or surveys and report to the 2003 General Assembly on the practice of deferred deposit transactions. The Commissioner of Banks, in consultation with the Attorney General, shall report the Commissioner's findings and recommendations, including legislation, to the 2003 General Assembly on or before April 1, 2003.

SECTION 14. Sections 12, 13 and 14 of this act become effective July 31, 2001. The remainder of this act becomes effective October 1, 2001.

HOUSE BILL 1071:
Procedure for Deferred Deposit Checks.

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Rep. Buchanan
Date:	July 25, 2001	**Summary by:**	Karen Cochrane Brown
Version:	Proposed Committee Substitute (H1071-CSRU-73[v.5])		Committee Co-Counsel

SUMMARY: ***The Proposed Committee Substitute for HB 1071 would extent the July 31, 2001 sunset on the delayed deposit provisions of the Check Casher Act, until July 31, 2003, and would add additional consumer protection provisions for delayed deposit transactions. This version of the bill adds several provisions designed to prevent out-of-state lenders from circumventing North Carolina law. The bill also increases the licensing fees for licensees who offer deferred deposit check cashing services.***

CURRENT LAW:

Article 22 of Chapter 53 of the General Statutes requires that certain persons who cash checks for a fee must be licensed as a check cashing business. G.S. 53-281, which is set to expire on July 1, 2001, allows licensed check cashing businesses to advance cash for a fee for postdated or delayed deposit checks. The deposit can be delayed for up to 31 days, the maximum amount of the check is limited to $300 and the maximum fee for this service is 15% of the face amount of the check. Also another delayed deposit check cannot be used to payoff an earlier delayed deposit check.

BILL ANALYSIS:

Section 1. – Adds several new definitions to the Act to clarify the provisions relating to deferred deposit transactions. The term "check-cashing service" is expanded to include someone acting as an agent for another person or entity in a deferred deposit transaction. In addition, the term "payment device" is defined to reflect the expanded ways in which payments can be authorized.

Section 2. – Makes conforming changes to the provision requiring persons who operate a check-cashing service to obtain a license.

Section 3. – Amends the provision relating to exemptions from the Act. State or federal banks, thrifts and credit unions are exempt from the law except if they provide deferred deposit transactions in which case they will be subject to most of the consumer protections contained in G.S. 53-281 and G.S. 53-283.

Section 4. – Increases the application fee for licensees who offer deferred deposit transactions from $250 to $500 and the investigation fee from $500 to $1,000. It also increases the renewal fee from $250 to $500 and from $50 per branch location to $250 for each branch location. This section also authorizes the Commissioner of Banks to use up to one-half of the amounts collected for consumer education.

Section 5. – Makes conforming changes to the provision relating to simple check cashing fees.

Section 6. – Makes substantial changes to G.S. 53-281, which authorizes deferred deposit transactions, including:

- Requiring that the deposit must be deferred for a minimum period of 60 days. Under current law, the deposit cannot be deferred more than 31 days. The amendment eliminates the maximum term for these transactions, which would now be governed by the agreement.

- Requiring that the agreement contain specific disclosures, such as how to file complaints with the Commissioner, that the consumer cannot be criminally prosecuted for a returned check, that the consumer can contact a consumer counseling service if the consumer is unable to pay, and that the consumer may rescind the transaction at no cost within one business day.
- After May 30, 2002, or the establishment of the Commissioner's database, whichever occurs first, limiting the number of deferred deposit transactions made to a customer to four within the previous twelve months, and prohibiting a licensee from entering a transaction with a customer who has more than $300 in deferred deposit transactions outstanding with all licensees.
- Restricting the collection fee for returned checks to $15. G.S. 25-3-506 authorizes a $25 fee for all other returned checks.
- Requiring licensees to maintain an office in the State.
- Prohibiting agreements that require customers to waive rights or limit remedies or require them to pursue rights in a particular forum.
- Directing the Commissioner to provide a consumer information pamphlet and requiring licensees to present it to customers before executing a transaction.
- Providing that this section will expire on July 31, 2003. After that date the practice of making deferred deposit transactions will be unlawful for all except banking institutions, which will continue to be subject to the consumer protection provisions of this section.

Section 7. – Amends the record keeping section of the Act to include a list of delayed deposit checks held for deposit, a daily transaction journal, receipts, deferred deposit agreements, history cards and bank statements. This section also directs licensees to submit information requested by the Commissioner.

Section 8. – Adds several acts to the list of prohibited practices, including:

- Facilitating a deferred deposit transaction with fees that exceed those allowed by this Article.
- Prohibiting the use or threatened use of criminal prosecution to collect payment on deferred deposit transactions.
- Making more than one deferred deposit transaction to the same customer at the same time.
- Facilitating a deferred deposit transaction application that, except for federal preemption, would be unlawful under this Article.
- Attempting to evade the requirements of this Article.
- Requiring a customer to waive any rights or protections.
- Failing to report transactions to the Commissioner's database.

A violation of this section is an unfair trade practice under G.S. 75-1.1.

Section 9. – Adds failing to comply with a request for assistance from the Commissioner and failing to cooperate with an investigation to the list of conduct for which a license may be suspended or revoked.

Section 10. – Adds a provision that willful violation of the Article shall void the agreement and extinguish the licensee's right to collect any principal or charges under the agreement.

Section 11. – Adds several new sections to the law, including a provision prohibiting mandatory arbitration clauses in deferred deposit transactions (G.S. 53-290), a provision directing the Commissioner of Banks to implement a statewide Internet accessible database by May 1, 2002, for the registration and retrieval of deferred deposit transactions. It also allows the Commissioner to charge $.35 per transaction to access the database (G.S. 53-291), a provision declaring that a choice of law provision in a deferred deposit transaction contract which requires that the contract be interpreted in accordance with the laws of another state, is against public policy and void (G.S. 53-292), and finally, a severability clause, which provides that if any part of the Article is declared to be invalid the remainder of the Article in unaffected.

Section 12. – Removes the sunset from the provisions relating to deferred deposit transactions that was originally placed in the law in 1997.

Section 13. – Directs the Commissioner of Banks to review the practice of deferred deposit transactions and report to the 2003 General Assembly by April 1, 2002.

Section 14. – Makes sections 12, 13, and 14 of the act effective July 31, 2001. and the remainder of the act effective October 1, 2001.

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — JULY 25, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bobby S Hobbs	Comm OK SVC
Chris Johnson	Urgent Money Service / NCCA
Jeanette Hobbs	EXTRA CASH Goldsboro
Jamie Sawyer	CASH-A-CHECK Jacksonville
Patricia McIntire	Cash-a-Check Jacksonville
Kelly Tyner	Instant Money Service Selma
Rosa Wood	Instant Money Service, Smithfield, N.C.
Shelley Whitman	Instant Money Service Selma
Shirley Whitman	Instant Money Service Garner N.C.
Jo Whitman	Instant Money Service - Selma
Denise Howland	Check It Out Hope Mills, NC

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — **Name of Committee**

JULY 25, 2001 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Shellena Locklear	Check it Out; Spring Lake NC
Angie Hill	Cash-A-Check, Jacksonville NC
Jimmy Gilchrist	747 Briarcliff Lane, Lumberton, N.C.
Lashanda Bowers	Cash-A-Check Jacksonville, NC
Deborah Alcorta	Express Money Service, Clinton, NC
Diane Cashwell	Express Money Service Wallace NC
Kerry Byrd	Express Money Service Faye, NC
Patty Powell	CASH-A-CHECK PLUS 1404 W Cumberland Dunn NC 28334
Shaneka Stacker	Cash-a-Check Plus 1404 W Cumberland S Dunn NC 28334
Nancy Morrison	Cash-a-Check Plus 909 Vandora Spring Garner, N.C.
Angela Mcneill	Cash-a-Check Plus 1404 W Cumberland St Dunn, NC 28334

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — JULY 25, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tammy Wyand	Carolina Rapid Cash Advance
Rhondea D. Broadway	Carolina Rapid Cash Rockingham NC
Johnathan Bullard	C/C Sanford, NC
Don D. McCoy	Nationwide Budget Finance
Mitchell Moore	Nationwide Budget Finance
Chuck Woodard	Advance America
Ed Denson	Imperial Cash Advance

FINANCIAL INSTITUTIONS
AUGUST 1, 2001
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS – DIXIE EPPS AND JOYCE FULLER

SGT.-AT-ARMS –JACK DOSSENBACH, DONNELL LEATHERS, DUSTY RHODES AND THOMAS WILDER

PAGES –ASHLEY MANN, LURA MANN AND LILA WALKER

S.B.#723 – UNSOLICITED CHECKS TO SECURE LOANS – SEN. BINGHAM

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
AUGUST 1, 2001

The **House Committee on Financial Institutions** met on Wednesday, August 1, 2001, at 10:00 a.m. in Room 1425 in the State Legislative Building. The meeting was called to order by Co-Chairman Walter Church. Rep. Church recognized the Committee Counsels, Committee Assistants, the Pages, and the Sgt.-at-Arms who were assigned to the meeting. The following members of the Committee were present: Co-Chairmen Church and Morgan; Vice-Chair McAllister; Reps. Buchanan, Cole, Dockham, Harrington, Howard, McLawhorn, McMahan, Michaux, Miller, Smith and Walend.

Co-Chairman Church moved that **THE PROPOSED HOUSE COMMITTEE SUBSTITUTE FOR S.B.#723 – UNSOLICITED CHECKS TO SECURE LOANS** be adopted for discussion. Mr. Church called on Sen. Bingham, the sponsor of the bill, to come forward to explain the bill. The Proposed Committee Substitute would regulate the process of lending money through the use of unsolicited checks, which when cashed, obligates the recipient to repay the amount of the check with interest. After much discussion, Rep. Smith moved that **S.B.#723 BE GIVEN A FAVORABLE REPORT AS TO HOUSE COMMITTEE SUBSTITUTE BILL AND UNFAVORABLE TO ORIGINAL BILL.** This motion was seconded by Rep. Buchanan and the motion carried.

There being no further business, Co-Chairman Church adjourned the meeting at 10:20 a.m.

Co-Chairman Walter Church, Sr.

Co-Chairman Richard Morgan

Joyce A. Fuller, Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Church and Morgan** (Chair/Chairs) for the Committee on **Financial Institutions**.

☐ Committee Substitute for
S.B. 723 A BILL TO BE ENTITLED AN ACT TO REQUIRE CERTAIN DISCLOSURE AND WARNING STATEMENTS ON UNSOLICITED CHECKS THAT, WHEN CASHED BY THE RECIPIENTS, OBLIGATE THE RECIPIENTS TO REPAY THE AMOUNT OF THE CHECKS PLUS INTEREST AND FEES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to House committee substitute bill ~~(#), ☐ which changes the title~~, unfavorable as to (original bill) ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)~~

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 723

Short Title:	Unsolicited Checks to Secure Loans.	(Public)
Sponsors:	Senators Bingham; Albertson, Ballance, Cunningham, Garwood, Hagan, Harris, Horton, Hoyle, Kinnaird, Metcalf, Rand, Reeves, Warren, and Weinstein.	
Referred to:	Commerce.	

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CERTAIN DISCLOSURE AND WARNING STATEMENTS ON UNSOLICITED CHECKS THAT, WHEN CASHED BY THE RECIPIENTS, OBLIGATE THE RECIPIENTS TO REPAY THE AMOUNT OF THE CHECKS PLUS INTEREST AND FEES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-20. Unsolicited checks to secure loans.**

(a) No person, firm, or corporation engaged in lending money shall deliver to a person an unsolicited check made out to the recipient that upon cashing, obligates the recipient to repay the amount of the check plus interest and fees, unless all of the following requirements are satisfied:

(1) The check is attached to a disclosure statement that is easily detachable and that contains in at least 10-point boldface type a statement conspicuously placed in substantially the following form:

'Warning: This is a loan solicitation. If you cash this check, you are agreeing to borrow the sum of $------ at the ---% rate of interest for a period of --- years. Your monthly payments will be $---- for ---- years. If you are late with a payment, you will be charged the following fees in addition to your monthly payment: (list fees). All other terms of this loan are clearly identified as loan terms and appear on the back of the check or on this attachment. Read these terms carefully before you cash this check. Cashing this check constitutes a loan transaction.'

(2) The disclosure statement under subdivision (1) of this subsection also contains on its face in at least 10-point boldface type a statement conspicuously placed in substantially the following form:

'You may cancel this loan agreement at any time prior to midnight of the third business day after the date that you cash this check. See the attached Notice of Cancellation form for an explanation of this right.'

(b) The person, firm, or corporation engaged in lending money shall furnish the recipient a completed form in duplicate, captioned "Notice of Cancellation," that shall be attached to the disclosure statement under subsection (a) of this section and easily detachable and that shall contain in 10 point boldface type the following information and statements in the same language as that used in the loan agreement:

'NOTICE OF CANCELLATION

You may cancel this loan, without any penalty or obligation, within three business days from the date you cashed the attached check.

If you cancel, you must make available to the lender any moneys you received upon cashing the check; or you may, if you wish, comply with the instructions of the lender regarding the return of the moneys at the lender's expense and risk.

If you fail to make the moneys available to the lender, or if you agree to return the moneys to the lender and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this loan, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to

_____

_____(name of lender)

at_____,

_____(address of lender's place of business)

I hereby cancel this loan agreement.

_____

_____(date)

_____

_____(borrower's signature)'

(c) A violation of this section is an unfair trade practice under G.S. 75-1.1 and is subject to all of the enforcement and penalty provisions of an unfair trade practice under this Article."

SECTION 2. This act becomes effective October 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 723
PROPOSED HOUSE COMMITTEE SUBSTITUTE S723-PCS9326-RU-60

Short Title: Unsolicited Checks to Secure Loans. (Public)

Sponsors:

Referred to:

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CERTAIN DISCLOSURE AND WARNING STATEMENTS ON UNSOLICITED CHECKS THAT, WHEN CASHED BY THE RECIPIENTS, OBLIGATE THE RECIPIENTS TO REPAY THE AMOUNT OF THE CHECKS PLUS INTEREST AND FEES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-20. Unsolicited checks to secure loans.**

(a) No person, firm, or corporation engaged in lending money shall deliver to a person an unsolicited check made out to the recipient that upon cashing, obligates the recipient to repay the amount of the check plus interest and fees, unless all of the following requirements are satisfied:

(1) In addition to any disclosures otherwise required by law, the solicitation for loans using a facsimile or negotiable check shall disclose both of the following on the face of the check:

a. In at least 10-point boldface type a statement in substantially the following form: 'THIS IS A SOLICITATION FOR A LOAN. READ THE ATTACHED DISCLOSURES BEFORE SIGNING THIS AGREEMENT.'

b. In at least 6-point type a statement in substantially the following form: 'By endorsing the back of this check, you accept our offer and agree to the terms of your loan agreement contained in the disclosure statement attached to this check.'

(2) Notification of the loan agreement being activated by endorsement must be conspicuously printed in at least 6-point type on the back of the check in substantially the following form: 'By endorsing this check, you agree to repay this loan according to the terms of the attached loan agreement.'

(3) The check is attached to a disclosure statement that is detachable and that contains in at least 10-point boldface type a statement conspicuously placed in substantially the following form:
'This is a loan solicitation. If you cash this check, you are agreeing to borrow the sum of $_____ at the ____% rate of interest for a period of _____ months. Your monthly payments will be $_____ for _____ months. If you are late with a payment, you will be charged the following fees in addition to your monthly payment: (list fees). All other terms of this loan are clearly identified as loan terms and appear on the back of the check or on this attachment. Read these terms carefully before you cash this check. Cashing this check constitutes a loan transaction. You may cancel this loan by returning the amount of the check to the lender within 10 days of the date this check is cashed. You may prepay this loan agreement at anytime without penalty. READ THE AGREEMENT BEFORE SIGNING.'

(4) The recipient has a right to cancel the loan by refunding to the lender the amount of the check within 10 days of the date the check is cashed. The loan is deemed refunded when a refund of the amount of the check is received by the lender within 10 days of the date the check is cashed.

(b) In the event an unsolicited check is stolen or otherwise obtained by someone other than the intended payee, and the check is cashed fraudulently or without authorization from the payee, the lender who issued the check shall provide the following recourse to the intended payee:

(1) The lender, upon receipt of notification that intended payee did not negotiate the check, shall promptly provide the intended payee with a statement or affidavit to be signed by the intended payee confirming that the intended payee did not deposit or cash the check or receive the proceeds of the check. The lender shall also provide the intended payee with the name and telephone number of a contact person designated by the lender to provide assistance to intended payees who have been victimized by the fraudulent negotiation of unsolicited checks. The lender shall cease all collection activity against the intended payee until the lender completes an investigation into the transaction.

(2) The intended payee shall be directed to complete and return the confirmation statement to the lender or an affiliate of the lender.

(3) Within 30 days of the receipt of the confirmation statement, the lender shall conduct a reasonable investigation and determine whether the check was fraudulently negotiated. Absent evidence to the contrary, the presumption shall be that the confirmation statement submitted by the intended payee is accurate. The lender shall notify the intended

payee in writing of the results of the investigation. If it is determined that the check was cashed fraudulently, the lender shall take immediate action to remove the intended payee from all liability on the account and to request all credit reporting agencies to remove references to the transaction, if any, from the consumer's credit reports.

(4) A consumer who is an intended payee of an unsolicited check under this section may bring a civil action to recover damages, costs, and attorney fees for any violation of this subsection.

(c) The provisions of this section shall not apply to a transaction in which a consumer has submitted an application or requested an extension of credit from the lender before receiving the check or instrument, or where the lender has an existing account relationship with the consumer.

(d) A violation of this section is an unfair trade practice under G.S. 75-1.1 and is subject to all of the enforcement and penalty provisions of an unfair trade practice under this Article."

SECTION 2. This act becomes effective October 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 723
PROPOSED HOUSE COMMITTEE SUBSTITUTE S723-CSRU-60 [v.5]

7/31/2001 3:39:57 PM

Short Title: Unsolicited Checks to Secure Loans. (Public)

Sponsors:

Referred to:

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CERTAIN DISCLOSURE AND WARNING STATEMENTS ON UNSOLICITED CHECKS THAT, WHEN CASHED BY THE RECIPIENTS, OBLIGATE THE RECIPIENTS TO REPAY THE AMOUNT OF THE CHECKS PLUS INTEREST AND FEES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-20. Unsolicited checks to secure loans.**

(a) No person, firm, or corporation engaged in lending money shall deliver to a person an unsolicited check made out to the recipient that upon cashing, obligates the recipient to repay the amount of the check plus interest and fees, unless all of the following requirements are satisfied:

(1) In addition to any disclosures otherwise required by law, the solicitation for loans using a facsimile or negotiable check shall disclose both of the following on the face of the check:

a. In at least 10-point boldface type a statement in substantially the following form: 'THIS IS A SOLICITATION FOR A LOAN. READ THE ATTACHED DISCLOSURES BEFORE SIGNING THIS AGREEMENT.'

b. In at least 6-point type a statement in substantially the following form: 'By endorsing the back of this check you accept our offer and agree to the terms of your loan agreement contained in the disclosure statement attached to this check.'

(2) Notification of the loan agreement being activated by endorsement must be conspicuously printed in at least 6-point type on the back of the check in substantially the following form: 'By endorsing this check, you agree to repay this loan according to the terms of the attached loan agreement.'

(3) The check is attached to a disclosure statement that is detachable and that contains in at least 10-point boldface type a statement conspicuously placed in substantially the following form:
'This is a loan solicitation. If you cash this check, you are agreeing to borrow the sum of $------ at the ---% rate of interest for a period of --- months. Your monthly payments will be $---- for ---- months. If you are late with a payment, you will be charged the following fees in addition to your monthly payment: (list fees). All other terms of this loan are clearly identified as loan terms and appear on the back of the check or on this attachment. Read these terms carefully before you cash this check. Cashing this check constitutes a loan transaction. You may cancel this loan by returning the amount of the check to the lender within 10 days of the date this check is cashed. You may prepay this loan agreement at anytime without penalty. READ THE AGREEMENT BEFORE SIGNING.'

(4) The recipient has a right to cancel the loan by refunding to the lender the amount of the check within ten days of the date the check is cashed. The loan is deemed refunded when a refund of the amount of the check is received by the lender within ten days of the date the check is cashed.

(b) In the event an unsolicited check is stolen or otherwise obtained by someone other than the intended payee, and the check is cashed fraudulently or without authorization from the payee, the lender who issued the check shall provided the following recourse to the intended payee:

(1) The lender, upon receipt of notification that intended payee did not negotiate the check, shall promptly provide the intended payee with a statement or affidavit to be signed my the intended payee confirming that the intended payee did not deposit or cash the check or receive the proceeds of the check. The lender shall also provide the intended payee with the name and telephone number of a contact person designated by the lender to provide assistance to intended payees who have been victimized by the fraudulent negotiation of unsolicited checks. The lender shall cease all collection activity against the intended payee until the lender completes an investigation into the transaction.

(2) The intended payee shall be directed to complete and return the confirmation statement to the lender or an affiliate of the lender.

(3) Within thirty days of the receipt of the confirmation statement, the lender shall conduct a reasonable investigation and determine whether the check was fraudulently negotiated. Absent evidence to the contrary, the presumption shall be that the confirmation statement submitted by the intended payee is accurate. The lender shall notify

the intended payee in writing of the results of the investigation. If it is determined that the check was cashed fraudulently, the lender shall take immediate action to remove the intended payee from all liability on the account and to request all credit reporting agencies to remove references to the transaction, if any, from the consumer's credit reports.

(4) A consumer who is an intended payee of an unsolicited check under this section may bring a civil action to recover damages, costs and attorney fees for any violation of this subsection.

(c) The provisions of this section shall not apply to a transaction in which a consumer has submitted an application or requested an extension of credit from the lender before receiving the check or instrument, or where the lender has an existing account relationship with the consumer.

(d) A violation of this section is an unfair trade practice under G.S. 75-1.1 and is subject to all of the enforcement and penalty provisions of an unfair trade practice under this Article."

SECTION 2. This act becomes effective October 1, 2001.

SENATE BILL 723:
Unsolicited Checks to Secure Loans.

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Senator Bingham
Date:	August 1, 2001	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S723-CSRU-60[v.5]		

SUMMARY: ***The Proposed House Committee Substitute for Senate Bill 723 would regulate the process of lending money through the use of unsolicited checks, which when cashed obligates the recipient to repay the amount of the check with interest.***

CURRENT LAW: Currently, the endorsement of a check subjects the endorser to the terms and conditions of their acceptance of the benefits of the check.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 723 establishes requirements for loans made through the use of unsolicited checks.

G.S. 75-20(a), as enacted by the bill, sets out the disclosures required to be made in unsolicited check loan situations. These disclosures include disclosure on the face and back of the check that acceptance of the check constitutes a loan, a detachable disclosure statement attached to the check that sets out the sum of the loan, the interest rate, the term of the loan, the monthly payments, and any late payment fees, and notice of a 10-day right to cancel by refunding the loan.

G.S. 75-20(b) provides for remedies when the check is fraudulently cashed. These provisions require the intended payee to sign a statement confirming that the intended payee did not sign the check, that the lender investigate the negotiation of the check, and if found to be fraudulent, relieve the intended payee of liability and notify credit bureaus of the error.

G.S. 75-20(c) exempts from the provisions of the bill loans where the payee has applied for or requested the loan, or where the lender has an existing account relationship with the consumer.

G.S. 75-20(d) makes a violation of this section an unfair trade practice under Chapter 75, which could subject the lender to treble damages and attorneys fees.

EFFECTIVE DATE: The bill becomes effective October 1, 2001.

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — AUGUST 1, 2001

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Okun	NC State AFL CIO
Doris Treaver	NC CWA Political Council
Margaret R. Westbrook	Kennedy Covington
Mari A Juitt	Smith & Brown
Keith Corbett	CRL
Rob Schofield	N C Justice Center
Peter Keber	Bank of America
Paul Stock	NC Bankers Assn.
DAVID BARNES	Poyner Spruill, LLP
	Moore & Van Allen
Richard W Hatch	AARP

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — **Name of Committee**

AUGUST 1, 2001 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Helen Savage	AARP
Natalie English	Charlotte Chamber
Kelly Riley	Charlotte Chamber
Barbara Canaday	MFSS, PA
Mark Reason	Capitol Group
REITZEL DEATON	NC Office of the Commissioner of Banks
McNeil Chestnut	A.G. Office For the Comm. of Bks.
Phil Lehniger	NC AG's

FINANCIAL INSTITUTIONS
AUGUST 22, 2001
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN

COMMITTEE ASSISTANTS – DIXIE EPPS AND JOYCE FULLER

SGT.-AT-ARMS –ROBERT FOWLER, WALTER SPELL, THOMAS WILDER, CHARLES WILLIAMS AND JAMES WORTH

S.B. #890 – MONEY TRANSMITTERS ACT – REP. CULPEPPER FOR SEN. HAGAN

H.B.#1071 – PROCEDURE FOR DELAYED DEPOSIT CHECKS – REPS. BUCHANAN AND CHURCH

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
AUGUST 22, 2001

The **House Committee on Financial Institutions** met on Wednesday, August 22, 2001, at 10:00 a.m. in room 1228 of the State Legislative Building. The meeting was called to order by Co-Chairman Richard Morgan. The following members of the committee were present: Co-Chairmen Church and Morgan; Vice-Chair McAllister; Reps. Allred. Brubaker, Buchanan, Cole, Culpepper, Harrington, Howard, McLawhorn, McMahan, Michaux, Miller, Smith, Wainwright and Walend and Ex-Officio Members Baddour and Cunningham.

Co-Chairman Morgan recognized Rep. Culpepper to explain **S.B.#890 – MONEY TRANSMITTERS ACT** in the absence of the sponsor, Sen. Hagan. The Sgt-At-Arms passed out an Amendment sponsored by Rep. Culpepper and he moved to amend the bill on page 10, line 16, by rewriting the line to read §53-208.12. Quarterly reports. Senate bill 890 repeals the existing law regulating money transmitters and replaces it with a new Article 16A in Chapter 53 (Banking). The new Article is based upon multi-state model legislation and is intended to give additional protection for the electronic transmission of money. The bill does the following:

Creates an additional $10,000 per location net worth requirement for licensed money transmitters.
Expands and updates many definitions to reflect modern methods of transmitting funds.
Requires that non-bank entities that provide money transmission to North Carolina Citizens via the Internet, but have no physical presence in North Carolina must be licensed.
Protects the outstanding liabilities of a money transmitter from general creditors by imposing a trust upon those funds that reflect the outstanding, but unclaimed value of money instruments or stored value.
Creates a civil penalty for violations.

The act becomes effective October 1, 2001 and applies to contracts entered into on and after that date.

Speaking for the bill were McNeil Chestnut, Assistant Attorney General and Ezra Lavene, Attorney with Howrey and Simon in Washington, D. C., representing the Money Transmitter Industry.

Rep. Buchanan moved that **the amendment for S.B.#890 BE ROLLED INTO A COMMITTEE SUBSTITUTE AND THE COMMITTEE SUBSTITUTE BE GIVEN A FAVORABLE REPORT.** This motion was seconded by Rep. Brubaker and the motion carried.

Co-Chairman Morgan called on Rep. Smith, Chairman of the sub committee on **H.B.#1071 – PROCEDURE FOR DELAYED DEPOSIT CHECKS** to come forward to explain how this bill came out of the sub-committee. This bill (Version 5) came out of the committee with some minor amendments. Co-Chairman Morgan called on Karen Cochrane-Brown, Committee Counsel, to come forward to explain the amended bill. The Proposed Committee substitute for H.B.#1071 would extend the July 31, 2001 sunset on the delayed deposit provisions of the Check Casher Act, until July 31, 2003, and would add additional consumer protection provisions for delayed deposit transactions. This version of the bill adds several provisions designed to prevent out-of-state lenders from circumventing North Carolina law. The bill also increases the licensing fees for licensees who offer deferred deposit check cashing services. Co-Chairman Morgan then called on Rep. Church to come forward and speak on the bill that he and Rep. Buchanan co-sponsored. Rep. Morgan then recognized Gregory Elliehausen from Georgetown University to come forward to speak on the bill. He presented the committee with a copy of "Payday Advance Credit in America: An Analysis of Customer Demand" by Gregory Elliehausen, Credit Research Center and Edward C. Lawrence, University of Missouri-St. Louis (see attached).

Co-Chairman Morgan, due to another committee meeting scheduled for 11:00 a.m. in room 1228, adjourned the meeting at 10:55 a.m. and stated that committee members should check their e-mail concerning a meeting at a later date.

Co-Chairman Walter G. Church, Sr.

Co-Chairman Richard Morgan

Joyce A. Fuller, Committee Assistant

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Church and Morgan** (Chair/Chairs) for the Committee on **Finanacial Institutions**.

☒ Committee Substitute for #2
S.B. 890 A BILL TO BE ENTITLED AN ACT TO REVISE THE NORTH CAROLINA MONEY TRANSMITTERS ACT, ARTICLE 16 OF CHAPTER 53 OF THE GENERAL STATUTES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill ~~(#), ☐ which changes the title~~, unfavorable as to Senate committee substitute bill. #2

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 890

Judiciary II Committee Substitute Adopted 5/16/01
Finance Committee Substitute Adopted 7/30/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S890-PCS7279-RO-40

Short Title: Money Transmitters Act. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO REVISE THE NORTH CAROLINA MONEY TRANSMITTERS ACT, ARTICLE 16 OF CHAPTER 53 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 53 of the General Statutes, G.S. 53-192 through G.S. 53-208, is hereby repealed.

SECTION 2. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 16A.

"Money Transmitters Act.

"**§ 53-208.1. Citation of Article.**

This Article shall be known and cited as the 'Money Transmitters Act'.

"**§ 53-208.2. Definitions.**

(a) Unless otherwise provided in this Article, or when the context clearly indicates that a different meaning is intended, the following definitions apply in this Article:

(1) Applicant. – A person filing an application for a license under this Article.

(2) Authorized delegate. – An entity designated by the licensee under the provisions of this Article to sell or issue payment instruments or stored value or engage in the business of transmitting money on behalf of a licensee.

(3) Commissioner. – The Commissioner of Banks of the State of North Carolina.

(4) Control. – Ownership of, or the power to vote, ten percent (10%) or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee

controlled by any person, there shall be aggregated with the person's interest the interest of any other person controlled by the person or by any spouse, parent, or child of the person.

(5) Controlling person. – Any person in control of a licensee.

(6) Electronic instrument. – A card or other tangible object for the transmission or payment of money or monetary value which contains a microprocessor chip, magnetic strip, or other means for the storage of information that is prefunded and for which the value is decremented upon each use. The term does not include a card or other tangible object that is redeemable by the issuer in goods or services.

(7) Executive officer. – The licensee's president, chair of the executive committee, senior officer responsible for the licensee's business, chief financial officer, and any other person who performs similar functions.

(8) Key shareholder. – Any person, or group of persons acting in concert, who is the owner of ten percent (10%) or more of any voting class of an applicant's stock.

(9) Licensee. – A person licensed under this Article.

(10) Material litigation. – Any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in that entity's annual audited financial statements, report to shareholders, or similar documents.

(11) Monetary value. – A medium of exchange, whether or not redeemable in money.

(12) Monetary transmission. – The term means either of the following:

a. The sale or issuance of payment instruments or stored value.

b. The act of engaging in the business of receiving money or monetary value for transmission within the United States or to locations abroad by any and all means, including payment instrument, wire, facsimile, or electronic transfer.

(13) Payment instrument. – Any electronic or written check, draft, money order, traveler's check, or other electronic or written instrument or order for the transmission or payment of money or monetary value, whether or not the instrument is negotiable. The term does not include a credit card voucher, letter of credit, or any other instrument that is redeemable by the issuer in goods or services.

(14) Outstanding payment instrument. – Any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any payment instrument issued by the licensee which has been sold by an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold and which has not yet been paid by or for the licensee.

(15) Person. – Any individual, partnership, association, joint-stock association, trust, or corporation.

(16) Remit. – To do one or more of the following:

a. Make direct payment of the funds to the licensee or its representatives authorized to receive those funds.

b. Deposit the funds in a bank, credit union, or savings and loan association or other similar financial institution in an account specified by the licensee.

(17) Permissible investments. – One or more of the following:

a. Cash.

b. Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign.

c. Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the Federal Reserve System.

d. Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities.

e. Investment securities that are obligations of the United States, its agencies, or instrumentalities or obligations that are guaranteed fully as to principal and interest of the United States or any obligations of any state, municipality, or any political subdivision thereof.

f. Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures, or preferred stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities or a fund composed of one or more permissible investments as set forth herein.

g. Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange.

h. Receivables due to a licensee from its authorized delegates pursuant to a contract described in G.S. 53-208.20, which are not past due or doubtful of collection.

i. Any other investments or security device approved by the Commissioner.

(18) Stored value. – Monetary value that is evidenced by an electronic record.

"**§ 53-208.3. License required.**

(a) On or after October 1, 2001, no person except those exempt pursuant to G.S. 53-208.4 shall engage in the business of money transmission in this State without a license as provided in this Article.

(b) A licensee may conduct its business in this State at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted to the licensee.

(c) For the purposes of this Article, a person is considered to be engaged in the business of money transmission in this State if that person makes available, from a location inside or outside of this State, an Internet website North Carolina citizens may access in order to enter into those transactions by electronic means.

"**§ 53-208.4. Exemptions.**

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

(1) The United States or any department, agency, or instrumentality thereof.

(2) The United States Post Office.

(3) The State or any political subdivisions thereof.

(4) Banks, credit unions, savings and loan associations, savings banks, or mutual banks organized under the laws of any state or the United States.

(5) A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as a broker-dealer.

(6) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof.

(b) Authorized delegates of a licensee, acting within the scope of authority conferred by a written contract as described in G.S. 53-208.19 shall not be required to obtain a license pursuant to this Article.

"**§ 53-208.5. License qualifications.**

(a) Each licensee shall have at all times a net worth of not less than one hundred thousand dollars ($100,000) calculated in accordance with generally accepted accounting principles. Licensees engaging in money transmission at more than one location or through authorized delegates shall have an additional net worth of ten thousand dollars ($10,000) per location in this State, as applicable, to a maximum of five hundred thousand dollars ($500,000). Licensees with neither locations nor authorized delegates in this State shall have an additional net worth as established by the Commissioner in an amount not to exceed a maximum of five hundred thousand dollars ($500,000).

(b) Every corporate applicant, at the time of filing of an application for license under this Article and at all times after a license is issued, shall be in good standing in the state of its incorporation and, if required by the North Carolina Business

Corporations Act, Chapter 55 of the General Statutes, shall be registered or qualified to do business in this State. All noncorporate applicants shall, at the time of the filing of an application for a license under this Article and at all times after a license is issued, be registered or qualified to do business in the State as required by law.

"**§ 53-208.6. Permissible investments and statutory trust.**

(a) Each licensee under this Article shall possess at all times unencumbered permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments and stored value obligations issued or sold. This requirement may be waived by the Commissioner if the dollar volume of a licensee's outstanding payment instruments and stored value do not exceed the bond or other security devices posted by the licensee pursuant to G.S. 53-208.8.

(b) Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored value obligations in the event of the bankruptcy of the licensee.

"**§ 53-208.7. License application.**

(a) Each application for a license under this Article shall be made in writing, under oath, and in a form prescribed by the Commissioner. For all applicants, each application shall contain:

(1) The exact name of the applicant, the applicant's principal address, any assumed or trade name used by the applicant in the conduct of its business, and the location of the applicant's business records.

(2) The history of the applicant's material civil litigation for a 10-year period prior to the date of the application and a record of any criminal convictions.

(3) A description of the activities conducted by the applicant and a history of operations.

(4) A description of the business activities in which the applicant seeks to be engaged in the State.

(5) A list identifying the applicant's proposed authorized delegates in the State, if any, at the time of the filing of the license application.

(6) A sample authorized delegate contract, if applicable.

(7) A sample form of payment instrument, if applicable, which bears the name and address or telephone number of the issuer clearly printed on the payment instrument.

(8) The location or locations at which the applicant and its authorized delegates, if any, propose to conduct the licensed activities in the State.

(9) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which the payment instruments will be payable.

(b) If the applicant is a corporation, the applicant shall also provide:

(1) The date of the applicant's incorporation and state of incorporation.
(2) A certificate of good standing from the state in which the applicant was incorporated.
(3) A certificate of authority from the Secretary of State to conduct business in this State, if required by the North Carolina Business Corporations Act, Chapter 55 of the General Statutes.
(4) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange.
(5) The name, business and residence address, and employment history for the past five years of the applicant's executive officers and the officers or managers who will be in charge of the applicant's activities to be licensed pursuant to this Article.
(6) The name, business and residence address, and employment history for the period five years prior to the date of the application of any key shareholder of the applicant.
(7) The history of material civil litigation for a 10-year period prior to the date of the application and a record of any criminal conviction for every executive officer or key shareholder.
(8) A copy of the applicant's most recent audited financial statement, including the balance sheet, statement of income or loss, statement of changes in shareholder equity, and statement of changes in financial position and, if available, the applicant's audited financial statements for the immediately preceding two-year period. However, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two-year period or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the prior three years in lieu of the applicant's financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this provision.
(9) Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application.

(c) If the applicant is not a corporation, the applicant shall also provide:
(1) The name, business and residence address, personal financial statement, and employment history, for the past five years, of each

principal of the applicant and the name, business and residence address, and employment history for the past five years of any other person or persons who will be in charge of the applicant's activities to be licensed pursuant to this Article.

(2) The place and date of the applicant's registration or qualification to do business in this State.

(3) The history of material civil litigation for a 10-year period prior to the date of the application and a record of any criminal conviction for each individual having an ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities.

(4) Copies of the applicant's audited financial statements, including the balance sheet, statement of income or loss, and statement of changes in financial position, for the current year and, if available, for the immediately preceding two-year period.

The Commissioner is authorized, for good cause shown, to waive any requirements of this section with respect to any license application or to permit a license applicant to submit substituted information in its license application in lieu of the information required by this section.

"**§ 53-208.8. Surety bond.**

(a) Each application shall be accompanied by a surety bond acceptable to the Commissioner in the amount of one hundred fifty thousand dollars ($150,000). If the applicant proposes to engage in business under this Article at more than one location, through authorized delegates or otherwise, then the amount of the security bond will be increased by five thousand dollars ($5,000) per location, up to a maximum of two hundred fifty thousand dollars ($250,000). In the case of an applicant which engages in business under this Article, but has no locations or authorized delegates in this State, the amount of the security bond may be increased at the Commissioner's discretion to a maximum of two hundred fifty thousand dollars ($250,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money or monetary value in connection with the sale and issuance of payment instruments, stored value, or transmission of money. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Claimants against the licensee may themselves bring suit directly on the security bond, or the Commissioner may bring suit on behalf of claimants, either in one action or in successive actions.

(b) In lieu of a surety bond, the licensee may deposit with the Commissioner, or with any bank in this State designated by the licensee and approved by the Commissioner, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the surety bond or portion thereof, the following:

(1) Unencumbered cash.
(2) Unencumbered interest-bearing bonds.
(3) Unencumbered notes.
(4) Unencumbered debentures.
(5) Unencumbered obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States.
(6) Unencumbered obligations of this State or of any political subdivision of the State, or guaranteed by this State.

The securities or cash shall be deposited as aforesaid and held to secure the same obligations as would the surety bond, but the depositor shall be entitled to receive all interest and dividends thereon, shall have the right, with the approval of the Commissioner, to substitute other securities for those deposited, and shall be required to do so on written order of the Commissioner made for good cause shown.

(c) The surety bond shall remain in effect until cancellation, which may occur only after 90 days' written notice to the Commissioner. Cancellation shall not affect any liability incurred or accrued during that period.

(d) The surety bond shall remain in place for no longer than five years after the licensee ceases money transmission operations in the State. However, notwithstanding this provision, the Commissioner may permit the surety bond to be reduced or eliminated prior to that time to the extent that the amount of the licensee's outstanding payment instruments, stored value obligations, and money transmitted in this State is reduced.

(e) The surety bond proceeds and any cash or other collateral posted as security by a licensee shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments, stored value obligations, and money transmissions in the event of the bankruptcy of the licensee.

"**§ 53-208.9. Fees.**

(a) Investigation and License Fees. – Each application for a license shall be accompanied by a nonrefundable investigation fee of five hundred dollars ($500.00), together with the initial license fee of one thousand dollars ($1,000) plus ten dollars ($10.00) per location within this State at which a money transmission business is to be conducted by the applicant or an authorized delegate.

(b) Annual License Fee. – On or before December 31 of each year, each licensee under this Article shall pay to the Commissioner a license fee in the amount of one thousand dollars ($1,000) plus ten dollars ($10.00) per location in this State at which the licensee or an authorized delegate is conducting a money transmitter business.

(c) Location Fee. – Notwithstanding the number of locations within this State at which a licensee or authorized delegate conducts a money transmitter business, the per location fee provided in subsections (a) and (b) of this section shall not exceed five thousand dollars ($5,000) per licensee per year. The per year location fee shall be based on the number of locations set forth in the annual report required by G.S. 53–208.11.

"**§ 53-208.10. Issuance of license.**

(a) Upon the filing of a complete application, the Commissioner shall investigate the financial condition and responsibility, financial and business experience, and the character and general fitness of the applicant. The Commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which shall be borne by the applicant. If the Commissioner finds that the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community and that the applicant has fulfilled the requirements imposed by this Article and has paid the required license fee, the Commissioner shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this State. If these requirements have not been met, the Commissioner shall deny the application in a written statement setting forth the reasons for the denial.

(b) The Commissioner shall approve or deny every application for an original license within 120 days from the date a complete application is submitted, which period may be extended by the written consent of the applicant. The Commissioner shall notify the applicant of the date when the application is deemed complete. In the absence of approval or denial of the application, or consent to the extension of the 120-day period, the application is deemed approved and the Commissioner shall issue the license effective as of the first day after the 120-day or extended period has elapsed.

(c) No license shall be denied except on 10 days' notice to the applicant. Any applicant aggrieved by a denial issued by the Commissioner under this section may at any time within five days from the date of receipt of written notice of the denial, contest the denial by serving a written demand for a hearing on the Commissioner. The serving of a written demand on the Commissioner shall automatically stay the denial until a ruling is issued. The Commissioner shall set a date for a hearing not later than 30 days after service of the response, unless a later date is set with the consent of the applicant. The hearing authorized by this subsection shall be an informal hearing.

"**§ 53-208.11. Renewal of license and annual report.**

(a) The annual license fee shall be accompanied by a report, in a form prescribed by the Commissioner, to be filed by the licensee on or before December 31 of each year. The licensee shall include all of the following in its annual renewal report:

(1) A copy of its most recent audited consolidated annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position, or, in the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited financial statement.

(2) For the most recent quarter for which data is available prior to the date of the filing of the renewal application, but in no event more than 120 days prior to the renewal date, the licensee shall provide the number of payment instruments sold by the licensee in the State, the dollar

amount of those instruments, and the dollar amount of those instruments currently outstanding.

(3) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the Commissioner on any other report required to be filed under this Article.

(4) A list of the licensee's permissible investments.

(5) A list of the locations within this State at which business regulated by this Article is being conducted by either the licensee or its authorized delegates, except for entities exempt under G.S. 53-208.4.

(b) A licensee that has not filed a renewal report or paid its annual license fee by the renewal filing deadline and has not been granted an extension of time to do so by the Commissioner shall be notified by the Commission, in writing, that a hearing will be scheduled at which time the licensee will be required to show cause why its license should not be suspended pending compliance with these requirements.

"**§ 53-208.12. Quarterly reports.**

A licensee shall file for each calendar quarter, no later than 60 days after the quarter has ended, a report which contains the total number of authorized delegates in this State.

"**§ 53-208.13. Extraordinary reporting requirements.**

(a) Within 15 days of the occurrence of any one of the events listed below, a licensee shall file a written report with the Commissioner describing the event and its expected impact on the licensee's activities in the State:

(1) The filing for bankruptcy or reorganization by the licensee.

(2) The institution of revocation or suspension proceedings against the licensee by any State or governmental authority with regard to the licensee's money transmission activities.

(3) Any felony indictment of the licensee or any of its key officers or directors related to money transmission activities.

(4) Any felony conviction of the licensee or any of its key officers or directors related to money transmission activities.

(b) A licensee shall update information contained in the original application filed with the Commissioner. If the information contained in the application is or becomes inaccurate in any material respect, the licensee shall file a corrected amendment as soon as practicable, but in no event later than 30 days after the effective date of the material changes.

"**§ 53-208.14. Changes in control of a license.**

Within 15 days of a change or acquisition of control of a licensee, the licensee shall provide notice of the event to the Commissioner in writing and in a form prescribed by the Commissioner. The notice shall be accompanied by any information, data, and records required by the Commissioner. Notwithstanding the foregoing, the Commissioner may waive this notification requirement if, in the Commissioner's discretion, the change in control does not pose any risk to the interests of the public.

"**§ 53-208.15. Examinations.**

(a) The Commissioner may conduct an annual on-site examination of a licensee. Should the Commissioner conclude that an on-site examination of a licensee is necessary, the licensee shall pay all reasonably incurred costs of the examination. If the Commissioner determines, based on the licensee's financial statements and past history of operations in the State, that an on-site examination is unnecessary, then the on-site examination may be waived by the Commissioner. An on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. The Commissioner, in lieu of an on-site examination, may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm, and reports so accepted are considered for all purposes as an official report of the Commissioner. The Commissioner may examine a licensee without prior notice if the Commissioner has a reasonable basis to believe that the licensee is not in compliance with this Article.

(b) If the Commissioner has a reasonable basis to believe that the licensee or authorized delegate is not in compliance with this Article, the Commissioner may (i) request financial data from a licensee in addition to that required under G.S. 53-208.11, or (ii) conduct an on-site examination of any authorized delegate or of any location of a licensee within this State without prior notice to the authorized delegate or licensee. When the Commissioner examines an authorized delegate's operations, the authorized delegate shall pay all reasonably incurred costs of the examination. When the Commissioner examines a licensee's location within the State, the licensee shall pay all reasonably incurred costs of the examination.

"**§ 53-208.16. Maintenance of records and certificate of authority.**

(a) Each licensee shall make, keep, and preserve the following books, accounts, and other records for a period of three years:

(1) A record or records of each payment instrument sold.

(2) A general ledger containing all assets, liability, capital, income, and expense accounts, which general ledger shall be posted at least monthly.

(3) Settlement sheets received from authorized delegates.

(4) Bank statements and bank reconciliation records.

(5) Records of outstanding payment instruments and stored value.

(6) Records of each payment instrument paid within the three-year period.

(7) A list of the names and addresses of all of the licensee's authorized delegates, if any.

(b) Maintenance of the documents required by this section in a photographic, electronic, or other similar form shall constitute compliance with this section.

(c) Records may be maintained at a location other than within this State so long as they are made accessible to the Commissioner on seven days' written notice.

"**§ 53-208.17. Confidentiality of data submitted to the Commissioner.**

(a) Notwithstanding any other provision of law, all information or reports obtained by the Commissioner from an applicant, licensee, or authorized delegate, whether obtained through reports, applications, examination, audits, investigation, or otherwise, including (i) all information contained in or related to examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the Commissioner; and (ii) financial statements, balance sheets, or authorized delegate information are confidential and may not be disclosed by the Commissioner or any officer or employee of the Commissioner. The Commissioner, however, may provide for the release of information to representatives of State or federal agencies who state in writing under oath that they will maintain the confidentiality of the information if: (i) the licensee provides consent prior to the release; or (ii) the Commissioner finds that the release is reasonably necessary for the protection of the public or in the interests of justice.

(b) Nothing in this section shall prohibit the Commissioner from releasing to the public a list of persons licensed under this Article or aggregated financial data on those licenses.

"**§ 53-208.18. Suspension or revocation of licenses.**

After notice and hearing, the Commissioner may suspend or revoke a license issued under this Article if the Commissioner finds any of the following:

(1) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the application.

(2) The licensee's net worth becomes inadequate and the licensee, after 10 days' written notice from the Commissioner, fails to take such steps as the Commissioner deems necessary to remedy the deficiency.

(3) The licensee knowingly violates any material provision of this Article or any rule or order validly adopted by the Commissioner under authority of this title.

(4) The licensee is conducting its business in an unsafe or unsound manner.

(5) The licensee is insolvent.

(6) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(7) The licensee has applied for an adjudication for bankruptcy, reorganization, arrangement, or other relief under any bankruptcy.

(8) The licensee refuses to permit the Commissioner to make any examination authorized by this Article.

(9) The licensee willfully fails to make any report required by this Article.

"**§ 53-208.19. Authorized delegate contracts.**

Licensees desiring to conduct licensed activities through authorized delegates in this State shall authorize each delegate to operate pursuant to an express written contract, which shall provide the following:

(1) That the licensee appoints the person as its delegate with authority to engage in money transmission on behalf of the licensee.

(2) That neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the Commissioner.

(3) That licensees are subject to supervision and regulation by the Commissioner.

(4) A licensee shall issue a certificate of authority for each location at which it conducts licensed activities in this State through authorized delegates. The certificate shall be posted in public view at each location and shall state as follows: "Money transmission on behalf of (licensee) is conducted at this location pursuant to the Money Transmitters Act."

"**§ 53-208.20. Authorized delegate conduct.**

(a) An authorized delegate shall not make any fraudulent or false statement or misrepresentation to a licensee or to the Commissioner.

(b) All money transmission or sale or issuance of payment instrument activities conducted by authorized delegates shall be strictly in accordance with the licensee's written procedures provided to the authorized delegates.

(c) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate. The failure of an authorized delegate to remit all money owing to a licensee within the time presented shall result in liability of the authorized delegates to the licensee for three times the licensee's actual damages. The Commissioner may set, by regulation, the maximum remittance time.

(d) An authorized delegate is deemed to consent to the Commissioner's inspection, with or without prior notice to the licensee or authorized delegate, of the books and records of the authorized delegate of the licensee when the Commissioner has a reasonable basis to believe that the licensee or authorized delegate is not in compliance with this Article.

(e) An authorized delegate is under a duty to act only as authorized under the contract with the licensee. An authorized delegate who exceeds its authority is subject to cancellation of its contract and further disciplinary action by the Commissioner.

(f) All funds, less fees, received by an authorized delegate of a licensee from the sale or delivery of a payment instrument or stored value issued by a licensee or received by an authorized delegate for transmission shall constitute trust funds owned by and belonging to the licensee from the time the funds are received by the authorized delegate until the time when the funds or an equivalent amount are remitted by the authorized delegate to the licensee. If an authorized delegate commingles any funds with any other funds or property owned or controlled by the authorized delegate, all

commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

(g) An authorized delegate shall report to the licensee the theft or loss of payment instruments within 24 hours from the time it knew or should have known of the theft or loss.

(h) An authorized delegate shall prominently post the certificate of authority specified in G.S. 53-208.19 at each location at which it conducts licensed activities in this State.

"**§ 53-208.21. Revocation or suspension of authorized delegates.**

(a) If, after notice and a hearing, the Commissioner finds that any authorized delegate of a licensee or any director, officer, employee, or controlling person of the authorized delegate: (i) has violated any provision of this Article or of any rule or regulation or order issued under this Article; (ii) has engaged or participated in any unsafe or unsound act with respect to the business of selling or issuing payment instruments of the licensee or the business of money transmission; or (iii) has made or caused to be made in any application or report filed with the Commissioner or in any proceeding before the Commissioner, any statement which was at the time and in the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any application or report any material fact which is required to be stated therein, the Commissioner may issue an order suspending or barring the authorized delegate from continuing to be or becoming an authorized delegate of any licensee during the period for which the order is in effect. Upon issuance of the order, the licensee shall terminate its relationship with the authorized delegate according to the terms of the order.

(b) Any authorized delegate to whom an order is issued under this section may apply to the Commissioner to modify or rescind the order. The Commissioner shall not grant the application unless the Commissioner finds that (i) it is in the public interest to do so, and (ii) it is reasonable to believe that the person will comply with all applicable provisions of this Article and of any regulation and order issued under this Article if and when that person is permitted to resume being an authorized delegate of a licensee. The right of any authorized delegate to whom an order is issued under this section to petition for judicial review of the order shall not be affected by the failure of the person to apply to the Commissioner to modify or rescind the order.

"**§ 53-208.22. Licensee liability.**

A licensee's responsibility to any person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized delegate shall be limited to the amount of money transmitted or the face amount of the payment instrument purchased.

"**§ 53-208.23. Hearings; procedures.**

Except as provided by G.S. 53-208.10(c), hearings conducted pursuant to this Article shall proceed in accordance with Article 3A of Chapter 150B of the General Statutes.

"**§ 53-208.24. Civil penalties.**

(a) If, after notice and hearing, the Commissioner finds that a person has intentionally violated this Article or a rule adopted under this Article, the Commissioner may order the person to pay to the Commissioner a civil penalty in an amount specified by the Commissioner, not to exceed one thousand dollars ($1,000) for each violation or, in the case of a continuing violation, one thousand dollars ($1,000) for each day that the violation continues. No proceeding shall be initiated and no penalty shall be assessed pursuant to this section until after the person has been notified in writing of the nature of the violation and has been afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so.

(b) The Commissioner, in the exercise of the Commissioner's reasonable judgment, may compromise, settle, and collect civil penalties with any person for violations of any provision of this Article, or of any rule, regulation, or order issued or promulgated to this Article.

"**§ 53-208.25. Enforcement.**

(a) If it appears to the Commissioner that any person has committed or is about to commit a violation of any provision of this Article or of any rule or order of the Commissioner, the Commissioner may apply to the Wake County Superior Court for an order enjoining the person from violating or continuing to violate this Article or any rule, regulation, or order and for injunctive or such other relief as the nature of the case may require.

(b) The Commissioner may enter into consent orders at any time with any person to resolve any matter arising under this Article. A consent order shall be signed by the person to whom it is issued or a duly authorized representative and shall indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this Article, or any rule, regulation, or order promulgated or issued thereunder has been violated, nor need it constitute a finding by the Commissioner that the person has violated any provision of this Article or any rule, regulation, or order promulgated or issued thereunder.

(c) Notwithstanding the issuance of a consent order, the Commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order, unless the consent order by its terms expressly precludes the Commissioner from so doing.

"**§ 53-208.26. Criminal penalties.**

(a) Any person who knowingly and willfully violates any provision of this Article for which a penalty is not specifically provided is guilty of a Class 1 misdemeanor.

(b) Any person who knowingly and willfully makes a material, false statement in any document filed or required to be filed under this Article with the intent to deceive the recipient of the document is guilty of a Class 1 misdemeanor.

(c) Any person who knowingly and willfully engages in the business of money transmission without a license as provided herein shall be guilty of a Class 1 misdemeanor.

"**§ 53-208.27. Rules.**

(a) The Banking Commission may adopt rules necessary to implement this Article.

(b) The Banking Commission may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article; and any person aggrieved by any such rule, regulation, order, or act may appeal to the Commission for review upon providing notice in writing within 20 days after any rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92.

"**§ 53-208.28. Severability.**

Should any provision, sentence, clause, section, or part of this Article for any reason be held unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or part of this Article.

"**§ 53-208.29. Appointment of Secretary of State as agent for service of process.**

(a) Any licensee, authorized delegate, or other person who knowingly engages in business activities that are regulated under this Article, with or without filing an application, is deemed to have done both of the following:

(1) Consented to the jurisdiction of the courts of this State for all actions arising under this Article; and

(2) Appointed the Secretary of State as such person's agent for the purpose of accepting service of process in any action, suit, or proceeding that may arise under this Article.

(b) Within three business days after service of process upon the Secretary of State, the Secretary shall transmit by certified mail copies of all lawful process accepted by the Secretary as an agent of that person at its last known address. Service of process shall be considered complete three business days after the Commissioner deposits copies of the documents in the United States mail.

"**§ 53-208.30. Transition.**

Any person who holds in good standing a money transmitters license issued by the Commissioner of Banks on October 1, 2001, may continue to engage in such business subject to the renewal requirements of G.S. 53-208.11, and upon renewal, proof that the licensee meets the net worth requirements of G.S. 53-208.5(a), and the bonding or other security requirements of G.S. 53-208.8."

SECTION 3. G.S. 53-99(b)(7a) reads as rewritten:

"(7a) Records of examinations and investigations of licensees under the ~~Sale of Checks Act, Article 16~~ Money Transmitters Act, Article 16A of this Chapter;".

SECTION 4. G.S. 53-277 reads as rewritten:

"**§ 53-277. Exemptions.**

(a) This Article shall not apply to:

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

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars ($2.00) is charged for the service.

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

SECTION 5. This act becomes effective October 1, 2001, and applies to contracts entered into on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 890

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S890-ARO-31 [v.2]

Date _____ ,2001

Comm. Sub. [NO]
Amends Title [NO]
Third Edition

Representative

moves to amend the bill on page 10, line 16, by rewriting the line to read:

"**§ 53-208.12. Quarterly reports.**".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 3

SENATE BILL 890

Judiciary II Committee Substitute Adopted 5/16/01
Finance Committee Substitute Adopted 7/30/01

Short Title: Money Transmitters Act. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO REVISE THE NORTH CAROLINA MONEY TRANSMITTERS ACT; ARTICLE 16 OF CHAPTER 53 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 53 of the General Statutes, G.S. 53-192 through G.S. 53-208, is hereby repealed.

SECTION 2. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 16A.

"Money Transmitters Act.

"**§ 53-208.1. Citation of Article.**

This Article shall be known and cited as the 'Money Transmitters Act'.

"**§ 53-208.2. Definitions.**

(a) Unless otherwise provided in this Article, or when the context clearly indicates that a different meaning is intended, the following definitions apply in this Article:

(1) Applicant. – A person filing an application for a license under this Article.

(2) Authorized delegate. – An entity designated by the licensee under the provisions of this Article to sell or issue payment instruments or stored value or engage in the business of transmitting money on behalf of a licensee.

(3) Commissioner. – The Commissioner of Banks of the State of North Carolina.

(4) Control. – Ownership of, or the power to vote, ten percent (10%) or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the person's

interest the interest of any other person controlled by the person or by any spouse, parent, or child of the person.

(5) Controlling person. – Any person in control of a licensee.

(6) Electronic instrument. – A card or other tangible object for the transmission or payment of money or monetary value which contains a microprocessor chip, magnetic strip, or other means for the storage of information that is prefunded and for which the value is decremented upon each use. The term does not include a card or other tangible object that is redeemable by the issuer in goods or services.

(7) Executive officer. – The licensee's president, chair of the executive committee, senior officer responsible for the licensee's business, chief financial officer, and any other person who performs similar functions.

(8) Key shareholder. – Any person, or group of persons acting in concert, who is the owner of ten percent (10%) or more of any voting class of an applicant's stock.

(9) Licensee. – A person licensed under this Article.

(10) Material litigation. – Any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in that entity's annual audited financial statements, report to shareholders, or similar documents.

(11) Monetary value. – A medium of exchange, whether or not redeemable in money.

(12) Monetary transmission. – The term means either of the following:

a. The sale or issuance of payment instruments or stored value.

b. The act of engaging in the business of receiving money or monetary value for transmission within the United States or to locations abroad by any and all means, including payment instrument, wire, facsimile, or electronic transfer.

(13) Payment instrument. – Any electronic or written check, draft, money order, traveler's check, or other electronic or written instrument or order for the transmission or payment of money or monetary value, whether or not the instrument is negotiable. The term does not include a credit card voucher, letter of credit, or any other instrument that is redeemable by the issuer in goods or services.

(14) Outstanding payment instrument. – Any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any payment instrument issued by the licensee which has been sold by an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold and which has not yet been paid by or for the licensee.

(15) Person. – Any individual, partnership, association, joint-stock association, trust, or corporation.

(16) Remit. – To do one or more of the following:

a. Make direct payment of the funds to the licensee or its representatives authorized to receive those funds.

b. Deposit the funds in a bank, credit union, or savings and loan association or other similar financial institution in an account specified by the licensee.

(17) Permissible investments. – One or more of the following:

a. Cash.

b. Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign.

c. Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the Federal Reserve System.

d. Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities.

e. Investment securities that are obligations of the United States, its agencies, or instrumentalities or obligations that are guaranteed fully as to principal and interest of the United States or any obligations of any state, municipality, or any political subdivision thereof.

f. Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures, or preferred stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities or a fund composed of one or more permissible investments as set forth herein.

g. Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange.

h. Receivables due to a licensee from its authorized delegates pursuant to a contract described in G.S. 53-208.20, which are not past due or doubtful of collection.

i. Any other investments or security device approved by the Commissioner.

(18) Stored value. – Monetary value that is evidenced by an electronic record.

"**§ 53-208.3. License required.**

(a) On or after October 1, 2001, no person except those exempt pursuant to G.S. 53-208.4 shall engage in the business of money transmission in this State without a license as provided in this Article.

(b) A licensee may conduct its business in this State at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted to the licensee.

(c) For the purposes of this Article, a person is considered to be engaged in the business of money transmission in this State if that person makes available, from a location inside or outside of this State, an Internet website North Carolina citizens may access in order to enter into those transactions by electronic means.

"**§ 53-208.4. Exemptions.**

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

(1) The United States or any department, agency, or instrumentality thereof.

(2) The United States Post Office.

(3) The State or any political subdivisions thereof.

(4) Banks, credit unions, savings and loan associations, savings banks, or mutual banks organized under the laws of any state or the United States.

(5) A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as a broker-dealer.

(6) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof.

(b) Authorized delegates of a licensee, acting within the scope of authority conferred by a written contract as described in G.S. 53-208.19 shall not be required to obtain a license pursuant to this Article.

"**§ 53-208.5. License qualifications.**

(a) Each licensee shall have at all times a net worth of not less than one hundred thousand dollars ($100,000) calculated in accordance with generally accepted accounting principles. Licensees engaging in money transmission at more than one location or through authorized delegates shall have an additional net worth of ten thousand dollars ($10,000) per location in this State, as applicable, to a maximum of five hundred thousand dollars ($500,000). Licensees with neither locations nor authorized delegates in this State shall have an additional net worth as established by the Commissioner in an amount not to exceed a maximum of five hundred thousand dollars ($500,000).

(b) Every corporate applicant, at the time of filing of an application for license under this Article and at all times after a license is issued, shall be in good standing in the state of its incorporation and, if required by the North Carolina Business

Corporations Act, Chapter 55 of the General Statutes, shall be registered or qualified to do business in this State. All noncorporate applicants shall, at the time of the filing of an application for a license under this Article and at all times after a license is issued, be registered or qualified to do business in the State as required by law.

"**§ 53-208.6. Permissible investments and statutory trust.**

(a) Each licensee under this Article shall possess at all times unencumbered permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments and stored value obligations issued or sold. This requirement may be waived by the Commissioner if the dollar volume of a licensee's outstanding payment instruments and stored value do not exceed the bond or other security devices posted by the licensee pursuant to G.S. 53-208.8.

(b) Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored value obligations in the event of the bankruptcy of the licensee.

"**§ 53-208.7. License application.**

(a) Each application for a license under this Article shall be made in writing, under oath, and in a form prescribed by the Commissioner. For all applicants, each application shall contain:

(1) The exact name of the applicant, the applicant's principal address, any assumed or trade name used by the applicant in the conduct of its business, and the location of the applicant's business records.

(2) The history of the applicant's material civil litigation for a 10-year period prior to the date of the application and a record of any criminal convictions.

(3) A description of the activities conducted by the applicant and a history of operations.

(4) A description of the business activities in which the applicant seeks to be engaged in the State.

(5) A list identifying the applicant's proposed authorized delegates in the State, if any, at the time of the filing of the license application.

(6) A sample authorized delegate contract, if applicable.

(7) A sample form of payment instrument, if applicable, which bears the name and address or telephone number of the issuer clearly printed on the payment instrument.

(8) The location or locations at which the applicant and its authorized delegates, if any, propose to conduct the licensed activities in the State.

(9) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which the payment instruments will be payable.

(b) If the applicant is a corporation, the applicant shall also provide:

(1) The date of the applicant's incorporation and state of incorporation.
(2) A certificate of good standing from the state in which the applicant was incorporated.
(3) A certificate of authority from the Secretary of State to conduct business in this State, if required by the North Carolina Business Corporations Act, Chapter 55 of the General Statutes.
(4) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange.
(5) The name, business and residence address, and employment history for the past five years of the applicant's executive officers and the officers or managers who will be in charge of the applicant's activities to be licensed pursuant to this Article.
(6) The name, business and residence address, and employment history for the period five years prior to the date of the application of any key shareholder of the applicant.
(7) The history of material civil litigation for a 10-year period prior to the date of the application and a record of any criminal conviction for every executive officer or key shareholder.
(8) A copy of the applicant's most recent audited financial statement, including the balance sheet, statement of income or loss, statement of changes in shareholder equity, and statement of changes in financial position and, if available, the applicant's audited financial statements for the immediately preceding two-year period. However, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two-year period or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the prior three years in lieu of the applicant's financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this provision.
(9) Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application.

(c) If the applicant is not a corporation, the applicant shall also provide:
(1) The name, business and residence address, personal financial statement, and employment history, for the past five years, of each

principal of the applicant and the name, business and residence address, and employment history for the past five years of any other person or persons who will be in charge of the applicant's activities to be licensed pursuant to this Article.

(2) The place and date of the applicant's registration or qualification to do business in this State.

(3) The history of material civil litigation for a 10-year period prior to the date of the application and a record of any criminal conviction for each individual having an ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities.

(4) Copies of the applicant's audited financial statements, including the balance sheet, statement of income or loss, and statement of changes in financial position, for the current year and, if available, for the immediately preceding two-year period.

The Commissioner is authorized, for good cause shown, to waive any requirements of this section with respect to any license application or to permit a license applicant to submit substituted information in its license application in lieu of the information required by this section.

"**§ 53-208.8. Surety bond.**

(a) Each application shall be accompanied by a surety bond acceptable to the Commissioner in the amount of one hundred fifty thousand dollars ($150,000). If the applicant proposes to engage in business under this Article at more than one location, through authorized delegates or otherwise, then the amount of the security bond will be increased by five thousand dollars ($5,000) per location, up to a maximum of two hundred fifty thousand dollars ($250,000). In the case of an applicant which engages in business under this Article, but has no locations or authorized delegates in this State, the amount of the security bond may be increased at the Commissioner's discretion to a maximum of two hundred fifty thousand dollars ($250,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money or monetary value in connection with the sale and issuance of payment instruments, stored value, or transmission of money. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Claimants against the licensee may themselves bring suit directly on the security bond, or the Commissioner may bring suit on behalf of claimants, either in one action or in successive actions.

(b) In lieu of a surety bond, the licensee may deposit with the Commissioner, or with any bank in this State designated by the licensee and approved by the Commissioner, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the surety bond or portion thereof, the following:

(1) Unencumbered cash.
(2) Unencumbered interest-bearing bonds.
(3) Unencumbered notes.
(4) Unencumbered debentures.
(5) Unencumbered obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States.
(6) Unencumbered obligations of this State or of any political subdivision of the State, or guaranteed by this State.

The securities or cash shall be deposited as aforesaid and held to secure the same obligations as would the surety bond, but the depositor shall be entitled to receive all interest and dividends thereon, shall have the right, with the approval of the Commissioner, to substitute other securities for those deposited, and shall be required to do so on written order of the Commissioner made for good cause shown.

(c) The surety bond shall remain in effect until cancellation, which may occur only after 90 days' written notice to the Commissioner. Cancellation shall not affect any liability incurred or accrued during that period.

(d) The surety bond shall remain in place for no longer than five years after the licensee ceases money transmission operations in the State. However, notwithstanding this provision, the Commissioner may permit the surety bond to be reduced or eliminated prior to that time to the extent that the amount of the licensee's outstanding payment instruments, stored value obligations, and money transmitted in this State is reduced.

(e) The surety bond proceeds and any cash or other collateral posted as security by a licensee shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments, stored value obligations, and money transmissions in the event of the bankruptcy of the licensee.

"**§ 53-208.9. Fees.**

(a) Investigation and License Fees. – Each application for a license shall be accompanied by a nonrefundable investigation fee of five hundred dollars ($500.00), together with the initial license fee of one thousand dollars ($1,000) plus ten dollars ($10.00) per location within this State at which a money transmission business is to be conducted by the applicant or an authorized delegate.

(b) Annual License Fee. – On or before December 31 of each year, each licensee under this Article shall pay to the Commissioner a license fee in the amount of one thousand dollars ($1,000) plus ten dollars ($10.00) per location in this State at which the licensee or an authorized delegate is conducting a money transmitter business.

(c) Location Fee. – Notwithstanding the number of locations within this State at which a licensee or authorized delegate conducts a money transmitter business, the per location fee provided in subsections (a) and (b) of this section shall not exceed five thousand dollars ($5,000) per licensee per year. The per year location fee shall be based on the number of locations set forth in the annual report required by G.S. 53–208.11.

"**§ 53-208.10. Issuance of license.**

(a) Upon the filing of a complete application, the Commissioner shall investigate the financial condition and responsibility, financial and business experience, and the character and general fitness of the applicant. The Commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which shall be borne by the applicant. If the Commissioner finds that the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community and that the applicant has fulfilled the requirements imposed by this Article and has paid the required license fee, the Commissioner shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this State. If these requirements have not been met, the Commissioner shall deny the application in a written statement setting forth the reasons for the denial.

(b) The Commissioner shall approve or deny every application for an original license within 120 days from the date a complete application is submitted, which period may be extended by the written consent of the applicant. The Commissioner shall notify the applicant of the date when the application is deemed complete. In the absence of approval or denial of the application, or consent to the extension of the 120-day period, the application is deemed approved and the Commissioner shall issue the license effective as of the first day after the 120-day or extended period has elapsed.

(c) No license shall be denied except on 10 days' notice to the applicant. Any applicant aggrieved by a denial issued by the Commissioner under this section may at any time within five days from the date of receipt of written notice of the denial, contest the denial by serving a written demand for a hearing on the Commissioner. The serving of a written demand on the Commissioner shall automatically stay the denial until a ruling is issued. The Commissioner shall set a date for a hearing not later than 30 days after service of the response, unless a later date is set with the consent of the applicant. The hearing authorized by this subsection shall be an informal hearing.

"**§ 53-208.11. Renewal of license and annual report.**

(a) The annual license fee shall be accompanied by a report, in a form prescribed by the Commissioner, to be filed by the licensee on or before December 31 of each year. The licensee shall include all of the following in its annual renewal report:

(1) A copy of its most recent audited consolidated annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position, or, in the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited financial statement.

(2) For the most recent quarter for which data is available prior to the date of the filing of the renewal application, but in no event more than 120 days prior to the renewal date, the licensee shall provide the number of payment instruments sold by the licensee in the State, the dollar

amount of those instruments, and the dollar amount of those instruments currently outstanding.

(3) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the Commissioner on any other report required to be filed under this Article.

(4) A list of the licensee's permissible investments.

(5) A list of the locations within this State at which business regulated by this Article is being conducted by either the licensee or its authorized delegates, except for entities exempt under G.S. 53-208.4.

(b) A licensee that has not filed a renewal report or paid its annual license fee by the renewal filing deadline and has not been granted an extension of time to do so by the Commissioner shall be notified by the Commission, in writing, that a hearing will be scheduled at which time the licensee will be required to show cause why its license should not be suspended pending compliance with these requirements.

"**§ 58-208.12. Quarterly reports.**

A licensee shall file for each calendar quarter, no later than 60 days after the quarter has ended, a report which contains the total number of authorized delegates in this State.

"**§ 53-208.13. Extraordinary reporting requirements.**

(a) Within 15 days of the occurrence of any one of the events listed below, a licensee shall file a written report with the Commissioner describing the event and its expected impact on the licensee's activities in the State:

(1) The filing for bankruptcy or reorganization by the licensee.

(2) The institution of revocation or suspension proceedings against the licensee by any State or governmental authority with regard to the licensee's money transmission activities.

(3) Any felony indictment of the licensee or any of its key officers or directors related to money transmission activities.

(4) Any felony conviction of the licensee or any of its key officers or directors related to money transmission activities.

(b) A licensee shall update information contained in the original application filed with the Commissioner. If the information contained in the application is or becomes inaccurate in any material respect, the licensee shall file a corrected amendment as soon as practicable, but in no event later than 30 days after the effective date of the material changes.

"**§ 53-208.14. Changes in control of a license.**

Within 15 days of a change or acquisition of control of a licensee, the licensee shall provide notice of the event to the Commissioner in writing and in a form prescribed by the Commissioner. The notice shall be accompanied by any information, data, and records required by the Commissioner. Notwithstanding the foregoing, the Commissioner may waive this notification requirement if, in the Commissioner's discretion, the change in control does not pose any risk to the interests of the public.

"**§ 53-208.15. Examinations.**

(a) The Commissioner may conduct an annual on-site examination of a licensee. Should the Commissioner conclude that an on-site examination of a licensee is necessary, the licensee shall pay all reasonably incurred costs of the examination. If the Commissioner determines, based on the licensee's financial statements and past history of operations in the State, that an on-site examination is unnecessary, then the on-site examination may be waived by the Commissioner. An on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. The Commissioner, in lieu of an on-site examination, may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm, and reports so accepted are considered for all purposes as an official report of the Commissioner. The Commissioner may examine a licensee without prior notice if the Commissioner has a reasonable basis to believe that the licensee is not in compliance with this Article.

(b) If the Commissioner has a reasonable basis to believe that the licensee or authorized delegate is not in compliance with this Article, the Commissioner may (i) request financial data from a licensee in addition to that required under G.S. 53-208.11, or (ii) conduct an on-site examination of any authorized delegate or of any location of a licensee within this State without prior notice to the authorized delegate or licensee. When the Commissioner examines an authorized delegate's operations, the authorized delegate shall pay all reasonably incurred costs of the examination. When the Commissioner examines a licensee's location within the State, the licensee shall pay all reasonably incurred costs of the examination.

"**§ 53-208.16. Maintenance of records and certificate of authority.**

(a) Each licensee shall make, keep, and preserve the following books, accounts, and other records for a period of three years:

(1) A record or records of each payment instrument sold.

(2) A general ledger containing all assets, liability, capital, income, and expense accounts, which general ledger shall be posted at least monthly.

(3) Settlement sheets received from authorized delegates.

(4) Bank statements and bank reconciliation records.

(5) Records of outstanding payment instruments and stored value.

(6) Records of each payment instrument paid within the three-year period.

(7) A list of the names and addresses of all of the licensee's authorized delegates, if any.

(b) Maintenance of the documents required by this section in a photographic, electronic, or other similar form shall constitute compliance with this section.

(c) Records may be maintained at a location other than within this State so long as they are made accessible to the Commissioner on seven days' written notice.

"**§ 53-208.17. Confidentiality of data submitted to the Commissioner.**

(a) Notwithstanding any other provision of law, all information or reports obtained by the Commissioner from an applicant, licensee, or authorized delegate, whether obtained through reports, applications, examination, audits, investigation, or otherwise, including (i) all information contained in or related to examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the Commissioner; and (ii) financial statements, balance sheets, or authorized delegate information are confidential and may not be disclosed by the Commissioner or any officer or employee of the Commissioner. The Commissioner, however, may provide for the release of information to representatives of State or federal agencies who state in writing under oath that they will maintain the confidentiality of the information if: (i) the licensee provides consent prior to the release; or (ii) the Commissioner finds that the release is reasonably necessary for the protection of the public or in the interests of justice.

(b) Nothing in this section shall prohibit the Commissioner from releasing to the public a list of persons licensed under this Article or aggregated financial data on those licenses.

"**§ 53-208.18. Suspension or revocation of licenses.**

After notice and hearing, the Commissioner may suspend or revoke a license issued under this Article if the Commissioner finds any of the following:

(1) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the application.

(2) The licensee's net worth becomes inadequate and the licensee, after 10 days' written notice from the Commissioner, fails to take such steps as the Commissioner deems necessary to remedy the deficiency.

(3) The licensee knowingly violates any material provision of this Article or any rule or order validly adopted by the Commissioner under authority of this title.

(4) The licensee is conducting its business in an unsafe or unsound manner.

(5) The licensee is insolvent.

(6) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(7) The licensee has applied for an adjudication for bankruptcy, reorganization, arrangement, or other relief under any bankruptcy.

(8) The licensee refuses to permit the Commissioner to make any examination authorized by this Article.

(9) The licensee willfully fails to make any report required by this Article.

"**§ 53-208.19. Authorized delegate contracts.**

Licensees desiring to conduct licensed activities through authorized delegates in this State shall authorize each delegate to operate pursuant to an express written contract, which shall provide the following:

(1) That the licensee appoints the person as its delegate with authority to engage in money transmission on behalf of the licensee.

(2) That neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the Commissioner.

(3) That licensees are subject to supervision and regulation by the Commissioner.

(4) A licensee shall issue a certificate of authority for each location at which it conducts licensed activities in this State through authorized delegates. The certificate shall be posted in public view at each location and shall state as follows: "Money transmission on behalf of (licensee) is conducted at this location pursuant to the Money Transmitters Act."

"**§ 53-208.20. Authorized delegate conduct.**

(a) An authorized delegate shall not make any fraudulent or false statement or misrepresentation to a licensee or to the Commissioner.

(b) All money transmission or sale or issuance of payment instrument activities conducted by authorized delegates shall be strictly in accordance with the licensee's written procedures provided to the authorized delegates.

(c) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate. The failure of an authorized delegate to remit all money owing to a licensee within the time presented shall result in liability of the authorized delegates to the licensee for three times the licensee's actual damages. The Commissioner may set, by regulation, the maximum remittance time.

(d) An authorized delegate is deemed to consent to the Commissioner's inspection, with or without prior notice to the licensee or authorized delegate, of the books and records of the authorized delegate of the licensee when the Commissioner has a reasonable basis to believe that the licensee or authorized delegate is not in compliance with this Article.

(e) An authorized delegate is under a duty to act only as authorized under the contract with the licensee. An authorized delegate who exceeds its authority is subject to cancellation of its contract and further disciplinary action by the Commissioner.

(f) All funds, less fees, received by an authorized delegate of a licensee from the sale or delivery of a payment instrument or stored value issued by a licensee or received by an authorized delegate for transmission shall constitute trust funds owned by and belonging to the licensee from the time the funds are received by the authorized delegate until the time when the funds or an equivalent amount are remitted by the authorized delegate to the licensee. If an authorized delegate commingles any funds with any other funds or property owned or controlled by the authorized delegate, all

commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

(g) An authorized delegate shall report to the licensee the theft or loss of payment instruments within 24 hours from the time it knew or should have known of the theft or loss.

(h) An authorized delegate shall prominently post the certificate of authority specified in G.S. 53-208.19 at each location at which it conducts licensed activities in this State.

"**§ 53-208.21. Revocation or suspension of authorized delegates.**

(a) If, after notice and a hearing, the Commissioner finds that any authorized delegate of a licensee or any director, officer, employee, or controlling person of the authorized delegate: (i) has violated any provision of this Article or of any rule or regulation or order issued under this Article; (ii) has engaged or participated in any unsafe or unsound act with respect to the business of selling or issuing payment instruments of the licensee or the business of money transmission; or (iii) has made or caused to be made in any application or report filed with the Commissioner or in any proceeding before the Commissioner, any statement which was at the time and in the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any application or report any material fact which is required to be stated therein, the Commissioner may issue an order suspending or barring the authorized delegate from continuing to be or becoming an authorized delegate of any licensee during the period for which the order is in effect. Upon issuance of the order, the licensee shall terminate its relationship with the authorized delegate according to the terms of the order.

(b) Any authorized delegate to whom an order is issued under this section may apply to the Commissioner to modify or rescind the order. The Commissioner shall not grant the application unless the Commissioner finds that (i) it is in the public interest to do so, and (ii) it is reasonable to believe that the person will comply with all applicable provisions of this Article and of any regulation and order issued under this Article if and when that person is permitted to resume being an authorized delegate of a licensee. The right of any authorized delegate to whom an order is issued under this section to petition for judicial review of the order shall not be affected by the failure of the person to apply to the Commissioner to modify or rescind the order.

"**§ 53-208.22. Licensee liability.**

A licensee's responsibility to any person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized delegate shall be limited to the amount of money transmitted or the face amount of the payment instrument purchased.

"**§ 53-208.23. Hearings - procedures.**

Except as provided by G.S. 53-208.10(c), hearings conducted pursuant to this Article shall proceed in accordance with Article 3A of Chapter 150B of the General Statutes.

"**§ 53-208.24. Civil penalties.**

(a) If, after notice and hearing, the Commissioner finds that a person has intentionally violated this Article or a rule adopted under this Article, the Commissioner may order the person to pay to the Commissioner a civil penalty in an amount specified by the Commissioner, not to exceed one thousand dollars ($1,000) for each violation or, in the case of a continuing violation, one thousand dollars ($1,000) for each day that the violation continues. No proceeding shall be initiated and no penalty shall be assessed pursuant to this section until after the person has been notified in writing of the nature of the violation and has been afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so.

(b) The Commissioner, in the exercise of the Commissioner's reasonable judgment, may compromise, settle, and collect civil penalties with any person for violations of any provision of this Article, or of any rule, regulation, or order issued or promulgated to this Article.

"**§ 53-208.25. Enforcement.**

(a) If it appears to the Commissioner that any person has committed or is about to commit a violation of any provision of this Article or of any rule or order of the Commissioner, the Commissioner may apply to the Wake County Superior Court for an order enjoining the person from violating or continuing to violate this Article or any rule, regulation, or order and for injunctive or such other relief as the nature of the case may require.

(b) The Commissioner may enter into consent orders at any time with any person to resolve any matter arising under this Article. A consent order shall be signed by the person to whom it is issued or a duly authorized representative and shall indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this Article, or any rule, regulation, or order promulgated or issued thereunder has been violated, nor need it constitute a finding by the Commissioner that the person has violated any provision of this Article or any rule, regulation, or order promulgated or issued thereunder.

(c) Notwithstanding the issuance of a consent order, the Commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order, unless the consent order by its terms expressly precludes the Commissioner from so doing.

"**§ 53-208.26. Criminal penalties.**

(a) Any person who knowingly and willfully violates any provision of this Article for which a penalty is not specifically provided is guilty of a Class 1 misdemeanor.

(b) Any person who knowingly and willfully makes a material, false statement in any document filed or required to be filed under this Article with the intent to deceive the recipient of the document is guilty of a Class 1 misdemeanor.

(c) Any person who knowingly and willfully engages in the business of money transmission without a license as provided herein shall be guilty of a Class 1 misdemeanor.

"**§ 53-208.27. Rules.**

(a) The Banking Commission may adopt rules necessary to implement this Article.

(b) The Banking Commission may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article; and any person aggrieved by any such rule, regulation, order, or act may appeal to the Commission for review upon providing notice in writing within 20 days after any rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92.

"**§ 53-208.28. Severability.**

Should any provision, sentence, clause, section, or part of this Article for any reason be held unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or part of this Article.

"**§ 53-208.29. Appointment of Secretary of State as agent for service of process.**

(a) Any licensee, authorized delegate, or other person who knowingly engages in business activities that are regulated under this Article, with or without filing an application, is deemed to have done both of the following:

(1) Consented to the jurisdiction of the courts of this State for all actions arising under this Article; and

(2) Appointed the Secretary of State as such person's agent for the purpose of accepting service of process in any action, suit, or proceeding that may arise under this Article.

(b) Within three business days after service of process upon the Secretary of State, the Secretary shall transmit by certified mail copies of all lawful process accepted by the Secretary as an agent of that person at its last known address. Service of process shall be considered complete three business days after the Commissioner deposits copies of the documents in the United States mail.

"**§ 53-208.30. Transition.**

Any person who holds in good standing a money transmitters license issued by the Commissioner of Banks on October 1, 2001, may continue to engage in such business subject to the renewal requirements of G.S. 53-208.11, and upon renewal, proof that the licensee meets the net worth requirements of G.S. 53-208.5(a), and the bonding or other security requirements of G.S. 53-208.8."

SECTION 3. G.S. 53-99(b)(7a) reads as rewritten:

"(7a) Records of examinations and investigations of licensees under the ~~Sale of Checks Act, Article 16~~ Money Transmitters Act, Article 16A of this Chapter;".

SECTION 4. G.S. 53-277 reads as rewritten:

"**§ 53-277. Exemptions.**

(a) This Article shall not apply to:

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

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars ($2.00) is charged for the service.

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

SECTION 5. This act becomes effective October 1, 2001, and applies to contracts entered into on or after that date.

SENATE BILL 890:
Money Transmitters Act.

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Sen. Hagan
Date:	August 22, 2001	**Summary by:**	Karen Cochrane Brown
Version:	Third Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 890 repeals the existing law regulating money transmitters and replaces it with a new Article 16A in the Chapter 53 (Banking). The new Article is based upon multi-state model legislation and is intended to give additional protection for the electronic transmission of money. The bill does the following:***

- ***Creates an additional $10,000 per location net worth requirement for licensed money transmitters.***
- ***Expands and updates many definitions to reflect modern methods of transmitting funds.***
- ***Requires that non-bank entities that provide money transmission to North Carolina citizens via the Internet, but have no physical presence in North Carolina must be licensed.***
- ***Protects the outstanding liabilities of a money transmitter from general creditors by imposing a trust upon those funds that reflect the outstanding, but unclaimed value of money instruments or stored value.***
- ***Creates a civil penalty for violations.***

The act becomes effective October 1, 2001 and applies to contracts entered into on and after that date.

CURRENT LAW: Article 16 of Chapter 53 regulates non-bank entities that are in the business of transmitting money. The Commissioner of Banks must license any person who issues checks, drafts, money orders or other instruments for the transmission of money ("checks"), including instruments transmitted by wire or other means. In order to be approved for a license, an applicant must furnish a $150,000 surety bond plus $5,000 for each North Carolina location where the applicant issues or sells checks. The amount of surety bond may not exceed $250,000. Each licensee must also maintain a minimum net worth of at least $100,000 that must be invested in "permitted investments" which include unencumbered cash, unencumbered investment securities that are obligations of the United States or that are guaranteed by the United States, and unencumbered obligations of State or local governments. Article 16 does not apply to: (1) corporations organized under general banking laws of any state and where deposits are federally insured; (2) the U.S. government; (3) savings and loan associations; and (4) entities that sell checks through "nonbank" agents or locations. A licensee must have on hand at all times permissible investments in an amount equal to the aggregate face value of all outstanding checks sold by the licensee and for which the licensee is liable for payment. Licensees must pay an annual license fee of $1,000 as well as a $500 investigation fee. Licensees may conduct business in one or more locations in North Carolina. The Commissioner may revoke a license at any time for a violation of the Article, for failure to pay the annual fee, or for any reason that would be cause to deny the issuance of a license. Violations of Article 16 are Class 1 misdemeanors.

BILL ANALYSIS: Section 1 repeals Article 16 of Chapter 53 ("Money Transmitters Act")

Section 2 creates Article 16A, a more detailed and updated "Money Transmitters Act". The new Articl is based upon model legislation already enacted in a number of states.

On and after October 1, 2001, any person who engages in the business of money transmission in North Carolina must be licensed under Article 16A, unless the person is exempt. "Money transmission" is defined as (1) the sale or issuance of payment instruments or stored value, or (2) the act of engaging in the business of receiving money or monetary value for transmission within the United States or abroad by any and all means, including payment instrument, wire, facsimile, or electronic transfer. A person is engaged in the business of money transmission in North Carolina if the person makes available an internet website that North Carolina citizens may access in order to purchase money transmissions electronically. The Article does not apply to the United States or any department of thereof, the U.S. Post Office, the State of North Carolina or its political subdivisions, banks or savings and loans organized under the laws of any state of the U.S., and persons registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as a broker-dealer.

In order to qualify for a license, an applicant must have a net worth of at least $100,000 plus $10,000 for each additional location in North Carolina up to a maximum of $500,000. Licensees with neither locations nor authorized delegates in North Carolina must have an additional net worth (over $100,000) as established by the Commissioner. Corporate applicants for a license must be in good standing in the state of incorporation and if required, must be registered or qualified to do business in North Carolina. North Carolina may require money transmitters that do not have a physical presence in this State to be licensed in this State under its police powers in order to prevent fraud or misconduct. Courts have held that a state may interfere with interstate commerce through a licensing requirement so long as there is no indication of a restriction or competition with in-state licensees.

A licensee must provide a surety bond of at least $150,000 plus an additional $5,000 per location with a maximum of $250,000. In lieu of a surety bond, the licensee may deposit with the Commissioner an aggregate amount of not less than the surety bond of certain unencumbered assets. The licensee must give the Commissioner at least 90 days notice before canceling the bond.

As with the original Money Transmitters Act, there is a $1,000 annual license fee and a $500 investigation and license fee, as well as a $1,000 initial license fee plus $10 per North Carolina location. The Commissioner is changed with investigating the financial condition and responsibility of applicants and may conduct on site investigations. The Commissioner will issue a license if the Commissioner determines the applicant's business will be conducted honestly and fairly, and the other requirements of the Act have been fulfilled. A licensee has 15 days to report to the Commissioner any change or acquisition of control of the licensee.

After notice and a hearing, the Commissioner may revoke or suspend a license for any of the following grounds: a fact or condition exists that would have been grounds for denying a license; the licensee's net worth has fallen below the required minimum and the licensee has failed to take steps to correct the situation; a knowing violation of the Article; the licensee is conducting business in an unsafe or unsound manner; the licensee is insolvent, has suspended payments on its obligations, or has applied for bankruptcy; and the licensee fails to allow the Commissioner to make an examination; or the licensee fails to submit the required reports.

A licensee may conduct business in multiple locations in the State through authorized delegates pursuant to a single license. An "authorized delegate" is an entity designated by a licensee to sell or issue payment instruments or stored value or engage in the business of transmitting money on behalf of the licensee. The licensee and the authorized delegate must enter into a written contract whereby the licensee grants to

the delegate authority to engage in money transmissions on behalf of the licensee. The agreement must also prohibit further sub delegation of this authority without the written consent of the Commissioner, provide that licensees are subject to the supervision and regulation of the Commissioner, and require the licensee to issue a certificate of authority for each location where it conducts licensed activities through authorized delegates.

A licensee's liability to any person for a money transmission is limited to the face amount of the payment instrument purchased. However, the Commissioner may impose a civil penalty of up to $1,000 for each intentional violation of the Article or the rules adopted pursuant to the Article. It is a Class 1 misdemeanor if a person to knowingly and willfully makes a material and false statement in any document filed or required to be filed, and the statement is made with the intent to deceive. It is also a Class 1 misdemeanor if a person knowingly and willfully engages in the business of money transmission without a license. Any other violation of the Article is also Class 1 misdemeanor.

Sections 3 and 4 make conforming changes.

Section 5 makes the act effective October 1, 2001 and applies to contracts entered into on or after that date.

BACKGROUND: In 1963, the General Assembly enacted the "Sale of Checks Act" as Article 16 of Chapter 53. It was designed to ensure the financial integrity of those selling money orders for the transmission of funds by requiring a background check, minimum net worth, surety bond, and a license. In 1991, the Article was amended and renamed the "Money Transmitters Act". The changes were made in response to Federal anti-money laundering initiatives. The Act was also expanded to include wire transmission of funds, and required money transmitters to maintain permissible investments equal to the amount of out standing checks for which they were responsible for payment.

Currently, 44 states regulate non-bank money transmitter entities that issue and sell checks, money orders, travelers' checks or arrange for the transmission of money. The North Carolina Commissioner of Banks licenses 41 money transmitters with 8,000 non-bank agent locations. Within the last five years, there has been a 50% increase in licenses as the result of firms largely serving North Carolina's growing Hispanic population. Some of these firms receive and transmit in excess of $50 million dollars per year.

Cindy Avrette, Counsel to the Senate Finance Committee, and Kory Goldsmith, Counsel to the Senate Judiciary II committee, contributed substantially to this summary.

Payday Advance Credit in America: An Analysis of Customer Demand

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Payday Advance Credit in America: An Analysis of Customer Demand*

Monograph #35

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*The monograph is available at
www.msb.edu/prog/crc/order/academic_order.html

Analytic Framework

- Payday advance is consumer credit and should be analysed as such.
- The standard analytic model treats the consumer credit decision as part of the household's consumption/investment decision (Juster and Shay 1964).
- The consumer's choice is determined by comparing the marginal rate on household investment with his marginal borrowing cost, which may be his cost for additional consumer credit, rate of time preference, or return on savings.

Types of Borrowers

Rationed

- Early life-cycle stages and low or moderate incomes.
- High rate of return on household investment.
- Little discretionary income, making sacrifices in current consumption costly.
- Limited liquid asset holdings, making reductions in precautionary savings costly.

Unrationed

- Later life-cycle stages or relatively high incomes.
- Low or moderate rates of return on household investment.
- High income or low expenditures allow for discretionary income.
- Able to use liquid assets without depleting precautionary savings.

Implications

- Rationed borrowers are heavy users of consumer credit. Because of high rates of return on household investment, obtaining additional credit from high-cost sources is often economically rational.
- To obtain additional credit, rationed borrowers turned to finance companies for personal loans in the past and to credit cards more recently.

Analysis of Payday Advance Use

- Payday advance credit is a another source of high-cost credit for rationed borrowers.
- Use of payday advance credit can be economically rational.
- Despite the very high APRs for payday advances, the investment decision model does produce positive net present values for common situations in which payday advances are used.

Example

- A consumer needs $200 to repair his car.
- Alternatives
  a. Obtain a $200 payday advance at a cost of $30 ($15 per $100 advanced) until the next payday in 14 days.
  b. Take public transportation to work until the next payday.

Savings from Expenditure Financed by Payday Advance

Assume:

Bus and subway fare, 2 * $3.50 = $7.00

Less savings in operating expense of car, 2 * 12 miles * $0.31 per mile = $7.44

Plus opportunity cost of extra commuting time, 2 * 0.25 hrs * $10 per hr =$5.00

Net savings **=$4.56**

DAY		NET CASH FLOW	DISCOUNTED CASH FLOW
0	Tuesday	- $200.00	-$200.00
1	Wednesday	4.56	4.51
2	Thursday	4.56	4.46
3	Friday	4.56	4.42
4	Saturday	0	0
5	Sunday	0	0
6	Monday	4.56	4.28
7	Tuesday	4.56	4.23
8	Wednesday	4.56	4.19
9	Thursday	4.56	4.14
10	Friday	4.56	4.10
11	Saturday	0	0
12	Sunday	0	0
13	Monday	4.56	3.97
14	Tuesday	204.56	176.24
	TOTAL	**$45.60**	**$14.55**

Evaluating Availability of Alternatives

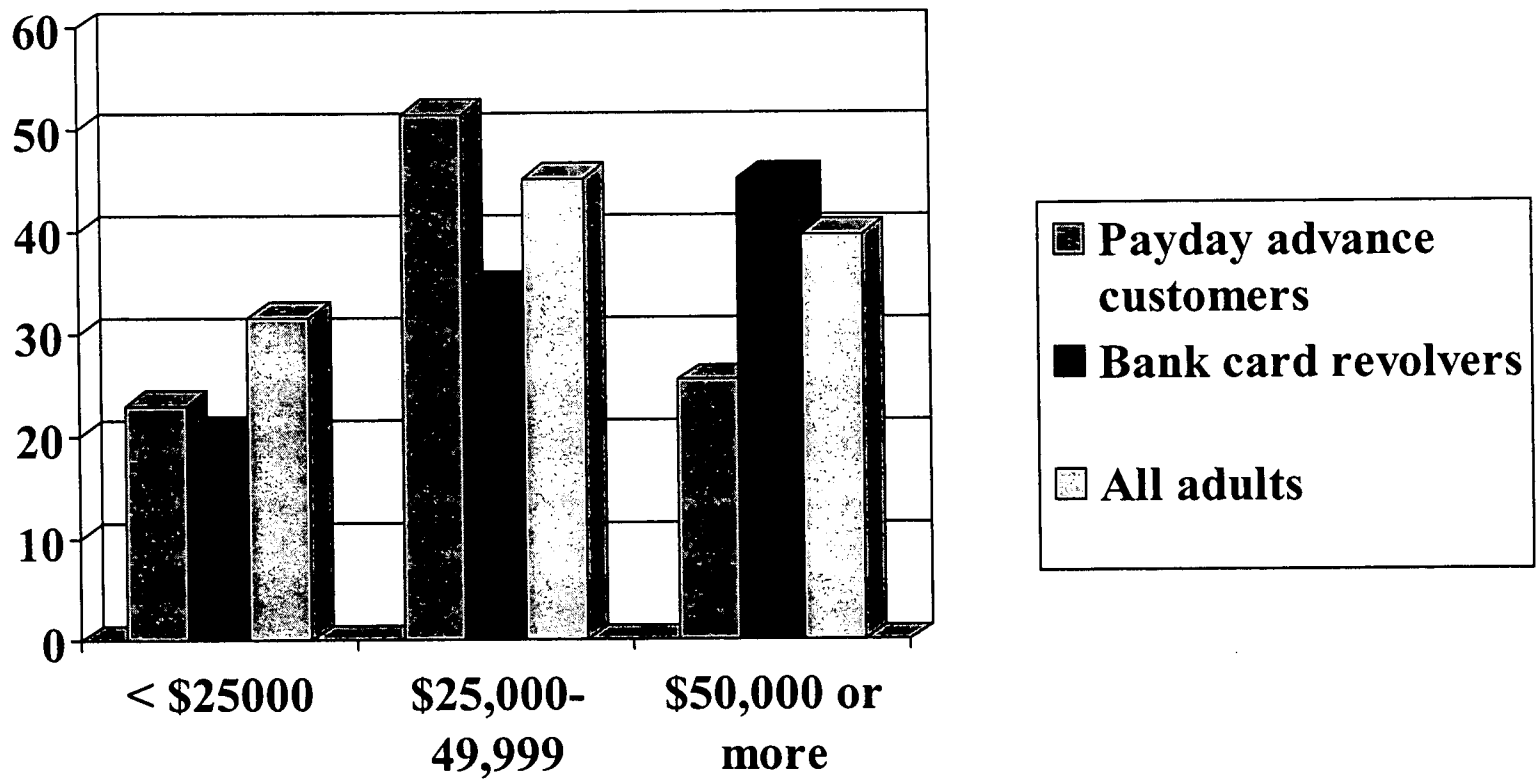
- Many consumers are reluctant to use liquid assets because of a belief that the worse the current situation, the greater is the need to maintain reserves for future emergencies.
- Consumers may use credit rather than draw against liquid assets because of a belief that they do not have the discipline to replenish their depleted assets.
- Some consumers may prefer discipline of short-term, closed-end credit over open-end credit, even if the closed-end credit is more costly.

Data for Analysis of Payday Advance Customer Use

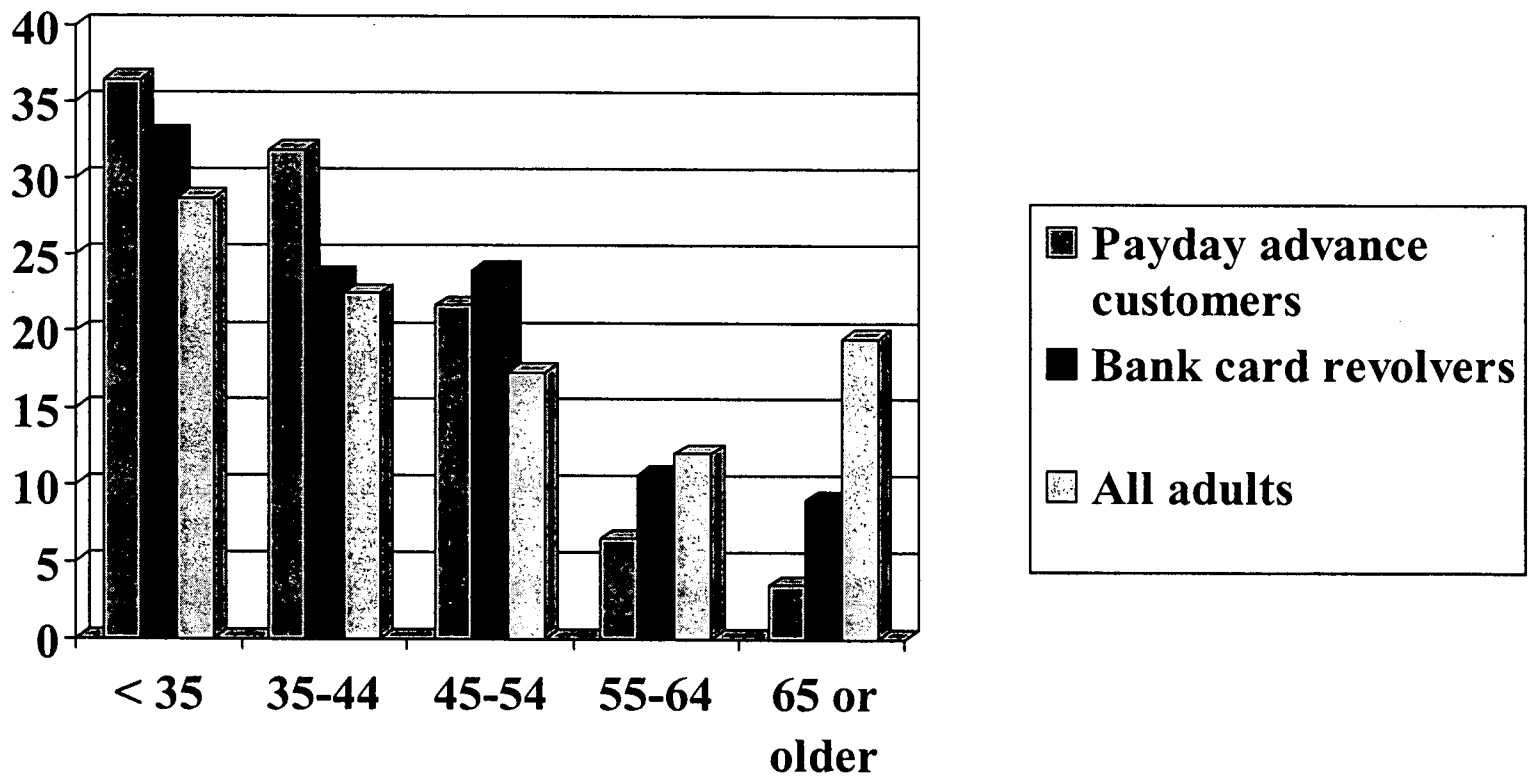
- 427 recent customers of payday advance companies belonging to the industry trade association were surveyed in early 2001.
- Questions covered general credit use and attitudes, recent payday advance use, and customer demographic characteristics.
- Benchmark data for general population from January 2000 Survey of Consumer Attitudes and 1998 Survey of Consumer Finances.

Family Income

(Percentage distribution)

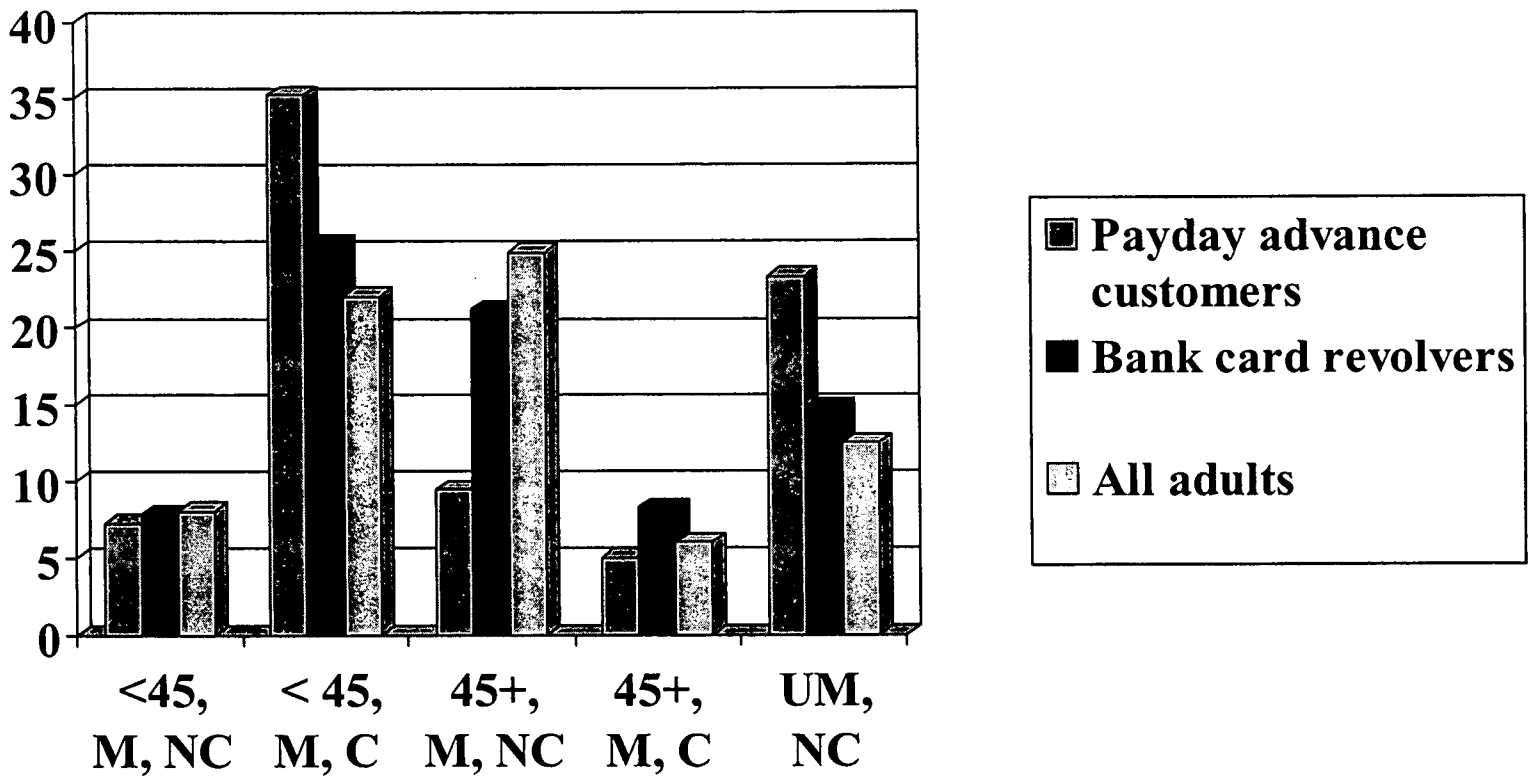


Age
(Percentage distribution)



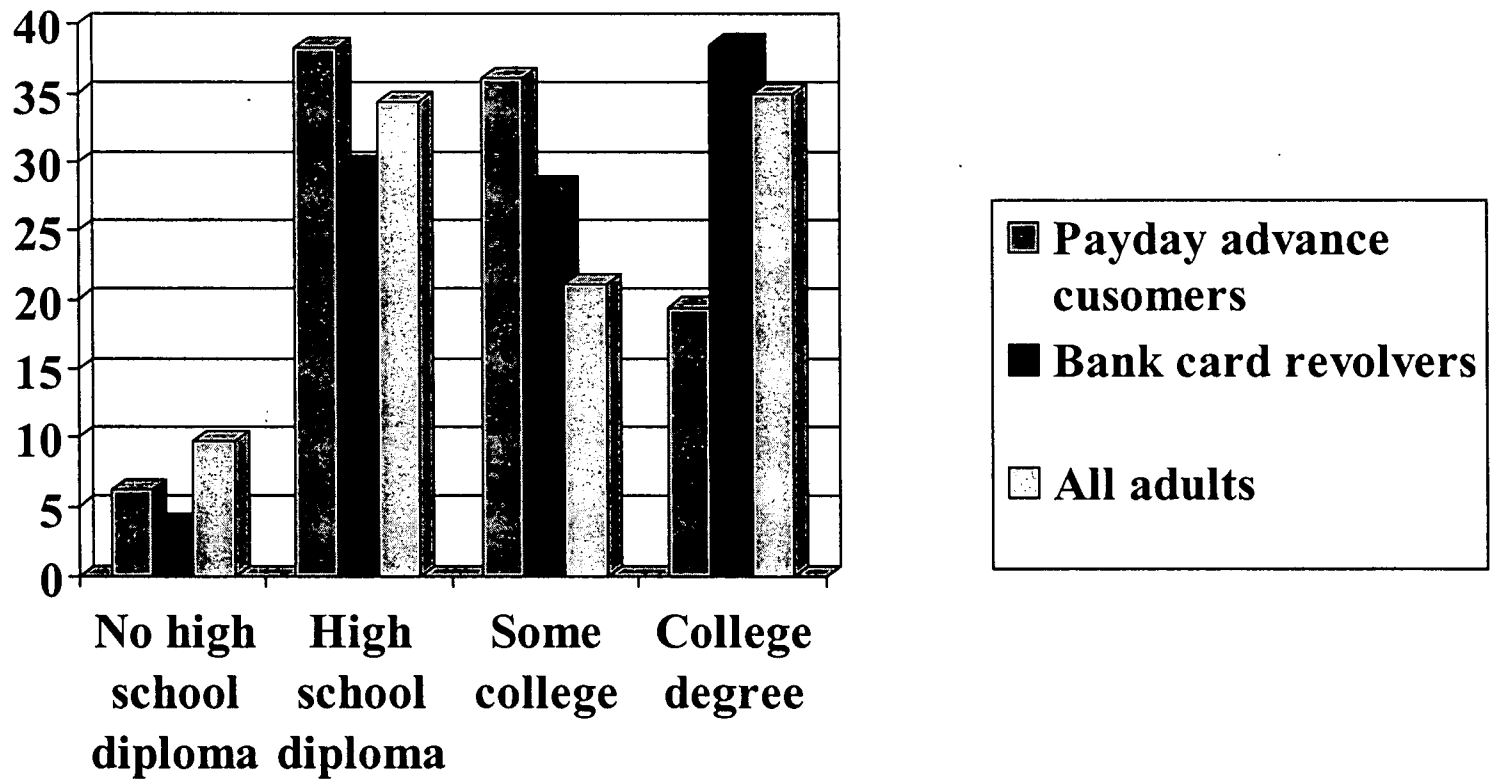
Selected Life-Cycle Stage Categories

(Percentage distribution)



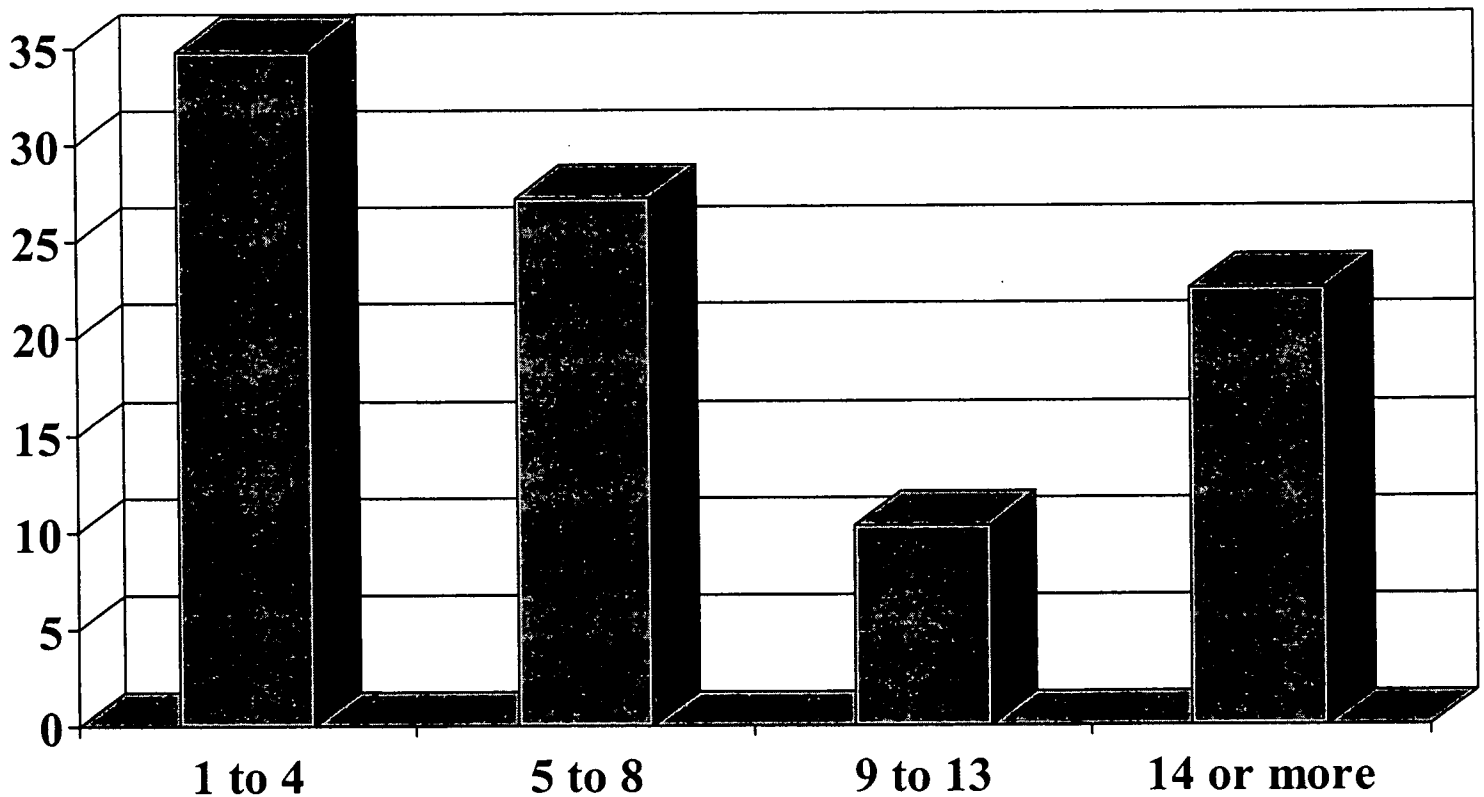
Education

(Percentage distribution)



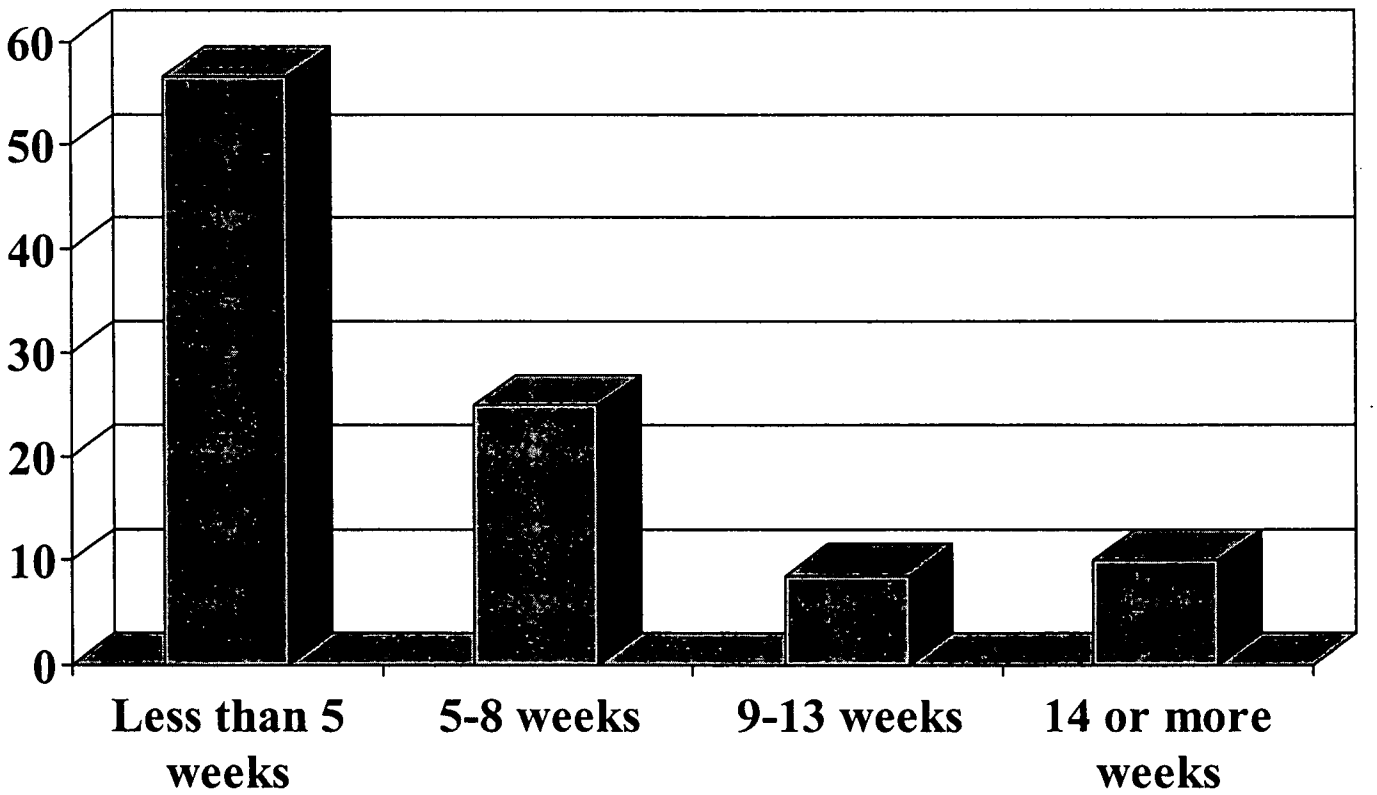
Number of Advances during Year

(Percentage distribution)



Length of Longest Advance Series

(Percentage distribution)



Use of Credit

(Percent)

	Payday advance customers	All adults
Any consumer credit	92	82
Bank cards	57	73
Retail cards	22	57
Auto loans	53	34
Other closed end	37	21
Mortgage	32	46

Use of Bank Cards

(Percent)

	Payday advance customers	Bank card owners
Has 4 or more accounts	13	21
Pays balance in full		
Almost always	25	49
Sometimes	20	21
Hardly ever	55	30
Did not use because limit would have been exceeded	61	n.a.

Credit Availability

(Percent)

	Payday advance customers	All adults
In last 5 years ...		
Turned down or limited	73	22
Did not apply because expected turndown	68	14
Borrowed from pawnshop	23	n.a.
Filed for bankruptcy	15	4

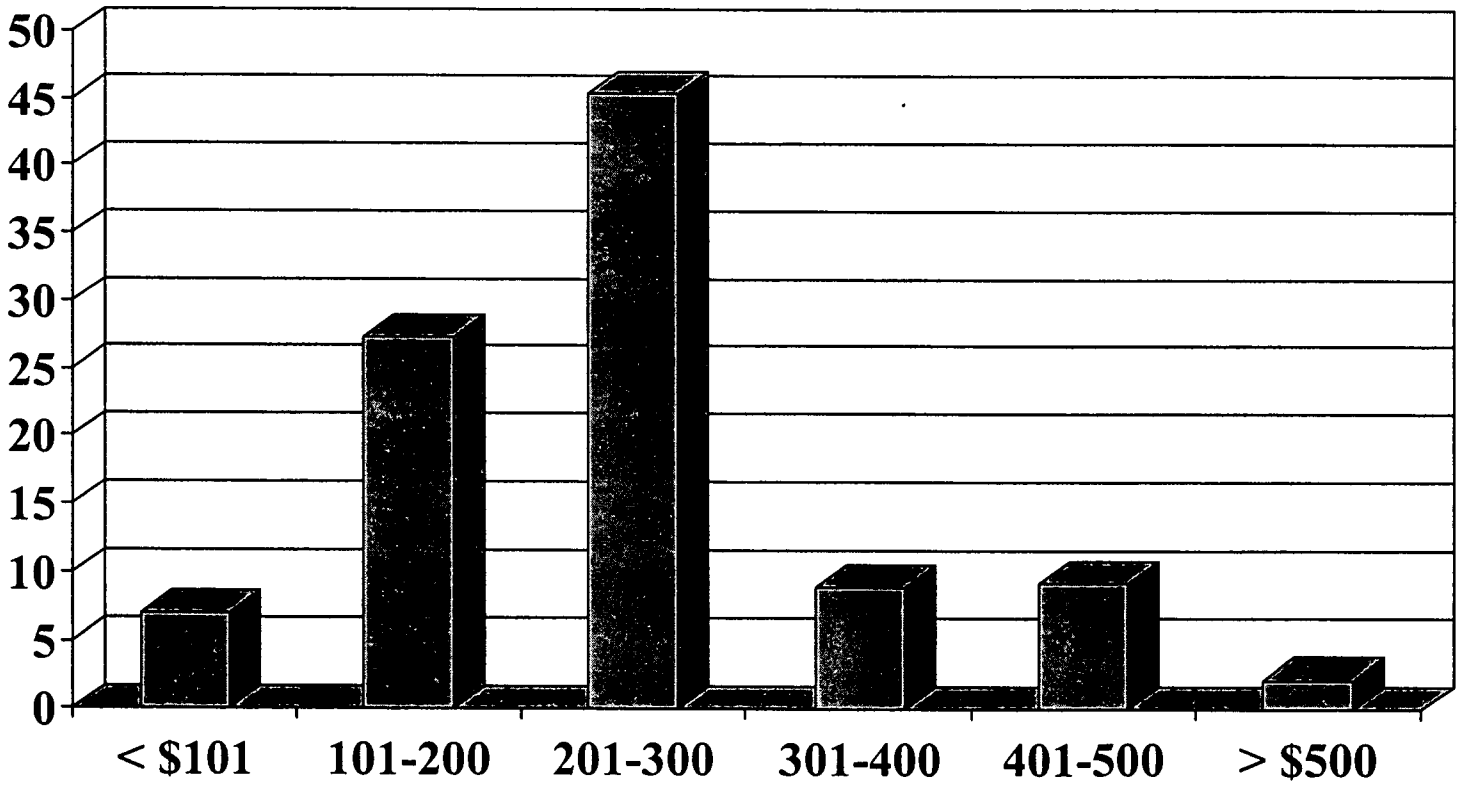
Other Financial Management Problems

In the last year, ...

- 68% of payday advance customers had written checks that were returned for insufficient funds.
- 25% of payday advance customers were 60 or more days past due on one or more mortgage or consumer credit payments (compared to 5.8% of borrowers overall).

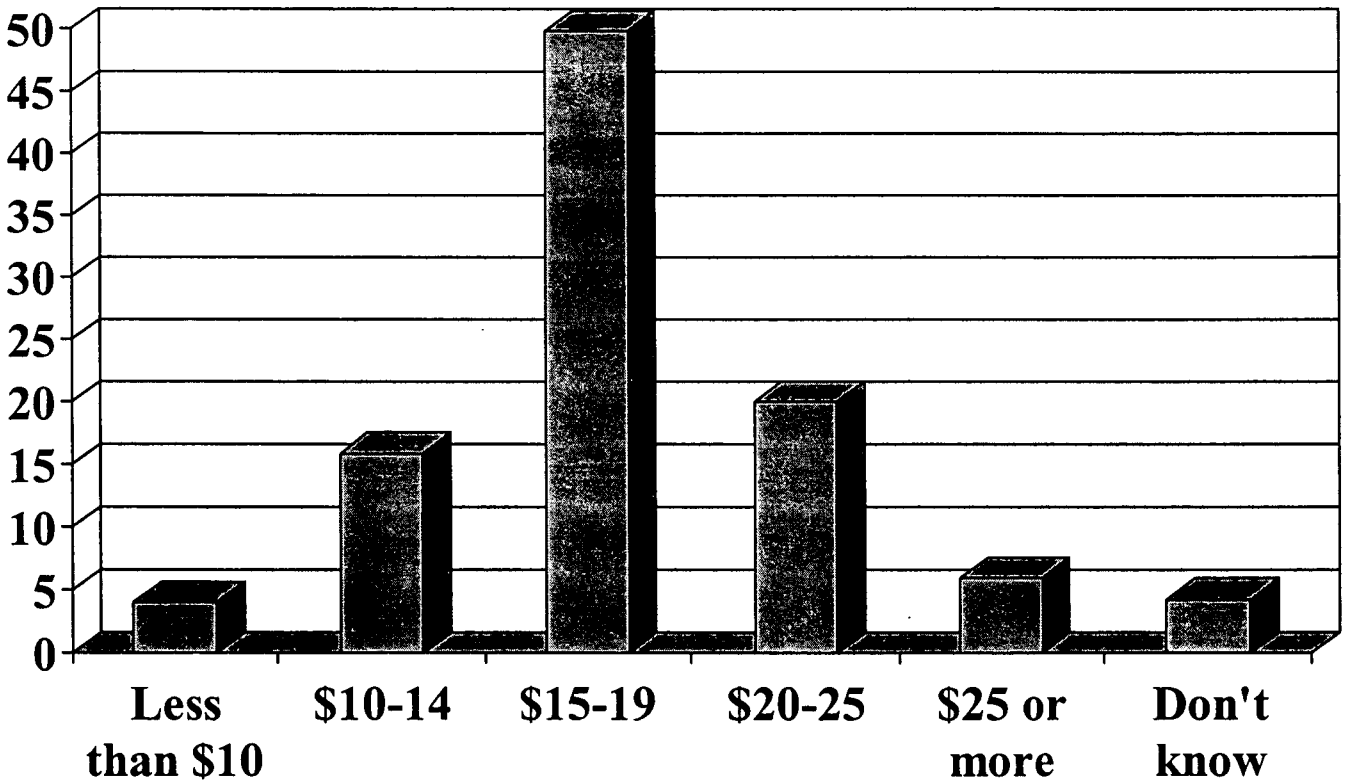
Size of Most Recent Advance

(Percentage distribution)



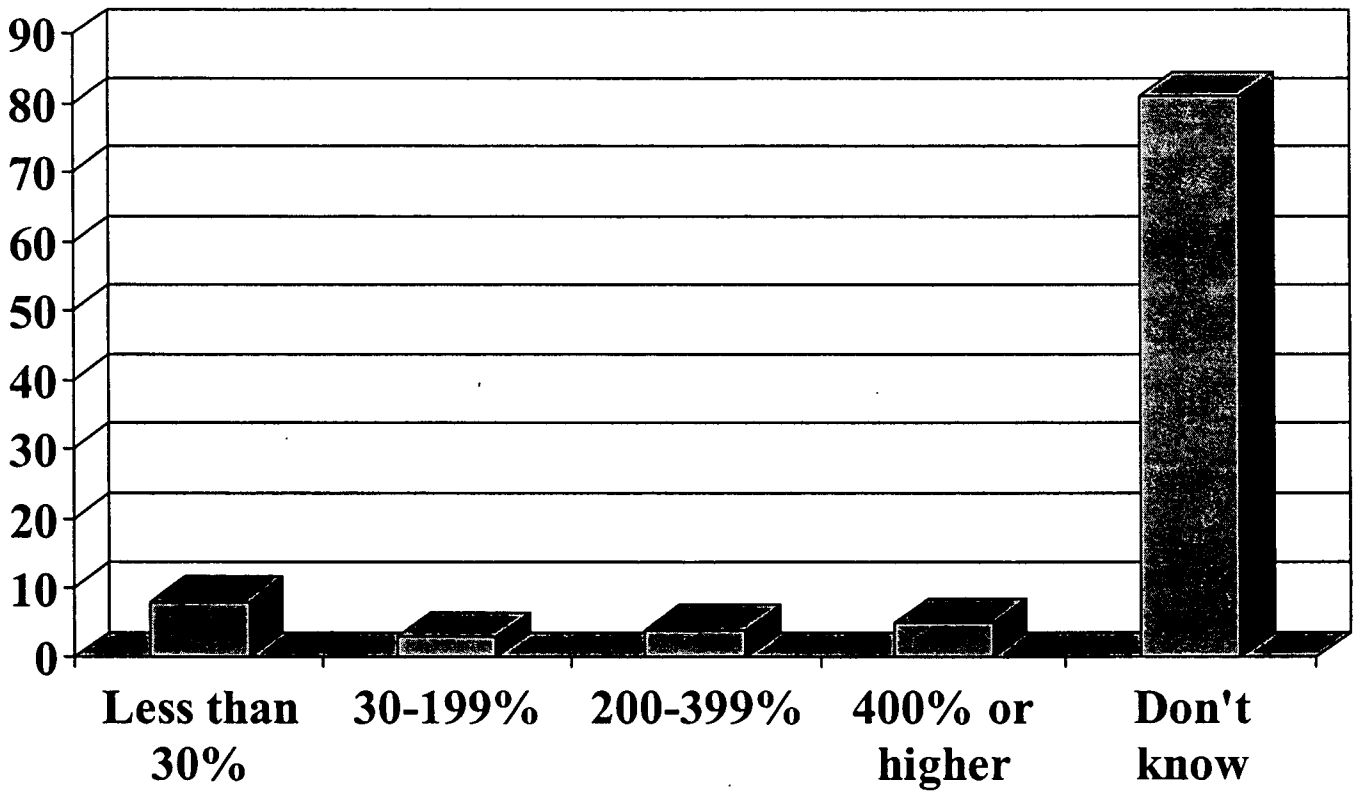
Finance Charge per $100 Advanced

(Percentage distribution)



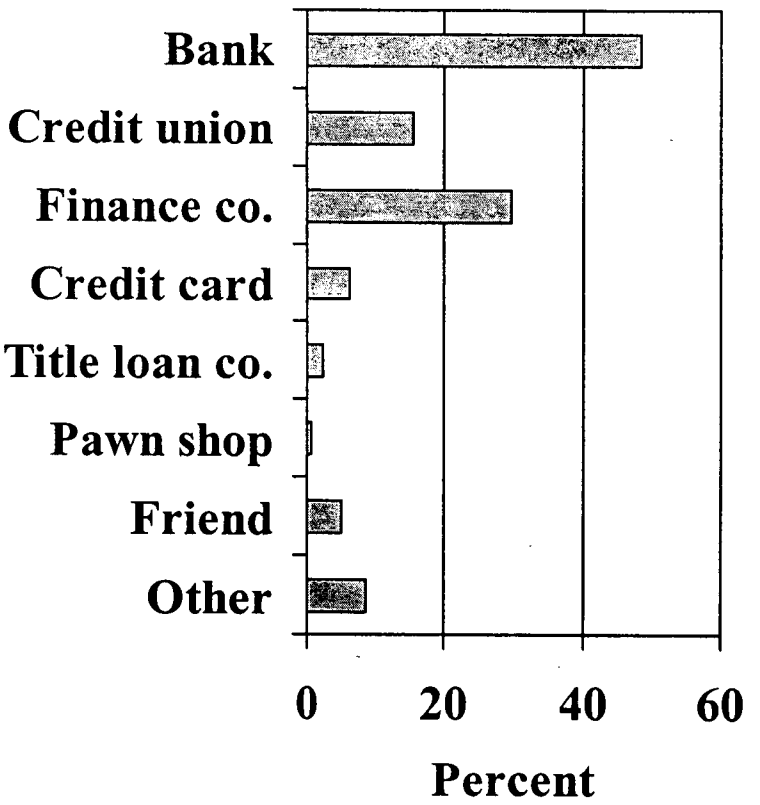
Annual Percentage Rate

(Percentage distribution)



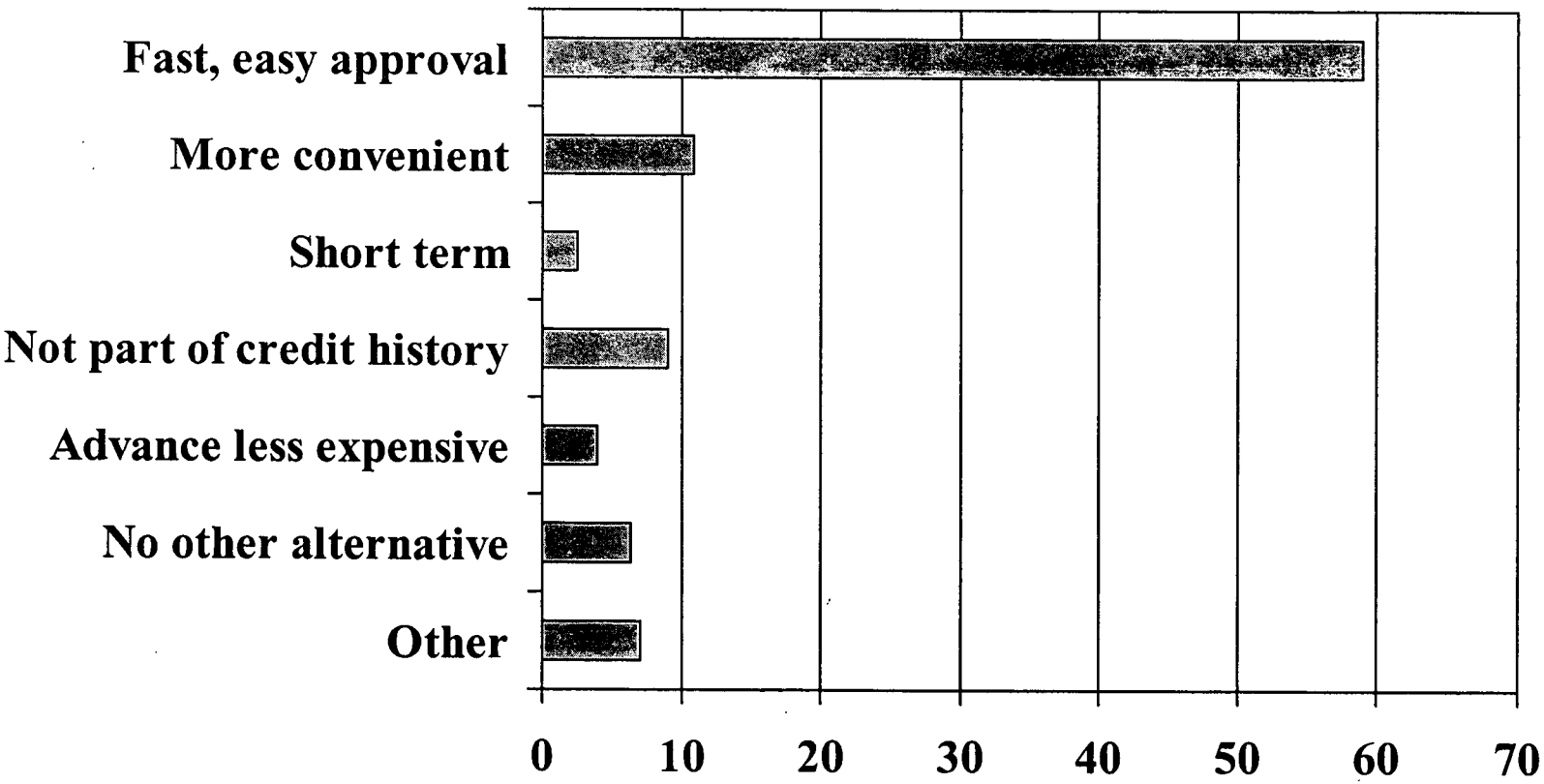
Consideration of Other Sources of Credit

38% of payday advance customers considered another source of credit before obtaining their last new advance.



Reason for choosing advance

(Percentage distribution)



Satisfaction with Most Recent New Payday Advance

- 75% of customers somewhat or very satisfied with most recent new advance.
- Only 12% somewhat or very dissatisfied.
- The high cost of payday advance credit was the main reason for dissatisfaction (61% of those who were dissatisfied).
- Neither lack of information nor difficulty of getting out of debt were important reasons for dissatisfaction (4% and 2% of those who were dissatisfied, respectively).

Attitudes : Customers agreeing with statements about payday advances

Payday advance companies provide a useful service to consumers.	92%
The government should limit the number of payday advances I can get in a year.	30%
The government should limit the number of times a payday advance can be renewed without a break.	36%

Summary and Conclusions

- Payday advance customers largely do not have the characteristics of fringe banking consumers.
- Customers have moderate incomes and are in early life-cycle stages, characteristics predicted to be associated with relatively heavy credit use and credit rationing.
- Customers use credit more frequently and in relatively larger amounts than the general population.

Summary and Conclusions (continued)

- However, payday advance customers often experience limitations on further credit use from banks and finance companies.
- Customers are aware of the dollar price of payday advance credit and do not appear to view payday advance credit as inexpensive.
- Payday advance credit gives credit rationed consumers a little more control of their financial situation when problems arise.

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — 8/22/01
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
James E Blackmon	Money Advance Benson NC
Brenda J. Blackmon	Money Advance, Benson, NC - 27504
Marie Jones	Checks-R-Us Fayetteville N.C. 28314
Vanessa McCormick	Checks-R-Us Fayetteville, NC
Lynette Hill	Checks-R-Us Raeford NC
Jerry Byrd	EXPRESS MONEY SERVICE
Charlene S Cole	2223 Dixie Trail - Fay, NC 28306-2363
Nancy Creekmore	UMS 2056 Car Bch Rd Wilm NC 28401
Zell Greene	UMS 2056 Car. Bch Rd Wilm. NC 28401
Michael Rulison	N. C. Consumers Council, Inc.
B.J. Stiens	ACE Cash Express
Jerry Stiens	ACE Cash Express
Jimmy D Lockhart	747 Briarcliff Lane Lumberton NC
Cynthia Bergallo	Express money Service
Bernadette Rice	Express money Svc
Ruth Davis	Avance America Capital Blvd, Raleigh NC
STACY MACFADDEN	EXPRESS MONEY SERVICE
Emily MacFadden	Express Money Service
Amy Bowen	Express Money Service
Bill Whitehurst	Hold-A-Check PO Box 1110 Chapel Hill NC
LOU WHITEHURST	HOLD-A-CHECK PO BOX 1110 CHAPEL HILL NC 27510
SUSAN LUPTON	COALITION FOR RESPONSIBLE LENDING
Virginia N Britt	Advocacy for Poor 458 West Hawes Mill Rd WS NC 27105
Elizabeth Oates	NCPIRG
Phil Lehmann	NC AGO
Mike Calhoun	CRL
Rob Schofield	NCJCPC
Nicole Dunnberry	NC Equity

VISITOR REGISTRATION SHEET

FIN. INST. — Name of Committee

8/22/01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Gamboa	Express Cash Angier, NC PO Box 639 27501
Nancy Nemschoff	Poyner & Spruill LLP
GREGORY ELLIEHAUSEN	GEORGETOWN UNIV. CREDIT RESEARCH CENTER WASH., DC
Vicki Woodward	Advance America, 961 E. Main, Spartanburg, SC
Keith Williams	Atlantic Bay Mortgage Group Raleigh NC
Junius Fennell	National Cash Advance, Clinton, NC
CoRee Peacock	Cash Advance USA, Apex
Joyce O'Neal	Cash Advance U.S.A Apex
Karen Waugh	Cash Advance USA Apex
Martin Waugh	Cash Advance USA, Apex
Donna Smith	Urgent Money Services
Jeff Meadows	Urgent Money Service 306 W 38 Drive Gse, NC 27896
Michelle Lowe	Urgent Money Service
Bill Lamb	AARP
Russell Ledbetter	Cash Advance Check Cashing
[illegible]	Urgent Money Service
Bobbi J Maxwell	Cash Connection 515 Peterbeck Pkwy, W SNC
James Andrews	NC State AFL-CIO
Dorothy Lawton	Cash Connection 515 Peters Creek Pkwy
Kathy Thompson	Cash Connection 4/1 W Harden Bud NC
[illegible]	[illegible]
Amy Fullbright	Hunton & Williams
DAVID BARNES	Poyner & Spruill
Paul Stock	NC Bankers Assn
Eric Stein	Coalition for Responsible Lending

VISITOR REGISTRATION SHEET

FINANICAL INSTITUTIONS — 8-22-01
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jo Whitman	Instant Money Service- 1102 S Pollock St. Selma
Tommy Byrd	" " " Dunn, NC
Pamela Patterson	" " " Apex NC
Shanley Johnson	Urgent Money Service Greensboro
Jacqueline King	Urgent Money Service Greensboro, NC.
Richard C. Hatch	AARP Cary, NC
Andrea Hall	NCMC
Denise Woods	Urgent Money Service 306 W. JJ Dr. Greensboro, NC 27406
LOU ANN FOULKS	Urgent Money Service Greensboro, NC
DORetha Bethea	Urgent Money Service Greensboro, N.C.
Brenda Holley	Urgent Money Winston Salem, n.c.
Tracy Autry	Urgent Money Service High Point NC
PHIL SHONLER	IDEAL SOFTWARE, INC. 1701 CARDINAL CT. BELMONT, NC 28012
Cathy Spangler	Urgent Money Service Eden, NC
Sandra Lee	Urgent Money Ser. 285 S. Horner Blvd Sanford
STEPHANIE A. PIERCE	Urgent Money Ser 6235 Bragg Blvd. Fay. NC,
Denise Cousins	Urgent Money Service 1821 N. Church St. Burlington, NC 27217
LINDA TURNER	Urgent Money Service E. 1025 N. Church St. Burl, NC, 27217
Brenda Quynn	Urgent Money Service, 1821 N. Church St. Burl. NC. 27217
Betty Moore	Urgent Money Service, 1084 S. Church St Burl. NC. 27215
Darlene Spry	Urgent Money Service 1179 N. Bragg Blvd
Barbara Williams	Urgent Money service, Sanford, NC
Doris Proctor	Urgent Money Service Fayetteville, N.C.
Kathy Harrelson	Urgent Money Service 802B W. Broad St Dunn NC
Dungee A. Williams	Urgent Money Service 911 S. Main St. Lillington
Gayle Lass	Urgent Money Service 211 W. Cumberland St, Dunn, NC
Angel Roberts	Urgent Money Service 7211 Market St. Wilm.
[illegible]	Instant Money Service 902-A West Broad St Dunn N.C. 28334

VISITOR REGISTRATION SHEET

FIN. INST — 8/22/01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Diane Dales	AARP
Anita Golden	Express Money SVC, Fay NC
Deborah Acosta	Express Money Serv. Clinton, NC
April Clifton	Express Money Service Mt. Olive, NC
Michelle Leggett	Eagle Payday / American Credit Co. Wash NC
Jeffrey Cox	American Credit Co. Greenville,
Stephanie Thomas	Urgent Money Service Jacksonville NC
Yaretta Mark	Urgent Money Service, Fay, NC
Latasha Yarborough	Urgent Money Service, Fay NC
Veronica Adams	Urgent Money Service, Elizabethtown, NC
Vajasia Smith	Urgent Money Service, Whiteville NC
Tisha Moore	CRL Durham NC
Tawanda Moore	Urgent Money Service Fayetteville, NC
Melissa Jacobs	Urgent money service Wilmington, NC
Athina D. Williams	Urgent Money Service Wilmington, NC
Shirley Whitman	Instant money service Garner, N.C.
Jeanette Hobbs	EXTRA CASH → Goldsboro NC
Connie Dupree	Charlotte Works Pay Day
Carmen Clark	Urgent money Service 5218 Bragg Blvd fayetteville
Gail Herron	Urgent Money Service 616 N Reilly, Fay NC
Bill Schweithal	Urgent Money Service. Hgh Point NC.
Misty Hundley	1209 E Bessemer Ave Gso Urgent Money Svc
Ronnie Pierson	Urgent Money Svc. 6372 Yadkin Rd. Fay NC
Jutta Magill	Urgent Money Ser 5218 Bragg Blvd Fay NC
Tiffany Armstrong	Urgent Money Ser 6417 Yakin Rd Fayetteville NC 28303
Miriam Crowell	Urgent Money Svc 5328 Murchison Rd Fay, NC 28311
Mann Newsome	B & B Money Express NC
Duane P. Byrum	The Cash Center Greenville NC

VISITOR REGISTRATION SHEET

FIN. INST — Name of Committee

8/22/01 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
FRED SCHMIDTKE	AARP
Simon Charles	FirstChoice Cash Advance
Carlos Sawyer	Urgent Money Service
Dan Schline	NC Credit Union League
Cynthia Swain	Urgent money service
Lisa Nichole Bolton	Urgent Money Service
Donna Denise Newsom	Urgent Money Service
Regina West Thomas	National Cash Advance
Robin Lynn Langdon	Urgent Money Service GSO, NC
Deborah Lundberg	Urgent money Service GSO, NC
Regina H. J. Johnson	COALITION FOR RESPONSIBLE LENDING
Keith Ernst	COALITION FOR RESPONSIBLE LENDING
ROSA WOOD	INSTANT MONEY SERVICE, SMITHFIELD, NC
Kelly Tyner	" / SELMA, NC
Deborah Goldstein	Coalition for Respons. Lending
Diane Bean	Urgent Money Service 2056 Coun... Beaufort
Wanda Dawson	Urgent Money Service 1011A Chico... Martinez
Jo Avery	Express Cash Advance
Chris Etcl	5959 Shallowford Rd Ste 405 Chatt, TN 37421
Johnathan Bullard	Sanford
Tracy Mc...	Roanoke Rapids
Charisse Fisher	Rocky Mt
Misty Wrench	Rainy Day Cash Advance Dunn
Jackie Clark	Rainy Day Cash Advance Lenoir
Sandy Sanders	WCSR
Kay Bird	Express Money Svc.
Joe Pena	Express Money Svc.
Diane Cashwell	Express Money Svc.

VISITOR REGISTRATION SHEET

FIN INST
Name of Committee

8/22/01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robin L Hodrick	Express Money Service
[illegible]	Capitol Group
[illegible]	Eagle Payday Loans
[illegible]	Advance America
[illegible]	Pay Day Cash
Jeff Edens	First Check

HOUSE COMMITTEE ON

FINANCIAL INSTITUTIONS

2002 Session

Representatives Church and Morgan, Chairs

Joyce Fuller and Dixie Epps
Committee Assistants

ATTENDANCE

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

DATES		6/12	7/31													
CHURCH, Walter	CHAIR	✓	✓													
MORGAN, Richard	CHAIR	✓	✓													
McALLISTER, Mary	VC		✓													
ALLRED, Cary			E													
BRUBAKER, Harold		✓	✓													
BUCHANAN, Monroe		✓	✓													
COLE, Nelson			✓													
CULPEPPER, Bill			✓													
DOCKHAM, Jerry		E	✓													
GIBSON, Pryor			✓													
HARRINGTON, Mike		✓														
HOWARD, Julia		✓	✓													
McLAWHORN, Marion		✓	✓													
McMAHAN, Ed			✓													
MICHAUX, Mickey			✓													
MILLER, Paul		E	✓													
SMITH, Ronnie		✓	✓													
WAINWRIGHT, William			E													
WALEND, Trudi		✓	✓													

ATTENDANCE

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

0

DATES															
EX OFFICIO MEMBERS															
HACKNEY, Joe	SPT														
BADDOUR, Philip	ML														
CUNNINGHAM, Pete															
DEDMON, Andrew	MW														
EARLE, Beverly	MW														

FINANCIAL INSTITUTIONS
JUNE 12, 2002
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS – DIXIE EPPS AND JOYCE FULLER

SGT.-AT-ARMS – THOMAS WILDER AND CHARLES WILLIAMS

PAGES – ALICIA DAVIS – WAKE COUNTY
KRISTIN RIDDLE – LEE COUNTY
NICK CLARKE – MECKLENBURG COUNTY
MEGAN HUTCHINS – WAKE COUNTY

HOUSE JOINT RESOLUTION 1590 – A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENT OF JOSEPH A SMITH JR. AS COMMISSIONER OF BANKS

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
JUNE 12, 2002

The **House Committee on Financial Institutions** met on Wednesday, June 12, 2002 at 10:00 a.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chairman Walter Church. Rep. Church recognized the Committee Counsels, Committee Assistants, the Pages and the Sgt.-at-Arms who were assigned to the meeting. The following members of the committee were present: Co-Chairmen Church and Morgan; Reps. Brubaker, Buchanan, Harrington, Howard, McLawhorn, Smith and Walend.

HOUSE JOINT RESOLUTION 1590 – A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENT OF JOSEPH A. SMITH, JR. AS COMMISSIONER OF BANKS. Co-Chairman Church turned the meeting over to Co-Chairman Morgan since he was the sponsor of this bill. Mr. Franklin Freeman, Senior Aid to the Governor, was called on and he said that the Governor requested that the committee confirm the nomination of Mr. Smith as Commissioner of Banks. Mr. Morgan than asked if Mr. Smith had anything that he would like to say and he replied that he would be deeply honored to serve the people of North Carolina and would do his best if appointed.

Co-Chairman Morgan than called on Co-Chairman Church to speak on the Resolution. Rep. Church stated that Governor Easley nominated Mr. Joseph A. Smith, Jr. as the new Commission of Banks as of June 1st to replace Hal Lingerfelt who retired. The office of the Commissioner of Banks, together with the N. C. Banking Commission, is responsible for the chartering and regulation of N. C.'s state banks, trust companies as well as regulation/licensing of various financial institutions including stated chartered savings banks and state chartered S & L's operating in N. C., check cashers, consumer finance companies, mortgage bankers, mortgage brokers, money transmitters and refund anticipation lenders.

Rep. Smith moved that **HOUSE JOINT RESOLUTION 1590 BE GIVEN A FAVORABLE REPORT.** The vote was unanimous.

There being no further business, Co-Chairman Morgan adjourned the meeting at 10:15 a.m.

Co-Chairman Walter G. Church, Sr. Co-Chairman Richard Morgan

Joyce A. Fuller

Joyce A. Fuller, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE JOINT RESOLUTION 1590

Sponsors:	Representatives Church; Buchanan and Wainwright.
Referred to:	Financial Institutions.

June 10, 2002

A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENT OF JOSEPH A. SMITH, JR. AS COMMISSIONER OF BANKS.

Whereas, under provisions of G.S. 53-92, appointment by the Governor of the Commissioner of Banks is subject to confirmation by the General Assembly by joint resolution; and

Whereas, the present Commissioner of Banks has resigned effective May 31, 2002; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee to fill the term of Commissioner of Banks; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The appointment of Joseph A. Smith, Jr. as Commissioner of Banks for the remainder of the term expiring March 31, 2003, is confirmed.

SECTION 2. This resolution is effective upon ratification.

BLIC BILL

1590

R. _____

RESOLUTION _____

A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENT OF JOSEPH A. SMITH, JR. AS COMMISSIONER OF BANKS.

Introduced by Representative(s): Church.

Daniwright - Church - Buchanan

Principal Clerk's Use Only

SSED 1st READING

JUN 10 2002

NO ED TO COMMITTEE

Financial Institutions

GOVERNOR EASLEY HAS NOMINATED MR. JOSEPH A. SMITH, JR. AS NORTH CAROLINA COMMISSIONER OF BANKS (JUNE 1ST). HE WILL REPLACE HAL LINGERFELT WHO RETIRED.

MR. SMITH OBTAINED A LAW DEGREE FROM THE UNIVERSITY OF VIRGINIA IN 1974. PREVIOUS EMPLOYMENT – WORKED FOR POYNER & SPRUILL IN RALEIGH, N. C. FROM 1988 TO 1991. FROM 1991 TO APRIL 2000 HE WAS GENERAL COUNCIL AND SECRETARY FOR CENTURA BANKS, INC. AND CENTURA BANK IN ROCKY MOUNT.

APRIL 2000 TO MAY 2002 HE WAS AN ATTORNEY WITH THACKER, PROFFITT, AND WOOD IN WASHINGTON, D. C., A FINANCIAL SERVICES REGULATORY PRACTICE.

THE OFFICE OF THE COMMISSIONER OF BANKS, TOGETHER WITH THE N. C. BANKING COMMISSION IS RESPONSIBLE FOR THE CHARTERING REGULATION OF N. C.'s STATE BANKS, TRUST COMPANIES AS WELL AS REGULATION /LICENSING OF VARIOUS FINANCIAL INSTITUTIONS INCLUDING STATE CHARTERED SAVINGS BANKS AND STATE CHARTERED S & L's OPERATING IN N.C., CHECK CASHERS, CONSUMER FINANCE COMPANIES, MORTGAGE BANKERS, MORTGAGE BROKERS, MONEY TRANSMITTERS AND REFUND ANTICIPATION LENDERS. Bank Holding Companies Reverse Mortgage Lenders

MR. SMITH'S EXPERIENCE AND QUALIFICATIONS MAKE HIM AN EXCELLENT CANDIDATE FOR THE JOB OF COMMISSION OF BANKS, AND I

AM CONFIDENT THAT HE WILL WORK TO ENSURE A BUSINESS CLIMATE THAT IS GOOD FOR THE FINANCIAL INDUSTRY AND NORTH CAROLINA CONSUMERS.

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

May 8, 2002

The Honorable Beverly E. Perdue
President of the Senate and Lieutenant Governor
310 North Blount Street
Raleigh, NC 27603

The Honorable James B. Black
The Speaker of the House
Room 2304
Legislative Building
Raleigh, NC 27601-1096

Dear Madam and Sir:

Please be advised that I have appointed Joseph A. Smith, Jr. as North Carolina Commissioner of Banks, effective June 1, 2002. Mr. Smith replaces Commissioner Hal Lingerfelt, who will retire May 31, 2002.

As provided for in N.C.G.S. § 53-92, Mr. Smith's appointment is subject to confirmation by the General Assembly by joint resolution.

I appreciate your assistance in securing a favorable resolution for the appointment of Mr. Smith as Commissioner of Banks.

With kindest regards, I remain

Very truly yours,

Michael F. Easley

MFE:rj

cc: The Honorable Marc Basnight, President Pro Tempore

Michael F. Easley
Governor

State of North Carolina
Office of the Governor

For Release:	**IMMEDIATE**	Contact:	Cari Boyce
Date:	May 3, 2002	Phone:	(919) 733-5612

EASLEY NAMES SMITH AS STATE'S COMMISSIONER OF BANKS

RALEIGH – Gov. Mike Easley today named **Joseph A. Smith, Jr.** as North Carolina Commissioner of Banks, effective June 1. Smith will replace Hal Lingerfelt who is retiring.

Smith is currently an attorney with Thacher Proffitt & Wood in Washington, DC, a financial services regulatory practice. From September 1991-April 2000 he was general counsel and secretary for Centura Banks, Inc. and Centura Bank in Rocky Mount, NC. Prior to that he was a partner with Poyner & Spruill in Raleigh. Smith received his bachelor's degree from Davidson College in 1971 and his law degree from the University of Virginia in 1975.

"Joe Smith's experience and qualifications make him an excellent candidate for the job of Commissioner," said [redacted]sley. "I am confident that he will work to ensure a business climate that is good for both the banking industry [redacted] North Carolina's consumers."

The Office of the Commissioner of Banks, together with the North Carolina Banking Commission, is responsible for the chartering and regulation of North Carolina's state banks and trust companies, as well as registration/licensing of various financial institutions operating in North Carolina, including Check-Cashers, Consumer Finance companies, Mortgage Bankers and Mortgage Brokers, Money Transmitters and Refund Anticipation Lenders.

###

[redacted]ernor's Press Office
State Capitol, Raleigh, NC 27603-8001
(919) 733-5612 - Toll Free 1-800-662-7005
FAX (919) 733-5166

Joseph A. Smith, Jr.
3223 Adams Court
Fairfax, VA 22030
(703) 279-1193

Employment History

May 2000 - Present
Counsel
Thacher Proffitt & Wood
Washington, DC

Financial services regulatory practice in the Washington office of a New York based law firm. Practice involves advising banks, thrift institutions and other financial services firms with regard to mergers and acquisitions, complex financing transactions and asset securitizations.

September 1991 - April 2000
Special Counsel (9/91 – 4/92)
General Counsel and Secretary
Centura Banks, Inc. and Centura Bank
[Now RBC Centura]
Rocky Mount, North Carolina

Chief legal officer of Centura during the period of time when it grew from $2.5 billion to over $10 billion in assets and extended its service offerings to securities and insurance.

September 1988 - April 1991
Counsel; Partner
Poyner & Spruill
Raleigh, North Carolina

Practice involving representation of bank and thrift clients in loan transactions, workouts and collection matters, general representation of other corporate clients and legislative representation of various corporate clients.

Publications

"The Federal Banking Agencies' Guidance on Subprime Lending: Regulation with a Divided Mind," North Carolina Banking Institute (Volume 6 April 2002)

"*Savings for the Poor: The Hidden Benefits of Electronic Banking*: A Review and Response," North Carolina Banking Institute (Volume 5 April 2001)

"Retail Delivery of Financial Services After the Gramm-Leach-Bliley Act: How Will Public Policy Shape the Financial Services Supermarket?" North Carolina Banking Institute (Volume 4 April 2000)

[With David E. Brown, Jr. and Kathryn M. Cole] "Strategic Alliances: Why, How and What to Look Out For" North Carolina Banking Institute (Volume 3 April 1999)

"The Role of Outside Counsel in the Creation of Economic Value," North Carolina Banking Institute (Volume 2 April 1998)

Other Information

Born November 9, 1949 in Charleston, WV. Attended public schools in hometown of Dunbar, WV before admission to Davidson.

Married to the former Elizabeth Marion (23 years in May). Two sons: Joseph III, who will graduate from Johns Hopkins University in May 2002, and Matthew, a student at Cape Fear Community College in Wilmington.

Member of the Board of Trust of Saint Augustine's College, Raleigh, NC, from 1995 through 2001.

References furnished upon request.

HOUSE JOINT RESOLUTION 1590: Confirmation of Joseph A Smith, Jr., Commissioner of Banks

BILL ANALYSIS

Committee:	House Financial Institutions	**Introduced by:**	Rep. Church
Date:	June 12, 2002	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***House Joint Resolution 1590 confirms the appointment of Mr. Joseph A. Smith, Jr. as Commissioner of Banks for the unexpired term of Hal D. Lingerfelt that expires March 31, 2003. The resolution is effective upon ratification.***

CURRENT LAW: Mr. Smith has been appointed by the Governor to serve as Commissioner of Banks for the unexpired term of Hal Lingerfelt that expires on March 31, 2003. This appointment is subject to confirmation by the General Assembly. Mr. Lingerfelt resigned effective May 31, 2002 for a term that began April 1, 1999. The Commissioner of Banks is paid $104,523 per year.

The Commissioner of Banks regulates and supervises banking activities under Chapter 53 and savings institutions activities under Chapter 54B of the North Carolina General Statutes. The primary responsibilities of this office are to insure safe and conservative management of the banks, savings and loan associations, and savings banks under its supervision taking into consideration the interest of the financial institutions' depositors, creditors, shareholders, and the public in their relations with such financial institutions. The North Carolina Banking Commission adopts rules to provide direction and supervision of the Commissioner of Banks as he enforces the rules of the Commission and the financial institution laws of North Carolina. The Banking Commission may review the actions of the Commissioner of Banks.

The Office of the Commissioner of Banks, together with the North Carolina Banking Commission, is responsible for the regulation of every state chartered bank, savings and loan association, savings bank or corporation transacting the business of banking in North Carolina, as well as registration/licensing of various financial institutions operating in North Carolina. These financial institutions include:

1. Check-cashers,
2. Consumer finance companies,
3. Mortgage bankers and mortgage brokers,
4. Money transmitters,
5. Refund anticipation lenders,
6. Bank holding companies, and
7. Reverse mortgage lenders.

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

May 8, 2002

The Honorable Beverly E. Perdue
President of the Senate and Lieutenant Governor
310 North Blount Street
Raleigh, NC 27603

The Honorable James B. Black
The Speaker of the House
Room 2304
Legislative Building
Raleigh, NC 27601-1096

Dear Madam and Sir:

Please be advised that I have appointed Joseph A. Smith, Jr. as North Carolina Commissioner of Banks, effective June 1, 2002. Mr. Smith replaces Commissioner Hal Lingerfelt, who will retire May 31, 2002.

As provided for in N.C.G.S. § 53-92, Mr. Smith's appointment is subject to confirmation by the General Assembly by joint resolution.

I appreciate your assistance in securing a favorable resolution for the appointment of Mr. Smith as Commissioner of Banks.

With kindest regards, I remain

Very truly yours,

Michael F. Easley

MFE:rj

cc: The Honorable Marc Basnight, President Pro Tempore

Joseph A. Smith, Jr.
3223 Adams Court
Fairfax, VA 22030
(703) 279-1193

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Washington, DC

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Member of the Board of Trust of Saint Augustine's College, Raleigh, NC, from 1995 through 2001.

References furnished upon request.

COPY

NORTH CAROLINA BOARD OF ETHICS
MAIL SERVICE CENTER 1324
RALEIGH, NC 27699-1324
WWW.DOA.STATE.NC.US/DOA/ETHICS

GEORGE F. BASON
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

May 30, 2002

The Honorable Michael F. Easley
Governor of North Carolina
Raleigh, North Carolina 27699

Re: Evaluation of Statement of Economic Interest filed by
Joseph A. Smith, Jr., Commissioner of Banks

Dear Governor Easley:

In accordance with Section 5(b) of Executive Order Number One ("the Order"), we have completed our evaluation of the statement of economic interest mentioned above.

We did not find either an actual conflict of interest or the potential for conflict of interest.

Mr. Smith will be serving as the new Commissioner of Banks. He has no equity or other ownership interest in any financial institutions regulated by the Commission.

Section 7 of the Order mandates that public officials perform their duties in a manner to promote the best interests of the public. Because conflicts of interest may arise while performing their public duties, public officials should make a due and diligent effort to determine whether they have a conflict of interest before taking any action that could have an impact on their own financial, familial, or personal interests.

We are sending a copy of this letter to the Chairman of the Commission with the request that our findings be recorded in the Commission's minutes pursuant to Executive Order Number One.

Sincerely,

George F. Bason
Chairman

cc: Mr. Joseph A. Smith, Jr.
Chairman of the Commission

PHONE: 919-733-2780 FAX: 919-733-2785 E-MAIL PERRY.NEWSON@NCMAIL.NET

Banking dom - 201

Statement of Economic Interest

for Executive Order Number One

RECEIVED
BOARD OF ETHICS
Date: 5-29-02 (Fax)

NORTH CAROLINA BOARD OF ETHICS
For assistance call 919-733-2780 Fax 919-733-2785
e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail form to: Board of Ethics, 1324 Mail Service Center, Raleigh, N.C. 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Name of Person Filing: Joseph A. Smith, Jr.
Name of Spouse: Elizabeth A. M. Smith
Home Address: 3223 Adams Court, Fairfax, VA 22030
Home Telephone: (703) 279-1193

Name of Employer: Thacher Proffitt & Wood
Your Title: 1700 Pennsylvania Ave., N.W., Suite 800
Business Address: Washington, DC 20006
Business Telephone: 202-347-8400
Business Fax: 202-626-1930
Business Activity: Title: counsel
Law Firm

Spouse's Employer and Business Activity: Flint Hill School, Oakton, VA
School

If you are filing because you are serving on or being considered for appointment to a State Board, Commission, or Council state the **name of the Board, Commission, or Council.**

Not applicable [Commissioner of Banks]

Are you, your employer, your spouse, or spouse's employer licensed or regulated by the Board on which you are/will be serving, or have business relationships with the Board? No X If yes, please explain:

NOTE: Executive Order Number One requires you to list assets and liabilities with a value of $10,000 or more for yourself and spouse as set forth below. You are NOT required to include an estimated value of the assets and liabilities.

1. List all parcels of real estate located in North Carolina in which you, or your spouse, have an ownership interest valued $10,000 or more. Give street address or other description adequate to determine the locarion of each parcel. State the specific interest held in each identified parcel.

Contract to purchase land and building for personal residence in Raleigh, NC. Address: 2210 Coley Forest Place, Raleigh, NC 27607-3162. Deed reference: Book 3125, Page No. 0370, Wake County.

Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest.

None

If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain.

Not applicable.

2. Identify personal property sold to or bought from the State within the preceding two years and personal property currently leased or rented to the State by you or your spouse. Indicate whether the transactions are in accordance with the provisions of the Division of Purchase and Contract. If not, please explain.

None

3. List the name of each publicly-owned company in which the value of securities held by you or your spouse is $10,000 or more. You may attach a list from your broker.

None

4. List the name and business activity of each **non-publicly-owned company or business entity** in which the value of securities or other equity interests held by you or your spouse is $10,000 or more, including but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations.

None

With respect to the entities listed above, should any of the entities own securities or equity interests of $10,000 or more in other companies or business entities, list the name of the company or business entity and a brief description of the business activity of each.

Not applicable

Are you, your spouse, or any of the entities listed above licensed by, regulated by, or have business relationships with the same area of State Government with which you are associated? If so, please explain.

Not applicable

5. You are required to make a good faith effort to list any individual or business entity with which you or your spouse have a financial or professional relationship provided:

(1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, or

(2) Any separate financial or professional interest of such individual or business entity would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties. For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed.

None. Contractual relationship with Thacher Proffitt & Wood terminates May 31, 2002.

6. List all directorships on all boards on which you are serving. Please explain any situation that could appear to be

a conflict of interest with your official duties.

None

Membership on Executive Committee and Steering Committee of the UNC Law School Center for Banking and Finance, and the Banking Institute have been terminated.

7. Are you an elected official at the local government level? If so, please explain.

No

8. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest of $10,000 or more.

Not applicable

9. List each asset with a valuation of $10,000 or more, held by you or your spouse, which have not been listed elsewhere. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list furniture, jewelry, automobiles, and other personal effects.

Bank accounts with Citibank, FSB, Suntrust and Wachovia Bank, NA
Retirement accounts with Vanguard Group, TIAA-CREF and BB&T Retirement Services

10. List each liability with a valuation of $10,000 or more for you and your spouse. Give the name of the creditor and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans.

Home mortgage on VA residence, SBA as morrgagee. Application for mortgage on Raleigh residence through Wachovia Bank, NA

11. List each source of income for you and your spouse where $10,000 or more was received. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

Sources for Person Filing:

Thacher Proffitt & Wood contractual compensation

Sources for Spouse: Flint Hill School salary.

Please explain if any of the sources of income are regulated by, receive permits from, or otherwise are connected with the same area of State Government with which you are connected.

Not applicable

12. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated has, during any single year of the past five years, earned legal fees of $10,000 or more

a conflict of interest with your official duties.

None

Membership on Executive Committee and Steering Committee of the UNC Law School Center for Banking and Finance, and the Banking Institute have been terminated.

7. Are you an elected official at the local government level? If so, please explain.

No

8. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest of $10,000 or more.

Not applicable

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Sources for Person Filing:

Thacher Proffitt & Wood contractual compensation

Sources for Spouse: Flint Hill School salary.

Please explain if any of the sources of income are regulated by, receive permits from, or otherwise are connected with the same area of State Government with which you are connected.

Not applicable

12. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated has, during any single year of the past five years, earned legal fees of $10,000 or more

from any of the following categories of legal representation:

( ) Admiralty ( ) Taxation ( ) Decedent's estates (X) Corporation law ( ) Real property

( ) Negligence (representing plaintiffs) ( ) Negligence (representing defendants)

( ) Criminal law ( ) Labor law ( ) Insurance law (X) Administrative law (Banking)

( ) Utilities regulation or representation of regulated utilities ( ) Representation of local governments

13. If the information has not been included in previous questions, list all **non-publicly owned businesses** you have been associated with during the past five years as an employee, officer, director, partner, or owner. For each business listed, state your association, and the time period of your association. To the best of your knowledge, state whether any of the businesses listed does business with the same area of State Government with which you are associated. State the nature of business, and whether you or the business is licensed by, regulated by, receive permits, grants or other funding from the same area of State Government with which you are associated.

None

14. List all gifts received with a value exceeding $200 during the twelve months preceding the date of this statement from sources other than your spouse or relatives.

None

List all gifts received with a value exceeding $100 during the twelve months preceding the date of this statement from any source having business with or regulated by the State.

None

15. List all **bankruptcies** filed during the preceding five years by you, your spouse, or any entity in which you or your spouse has been associated financially. Provide a brief summary of the facts and circumstances regarding each listed bankruptcy.

None

16. Having read Executive Order Number One, state any problems or conflicts of interest you may have that are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

None

VERIFICATION

I hereby do certify that I have read this Statement of Economic Interest, and all attachments and to the best of my knowledge and belief it is true, correct and complete. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein. I acknowledge that I am under a continuing obligation to avoid conflicts of interest and the appearance of conflicts of interest. If I believe a potential for conflict exists, I will inquire of the Board of Ethics as to that potential conflict.

May 29 2002
Date

Signature of Person Filing

~~STATE OF NORTH CAROLINA~~ Commonwealth of Virginia
COUNTY OF Arlington

Subscribed and sworn to before me this the 29th day of May, 2002.

My Commission Expires: March 31, 2005

Dana K. Blumenthal
Signature of Notary Public

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — JUNE 12, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Mountcastle	Poyner & Spruill
Frank Tracy	Gov.'s office
Ken Dilworth	Gov's office
Mitchell Chestnut	Spec. Dep. AG rep. Comm Bkg.
[illegible]	Comm of Banks
Ted Kaye	Research Div., NCCA
Brad Kretely	Research Division - NCCA
DAVID BARNET	Poyner + Spruill LLP
[illegible]	Moore & Van Allen
Larry Fletcher	Household Financial Group

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — JUNE 12, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dean Shatley	Speaker's Staff
Jennie Dorsett	NCCCA
Alex B MacLeod	First Citizens Bank
Mark Beason	Capitol Broom
Camille Stell	KCLH
Jana McKnight	Law Student
Margaret McNair	Intern
Betty Tranck	Bank of America
Susan Valauri	Nationwide
Dick Carlton	Carlton Alexander
Kate Hunter	NC State Watch

FINANCIAL INSTITUTIONS
JULY 31, 2002
ROOM 1425
10:00 A.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND MORGAN

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN

COMMITTEE ASSISTANTS – DIXIE EPPS AND JOYCE FULLER

SGT.-AT-ARMS – SHANNON BATTON, BILL FREEMAN AND AARON WOODLIEF

PAGES - ELIZABETH CARVER – PERSON COUNTY
LAUREN BROOKS – PERSON COUNTY
JOSHUA RICHARDSON – PITT COUNTY
BRETT BOWMAN – PASQUOTANK COUNTY

H.B. 1099 – FINANCIAL INSTITUTIONS ASSET SECURITIZATION – REPRESENTATIVES CHURCH AND WAINWRIGHT

CLOSING REMARKS

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
JULY 31, 2002

The **House Committee on Financial Institutions** met on Wednesday, July 31, 2002, at 10:00 a.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chairman Walter Church. Rep. Church recognized the Committee Counsel, Committee Assistants, the Pages and the Sgt-at Arms who were assigned to the meeting. The following members of the committee were present: Co-Chairmen Church and Morgan; Vice Chairman McAllister; Reps. Brubaker, Buchanan, Cole, Culpepper, Dockham, Gibson, Howard, McLawhorn, McMahan, Michaux, Miller, Smith and Walend.

HOUSE BILL 1099 – A BILL TO BE ENTITLED AN ACT TO PERMIT THE WAIVER OF THE RIGHT OF EQUITY OF REDEMPTION BY FINANCIAL INSTITUTIONS IN CERTAIN SECURITIZED FINANCIAL ASSETS AND TO STUDY ITS APPLICABILITY TO OTHER BUSINESS ENTITIES. Co-Chairman Church called on Henry A. LaBrun from Charlotte, who is a Partner with Cadwalader, Wickersham and Taft, to explain the bill. The Proposed Senate Committee Substitute for House Bill 1099 would amend Chapter 25 – Uniform Commercial Code by adding an article to permit certain financial institutions to waive their right to redeem collateral pledged as security for an obligation after the satisfaction of the obligation. This will permit proper asset securitization for financial institutions consistent with recent rulings by the Financial Accounting Standards Board (FASB). Also speaking for the bill were Paul Stock of the Bankers Association and Joe Smith, the acting Commissioner of Banks. After several questions from the members of the committee were answered by either Mr. LaBrun, Mr. Stock or Mr. Smith, Rep. Michaux **RECOMMENDED CONCURRENCE WITH SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 1099.** This motion was seconded by Rep. Brubaker and the motion carried.

There being no further business, Co-Chairman Church adjourned the meeting at 10:25 a.m.

Walter B. Church, Sr.

Co-Chairman Walter B. Church, Sr. Co-Chairman Richard T. Morgan

Joyce A. Fuller, Committee Assistant

MINUTES
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Co-Chairman Walter G. Church, Sr. Co-Chairman Richard T. Morgan

Joyce A. Fuller, Committee Assistant

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Church and Morgan** (Chair/Chairs) for the Committee on **Financial Institutions**.

☒ Committee Substitute for Senate

H.B. 1099 A BILL TO BE ENTITLED AN ACT TO PERMIT THE WAIVER OF THE RIGHT OF EQUITY OF REDEMPTION BY FINANCIAL INSTITUTIONS IN CERTAIN SECURITIZED FINANCIAL ASSETS AND TO STUDY ITS APPLICABILITY TO OTHER BUSINESS ENTITIES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☒ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 1099

Senate Judiciary I Committee Substitute Adopted 7/17/02

Short Title: Financial Institutions Asset Securitization. (Public)

Sponsors:

Referred to:

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE WAIVER OF THE RIGHT OF EQUITY OF REDEMPTION BY FINANCIAL INSTITUTIONS IN CERTAIN SECURITIZED FINANCIAL ASSETS AND TO STUDY ITS APPLICABILITY TO OTHER BUSINESS ENTITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 25 of the General Statutes is amended by adding a new Article to read:

"Article 9A.

"Asset-Backed Securities Facilitation.

"**§ 25-9A-101. Definitions.**

The following definitions apply in this Article:

(1) Beneficial interest. – Debt or equity interests or obligations of any type that are issued by a special purpose entity and entitle the holder of the interest or obligation to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

(2) Financial asset. – Cash or a contract or instrument that conveys to an entity a contractual right to receive cash or another financial instrument from another entity.

(3) Securitization. – The issuance by a special purpose entity of evidences of beneficial interest that meets one of the following criteria:

a. Its most senior class at the time of issuance is rated in one of the four highest categories assigned to long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or graduations indicating relative standing) by one or more nationally recognized rating organizations.

b. It is sold in transactions by an issuer not involving any public offering under section 4 of the Securities Act of 1933 (15

U.S.C. 77d), as amended, or in transactions exempt from registration under the Securities Act of 1933 pursuant to Regulation S issued in accordance with the Act, or any successor regulations issued under the Act.

(4) Special purpose entity. – A trust, corporation, limited liability company, or other entity demonstrably distinct from the transferor that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets, and in activities related or incidental thereto, in connection with the issuance by the special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from the special purpose entity) of evidences of beneficial interests.

(5) Transferor. – A financial institution insured by the Federal Deposit Insurance Corporation.

"**§ 25-9A-102. Waiver of equity of redemption.**

(a) Notwithstanding any other provision of law, except to the extent otherwise set forth in the transaction documents relating to a securitization, all of the following apply:

(1) Any property, assets, or rights purported to be transferred, in whole or in part, in a securitization or in connection with a securitization are considered no longer the property, assets, or rights of the transferor, to the extent purported to be transferred.

(2) A transferor in the securitization, its creditors, and, in any insolvency proceeding with respect to the transferor or the transferor's property, a bankruptcy trustee, receiver, debtor, debtor in possession, or similar person, to the extent the transfer is governed by State law, has no rights, legal or equitable, to reacquire, reclaim, recover, repudiate, disaffirm, redeem, or recharacterize as property of the transferor any property, assets, or rights purported to be transferred to the special purpose entity, in whole or in part, by the transferor.

(3) In the event of a bankruptcy, receivership, or other insolvency proceeding with respect to the transferor or the transferor's property, to the extent the transfer of property, assets, and rights are governed by State law, the property, assets, and rights are not considered part of the transferor's property, assets, rights, or estate.

(b) Nothing in this Article:

(1) Requires any securitization to be treated as a sale for federal or state tax purposes;

(2) Precludes the treatment of any securitization as debt for federal or state tax purposes; or

(3) Changes any applicable laws relating to the perfection and priority of security or ownership interests of persons other than the transferor, any hypothetical lien creditor of the transferor, or, in the event of a bankruptcy, receivership, or other insolvency proceeding with respect

to the transferor or its property, a bankruptcy trustee, receiver, debtor, debtor in possession, or other similar person."

SECTION 2. The General Statutes Commission is directed to study and report to the 2003 General Assembly on the question of whether the waiver of the equity of redemption, as permitted under this act for certain financial institutions, should be extended to apply to other business entities in other commercial transactions. The report should include any recommended legislation necessary to implement the Commission's recommendations.

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 1099:
Financial Institutions Asset Securitization.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Church
Date:	July 16, 2002	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Senate Committee Substitute - H1099-CSRU-99		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 1099 would amend Chapter 25 – Uniform Commercial Code by adding an article to permit certain financial institutions to waive their right to redeem collateral pledged as security for an obligation after the satisfaction of the obligation. This will permit proper asset securitization for financial institutions consistent with recent rulings by the Financial Accounting Standards Board (FASB).***

CURRENT LAW: Under current law, if a sale of assets is judicially determined to be a secured transaction, any waiver of the right to redeem the assets after the seller satisfies the obligation is ineffective and unenforceable. This frustrates the attempt to create a "true sale" out of a secured transaction.

BILL ANALYSIS: Section 1 of the bill would add a new Article 9A to Chapter 25 – Uniform Commercial Code, to permit the waiver of the equity of redemption in certain situations by financial institutions insured by the Federal Deposit Insurance Corporation (FDIC). The new G.S. 25-9A-101 defines terms used in the Article, include specific definitions for securitization, special purpose entity, financial asset, beneficial interest and transferor to be limited to a financial institution insured by the FDIC.

The new G.S. 25-9A-102 provides that an FDIC insured financial institution may waive its right of redemption (right to get its collateral back after the obligation for which the money was advance is repaid) for the transfer of bundled securities by the financial institution to a special purpose entity for the purpose of securitization (collateralizing the anticipated stream of payments from the assets). This section makes clear that the waiver of the right of the equity of redemption does not otherwise affect other State or federal law as to whether the transaction is treated as a sale or debt for tax purposes, nor does it affect the law on perfection and priority of security or ownership interests.

The effective of this change is to allow an FDIC insured financial institution to treat the securitization of assets as a "true sale" for accounting purposes under the recent ruling by FASB without having to reserving judgment on the possibility of reclassification of the transaction as not a sale but a secured transaction, thereby triggering the right of equity of redemption.

This act would not apply to any other business entities or any other types of transactions, where the right of the equity of redemption is preserved.

Section 2 directs the General Statutes Commission to study and report to the 2003 General Assembly on the question of whether a waiver of the right of equity of redemption should be permitted by other businesses in other commercial transactions.

EFFECTIVE DATE: The bill is effective when it becomes law.

NCBA

P.O. BOX 19999/RALEIGH, NC 27619-1999

(919) 781-7979/FAX (919) 881-9909

TOLL FREE: (800) 662-7044

MEMORANDUM

TO: Members of the House Financial Institutions Committee
FROM: Paul H. Stock, Executive Vice President & Counsel
DATE: July 31, 2002
RE: Senate Committee Substitute for House Bill 1099.

The House Financial Institutions Committee is scheduled to consider the Senate Committee Substitute for House Bill 1099 today. The matter addressed in that legislation is highly technical, but important to the members of the North Carolina Bankers Association. We hope you will support it.

A recent decision by the Financial Accounting Standards Board (FASB) has complicated the use of one-step securitizations by financial institutions and investors. In a typical one-step securitization, a financial institution must sell the assets to be securitized directly to a special purpose entity ("SPE"). This is to legally isolate the assets so that they are no longer available to the seller or its creditors. The assets can only be used to make payments on the securities issued to investors. Once the assets and the income stream are "secure" investors can then purchase them.

In the absence of this legislation, North Carolina financial institutions can no longer use a simple one-step procedure. Instead, they must take unnecessarily complex and cumbersome steps to legally segregate securitized assets. These steps provide no added benefit to the investor.

The recent FASB ruling requires **legal certainty** that once a financial institution transfers its assets to an SPE as a securitized transaction, it has no legal right to these assets and cannot reclaim them at some later time. At the federal level, the FDIC has provided this legal certainty. The deposits at all depository institutions in North Carolina are FDIC-insured. At the state level, unfortunately, not only has legal certainty not been provided, but North Carolina state law has added to the ambiguity. In North Carolina, under the "equity of redemption" statute, a borrower is entitled to a return of its collateral upon repayment of a loan. Therefore, theoretically, the assets in an SPE could be viewed as a loan and a financial institution could use the equity of redemption to reclaim the assets it had transferred to an SPE and sold to investors. Investors would have no recourse to protect their assets.

The bill simply eliminates the ability of a financial institution to use North Carolina's equity of redemption statute to reclaim the assets it transferred to a SPE for the purpose of securitization. Alabama, Delaware and Ohio have enacted similar legislation.

On behalf of the 135 members of the North Carolina Bankers Association, we urge you to vote in favor of the Senate Committee Substitute for House Bill 1099. Thank you for your consideration.

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — JULY 31, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Scoggin	Kennedy Covington
Paul Stock	NC Bankers Assn.
Joseph A. Smith Jr	Commissioner of Banks
Betty Turner	Bank of America
Henry LaBrun	Caldwell Carr
Kate Haw	NC State Watch
Mark Bacon	Capitol Group
Diana Watkins	Mercer & Assoc
Glenn Boyce	PCT Co. Commissioner
A.A. Adams	Victim Advocate
Letitia Williams	NC State Watch

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS — **Name of Committee**

JULY 31, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lucius W. Pullen	ATTORNEY
[signature]	MCA
[signature]	Moore & Van Allen
Larry Heckner	Household Financial Group

9/26/02 @ 3:40 P.M. FAX TO HJB

Rec'd 9/26/02 @ 12:00 Noon

MEMORANDUM

DATE: **September 26, 2002**

TO: **Representative Cole and Brubaker**

FROM: **Representative Church and Morgan**

SUBJECT: **Bills Pending in the Committee on Financial Institutions**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Financial Institutions, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 1311. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Church and Morgan**

FROM: **Representative Cole and Brubaker**
Bill Sponsor

SUBJECT: **HB 1179, MORTGAGE LENDERS ANE BROKERS LICENSURE.**
(Short Title)

I request that HB 1179 not be considered by the Committee on Financial Institutions.

(Sponsor's Signature)

9/30/02 Date

MEMORANDUM

DATE: **September 26, 2002**

TO: **Representative Cole and Brubaker**

FROM: **Representative Church and Morgan**

SUBJECT: **Bills Pending in the Committee on Financial Institutions**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Church and Morgan**

FROM: **Representative Cole and Brubaker**
Bill Sponsor

SUBJECT: **HB 1179, MORTGAGE LENDERS AND BROKERS LICENSURE.**
(Short Title)

I request that HB 1179 not be considered by the Committee on Financial Institutions.

(Sponsor's Signature)

9/26/02 Date

MEMORANDUM

DATE: **September 26, 2002**

TO: **Representative Buchanan and Church**

FROM: **Representative Church and Morgan**

SUBJECT: **Bills Pending in the Committee on Financial Institutions**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Church and Morgan**

FROM: **Representative Buchanan and Church**
Bill Sponsor

SUBJECT: **HB 1071, PROCEDURE FOR DELAYED DEPOSIT CHECKS.**
(Short Title)

I request that HB 1071 not be considered by the Committee on Financial Institutions.

Charles Buchanan
(Sponsor's Signature)

9-26-02 Date

MEMORANDUM

DATE: **September 26, 2002**

TO: **Representative Buchanan and Church**

FROM: **Representative Church and Morgan**

SUBJECT: **Bills Pending in the Committee on Financial Institutions**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Church and Morgan**

FROM: **Representative Buchanan and Church**
Bill Sponsor

SUBJECT: **HB 1071, PROCEDURE FOR DELAYED DEPOSIT CHECKS.**
(Short Title)

I request that HB 1071 not be considered by the Committee on Financial Institutions.

Walter C Church Jr
(Sponsor's Signature)

10-01-02 Date

MEMORANDUM

DATE: **September 26, 2002**

TO: **Representative Baddour**

FROM: **Representative Church and Morgan**

SUBJECT: **Bills Pending in the Committee on 1365**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Church and Morgan**

FROM: **Representative Baddour**
Bill Sponsor

SUBJECT: **HB 1365, IMPROVE REGULATION OF PAYDAY LENDERS.**
(Short Title)

I request that HB 1365 not be considered by the Committee on Financial Institutions.

Phil Baddour
(Sponsor's Signature)

9/30/02
Date

MEMORANDUM

DATE: **September 26, 2002**

TO: **Representative Luebke**

FROM: **Representative Church and Morgan**

SUBJECT: **Bills Pending in the Committee on Finanacial Institutions**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Church and Morgan**

FROM: **Representative Luebke**
Bill Sponsor

SUBJECT: **HB 1445, SIMPLIFY TAXATION OF FINANCIAL INSTITUTIONS.**
(Short Title)

I request that HB 1445 not be considered by the Committee on Financial Institutions.

(Sponsor's Signature)

9/26/02 Date

MEMORANDUM

DATE: **September 26, 2002**

TO: **Representative Miller**

FROM: **Representative Church and Morgan**

SUBJECT: **Bills Pending in the Committee on Financial Institutions**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Church and Morgan**

FROM: **Representative Miller**
Bill Sponsor

SUBJECT: **HB 1172, REVISE LAW GOVERNING DELAYED DEPOSIT CHECKS.** (Short Title)

I request that HB 1172 not be considered by the Committee on Financial Institutions.

(Sponsor's Signature)

September 26, 2002 Date

MEMORANDUM

DATE: **September 26, 2002**

TO: **Representative Harrington**

FROM: **Representative Church and Morgan**

SUBJECT: **Bills Pending in the Committee on Financial Institutions**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Church and Morgan**

FROM: **Representative Harrington**
Bill Sponsor

SUBJECT: **HB 670, REFORM PAYDAY LENDING** (Short Title)

I request that HB 670 not be considered by the Committee on Financial Institutions.

(Sponsor's Signature)

9-26-02 Date

MEMORANDUM

DATE: **September 26, 2002**

TO: **Representative Culpepper**

FROM: **Representative Church and Morgan**

SUBJECT: **Bills Pending in the Committee on Financial Institutions**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Church and Morgan**

FROM: **Representative Culpepper**
Bill Sponsor

SUBJECT: **HB 167, STATEWIDE APPLICATION OF G.S. 24-9** (Short Title)

I request that HB 167 not be considered by the Committee on Financial Institutions.

(Sponsor's Signature)

9/26/02 Date

MEMORANDUM

DATE: **September 26, 2002**

TO: **Representative Wainwright and Luebke**

FROM: **Representative Church and Morgan**

SUBJECT: **Bills Pending in the Committee on Financial Institutions**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Church and Morgan**

FROM: **Representative Wainwright and Luebke**
Bill Sponsor

SUBJECT: **HB 1350, CORPORATE TAX DISCLOSURE.** (Short Title)

I request that HB 1350 not be considered by the Committee ~~on Financial~~ Institutions.

Susan L. Wainwright
(Sponsor's Signature)

September 26, 2002
Date

MEMORANDUM

DATE: **September 26, 2002**

TO: **Representative Wainwright and Luebke**

FROM: **Representative Church and Morgan**

SUBJECT: **Bills Pending in the Committee on Financial Institutions**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Church and Morgan**

FROM: **Representative Wainwright and Luebke**
Bill Sponsor

SUBJECT: **HB 1350, CORPORATE TAX DISCLOSURE.** (Short Title)

I request that HB 1350 not be considered by the Committee on Financial Institutions.

(Sponsor's Signature)

9/26/02 Date

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2001-02 Standing Committee Minutes (Item 25894)

Box 13

1. 2001 House Finance (cont'd to Box 14)