

2005

**HOUSE
FINANCIAL
INSTITUTIONS**

**COMMITTEE
MINUTES**

HOUSE COMMITTEE ON
FINANCIAL INSTITUTIONS

2005 – 2006 Session

Representatives Church and Grady
Chairs

Joyce Fuller and Neta Grady
Committee Assistants

Karen Cochrane-Brown, Drupti Chauhan and Walker Reagan
Counsel

NORTH CAROLINA GENERAL ASSEMBLY

FINANCIAL INSTITUTIONS 2005 – 2006 SESSION



Representative
Church
Chair

Representative
Grady
Chair



Representative
Vinson
Vice chair



Representative
Wainwright
Vice chair



Representative
Blackwood



Representative
Brubaker



Representative
Carney



Representative
Clary



Representative
Dickson



Representative
Holliman



Representative
Jones



Representative
McGee



Representative
Miller



Representative
Moore



Representative
Rapp



Representative
Saunders



Representative
Steen

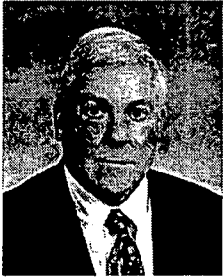


Representative
Williams

NORTH CAROLINA GENERAL ASSEMBLY

FINANCIAL INSTITUTIONS

2005 – 2006 SESSION



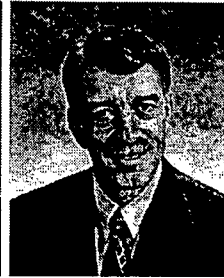
Rep. Culpepper
Ex-officio



Rep. Cunningham
Ex-officio



Rep. Eddins
Ex-officio



Rep. Hackney
Ex-officio

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

<u>MEMBER</u>	<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
Walter Church, Chair	Joyce Fuller	3-5805	1311 LB	33
Robert Grady, Chair	Neta Grady	5-9644	302 LOB	4
Douglas Vinson, Vice Chair	Darden Trotter	3-5886	1015 LB	89
William Wainwright, Vice Chair	Blinda Edwards	3-5995	532 LOB	8
Curtis Blackwood	Mizie Finke	3-2406	1317 LOB	97
Harold Brubaker	Cindy Coley	5-4946	1229 LB	2
Becky Carney	Joyce Langdon	3-5827	1221 LB	54
Debbie Clary	Shirley Winstead	5-2002	303 LOB	14
Margaret Dickson	Sue Buchimann	3-5776	1219 LB	42
Hugh Holliman	Carol Bowers	5-0873	1213LB	55
Earl Jones	Mia Bailey	3-5825	536 LOB	80
Bill McGee	Jayne Nelson	3-5747	531 LOB	103
Paul Miller	Eryn Gee	3-5872	640 LOB	43
Timothy Moore	Nancy Garriss	3-4838	502 LOB	85
Raymond Rapp	Dot Barber	3-5732	2213 LB	77
Drew Saunders	Ruth Fish	3-5606	2217 LB	48
Fred Steen	Chris Floyd	3-5881	514 LOB	64
Arthur Williams	Linda Uzzle	3-5906	637 LOB	22
Ex-Officio:				
Bill Culpepper	Dot Crocker	5-3028	404 LOB	36
Pete Cunningham	Valerie Rustin	3-5778	541 LOB	7
Rick Eddins	Susan Phillips	3-5828	1002 LB	26
Joe Hackney	Emily Reynolds	3-5752	2207 LB	69

FINANCIAL INSTITUTIONS

(Name of Committee)

[illegible]

100

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61	62	63	64	65	66	67	68	69	70
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MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
MARCH 29, 2005

The **House Committee on Financial Institutions** met on Tuesday, March 29, 2005, at 1:00 p.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chair Walter Church. Co-Chair Church recognized the Sgt-at-Arms and the pages who were assigned to the meeting. The following members of the committee were present: Co-Chair Church and Co-Chair Grady; Vice Chairs Vinson and Wainwright; Reps. Blackwood, Brubaker, Carney, Dickson, Holliman, Jones, McGee, Miller, Moore, Rapp, Saunders, Steen and Williams.

H.B. 859 – CONTINUING EDUCATION OF MORTGAGE BROKERS – Co-Chair Church recognized Drupti Chauhan, Committee Co-Counsel, to explain the summary of this bill which would establish requirements for live broadcasts of continuing education courses for licensees under the Mortgage Lending Act. Co-Chair Church then called on Rep. Brubaker to present the bill. Section I of House Bill 859 would allow the Commissioner to adopt rules for the conditions under which a continuing education course may be broadcast simultaneously to one or more remote locations. Section 2 of House Bill 859 adds false certification of attendance at a continuing professional education course as a ground upon which the Commissioner could deny, suspend, revoke, or refuse to issue or renew a licenser of a licensee or applicant or restrict or limit the activities relating to mortgage loans of any licensee or person who owns an interest in or participates in the business of a licensee. After some discussion, Rep. Saunders moved that **H.B. 859 be given a favorable report**. The motion carried. **H.B. 859 – FAVORABLE REPORT.**

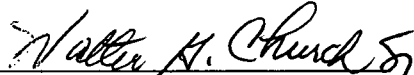
H.B. 621 – SMALL INSTALLMENT CONSUMER LOANS – Co-Chair Church called on Karen Cochrane-Brown, Committee Co-Counsel, to give a summary of the bill. House Bill 621 would add a new Article to Chapter 53 (the Banking Law) that authorizes a new loan business. The Commissioner of Banks who will issue licenses to qualified applicant lenders will supervise the businesses. The lenders will be able to make loans of up to \$1,200.00 at graduated rates. The terms of the loans will be between three and eighteen months. The bill also authorizes Consumer Finance lenders to collect delinquent payment charges of the greater of \$10.00 or 5% of the amount due ten days after the due date for the payment.


Co-Chair Church called on Rep. Wright, the introducer of the bill, to come forward and explain the bill. This bill would authorize a new category of small loans. The bill requires prospective lenders to be licensed by the Commissioner of Banks under similar terms as Consumer Finance lenders. Applicants would be required to pay a nonrefundable application investigation fee to the Commissioner of Banks in the amount of \$250.00. The bill would apply to loans of up to \$1,200.00. Lenders could charge an acquisition fee of 10% of the amount of the loans. The rate of the “installment account handling charge” would be determined by the amount of the cash advance.

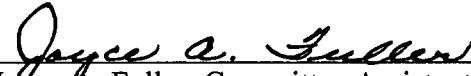
Those speaking in favor of the bill were: Richard Carlton, N. C. Independent Finance Corp.; R. E. Everette, Time Investment Corp. and Charles Walters, Chairman of the Board of World Acceptance Corp. Those speaking against the bill were: Bill Brooks, Small Business Janitorial Company; Josh Stein, Consumer Protection Division of the Attorney General's Office; Al Ripley, N. C. Justice Center; Chris Kukla, Self Help and Elizabeth Outz, N. C. Public Lenders Group.

After much discussion, it was decided that the bill needed to be looked at in more detail and it will be taken up at next week's meeting.

There being no further business, Co-Chair Church adjourned the meeting at approximately 2:02 p.m.


Co-Chair Walter G. Church, Sr.


Co-Chair Robert Grady


Joyce A. Fuller, Committee Assistant

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **Church and Grady** (Chairs) for the Committee on **Financial Institutions**.

☐ Committee Substitute for

H.B. 859 A BILL TO BE ENTITLED AN ACT TO REVISE THE LAW GOVERNING THE CONTINUING EDUCATION OF MORTGAGE BROKERS BY ESTABLISHING REQUIREMENTS FOR LIVE BROADCASTS OF CONTINUING EDUCATION COURSES.

☒ 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)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 859*

Short Title: Continuing Education of Mortgage Brokers.

(Public)

Sponsors: Representatives Brubaker, Church, and LaRoque (Primary Sponsors).

Referred to: Financial Institutions.

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAW GOVERNING THE CONTINUING EDUCATION
OF MORTGAGE BROKERS BY ESTABLISHING REQUIREMENTS FOR LIVE
BROADCASTS OF CONTINUING EDUCATION COURSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.07 reads as rewritten:

"§ 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 all licensees. 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.
- (8) Conditions under which a continuing education course may be broadcast simultaneously to one or more remote locations.

(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.

Continuing professional education credit hours may be given only for courses that are taught live by an instructor or instructors. To receive credit hours for a course, a licensee must attend and view the live teaching of the course or a live broadcast of the course. Only the period of live instruction shall apply to the satisfaction of the continuing professional education requirement established in this section. Courses consisting solely of recorded or printed materials or of electronic images, other than live

1 broadcast images, shall not apply to the satisfaction of the continuing professional
2 education requirement.

3 Licensees shall receive continuing professional education credit hours for live
4 courses that are broadcast simultaneously to licensees in one or more remote locations
5 only if the continuing education course provider, or an employee or agent of the
6 provider, certifies to the Commissioner the identity and attendance of each licensee at
7 the remote location. False certification of attendees by a continuing education course
8 provider shall be grounds for the suspension or revocation of the course provider's
9 privilege to provide courses in this State. The Commissioner may take disciplinary
10 action against the licensee pursuant to G.S. 53-243.12 for false certification of
11 attendance at a continuing education course.

12 (c) The Commissioner may require education providers of the fundamentals
13 mortgage lending course required under the provisions of G.S. 53-243.05(b)(2) and the
14 continuing education courses required under this section to file information regarding
15 the contents and materials of proposed courses to satisfy the education requirements
16 with the Commissioner for review and approval. The Commissioner may set fees for the
17 initial and continuing review of courses for which credit hours will be granted. The
18 initial filing fee for review of materials shall not exceed five hundred dollars (\$500.00)
19 and the fee for continued review shall not exceed two hundred fifty dollars (\$250.00)
20 per annum per course offered."

21 **SECTION 2.** G.S. 53-243.12(a) reads as rewritten:

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

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

28 (2) That any of the following circumstances apply to the applicant,
29 licensee, or any partner, member, manager, officer, director, loan
30 officer, managing principal, or any person occupying a similar status
31 or performing similar functions or any person directly or indirectly
32 controlling the applicant or licensee. The person:

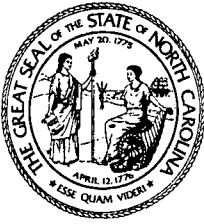
33 a. Has filed an application for license that, as of its effective date
34 or as of any date after filing, contained any statement that, in
35 light of the circumstances under which it was made, is false or
36 misleading with respect to any material fact.

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

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

- 1 d. Is permanently or temporarily enjoined by any court of
2 competent jurisdiction from engaging in or continuing any
3 conduct or practice involving any aspect of the mortgage
4 lending business.
- 5 e. Is the subject of an order of the Commissioner denying,
6 suspending, or revoking that person's license as a mortgage
7 broker or mortgage banker.
- 8 f. Is the subject of an order entered within the past five years by
9 the authority of any state with jurisdiction over that state's
10 mortgage brokerage or mortgage banking industry denying or
11 revoking that person's license as a mortgage broker or mortgage
12 banking industry or denying or revoking that person's license as
13 a mortgage broker or mortgage banker.
- 14 g. Does not meet the qualifications or the financial responsibility,
15 character, or general fitness requirements under G.S. 53-243.05
16 or any bond or capital requirements under this Article.
- 17 h. Has been the executive officer or controlling shareholder or
18 owned a controlling interest in any mortgage broker or
19 mortgage banker who has been subject to an order or injunction
20 described in sub-subdivision d., e., or f. of this subdivision.
- 21 i. Has failed to pay the proper filing or renewal fee under this
22 Article. However, the Commissioner may enter only a denial
23 order under this sub-subdivision, and the Commissioner shall
24 vacate the order when the deficiency has been corrected.
- 25 j. Has falsely certified attendance at a continuing professional
26 education course."

27 **SECTION 3.** This act becomes effective January 1, 2006, and applies to
28 licenses issued or renewed on or after that date.



HOUSE BILL 859: Continuing Education of Mortgage Brokers

BILL ANALYSIS

Committee: House Financial Institutions
Date: March 29, 2005
Version: 1st Edition

Introduced by: Reps. Brubaker, Church, &
LaRoque
Summary by: Drupti Chauhan
Committee Counsel

SUMMARY: *House Bill 859 would establish requirements for live broadcasts of continuing education courses for licensees under the Mortgage Lending Act.*

CURRENT LAW: G.S. 53-243.07 provides that the Commissioner of Banks (Commissioner) may adopt rules to require continuing education of licensees under the Mortgage Lending Act statutes. The rules can include criteria for items such as the content of continuing education courses, accreditation of continuing education sponsors, accreditation of videotape or other audiovisual programs, computation of credit, general compliance procedures, and sanctions for noncompliance. The Commissioner is allowed to determine the annual continuing professional requirements although they cannot exceed eight credit hours within a one-year period. The Commissioner can require that the education providers file information regarding the contents and materials of the courses for review and approval by the Commissioner.

BILL ANALYSIS: Section 1 of House Bill 859 would allow the Commissioner to adopt rules for the conditions under which a continuing education course may be broadcast simultaneously to one or more remote locations. The bill sets forth the following requirements for the live broadcasts of continuing education courses:

- credit hours can be given only for courses that are taught live by an instructor
- a licensee must attend and view the live teaching or a live broadcast of the course in order to receive credit hours for a course
- only the period of live instruction shall satisfy continuing professional education requirements
- licensees can receive professional education credit hours for live broadcast courses only if the continuing education provider certifies the identity and attendance of each licensee at the remote locations to the Commissioner

False certification of attendees by a continuing education course provider shall be grounds for the suspension or revocation of the course provider's privilege to provide the courses in North Carolina and the Commissioner may take disciplinary action against the licensee for false certification of attendance.

Section 2 of House Bill 859 adds false certification of attendance at a continuing professional education course as a ground upon which the Commissioner could deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant or restrict or limit the activities relating to mortgage loans of any licensee or person who owns an interest in or participates in the business of a licensee.

EFFECTIVE DATE: The bill would become effective January 1, 2006, and apply to licenses issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 621

Short Title: Small Installment Consumer Loans.

(Public)

Sponsors: Representative Wright.

Referred to: Financial Institutions, if favorable, Finance.

March 14, 2005

A BILL TO BE ENTITLED
AN ACT TO ALLOW ALTERNATIVE INTEREST RATES AND MATURITIES
FOR LOANS NOT EXCEEDING TWELVE HUNDRED DOLLARS.

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 15A.

"Small Installment Consumer Loans.

"§ 53-191.10. Title.

This Article shall be known and cited as the "Small Installment Consumer Loan Act".

"§ 53-191.11. Definitions.

As used in this Article, the following terms mean:

- (1) Actuarial method. – The Actuarial Method as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as amended from time to time, together with the regulations issued from time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.
- (2) Amount of the loan. – The aggregate of the cash advance and the charges authorized by G.S. 53-191.15.
- (3) Borrower. – Any person who borrows money from any licensee or who pays or obligates himself or herself to pay any money or otherwise furnishes any valuable consideration to any licensee for any act of the licensee as a licensee.
- (4) Cash advance. – The Amount Financed as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as amended from time to time, together with the regulations issued from

time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.

(5) Commission. – The State Banking Commission.

(6) Commissioner. – The Commissioner of Banks.

(7) Deputy commissioner. – The deputy commissioner of banks.

(8) Lender. – A person who makes a loan under this Article.

(9) License. – The certificate issued by the Commissioner under the authority of this Article to conduct a consumer loan business.

(10) Licensee. – A person to whom one or more licenses have been issued.

(11) Loanable assets. – Cash, bank deposits, or installment loans made as a licensee pursuant to this Article as the Commissioner may approve.

(12) Person. – Any person, firm, partnership, association, or corporation.

"§ 53-191.12. Scope of Article; evasions; penalties; loans in violation of Article void.

(a) Scope. – Except as otherwise permitted under Article 15 of this Chapter, no person shall engage in the business of lending in amounts of one thousand two hundred dollars (\$1,200) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section includes endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions. – The provisions of subsection (a) of this section shall apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever.

(c) Penalties; Commissioner to Provide and Testify as to Facts in Commissioner's Possession. – Any person not exempt from this Article, or any officer, agent, employee, or representative thereof, who intentionally fails to comply with or who otherwise intentionally violates any of the provisions of this Article, or any rule adopted pursuant to this Article, shall be guilty of a Class 1 misdemeanor. Each violation shall be considered a separate offense. It shall be the duty of the Commissioner to provide the district attorney of the court having jurisdiction of any such offense with all facts and evidence in the Commissioner's actual or constructive possession and to testify as to those facts upon the trial of any person for any such offense.

(d) Additional Penalties. – Any contract of loan, the making or collecting of which violates any provision of this Article or any rules adopted pursuant to the authority granted in this Article, except as a result of accidental or bona fide error of computation, shall be void, and the licensee or any other party in violation shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to such loan.

"§ 53-191.13. Expense of supervision.

Each licensee, for the purpose of defraying necessary expenses of the Commissioner and the Commissioner's agents in supervising them, shall pay to the Commissioner the fees prescribed in G.S. 53-122 at the times therein specified.

"§ 53-191.14. License required; showing 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, and the Commissioner shall not issue any such license unless and until the Commissioner finds all of the following:

(1) 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.

(2) The applicant has available for the operation of the business at the specified location loanable assets of at least 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) of this section, the Commissioner shall so notify the applicant who shall then be entitled to an informal hearing thereon provided the applicant so requests in writing within 30 days after the Commissioner has caused the notice 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 the application. At the time of making the 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) 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 fifty thousand dollars (\$50,000). The requirements and standards of this subsection and subdivision (a)(2) of this section shall be maintained throughout the period of the license and failure to maintain these requirements or standards shall be grounds for the revocation of a license under the provisions of this Article.

(d) 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 partnership 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 provided in this Article.

"§ 53-191.15. Alternative rates and maturities for loans not exceeding \$1,200.

1 (a) Notwithstanding any other provisions of law, a licensee may elect to make
2 installment loans with cash advances not exceeding one thousand two hundred dollars
3 (\$1,200) under the following terms and conditions:

- 4 (1) No acquisition charge in excess of ten percent (10%) of the cash
5 advance of the loan may be charged.
- 6 (2) On any loan with a cash advance of not more than three hundred
7 dollars (\$300.00), no installment account handling charge in excess of
8 four and one-half percent (4.5%) of the cash advance per month may
9 be charged.
- 10 (3) On any loan with a cash advance in excess of three hundred dollars
11 (\$300.00) but not more than five hundred dollars (\$500.00), no
12 installment account handling charge in excess of four percent (4%) of
13 the cash advance per month may be charged.
- 14 (4) On any loan with a cash advance in excess of five hundred dollars
15 (\$500.00) but not more than seven hundred dollars (\$700.00), no
16 installment account handling charge in excess of three percent (3%) of
17 the cash advance per month may be charged.
- 18 (5) On any loan with a cash advance in excess of seven hundred dollars
19 (\$700.00) but not more than one thousand dollars (\$1,000), no
20 installment account handling charge in excess of two and one-half
21 percent (2.5%) of the cash advance per month may be charged.
- 22 (6) On any loan with a cash advance in excess of one thousand dollars
23 (\$1,000) but not more than one thousand two hundred dollars (\$1,200),
24 no installment account handling charge in excess of two percent (2%)
25 of the cash advance per month may be charged.
- 26 (7) The minimum term for any loan made under this section shall be three
27 months and the maximum term shall be 18 months.

28 (b) If a loan made under this section is prepaid in full, including payment in cash
29 or by a new loan or the renewal of the loan, or if the licensee demands payment in full
30 of the unpaid balance, the licensee shall refund or credit to the borrower that portion of
31 the installment account handling charge contracted for on the loan, the acquisition
32 charge being fully earned as of the date of the loan, determined by the actuarial method
33 computed as of the next scheduled installment due date next following the date of
34 prepayment.

35 (c) On any loan established under this section, no insurance charge or any other
36 charge of any nature whatsoever is permitted except as provided in this section, and
37 except for the following:

- 38 (1) A delinquent payment charge of ten dollars (\$10.00) on any
39 installment not paid within 10 days after its due date.
- 40 (2) The return check charge permitted under G.S. 25-3-506.
- 41 (3) Fees actually paid to any public official or agency of a county or the
42 State to file, record, or perfect, pursuant to Article 9 of Chapter 25 of
43 the General Statutes, or G.S. 20-58, the lender's security interest in any
44 collateral securing the loan.

(4) Interest after maturity on the outstanding balance at a rate equal to eight percent (8%) per annum.

(d) The loan charges allowed under this section may not be imposed on a loan to a borrower who has one or more loans outstanding under this Article with the same lender or an affiliated lender except that a licensee may make a loan having the charges allowed under this section to pay off the balance due under any other loan or loans made by the lender or its affiliates provided that the aggregate payoff balance of the loan or loans being paid off does not exceed one thousand two hundred dollars (\$1,200). The acquisition by a lender or an affiliate of a lender in a bulk transaction of loans made under this Article to a borrower who, at the time of the acquisition, has a loan under this section from the acquiring licensee or an affiliate of the licensee shall not be a violation of this section.

(e) Any loan made under this section must provide for repayment in substantially equal monthly installments. No loan made under this section may be prepaid by a loan from the same licensee or an affiliate of the same licensee who made the initial loan until at least 61 days after the initial loan date nor may a licensee or an affiliate of the same licensee under this section make a new loan to the same borrower until at least 61 days after the initial loan date.

"§ 53-191.16. Businesses exempted.

Nothing in this Article shall be construed to apply to any person, firm, or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations organized under the laws of North Carolina, production credit associations organized under the act of Congress known as the Farm Credit Act of 1933, pawnbrokers lending or advancing money on specific articles of personal property, industrial banks, the business of negotiating loans on real estate as defined in G.S. 105-41, nor to installment paper dealers as defined in G.S. 105-83 other than persons, firms, and corporations engaged in the business of accepting fees for endorsing or otherwise securing loans or contracts for repayment of loans.

"§ 53-191.17. Applicable provisions.

The provisions of the following sections shall apply to loans, borrowers, and lenders governed by this Article as if these transactions were transactions under Article 15 of this Chapter: G.S. 53-169 through G.S. 53-172 and G.S. 53-181 through G.S. 53-188."

SECTION 2. G.S. 53-169 reads as rewritten:

"§ 53-169. Application for license.

The application for license shall be made on a form prepared and furnished by the Commissioner of Banks and shall state:

- (1) The fact that the applicant desires to engage in business under this ~~Article;~~ Article or under Article 15A of this and Chapter; and
- (2) Whether the applicant is an individual, partnership, association or corporation; and
- (3) The name and address of the person who will manage and be in immediate control of the business; and

- 1 (4) The name and address of the owners and their percentage of equity in
2 the company, except when the Commissioner does not deem it feasible
3 to furnish such information because of the number of stockholders
4 involved; and
5 (5) When the applicant proposes to commence doing business; and
6 (6) Such other information as the Commissioner of Banks deems
7 necessary.

8 The statements made in such application shall be sworn to by the applicant or
9 persons making application on the applicant's behalf."

10 **SECTION 3.** G.S. 53-172(a) reads as rewritten:

11 "(a) No licensee shall conduct the business of making loans under ~~this Article~~
12 Article 15 or Article 15A of this Chapter within any office, suite, room, or place of
13 business in which any other business is solicited or transacted.

14 ~~Installment~~ The business of installment paper dealers as defined in G.S. 105-83,
15 small installment consumer lenders under Articles 15 and 15A of this Chapter,
16 check-cashing under G.S. 53-276, and the collection by a licensee of loans legally made
17 in North Carolina, or another state by another government regulated lender or lending
18 agency, shall not be considered as being ~~any~~ other business within the meaning of this
19 section."

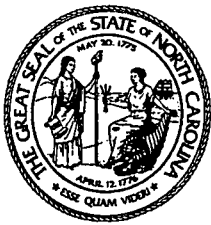
20 **SECTION 4.** G.S. 53-173 is amended by adding a new subsection to read:

21 "(b1) Delinquent Payment Charge. – In addition to the interest and fees permitted
22 under this section, a licensee may collect a delinquent payment charge of the greater of
23 ten dollars (\$10.00) or five percent (5%) of the amount of the payment due not paid
24 within 10 days after its due date."

25 **SECTION 5.** G.S. 53-176(c) reads as rewritten:

26 "(c) The provisions of G.S. 53-173(b), (b1), (c) and (d) and G.S. 53-180(b), (c),
27 (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section."

28 **SECTION 6.** This act becomes effective October 1, 2005.



BILL ANALYSIS

HOUSE BILL 621: Small Installment Consumer Loans.

Committee: House Financial Institutions
Date: March 29, 2005
Version: First Edition

Introduced by: Rep. Wright
Summary by: Karen Cochrane Brown
Committee Co-Counsel

SUMMARY: *House Bill 621 would add a new Article to Chapter 53 (the Banking Law) that authorizes a new loan business. The Commissioner of Banks who will issue licenses to qualified applicant lenders will supervise the businesses. The lenders will be able to make loans of up to \$1200.00 at graduated rates. The terms of the loans will be between three and eighteen months.*

The bill also authorizes Consumer Finance lenders to collect delinquent payment charges of the greater of \$10. 00 or 5% of the amount due ten days after the due date for the payment.

CURRENT LAW:

Currently, the North Carolina Consumer Finance Act (Article 15, Chap. 53) is the only State law that specifically authorizes nonbank lenders to make small unsecured loans. This 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 \$50,000. 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 would authorize a new category of small loans. The bill requires prospective lenders to be licensed by the Commissioner of Banks under similar terms as Consumer Finance lenders. Applicants would be required to pay a nonrefundable application investigation fee to the Commissioner of Banks in the amount of \$250.00. This bill would apply to loans of up to \$1200.00. Lenders could charge an acquisition fee of 10% of the amount of the loan. The rate of the "installment account handling charge" would be determined by the amount of the cash advance.

HOUSE BILL 621

Page 2

- On loans of \$300.00 or less the rate would be 4.5% per month.
- On loans between \$300.00 and \$500.00 the rate would be 4% per month.
- On loans between \$500.00 and \$700.00 the rate would be 3% per month.
- On loans between \$700.00 and \$1000.00 the rate would be 2.5% per month.
- On loans between \$1000.00 and \$1200.00 the rate would be 2% per month.

The minimum term for any loan would be three months and the maximum term would be 18 months.

Lenders could not charge for insurance but could charge \$10.00 for payments not made within ten days of the due date.

A borrower could not have more than one outstanding loan with the same lender; however, a lender could make a loan to payoff the balance of an outstanding loan to the borrower so long as the aggregate amount of the loans does not exceed \$1200.00. The lender may charge a new acquisition fee to a borrower who has a loan from the lender in a bulk transaction of loans.

Loans made under this section must provide for payments in substantially equal installments. Loans may not be prepaid by another loan from the same lender until at least 61 days after the initial loan, nor may the lender make a new loan to the same borrower in less than 61 days.

The provisions of the Consumer Finance Act relating to application for license, locations and change of ownership, revocation, suspension or surrender of license, and conduct of other business in the same office are made applicable to persons or entities covered by this Act. In addition, the provisions of the Consumer Finance Act relating to certain consumer notices and protections and the Commissioners powers are also made applicable to this Act.

Finally, the bill also amends the Consumer Finance Act to authorize the collection of delinquent payment charges of the greater of \$10.00 or 5% of the amount due if the payment is not made within 10 days of the due date.

This act would become effective October 1, 2005.

H621-SMRO-001

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on FINANCIAL INSTITUTIONS will meet as follows:

DAY & DATE: Tuesday, March 29, 2005

TIME: 1:00 p.m.

LOCATION: Room 1425

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 621 SMALL INSTALLMENT CONSUMER LOANS - Representative Wright

**HB 859 CONTINUING EDUCATION OF MORTGAGE BROKERS -
Representatives Brubaker, Church and LaRoque**

Respectfully,
Representatives Church and Grady
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at 10:00 am on Thursday, **March 24, 2005.**

____Principal Clerk
____Reading Clerk - House Chamber

Joyce Fuller (Committee Assistant)

FINANCIAL INSTITUTIONS
MARCH 29, 2005
ROOM 1425
1:00 P.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND GRADY

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN, MS. DRUPTI
CHAUHAN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS –JOYCE FULLER AND NETA GRADY

SGT.-AT-ARMS – PAUL CURRY AND WALTER SPELL

PAGES - RICHARD PRIDGEN (WAYNE CO.) AND HARRIS WALKER
(NASH CO.)

BILLS TO BE CONSIDERED:

H.B. 859 – CONTINUING EDUCATION OF MORTGAGE BROKERS -
REPRESENTATIVES BRUBAKER, CHURCH AND LaROQUE

H.B. 621 – SMALL INSTALLMENT CONSUMER LOANS
REPRESENTATIVE WRIGHT

CLOSING REMARKS

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

MARCH 29, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

JOHN CRAWFORD

NCAMP

CALVIN KIRVEN

NCAMP

Jennifer Sakemson

NCAMP

Kate Crawford

Corporate Counselors

Joe Chusac

Raydole Height

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

Name of Committee

March 29, 2005

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fred Bone	Bone & ASSO
Roger Bone	"
BILL BROOKS	108 W. SKYHAWK DR, CARY, NC
CHRIS KOKIA	SELF-EMP
AL RIPLEY	NC JUSTICE CTR.
Boyd Henth	Time Financial Service
Charlie Walters	N.C. IND. FINANCE ASSOC.
MORRIS MARSHBURN	RSM McClellan Inc
Stephanie Simpson	NC Association of REALTORS
R. Paul Wilkins	NCHBA
Dan Payne	Edmoka & Webb
Vince Condrush	NCIFA
Ronny J. J. J.	NC FSA

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

MARCH 29, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

BOYCE SCOTT	Wood Acceptance Corp P.O. Box 981 Greenville
Brad Lamb	NC Consumers Council
Luther	KCLH
Casey Johnson	Security Finance Corp.
Victor Barry	SECURITY FINANCE DRAWER 811 SPARTANBURG, SC 29304-0811
My [unclear]	First Citizens Bank
Paul Stahl	NC Bankers
RON OTTAVIO	WACHOVIA

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
APRIL 12, 2005

The **House Committee on Financial Institutions** met on Tuesday, April 12, 2005, at 1:00 p.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chair Robert Grady. Co-Chair Grady recognized the Sgt.-at-Arms and the pages who were assigned to the meeting. The following members of the committee were present: Co-Chair Church and Co-Chair Grady; Vice Chair Wainwright; Reps. Blackwood, Carney, Clary, Dickson, Holliman, Jones, McGee, Miller, Moore, Rapp, Saunders, Steen and Williams

H.B. 621 – SMALL INSTALLMENT CONSUMER LOANS – Co-Chair Grady called on Walker Reagan, Committee Co-Counsel, to give a summary of the bill. House Bill 621 would add a new Article to Chapter 53 (the Banking Law) that authorizes a new loan business. The Commissioner of Banks who will issue licenses to qualified applicant lenders will supervise the businesses. The lenders will be able to make loans of up to \$1,200.00 at graduated rates. The terms of the loans will be between three and eighteen months.

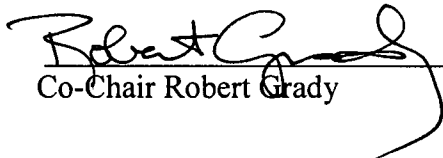
The bill also authorizes Consumer Finance lenders to collect delinquent payment charges of the greater of \$10.00 or 5% of the amount due ten days after the due date for the payment.

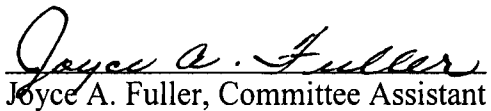
Those speaking against the bill were: Al Ripley, N. C. Justice Center; Chris Kukla, Self Help and Josh Stein, Consumer Protection Division of the Attorney General's Office. Those speaking in favor of the bill were: Richard Carlton, N. C. Independent Finance Corp; Charles Walters, Chairman of the Board of World Acceptance Corp. and Ed Renfrow, Coastal Finance.

Co-Chair Grady called on Rep. Wright, the sponsor of the bill, to come up front to answer any questions that the committee might have. After discussion, Rep. Williams moved that **H.B. 621 be given a favorable report and that the bill be re-referred to the Committee on Finance.** The motion carried. **H.B. 621 – FAVORABLE REPORT AND BE RE-REFERRED TO THE COMMITTEE ON FINANCE.**

There being no further business, Co-Chair Grady adjourned the meeting at 1:50 p.m.


Co-Chair Walter G. Church, Sr.


Co-Chair Robert Grady


Joyce A. Fuller, Committee Assistant

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **Church and Grady** (Chairs) for the Committee on **Financial Institutions**.

☐ Committee Substitute for

H.B. 621 A BILL TO BE ENTITLED AN ACT TO ALLOW ALTERNATIVE INTEREST RATES AND MATURITIES FOR LOANS NOT EXCEEDING TWELVE HUNDRED DOLLARS.

☐ 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)

03/19/03

FOR JOURNAL USE ONLY

- ____ Pursuant to Rule 36(b), the bill/resolution 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
____ the House amendment (s).
____ the House committee substitute bill.
____ 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 2005

H

1

HOUSE BILL 621

Short Title: Small Installment Consumer Loans.

(Public)

Sponsors: Representative Wright.

Referred to: Financial Institutions, if favorable, Finance.

March 14, 2005

A BILL TO BE ENTITLED
AN ACT TO ALLOW ALTERNATIVE INTEREST RATES AND MATURITIES
FOR LOANS NOT EXCEEDING TWELVE HUNDRED DOLLARS.

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 15A.

"Small Installment Consumer Loans.

"§ 53-191.10. Title.

This Article shall be known and cited as the "Small Installment Consumer Loan Act".

"§ 53-191.11. Definitions.

As used in this Article, the following terms mean:

- (1) Actuarial method. – The Actuarial Method as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as amended from time to time, together with the regulations issued from time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.
- (2) Amount of the loan. – The aggregate of the cash advance and the charges authorized by G.S. 53-191.15.
- (3) Borrower. – Any person who borrows money from any licensee or who pays or obligates himself or herself to pay any money or otherwise furnishes any valuable consideration to any licensee for any act of the licensee as a licensee.
- (4) Cash advance. – The Amount Financed as defined by the federal Consumer Credit Protection Act (15 U.S.C. § 1601, et. seq., commonly referred to as the Truth-In-Lending Act or TILA), as amended from time to time, together with the regulations issued from

time to time by the Board of Governors of the Federal Reserve System pursuant to that Act.

(5) Commission. – The State Banking Commission.

(6) Commissioner. – The Commissioner of Banks.

(7) Deputy commissioner. – The deputy commissioner of banks.

(8) Lender. – A person who makes a loan under this Article.

(9) License. – The certificate issued by the Commissioner under the authority of this Article to conduct a consumer loan business.

(10) Licensee. – A person to whom one or more licenses have been issued.

(11) Loanable assets. – Cash, bank deposits, or installment loans made as a licensee pursuant to this Article as the Commissioner may approve.

(12) Person. – Any person, firm, partnership, association, or corporation.

"§ 53-191.12. Scope of Article; evasions; penalties; loans in violation of Article void.

(a) Scope. – Except as otherwise permitted under Article 15 of this Chapter, no person shall engage in the business of lending in amounts of one thousand two hundred dollars (\$1,200) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section includes endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions. – The provisions of subsection (a) of this section shall apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever.

(c) Penalties; Commissioner to Provide and Testify as to Facts in Commissioner's Possession. – Any person not exempt from this Article, or any officer, agent, employee, or representative thereof, who intentionally fails to comply with or who otherwise intentionally violates any of the provisions of this Article, or any rule adopted pursuant to this Article, shall be guilty of a Class 1 misdemeanor. Each violation shall be considered a separate offense. It shall be the duty of the Commissioner to provide the district attorney of the court having jurisdiction of any such offense with all facts and evidence in the Commissioner's actual or constructive possession and to testify as to those facts upon the trial of any person for any such offense.

(d) Additional Penalties. – Any contract of loan, the making or collecting of which violates any provision of this Article or any rules adopted pursuant to the authority granted in this Article, except as a result of accidental or bona fide error of computation, shall be void, and the licensee or any other party in violation shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to such loan.

"§ 53-191.13. Expense of supervision.

Each licensee, for the purpose of defraying necessary expenses of the Commissioner and the Commissioner's agents in supervising them, shall pay to the Commissioner the fees prescribed in G.S. 53-122 at the times therein specified.

"§ 53-191.14. License required; showing 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, and the Commissioner shall not issue any such license unless and until the Commissioner finds all of the following:

(1) 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.

(2) The applicant has available for the operation of the business at the specified location loanable assets of at least 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) of this section, the Commissioner shall so notify the applicant who shall then be entitled to an informal hearing thereon provided the applicant so requests in writing within 30 days after the Commissioner has caused the notice 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 the application. At the time of making the 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) 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 fifty thousand dollars (\$50,000). The requirements and standards of this subsection and subdivision (a)(2) of this section shall be maintained throughout the period of the license and failure to maintain these requirements or standards shall be grounds for the revocation of a license under the provisions of this Article.

(d) 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 partnership 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 provided in this Article.

"§ 53-191.15. Alternative rates and maturities for loans not exceeding \$1,200.

1 (a) Notwithstanding any other provisions of law, a licensee may elect to make
2 installment loans with cash advances not exceeding one thousand two hundred dollars
3 (\$1,200) under the following terms and conditions:

4 (1) No acquisition charge in excess of ten percent (10%) of the cash
5 advance of the loan may be charged.

6 (2) On any loan with a cash advance of not more than three hundred
7 dollars (\$300.00), no installment account handling charge in excess of
8 four and one-half percent (4.5%) of the cash advance per month may
9 be charged.

10 (3) On any loan with a cash advance in excess of three hundred dollars
11 (\$300.00) but not more than five hundred dollars (\$500.00), no
12 installment account handling charge in excess of four percent (4%) of
13 the cash advance per month may be charged.

14 (4) On any loan with a cash advance in excess of five hundred dollars
15 (\$500.00) but not more than seven hundred dollars (\$700.00), no
16 installment account handling charge in excess of three percent (3%) of
17 the cash advance per month may be charged.

18 (5) On any loan with a cash advance in excess of seven hundred dollars
19 (\$700.00) but not more than one thousand dollars (\$1,000), no
20 installment account handling charge in excess of two and one-half
21 percent (2.5%) of the cash advance per month may be charged.

22 (6) On any loan with a cash advance in excess of one thousand dollars
23 (\$1,000) but not more than one thousand two hundred dollars (\$1,200),
24 no installment account handling charge in excess of two percent (2%)
25 of the cash advance per month may be charged.

26 (7) The minimum term for any loan made under this section shall be three
27 months and the maximum term shall be 18 months.

28 (b) If a loan made under this section is prepaid in full, including payment in cash
29 or by a new loan or the renewal of the loan, or if the licensee demands payment in full
30 of the unpaid balance, the licensee shall refund or credit to the borrower that portion of
31 the installment account handling charge contracted for on the loan, the acquisition
32 charge being fully earned as of the date of the loan, determined by the actuarial method
33 computed as of the next scheduled installment due date next following the date of
34 prepayment.

35 (c) On any loan established under this section, no insurance charge or any other
36 charge of any nature whatsoever is permitted except as provided in this section, and
37 except for the following:

38 (1) A delinquent payment charge of ten dollars (\$10.00) on any
39 installment not paid within 10 days after its due date.

40 (2) The return check charge permitted under G.S. 25-3-506.

41 (3) Fees actually paid to any public official or agency of a county or the
42 State to file, record, or perfect, pursuant to Article 9 of Chapter 25 of
43 the General Statutes, or G.S. 20-58, the lender's security interest in any
44 collateral securing the loan.

(4) Interest after maturity on the outstanding balance at a rate equal to eight percent (8%) per annum.

(d) The loan charges allowed under this section may not be imposed on a loan to a borrower who has one or more loans outstanding under this Article with the same lender or an affiliated lender except that a licensee may make a loan having the charges allowed under this section to pay off the balance due under any other loan or loans made by the lender or its affiliates provided that the aggregate payoff balance of the loan or loans being paid off does not exceed one thousand two hundred dollars (\$1,200). The acquisition by a lender or an affiliate of a lender in a bulk transaction of loans made under this Article to a borrower who, at the time of the acquisition, has a loan under this section from the acquiring licensee or an affiliate of the licensee shall not be a violation of this section.

(e) Any loan made under this section must provide for repayment in substantially equal monthly installments. No loan made under this section may be prepaid by a loan from the same licensee or an affiliate of the same licensee who made the initial loan until at least 61 days after the initial loan date nor may a licensee or an affiliate of the same licensee under this section make a new loan to the same borrower until at least 61 days after the initial loan date.

"§ 53-191.16. Businesses exempted.

Nothing in this Article shall be construed to apply to any person, firm, or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations organized under the laws of North Carolina, production credit associations organized under the act of Congress known as the Farm Credit Act of 1933, pawnbrokers lending or advancing money on specific articles of personal property, industrial banks, the business of negotiating loans on real estate as defined in G.S. 105-41, nor to installment paper dealers as defined in G.S. 105-83 other than persons, firms, and corporations engaged in the business of accepting fees for endorsing or otherwise securing loans or contracts for repayment of loans.

"§ 53-191.17. Applicable provisions.

The provisions of the following sections shall apply to loans, borrowers, and lenders governed by this Article as if these transactions were transactions under Article 15 of this Chapter: G.S. 53-169 through G.S. 53-172 and G.S. 53-181 through G.S. 53-188."

SECTION 2. G.S. 53-169 reads as rewritten:

"§ 53-169. Application for license.

The application for license shall be made on a form prepared and furnished by the Commissioner of Banks and shall state:

- (1) The fact that the applicant desires to engage in business under this Article; Article or under Article 15A of this and Chapter; and
- (2) Whether the applicant is an individual, partnership, association or corporation; and
- (3) The name and address of the person who will manage and be in immediate control of the business; and

(4) The name and address of the owners and their percentage of equity in the company, except when the Commissioner does not deem it feasible to furnish such information because of the number of stockholders involved; and

(5) When the applicant proposes to commence doing business; and

(6) Such other information as the Commissioner of Banks deems necessary.

The statements made in such application shall be sworn to by the applicant or persons making application on the applicant's behalf."

SECTION 3. G.S. 53-172(a) reads as rewritten:

"(a) No licensee shall conduct the business of making loans under ~~this Article~~ Article 15 or Article 15A of this Chapter within any office, suite, room, or place of business in which any other business is solicited or transacted.

~~Installment~~ The business of installment paper dealers as defined in G.S. 105-83, small installment consumer lenders under Articles 15 and 15A of this Chapter, check-cashing under G.S. 53-276, and the collection by a licensee of loans legally made in North Carolina, or another state by another government regulated lender or lending agency, shall not be considered as being any other business within the meaning of this section."

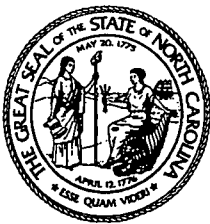
SECTION 4. G.S. 53-173 is amended by adding a new subsection to read:

"(b1) Delinquent Payment Charge. – In addition to the interest and fees permitted under this section, a licensee may collect a delinquent payment charge of the greater of ten dollars (\$10.00) or five percent (5%) of the amount of the payment due not paid within 10 days after its due date."

SECTION 5. G.S. 53-176(c) reads as rewritten:

"(c) The provisions of G.S. 53-173(b), (b1), (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."

SECTION 6. This act becomes effective October 1, 2005.



HOUSE BILL 621: Small Installment Consumer Loans.

BILL ANALYSIS

Committee: House Financial Institutions
Date: March 29, 2005
Version: First Edition

Introduced by: Rep. Wright
Summary by: Karen Cochrane Brown
Committee Co-Counsel

SUMMARY: *House Bill 621 would add a new Article to Chapter 53 (the Banking Law) that authorizes a new loan business. The Commissioner of Banks who will issue licenses to qualified applicant lenders will supervise the businesses. The lenders will be able to make loans of up to \$1200.00 at graduated rates. The terms of the loans will be between three and eighteen months.*

The bill also authorizes Consumer Finance lenders to collect delinquent payment charges of the greater of \$10.00 or 5% of the amount due ten days after the due date for the payment.

CURRENT LAW:

Currently, the North Carolina Consumer Finance Act (Article 15, Chap. 53) is the only State law that specifically authorizes nonbank lenders to make small unsecured loans. This 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 \$50,000. 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 would authorize a new category of small loans. The bill requires prospective lenders to be licensed by the Commissioner of Banks under similar terms as Consumer Finance lenders. Applicants would be required to pay a nonrefundable application investigation fee to the Commissioner of Banks in the amount of \$250.00. This bill would apply to loans of up to \$1200.00. Lenders could charge an acquisition fee of 10% of the amount of the loan. The rate of the "installment account handling charge" would be determined by the amount of the cash advance.

HOUSE BILL 621

Page 2

- On loans of \$300.00 or less the rate would be 4.5% per month.
- On loans between \$300.00 and \$500.00 the rate would be 4% per month.
- On loans between \$500.00 and \$700.00 the rate would be 3% per month.
- On loans between \$700.00 and \$1000.00 the rate would be 2.5% per month.
- On loans between \$1000.00 and \$1200.00 the rate would be 2% per month.

The minimum term for any loan would be three months and the maximum term would be 18 months.

Lenders could not charge for insurance but could charge \$10.00 for payments not made within ten days of the due date.

A borrower could not have more than one outstanding loan with the same lender; however, a lender could make a loan to payoff the balance of an outstanding loan to the borrower so long as the aggregate amount of the loans does not exceed \$1200.00. The lender may charge a new acquisition fee to a borrower who has a loan from the lender in a bulk transaction of loans.

Loans made under this section must provide for payments in substantially equal installments. Loans may not be prepaid by another loan from the same lender until at least 61 days after the initial loan, nor may the lender make a new loan to the same borrower in less than 61 days.

The provisions of the Consumer Finance Act relating to application for license, locations and change of ownership, revocation, suspension or surrender of license, and conduct of other business in the same office are made applicable to persons or entities covered by this Act. In addition, the provisions of the Consumer Finance Act relating to certain consumer notices and protections and the Commissioners powers are also made applicable to this Act.

Finally, the bill also amends the Consumer Finance Act to authorize the collection of delinquent payment charges of the greater of \$10.00 or 5% of the amount due if the payment is not made within 10 days of the due date.

This act would become effective October 1, 2005.

H621-SMRO-001

Joyce Fuller (Rep. Church)

From: Neta Grady (Rep. Grady)**Sent:** Wednesday, April 06, 2005 12:51 PM**To:** @House/Financial Institutions; @HouseCommitteeNotice; Clarestene Stewart (Rep. Wright); Drupti Chauhan (Research); Interested Parties; Karen Cochrane-Brown (Research); Susan Phillips (Rep. Eddins); Valerie Rustin (Rep. Cunningham); Vanda Wilson-Wormack (Rep. Wright); Walker Reagan (Research)**Subject:** Financial Instititons Committee Meeting

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Financial Institutions will meet as follows:

DAY & DATE: Tuesday, April 12, 2005**TIME:** 1:00 PM**LOCATION:** 1425

The following bills will be considered (Bill # & Short Title & Bill Sponsor):
HB 621 SMALL INSTALLMENT CONSUMER LOANS-Representative Wright

Respectfully,
Representatives Church and Grady
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **12:49PM** on **April 06, 2005**.

____Principal Clerk
____Reading Clerk - House Chamber

Neta Grady (Committee Assistant)

FINANCIAL INSTITUTIONS

APRIL 12, 2005

ROOM 1425

1:00 P.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND GRADY

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN, MS. DRUPTI
CHAUHAN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS –JOYCE FULLER AND NETA GRADY

SGT.-AT-ARMS – EARL COKER AND FRED HINES

PAGES - JOHN MELVIN (WAKE COUNTY) AND ROBERT SNEEDEN (NEW
HANOVER)

BILLS TO BE CONSIDERED:

H.B. 621 – SMALL INSTALLMENT CONSUMER LOANS
REPRESENTATIVE WRIGHT

CLOSING REMARKS

VISITOR REGISTRATION SHEET

House-Financial Institutions
Name of Committee

April 12, 2005
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlie Walters	Walter Reed
John McMillan	MFC
Josh Stein	NC DOT
Betty Turner	BANK OF AMERICA
Paul Stock	NCBA
Ben Haffell	Sen. HABAN
Quander Payne	Edminster & Webb
Michael Wagner	Fayetteville Observer
Gay Robertson	AP

VISITOR REGISTRATION SHEET

House-Financial Institutions
Name of Committee

April 12, 2005
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Kulka	Self-Help
Al Ripley	NC Justice Ctr.
Melissa Parker	NASW-NC Raleigh, NC
Tya McGhee	NAOW-NC Raleigh, NC
Elizabeth Ouzts	NCPIRG
Jacqueline Hues	CFSA
Ju. Ann Cae	CFSA
Mark Mason	Capitol Group
Ed Ruppert	Coastal Finance
Vince Andracchio	Friendly Check
Dick Carlton	attys.

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
APRIL 19, 2005

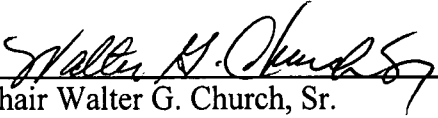
The **House Committee on Financial Institutions** met on Tuesday, April 19, 2005, at 1:00 p.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chair Robert Grady. Co-Chair Grady recognized the pages who were assigned to the meeting. The following members of the committee were present: Co-Chair Church and Co-Chair Grady; Vice Chairs Vinson and Wainwright; Reps. Blackwood, Brubaker, Carney, Clary, Dickson, Holliman, Jones, McGee, Rapp, Saunders and Williams.

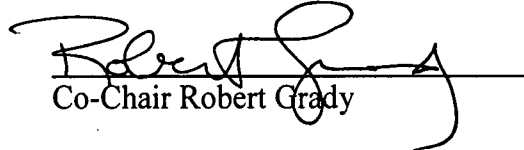
H.B.1168 – PROHIBIT DECEPTIVE MARKETING BANKING SERVICES – Co-Chair Grady asked Vice Chair Wainwright to please come forward and preside since he and Co-Chair Church were sponsors of this bill. Paul Stock of the North Carolina Bankers Association was asked to explain the bill. An increasing problem in recent years has been deceptive marketing involving use of a financial institution's name and/or logo by nonaffiliated entities to sell a variety of products and services. For example, a consumer who has a mortgage loan from ABC Bank will receive an envelope in the mail with ABC Bank's name and/or logo on the outside. Inside will be a solicitation for a "better" mortgage or an insurance product or a second mortgage or equity line of credit. While both the Department of Insurance and the Consumer Protection Division of the Attorney General's Office offer assistance where current law provides them with the tools to do so, including a disclosure inside the mailing is usually sufficient to enable the marketer to continue the practice, even if the confusion for the consumer results. To combat these marketing techniques, a number of states have passed legislation outlawing the practice of using the name or logo of a financial institution in this manner. It would provide that a violation of the prohibition on use of the financial institution's name or logo without permission is a misdemeanor.

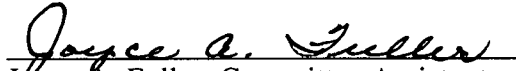
Also speaking for this bill was Josh Stine of the North Carolina Attorney General's Office. Brad Lamb, North Carolina Consumer Council, asked some questions regarding this bill. After discussion by the committee, Rep. Holliman moved that **H.B.1168 be given a favorable report**. The motion carried. **H.B. 1168 – FAVORABLE REPORT.**

H.B. 1169 - INVESTMENTS OF STATE AND LOCAL FUNDS – Walker Reagan, Committee Co-Counsel, handed out a Proposed Committee Substitute for House Bill 1169. Vice-Chair Wainwright called on Paul Stock to explain this bill since Co-Chairs Church and Grady were the sponsors of this bill also. He explained that the Proposed Committee Substitute would expand the types of investments the State Treasurer, local governments and community college are permitted to invest their idle funds in, to include certificates of deposits through the Certificates of Deposit Account Registry Services (or CDARS). Vance Holloman, Department of State Treasurer, also spoke for this bill. After discussion, Rep. McGee moved that **H.B. 1169 be given a favorable report for**

the committee substitute bill and unfavorable as to the original bill. The motion carried. H.B. 1169 – WITH A FAVORABLE REPORT AS TO THE COMMITTEE SUBSTITUTE BILL, UNFAVORABLE AS TO THE ORIGINAL BILL.


Co-Chair Walter G. Church, Sr.


Co-Chair Robert Grady


Joyce A. Fuller, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 1168

Short Title: Prohibit Deceptive Marketing/Banking Services.

(Public)

Sponsors: Representatives Church, Brubaker, Grady (Primary Sponsors); LaRoque and Moore.

Referred to: Financial Institutions.

April 11, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DECEPTIVE USE OF THE NAME OR LOGO OF A BANKING ENTITY WITHOUT PERMISSION IN THE MARKETING OF FINANCIAL PRODUCTS AND SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-127 reads as rewritten:

"§ 53-127. **Unlawful use of terms indicating that business is bank or trust company.**~~company~~**unauthorized use of name of banking entity.**

(a) Definitions. The following definitions apply in this section.

(1) Banking. The business of receiving or soliciting money on deposit.

(2) Banking entity. A person, partnership, corporation, or other entity that is engaged in the banking or trust business in North Carolina and is (i) subject to the supervision of the Commissioner of Banks under this Chapter, (ii) subject to supervision by the Commissioner of Banks under Chapter 54B or Chapter 54C, or (iii) a banking or savings institution authorized to transact a banking or trust business in this State under federal law. The term "banking entity" includes a credit union chartered under the laws of this State or under federal law, but only with regard to subsections (c1), (d), (e), and (f) of this section.

(3) Nonbanking entity. A person, partnership, corporation, or other entity that is not a banking entity.

(b) Restrictions. No nonbanking entity may use any sign or written or printed paper indicating that it is a bank, savings bank, trust company, or place of banking. No entity may use the word "bank", "savings bank", "banking", "banker", or "trust company", or the equivalent or plural of any of these words in connection with any business other than that of banking. This section does not prohibit an individual from acting in a trust capacity.

(c) Exceptions.

- 1 (1) A nonbanking entity may use any of the terms listed above in its name
2 if the context or remaining words show clearly that the business is not
3 a bank or trust company and is not engaged in the banking or trust
4 business.
- 5 (2) A nonbanking entity may use any of the terms listed above where the
6 term is the proper name of a principal or former principal in the entity
7 and the use of the name is made in good faith and not in an effort to
8 deceive the public.
- 9 (3) A corporation that is a bank holding company as defined in
10 G.S. 53-226(2) or a savings and loan holding company as defined in
11 G.S. 54B-261(d) may use the words "bank", "banker", and "trust
12 company", and the equivalent and plural of these words in its name
13 and may use a name similar to that of any of its subsidiary banks or
14 stock associations.
- 15 (4) A corporation incorporated before January 1, 1905, may retain the
16 word "trust" in its name, although it does not transact a business that
17 requires examination by the Commissioner of Banks.

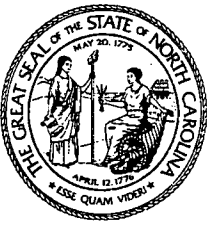
18 (c1) No person shall use the name or logo of any banking entity in connection
19 with the sale, offering for sale, distribution, or advertising of any product or service
20 without the express written consent of the banking entity.

21 (d) Penalty. Violation of subsections (a) through (c1) of this section is a Class 3
22 misdemeanor, punishable only by a fine of up to five hundred dollars (\$500.00).

23 (e) Any banking entity may file an action to enjoin the use of the banking entity's
24 name or logo in connection with the sale, offering for sale, distribution, or advertising of
25 any product or service without the express written consent of the banking entity. Any
26 court of competent jurisdiction may grant injunctions to restrain the use and may require
27 the defendants to pay to the banking entity all profits derived from, and all damages
28 suffered by, reason of the wrongful use of the name or logo.

29 (f) The provisions of this section are not exclusive remedies and do not preclude
30 the use of any other remedy by law."

31 **SECTION 2.** This act becomes effective December 1, 2005, and applies to
32 offenses committed on or after that date.



HOUSE BILL 1168: Prohibit Deceptive Marketing/Banking Services

BILL ANALYSIS

Committee: House Financial Institutions
Date: April 19, 2005
Version: 1st Edition

Introduced by: Reps. Church, Brubaker & Grady
Summary by: Drupti Chauhan
Committee Counsel

SUMMARY: *House Bill 1168 would prohibit the use of the name or logo of a banking entity in the marketing of financial products and services without the express written consent of the banking entity.*

CURRENT LAW: Banking entities are defined as any person, partnership, corporation, or other entity that is engaged in the banking or trust business in the State and is subject to the supervision of the Commissioner of Banks or is a banking or savings institution authorized to transact banking or trust business in the State under federal law.

No nonbanking entity can use any sign or written or printed paper indicating that it is a bank, savings bank, trust company or place of banking. No entity is allowed to use the words "bank", "savings bank", "banking", "banker" or "trust company" or the equivalent of these words in connection with any business except the business of banking or in the following situations:

- A nonbanking entity could use those terms in its name if it is clear that the business is not a bank or trust company and it is not engaged in the banking or trust business;
- A nonbanking entity could use those terms if the term is the proper name of a principal or former principal in the entity and the use of the term is in good faith and for deceptive purposes
- A banking holding company or a savings and loan holding company may use "bank", "banker", and "trust company" and equivalent terms in its name.
- A corporation that was incorporated before January 1, 1905 may keep using the term "trust" in its name although it does not conduct any business that comes under the supervision of the Commissioner of Banks.

Violation of these provisions is a Class 3 misdemeanor, punishable only by a fine of up to \$500.00.

BILL ANALYSIS: House Bill 1168 would add a credit union chartered under State or federal law to the definition of "banking entity".

The bill would prohibit any person from using the name or logo of any banking entity in connection with the sale, offering for sale, distribution, or advertising of any product or service without the express written consent of the banking entity. A violation of this provision would be a Class 3 misdemeanor punishable by a fine of up to \$500.00.

Any banking entity would be able to file an action to enjoin the use of its name or logo in the sale, offering for sale, distribution, or advertisement of any product or service without its express written consent. The bill provides that any court may grant injunctions to restrain the use of the name or logo and may require the defendants to pay to the banking entity all profits that resulted from the unauthorized use of the name or logo. The court may also require the defendants to pay for damages suffered by the banking entity as a result of the unauthorized use. These remedies are not to be considered exclusive and do not preclude any other remedies provided for by law.

EFFECTIVE DATE: The bill would become effective December 1, 2005 and apply to offenses committed on or after that date.

HB1168-SMRQ-001

EXPLANATION OF HOUSE BILL 1168

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT DECEPTIVE USE OF THE NAME OR LOGO OF A FINANCIAL INSTITUTION WITHOUT PERMISSION IN THE MARKETING OF FINANCIAL PRODCUTS AND SERVICES.

An increasing problem in recent years has been deceptive marketing involving use of a financial institution's name and/or logo by nonaffiliated entities to sell a variety of products and services. For example, a consumer who has a mortgage loan from ABC Bank will receive an envelope in the mail with ABC Bank's name and/or logo on the outside. Inside will be a solicitation for a "better" mortgage or an insurance product or a second mortgage or equity line of credit. Sometimes there is a disclosure on the inside that the marketing firm is not related to ABC Bank, sometimes there is not. Even where disclosures exist, they are sometimes confusing or misleading themselves. While both the Department of Insurance and the Consumer Protection Division of the Attorney General's Office offer assistance where current law provides them with the tools to do so, including a disclosure inside the mailing is usually sufficient to enable the marketer to continue the practice, even if the confusion for the consumer results.

To combat these marketing techniques, a number of states have passed legislation outlawing the practice of using the name or logo of a financial institution in this manner. This bill would provide a civil remedy (injunctive relief and payment of damages and all profits derived from the offending marketing). It would also provide that a violation of the prohibition on use of the financial institution's name or log without permission is a misdemeanor.

The bill would become effective October 1, 2005.

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives Church and Grady, Chairs for the Committee on FINANCIAL INSTITUTIONS.

☐ Committee Substitute for

H.B. 1169 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE INVESTMENT OF STATE AND LOCAL FUNDS IN NORTH CAROLINA FINANCIAL INSTITUTIONS.

☐ 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 # , ☒ unfavorable as to the original bill .

☐ 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)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 1169
PROPOSED COMMITTEE SUBSTITUTE H1169-PCS30253-RU-17

Short Title: Investments of State and Local Funds.

(Public)

Sponsors:

Referred to:

April 11, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE INVESTMENT OF STATE AND LOCAL FUNDS
3 IN NORTH CAROLINA FINANCIAL INSTITUTIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 147-69.1(c)(5) reads as rewritten:

6 "(c) It shall be the duty of the State Treasurer to invest the cash of the funds
7 enumerated in subsection (b) of this section in excess of the amount required to meet the
8 current needs and demands on such funds, selecting from among the following:

9 ...

10 (5) ~~Time~~ Certificates of deposit and other time deposits of financial
11 ~~institutions with institutions under any of the following conditions:~~

12 a. With financial institutions with a physical presence in North
13 Carolinathe State for the purpose of receiving commercial or
14 retail deposits; provided that any principal amount of such
15 deposit in excess of the amount insured by the federal
16 government or any agency thereof, be fully secured by surety
17 bonds, or be fully collateralized; provided further that the rate
18 of return or investment yield may not be less than that available
19 in the market on United States government or agency
20 obligations of comparable maturity.

21 b. With financial institutions with a physical presence inside or
22 outside the State, in accordance with all of the following
23 conditions:

24 1. The funds are initially deposited through a bank or
25 savings and loan association in the State that is an
26 official depository and that is selected by the State
27 Treasurer, provided that the rate of return or investment
28 yield shall not be less than that available in the market on

United States government or agency obligations of comparable maturity.

2. The selected bank or savings and loan association arranges for the deposit of the funds in certificates of deposit for the account of the State in one or more federally insured banks or savings and loan associations wherever located, provided that no State funds shall be deposited in a bank or savings and loan association that at the time holds other deposits from the State.

3. The full amount of principal and any accrued interest of each certificate of deposit are covered by federal deposit insurance.

4. The selected bank or savings and loan association acts as custodian for the State with respect to the certificates of deposit issued for the State's account.

5. At the same time that the State funds are deposited and the certificates of deposit are issued, the selected bank or savings and loan association receives an amount of deposits from customers of other federally insured financial institutions wherever located equal to or greater than the amount of the funds invested by the State through the selected bank or savings and loan association pursuant to this sub-subdivision."

SECTION 2. G.S. 159-30 is amended by adding the following new subsection to read:

"(b1) In addition to deposits authorized by subsection (b) of this section, the finance officer may deposit any portion of idle funds in accordance with all of the following conditions:

(1) The funds are initially deposited through a bank or savings and loan association that is an official depository and that is selected by the finance officer.

(2) The selected bank or savings and loan association arranges for the deposit of funds in certificates of deposit for the account of the local government or public authority in one or more federally insured banks or savings and loan associations wherever located, provided that no funds shall be deposited in a bank or savings and loan association that at the time holds other deposits from the local government or public authority.

(3) The full amount of principal and any accrued interest of each certificate of deposit are covered by federal deposit insurance.

(4) The selected bank or savings and loan association acts as custodian for the local government or public authority with respect to the certificates of deposit issued for the local government's or public authority's account.

1 (5) At the same time that the local government or public authority funds
2 are deposited and the certificates of deposit are issued, the selected
3 bank or savings and loan association receives an amount of deposits
4 from customers of other federally insured financial institutions
5 wherever located equal to or greater than the amount of the funds
6 invested by the local government or public authority through the
7 selected bank or savings and loan association."

8 **SECTION 3.** G.S. 115D-58.6(b) reads as rewritten:

9 "(b) Moneys may be deposited at interest in any bank, savings and loan
10 association or trust company in this State in the form of certificates of deposit or such
11 other forms of time deposits as may be approved for county governments. In addition,
12 moneys may be deposited in the form of certificates of deposit as provided for a local
13 government or public authority in G.S. 159-30(b1). Investment deposits shall be secured
14 as provided in G.S. 159-31(b)."

15 **SECTION 4.** This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1169

Short Title: Investments of State and Local Funds. (Public)

Sponsors: Representatives Church, Brubaker, Grady (Primary Sponsors); and LaRoque.

Referred to: Financial Institutions.

April 11, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE INVESTMENT OF STATE AND LOCAL FUNDS
3 IN NORTH CAROLINA FINANCIAL INSTITUTIONS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 147-69.1(c)(5) reads as rewritten:

6 "(c) It shall be the duty of the State Treasurer to invest the cash of the funds
7 enumerated in subsection (b) of this section in excess of the amount required to meet the
8 current needs and demands on such funds, selecting from among the following:

9 ...
10 (5) Time deposits of financial ~~institutions with~~ institutions as follows:

11 a. With a physical presence in North Carolina for the purpose of
12 receiving commercial or retail deposits; provided that any
13 principal amount of such deposit in excess of the amount
14 insured by the federal government or any agency thereof, be
15 fully secured by surety bonds, or be fully collateralized;
16 provided further that the rate of return or investment yield may
17 not be less than that available in the market on United States
18 government or agency obligations of comparable maturity.

19 b. In accordance with all of the following conditions:

- 20 1. The funds are initially deposited through a bank or
21 savings and loan association that is an official depository
22 and that is selected by the State Treasurer, provided that
23 the rate of return or investment yield shall not be less
24 than that available in the market on United States
25 government or agency obligations of comparable
26 maturity.
27 2. The selected bank or savings and loan association
28 arranges for the deposit of funds in certificates of deposit

1 for the account of the State in one or more federally
2 insured banks or savings and loan associations wherever
3 located, provided that no funds shall be deposited in a
4 bank or savings and loan association that at the time
5 holds other deposits from the State.

6 3. The full amount of principal and any accrued interest of
7 each certificate of deposit are covered by federal deposit
8 insurance.

9 4. The selected bank or savings and loan association acts as
10 custodian for the State with respect to the certificates of
11 deposit issued for the State's account.

12 5. At the same time that the State funds are deposited and
13 the certificates of deposit are issued, the selected bank or
14 savings and loan association receives an amount of
15 deposits from customers of other federally insured
16 financial institutions wherever located equal to or greater
17 than the amount of the funds invested by the State
18 through the selected bank or savings and loan
19 association."

20 SECTION 2. G.S. 159-30 is amended by adding the following new
21 subsection to read:

22 "(b1) In addition to deposits authorized by subsection (b) of this section, the
23 finance officer may deposit any portion of idle funds in accordance with all of the
24 following conditions:

25 (1) The funds are initially deposited through a bank or savings and loan
26 association that is an official depository and that is selected by the
27 finance officer.

28 (2) The selected bank or savings and loan association arranges for the
29 deposit of funds in certificates of deposit for the account of the local
30 government or public authority in one or more federally insured banks
31 or savings and loan associations wherever located, provided that no
32 funds shall be deposited in a bank or savings and loan association that
33 at the time holds other deposits from the local government or public
34 authority.

35 (3) The full amount of principal and any accrued interest of each
36 certificate of deposit are covered by federal deposit insurance.

37 (4) The selected bank or savings and loan association acts as custodian for
38 the local government or public authority with respect to the certificates
39 of deposit issued for the local government's or public authority's
40 account.

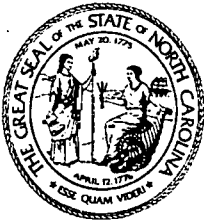
41 (5) At the same time that the local government or public authority funds
42 are deposited and the certificates of deposit are issued, the selected
43 bank or savings and loan association receives an amount of deposits
44 from customers of other federally insured financial institutions

1 wherever located equal to or greater than the amount of the funds
2 invested by the local government or public authority through the
3 selected bank or savings and loan association."

4 **SECTION 3.** G.S. 115D-58.6(b) reads as rewritten:

5 "(b) Moneys may be deposited at interest in any bank, savings and loan
6 association or trust company in this State in the form of certificates of deposit or such
7 other forms of time deposits as may be approved for county governments. In addition,
8 moneys may be deposited in the form of certificates of deposit as provided for a local
9 government or public authority in G.S. 159-30(b1). Investment deposits shall be secured
10 as provided in G.S. 159-31(b)."

11 **SECTION 4.** This act becomes effective October 1, 2005.



HOUSE BILL 1169: Investments of State and Local Funds

BILL ANALYSIS

Committee: House Financial Institutions
Introduced by: Reps. Church, Brubaker, Grady
Version: First Edition
H1169-CSRU-17

Date: April 19, 2005
Summary by: Walker Reagan
Committee Co-Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 1169 would expand the types of investments the State Treasurer, local governments and community colleges are permitted to invest their idle funds in, to include certificates of deposits through the Certificates of Deposit Account Registry Services (or CDARS).*

CURRENT LAW: Under current law cash in either the General Fund, Highway Fund or Highway Trust Fund that is not needed to meet the current needs and demands on those funds, is to be invested by the State Treasurer in certain investments specifically authorized in statute. (See G.S. 147-69.1 attached). Included in this list of authorized investments are time deposits in NC financial institutions for which amounts held by the financial institutions for the State in excess of the federal insurance on deposits, currently insured up to \$100,000, is fully secured by bonds or other adequate collateralization. The rates of returns on these time deposits must equal or exceed the rate of return available in the market on US government or agency obligations of comparable maturity.

BILL ANALYSIS: Section 1 of the bill amends G.S. 147-69.1(c)(5) to add another authorized investment option. The bill will allow the State Treasurer to invest in certificates of deposits (CD's) with a financial institution inside or outside the State provided the following conditions are met in relation to the investment:

- State funds would be invested through a bank or savings and loan association that has a rate of return equal to or greater than the rate of return available in the market on US government or agency obligations of comparable maturity.
- The selected financial institution arranges for the deposit of the funds in one or more federally insured financial institutions where no other State funds are deposited.
- The full amount of the deposit and the interest are covered by federal deposit insurance.
- The selected financial institution acts as the custodian of the State funds for CD's issued for the State account.
- At the time the State funds are deposited and CD's are issued, the selected financial institution receives deposits from customers of other federally insured financial institutions equal to or greater than the amounts invested by the State in the selected financial institution.

Section 2 grants the same authorization under the same conditions to local governments under Local Government Budget and Fiscal Control Act.

Section 3 grants the same authorization under the same conditions to the community colleges for the investment of their funds.

EFFECTIVE DATE: The bill becomes effective October 1, 2005.

H1169e1-SMRU-CSRU-17

House Bill 1169

Page 2

§ 147-69.1. Investments authorized for General Fund and Highway Funds assets.

(a) The Governor and Council of State, with the advice and assistance of the State Treasurer, shall adopt such rules and regulations as shall be necessary and appropriate to implement the provisions of this section.

(b) This section applies to funds held by the State Treasurer to the credit of:

- (1) The General Fund;
- (2) The Highway Fund and Highway Trust Fund.

(c) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (b) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.
- (2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service, the Export-Import Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, and the Student Loan Marketing Association.
- (3) Repurchase Agreements with respect to securities issued or guaranteed by the United States government or its agencies or other securities eligible for investment by this section executed by a bank or trust company or by primary or other reporting dealers to the Federal Reserve Bank of New York.
- (4) Obligations of the State of North Carolina.
- (5) Time deposits of financial institutions with a physical presence in North Carolina for the purpose of receiving commercial or retail deposits; provided that any principal amount of such deposit in excess of the amount insured by the federal government or any agency thereof, be fully secured by surety bonds, or be fully collateralized; provided further that the rate of return or investment yield may not be less than that available in the market on United States government or agency obligations of comparable maturity.
- (6) Repealed by Session Laws 1989 (Regular Session, 1990), c. 813, s. 10.
- (7) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.
- (8) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.
- (9) Asset-backed securities (whether considered debt or equity) provided they bear the highest rating of at least one nationally recognized rating service and do not bear a rating below the highest rating by any nationally recognized rating service which rates the particular securities.
- (10) Corporate bonds and notes provided they bear the highest rating of at least one nationally recognized rating service and do not bear a rating below the highest by any nationally recognized rating service which rates the particular obligation.

(d) Unless otherwise provided by law, the interest or income received and accruing from all deposits or investments of such cash balances shall be paid into the State's General Fund, except that all interest or income received and accruing on the monthly balance of the Highway Fund and Highway Trust Fund shall be paid into the State Highway Fund and Highway Trust Fund. The cash balances of the several funds may be combined for deposit or investment purposes; and when such combined deposits or investments are made, the interest or income received and accruing from all deposits or investments shall be prorated among the funds in conformity with applicable law and the rules and regulations adopted by the Governor and Council of State.

(e) The State Treasurer shall cause to be prepared quarterly statements on or before the tenth day of February, May, August, and November in each year, which shall show the amount of cash on hand, the amount of money on deposit, the name of each depository, and all investments for which he is in any way responsible. Each quarterly statement shall be delivered to the Governor, Council of State, President Pro Tempore of the Senate, and Speaker of the House of Representatives; and a copy shall be posted in the office of the State Treasurer for the information of the public.

Joyce Fuller (Rep. Church)

From: Neta Grady (Rep. Grady)**Sent:** Wednesday, April 13, 2005 3:27 PM**To:** @House/Financial Institutions; @HouseCommitteeNotice; Drupti Chauhan (Research); Interested Parties; Karen Cochrane-Brown (Research); Susan Phillips (Rep. Eddins); Valerie Rustin (Rep. Cunningham); Walker Reagan (Research)**Subject:** House Committee Meeting (Date)

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on FINANCIAL INSTITUTIONS will meet as follows:

DAY & DATE: Tuesday, April 19, 2005**TIME:** 1:00 PM**LOCATION:** 1425

The following bills will be considered:

HB 1168 – PROHIBIT DECEPTIVE MARKETING/BANKING SERVICES – Reps. Church, Brubaker, Grady

HB1169 – INVESTMENTS OF STATE AND LOCAL FUNDS – Reps. Church, Brubaker, Grady

Respectfully,
Representatives Church and Grady
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at 3:25 PM on April 12, 2005.

____ Principal Clerk
____ Reading Clerk - House Chamber

Neta Grady... Committee Assistant.

FINANCIAL INSTITUTIONS

APRIL 19, 2005

ROOM 1425

1:00 P.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND GRADY

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN, MS. DRUPTI CHAUHAN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS –JOYCE FULLER AND NETA GRADY

SGT.-AT-ARMS – BILL FREEMAN AND FRED HINES

PAGES - BLAIR BELK – MECKLENBERG COUNTY AND CHRISTI THOMPSON - WAKE COUNTY

BILLS TO BE CONSIDERED:

H.B. 1168 - PROHIBIT DECEPTIVE MARKETING/BANKING SERVICES -
Reps. Church, Brubaker and Grady

H.B. 1169 - INVESTMENTS OF STATE AND LOCAL FUNDS - Reps. Church,
Brubaker and Grady

CLOSING REMARKS

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

APRIL 19, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Vance Holloman

Dept. of State Treasurer

Paul Sol

NC Bankers Assoc.

Brad Lamb

NC Consumers Council

Josh Stein

NC AGU

Al Macdonald

Farm City, NC

Lee Hodge

KCLH

~~Ron O'Hare~~

Wachovia

Betty Turner

Bank of America

Ann Fullbright

Anton & Williams

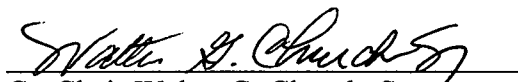
MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
APRIL 26, 2005

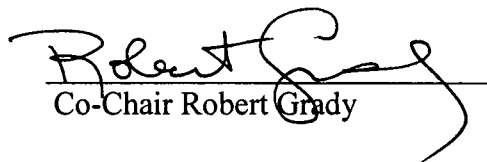
The **House Committee on Financial Institutions** met on Tuesday, April 26, 2005, at 1:00 p.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chair Walter Church. Co-Chair recognized the Sgt-at-Arms and the pages who were assigned to the meeting. The following members of the committee were present: Co-Chair Church; Vice Chairs Vinson and Wainwright; Reps. Blackwood, Carney, Jones, McGee, Moore, Rapp, Saunders and Steen.

H.B. 1168 – PROHIBIT DECEPTIVE MARKETING BANKING SERVICES – Co-Chair Church asked Vice Chair Wainwright to preside since he was a sponsor of this bill. Vice-Chair Wainwright asked for a motion from the floor to reconsider the bill. Rep. Blackwood moved to reconsider the vote by which H.B. 1168 was approved. Drupti Chauhan, Committee Counsel, was called on to explain the bill and the Proposed Committee Substitute. The current law prohibits a company from calling itself a bank if it is not one. This bill would expand the misdemeanor to include using a financial institution's name or logo in marketing materials without written permission. It is intended to address the growing practice, often by disreputable companies, of sending out misleading marketing materials that appear to come from a consumer's bank, savings institution or credit union. It also permits the financial institution to seek injunctive relief. This proposal has the support of both the North Carolina Bankers Association and the Consumer Protection Division of the Attorney General's Office. The Proposed Committee Substitute makes changes on line 19 by prohibiting the use of a name or logo in connection with the sale, offering for sale or advertising of any financial product or service.

There being no further discussion on this bill, Rep. Carney moved that **H.B. 1168 be given a favorable report for the committee substitute bill and unfavorable to the original bill**. The motion carried. **H.B. 1168 – WITH A FAVORABLE REPORT AS TO THE COMMITTEE SUBSTITUTE BILL, AND UNFAVORABLE TO THE ORIGINAL BILL.**

Thee being no further business, Co-Chair Church adjourned the meeting at 1:07 p.m.


Co-Chair Walter G. Church, Sr.


Co-Chair Robert Grady


Joyce A. Fuller, Committee Assistant

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives Church and Grady, Chairs for the Committee on FINANCIAL INSTITUTIONS.

☐ Committee Substitute for
H.B. 1168 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE DECEPTIVE USE OF
THE NAME OR LOGO OF A BANKING ENTITY WITHOUT PERMISSION IN THE
MARKETING OF FINANCIAL PRODUCTS AND SERVICES.

- ☐ 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 # , ☒ unfavorable as to the
original bill .
- ☐ 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)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 1168

Short Title: Prohibit Deceptive Marketing/Banking Services.

(Public)

Sponsors: Representatives Church, Brubaker, Grady (Primary Sponsors); LaRoque and Moore.

Referred to: Financial Institutions.

April 11, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DECEPTIVE USE OF THE NAME OR LOGO OF A BANKING ENTITY WITHOUT PERMISSION IN THE MARKETING OF FINANCIAL PRODUCTS AND SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-127 reads as rewritten:

"§ 53-127. Unlawful use of terms indicating that business is bank or trust ~~company~~company; unauthorized use of name of banking entity.

(a) Definitions. The following definitions apply in this section.

(1) Banking. The business of receiving or soliciting money on deposit.

(2) Banking entity. A person, partnership, corporation, or other entity that is engaged in the banking or trust business in North Carolina and is (i) subject to the supervision of the Commissioner of Banks under this Chapter, (ii) subject to supervision by the Commissioner of Banks under Chapter 54B or Chapter 54C, or (iii) a banking or savings institution authorized to transact a banking or trust business in this State under federal law. The term "banking entity" includes a credit union chartered under the laws of this State or under federal law, but only with regard to subsections (c1), (d), (e), and (f) of this section.

(3) Nonbanking entity. A person, partnership, corporation, or other entity that is not a banking entity.

(b) Restrictions. No nonbanking entity may use any sign or written or printed paper indicating that it is a bank, savings bank, trust company, or place of banking. No entity may use the word "bank", "savings bank", "banking", "banker", or "trust company", or the equivalent or plural of any of these words in connection with any business other than that of banking. This section does not prohibit an individual from acting in a trust capacity.

(c) Exceptions.

- 1 (1) A nonbanking entity may use any of the terms listed above in its name
2 if the context or remaining words show clearly that the business is not
3 a bank or trust company and is not engaged in the banking or trust
4 business.
- 5 (2) A nonbanking entity may use any of the terms listed above where the
6 term is the proper name of a principal or former principal in the entity
7 and the use of the name is made in good faith and not in an effort to
8 deceive the public.
- 9 (3) A corporation that is a bank holding company as defined in
10 G.S. 53-226(2) or a savings and loan holding company as defined in
11 G.S. 54B-261(d) may use the words "bank", "banker", and "trust
12 company", and the equivalent and plural of these words in its name
13 and may use a name similar to that of any of its subsidiary banks or
14 stock associations.
- 15 (4) A corporation incorporated before January 1, 1905, may retain the
16 word "trust" in its name, although it does not transact a business that
17 requires examination by the Commissioner of Banks.

18 (c1) No person shall use the name or logo of any banking entity in connection
19 with the sale, offering for sale, distribution, or advertising of any product or service
20 without the express written consent of the banking entity.

21 (d) Penalty. Violation of subsections (a) through (c1) of this section is a Class 3
22 misdemeanor, punishable only by a fine of up to five hundred dollars (\$500.00).

23 (e) Any banking entity may file an action to enjoin the use of the banking entity's
24 name or logo in connection with the sale, offering for sale, distribution, or advertising of
25 any product or service without the express written consent of the banking entity. Any
26 court of competent jurisdiction may grant injunctions to restrain the use and may require
27 the defendants to pay to the banking entity all profits derived from, and all damages
28 suffered by, reason of the wrongful use of the name or logo.

29 (f) The provisions of this section are not exclusive remedies and do not preclude
30 the use of any other remedy by law."

31 **SECTION 2.** This act becomes effective December 1, 2005, and applies to
32 offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 1168
PROPOSED COMMITTEE SUBSTITUTE H1168-CSRQ-12 [v.1]

4/26/2005 9:46:45 AM

Short Title: Prohibit Deceptive Marketing/Banking Services. (Public)

Sponsors:

Referred to:

April 11, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE DECEPTIVE USE OF THE NAME OR LOGO OF A
3 BANKING ENTITY WITHOUT PERMISSION IN THE MARKETING OF
4 FINANCIAL PRODUCTS AND SERVICES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 53-127 reads as rewritten:

7 "§ 53-127. Unlawful use of terms indicating that business is bank or trust
8 ~~company-company; unauthorized use of name of banking entity.~~

9 (a) Definitions. The following definitions apply in this section.

10 (1) Banking. The business of receiving or soliciting money on deposit.

11 (2) Banking entity. A person, partnership, corporation, or other entity that
12 is engaged in the banking or trust business in North Carolina and is (i)
13 subject to the supervision of the Commissioner of Banks under this
14 Chapter, (ii) subject to supervision by the Commissioner of Banks
15 under Chapter 54B or Chapter 54C, or (iii) a banking or savings
16 institution authorized to transact a banking or trust business in this
17 State under federal law. The term "banking entity" includes a credit
18 union chartered under the laws of this State or under federal law, but
19 only with regard to subsections (c1), (d), (e), and (f) of this section.

20 (3) Nonbanking entity. A person, partnership, corporation, or other entity
21 that is not a banking entity.

22 (b) Restrictions. No nonbanking entity may use any sign or written or printed
23 paper indicating that it is a bank, savings bank, trust company, or place of banking. No
24 entity may use the word "bank", "savings bank", "banking", "banker", or "trust
25 company", or the equivalent or plural of any of these words in connection with any
26 business other than that of banking. This section does not prohibit an individual from
27 acting in a trust capacity.

28 (c) Exceptions.

(1) A nonbanking entity may use any of the terms listed above in its name if the context or remaining words show clearly that the business is not a bank or trust company and is not engaged in the banking or trust business.

(2) A nonbanking entity may use any of the terms listed above where the term is the proper name of a principal or former principal in the entity and the use of the name is made in good faith and not in an effort to deceive the public.

(3) A corporation that is a bank holding company as defined in G.S. 53-226(2) or a savings and loan holding company as defined in G.S. 54B-261(d) may use the words "bank", "banker", and "trust company", and the equivalent and plural of these words in its name and may use a name similar to that of any of its subsidiary banks or stock associations.

(4) A corporation incorporated before January 1, 1905, may retain the word "trust" in its name, although it does not transact a business that requires examination by the Commissioner of Banks.

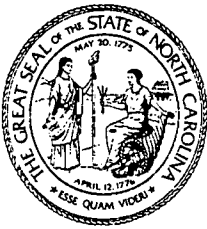
(c1) No person shall use the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity.

(d) Penalty. Violation of subsections (a) through (c1) of this section is a Class 3 misdemeanor, punishable only by a fine of up to five hundred dollars (\$500.00).

(e) Any banking entity may file an action to enjoin the use of the banking entity's name or logo in connection with the sale, offering for sale, distribution, or advertising of any product or service without the express written consent of the banking entity. Any court of competent jurisdiction may grant injunctions to restrain the use and may require the defendants to pay to the banking entity all profits derived from, and all damages suffered by, reason of the wrongful use of the name or logo.

(f) The provisions of this section are not exclusive remedies and do not preclude the use of any other remedy by law."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.



HOUSE BILL 1168: Prohibit Deceptive Marketing/Banking Services

BILL ANALYSIS

Committee: House Financial Institutions
Date: April 26, 2005
Version: H1168-CSRQ-12[v.1]

Introduced by: Reps. Church, Brubaker & Grady
Summary by: Drupti Chauhan
Committee Counsel

SUMMARY: *House Bill 1168 would prohibit the use of the name or logo of a banking entity in the marketing of financial products and services without the express written consent of the banking entity.*

The PCS makes changes on line 19 by prohibiting the use of a name or logo in connection with the sale, offering for sale or advertising of any *financial* product or service.

CURRENT LAW: Banking entities are defined as any person, partnership, corporation, or other entity that is engaged in the banking or trust business in the State and is subject to the supervision of the Commissioner of Banks or is a banking or savings institution authorized to transact banking or trust business in the State under federal law.

No nonbanking entity can use any sign or written or printed paper indicating that it is a bank, savings bank, trust company or place of banking. No entity is allowed to use the words "bank", "savings bank", "banking", "banker" or "trust company" or the equivalent of these words in connection with any business except the business of banking or in the following situations:

- A nonbanking entity could use those terms in its name if it is clear that the business is not a bank or trust company and it is not engaged in the banking or trust business;
- A nonbanking entity could use those terms if the term is the proper name of a principal or former principal in the entity and the use of the term is in good faith and for deceptive purposes
- A banking holding company or a savings and loan holding company may use "bank", "banker", and "trust company" and equivalent terms in its name.
- A corporation that was incorporated before January 1, 1905 may keep using the term "trust" in its name although it does not conduct any business that comes under the supervision of the Commissioner of Banks.

Violation of these provisions is a Class 3 misdemeanor, punishable only by a fine of up to \$500.00.

BILL ANALYSIS: House Bill 1168 would add a credit union chartered under State or federal law to the definition of "banking entity".

The bill would prohibit any person from using the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity. A violation of this provision would be a Class 3 misdemeanor punishable by a fine of up to \$500.00.

Any banking entity would be able to file an action to enjoin the use of its name or logo in the sale, offering for sale, distribution, or advertisement of any product or service without its express written consent. The bill provides that any court may grant injunctions to restrain the use of the name or logo and may require the defendants to pay to the banking entity all profits that resulted from the unauthorized use of the name or logo. The court may also require the defendants to pay for damages suffered by the banking entity as a result of the unauthorized use. These remedies are not to be considered exclusive and do not preclude any other remedies provided for by law.

EFFECTIVE DATE: The bill would become effective December 1, 2005 and apply to offenses committed on or after that date.

HB1168-SMRQ-002

Joyce Fuller (Rep. Church)

From: Neta Grady (Rep. Grady)

Sent: Wednesday, April 20, 2005 11:49 AM

To: @House/Financial Institutions; @HouseCommitteeNotice; Drupti Chauhan (Research); Interested Parties; Karen Cochrane-Brown (Research); Susan Phillips (Rep. Eddins); Valerie Rustin (Rep. Cunningham); Walker Reagan (Research)

Subject: House Financial Institutions Meeting...April 26,2005

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on FINANCIAL INSTITUTIONS will meet as follows:

DAY & DATE: Tuesday, April 26,2005

TIME: 1:00 PM

LOCATION: 1425

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 1168 PROHIBIT DECEPTIVE MARKETING/BANKING SERVICES...Reps. Brubaker, Church and Grady

HB 1169 INVESTMENTS OF STATE AND LOCAL FUNDS...Reps. Brubaker, Church and Grady

Respectfully,
Representatives Church and Grady
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **11:45 am** on **April 20, 2005**.

____ Principal Clerk
____ Reading Clerk - House Chamber

Neta Grady... (Committee Assistant)

FINANCIAL INSTITUTIONS

APRIL 26, 2005

ROOM 1425

1:00 P.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND GRADY

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN, MS. DRUPTI
CHAUHAN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS –JOYCE FULLER AND NETA GRADY

SGT.-AT-ARMS – MARTHA GATTISON AN EARL COKER

PAGES – LAUREN CAUDLE – DAVIDSON COUNTY, FLORENCE HAMRICK –
ROWAN COUNTY, BRADLEY HARPER – NASH COUNTY AND ALYSSA
KLAUS – ROWAN COUNTY

BILLS TO BE CONSIDERED:

H.B. 1168 - PROHIBIT DECEPTIVE MARKETING/BANKING SERVICES -
Reps. Church, Brubaker and Grady

CLOSING REMARKS

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

Name of Committee

APRIL 26, 2005

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Brad Lamb

NC Consumers Council

Paul Stoll

NC Banker Assn.

Lee Huch

KCLH

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

Name of Committee

APRIL 26, 2005

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Betty Turner

Bank of America

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
MAY 3, 2005

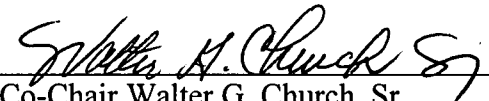
The **House Committee on Financial Institutions** met on Tuesday, May 3, 2005, at 1:00 p.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chair Walter Church and he recognized the Sgt-at-Arms, the staff and the pages who were assigned to the meeting. The following members of the committee were present: Co-Chairs Church and Grady; Vice Chairs Vinson and Wainwright; Reps. Blackwood, Brubaker, Carney, Dickson, Jones, McGee, Miller, Moore, Rapp, Saunders, Steen and Williams.

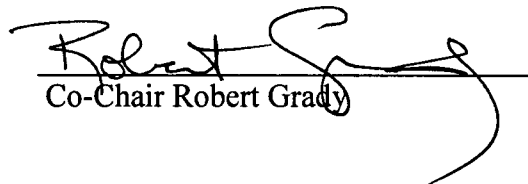
H.B. 1320 – DISCLOSE MONETARY TRANSMISSIONS – Co-Chair Church recognized Rep. Joe Hackney, the sponsor, to explain the bill. This bill would add a new section to the Money Transmitter Act requiring disclosures to be made by the licensee to the customer at the time of the transaction, if the transmission is to a location outside the United States. The licensee must provide a receipt showing the amount of funds submitted for transmission and any fees charged by the licensee, as well as a toll-free number that the customer can use to receive information about the money transmission.

Co-Chair Church recognized Karen Cochrane-Brown, Committee Co-Counsel, to explain the bill analysis. House Bill 1320 would amend the Money Transmitter Act to require that licensees subject to the Act provide receipts to their customers containing certain disclosures.

After some discussion, Rep. Brubaker moved that **H.B. 1320 be given a favorable report**. The motion carried. **H.B. 1320 – FAVORABLE REPORT.**

There being no further business, Co-Chair Church adjourned the meeting at 1:15 p.m.


Co-Chair Walter G. Church, Sr.


Co-Chair Robert Grady


Joyce A. Fuller, Committee Assistant

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives Church and Grady, Chairs for the Committee on FINANCIAL
INSTITUTIONS .

☐

H.B. 1320 A BILL TO BE ENTITLED AN ACT TO REQUIRE DISCLOSURES OF
CERTAIN MONETARY TRANSMISSIONS.

- ☒ 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)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 1320

Short Title: Disclose Monetary Transmissions.

(Public)

Sponsors: Representative Hackney.

Referred to: Financial Institutions.

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE DISCLOSURES OF CERTAIN MONETARY TRANSMISSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16A of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ 53-208.22A. Disclosures of transmissions.

(a) At the time of a monetary transmission transaction to a location outside of the United States, the licensee shall provide a receipt to the customer. The receipt shall state clearly (i) the amount of funds presented for transmission and any fee charged by the licensee and (ii) a toll-free telephone number or a local number that a customer can access at no charge to receive information about a monetary transmission.

(b) If the rate of exchange for a monetary transmission to be paid in the currency of another country is fixed by the licensee for a transaction at the time the monetary transmission is initiated, the receipt shall also state:

(1) The rate of exchange for that transaction.

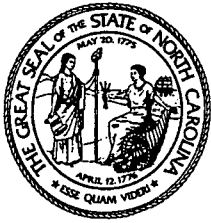
(2) The amount to be paid in the foreign currency.

(3) The period, if any, in which the payment shall be made in order to qualify for the fixed rate of exchange.

(c) If the rate of exchange for a monetary transmission to be paid in the currency of another country is not fixed at the time the monetary transmission is initiated, the receipt shall also disclose that the rate of exchange for the transaction will be set at the time the recipient of the monetary transmission receives the funds in the foreign country.

(d) The licensee shall provide the disclosures required by this section to the customer before completing the transaction if the customer requests the disclosures."

SECTION 2. This act becomes effective October 1, 2005, and applies to transactions occurring on or after that date.



HOUSE BILL 1320: Disclose Monetary Transmissions

BILL ANALYSIS

Committee: House Financial Institutions
Introduced by: Rep. Hackney
Version: First Edition

Date: May 2, 2005
Summary by: Karen Cochrane-Brown
Committee Co-Counsel

SUMMARY: *House Bill 1320 amends the Money Transmitter Act to require that licensees subject to the Act provide receipts to their customers containing certain disclosures.*

CURRENT LAW:

The Money Transmitter Act requires any person who engages in the business of money transmission in North Carolina to be licensed by the Commissioner of Banks, unless the person is exempt from the Act. The following entities are exempt: the U.S. Post Office, the State of North Carolina or its political subdivisions, banks and savings and loans, and persons registered as securities broker-dealers under federal or state securities laws.

The Act defines the term "money transmission" 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 instruments, wire, facsimile, or electronic transfer.

The Act further provides that 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 Act. It is a Class 1 misdemeanor to knowingly and willfully make a false statement in any document with the intent to deceive, and also to engage in the business of money transmission without a license.

BILL ANALYSIS:

This bill would add a new section to the Money Transmitter Act requiring disclosures to be made by the licensee to the customer at the time of the transaction, if the transmission is to a location outside the United States. The licensee must provide a receipt showing the amount of funds submitted for transmission and any fees charged by the licensee, as well as a toll-free number that the customer can use to receive information about the money transmission.

If the licensee at the initiation of the transaction fixes the rate of currency exchange, the receipt must also state:

- The rate of exchange.
- The amount to be paid in the foreign currency.
- The period in which the payment must be made in order to qualify for the fixed rate of exchange.

If the rate of exchange is not fixed at the time of the transmission, the receipt must disclose that the rate will be set when the recipient receives the funds in the foreign country.

House Bill 1320

Page 2

Finally, if the customer requests, the licensee must provide the disclosures required by this section before completing the transaction.

EFFECTIVE DATE:

This act would become effective October 1, 2005, and apply to transactions occurring on or after that date.

BACKGROUND:

As of December 31, 2004, there are 57 licensed Money Transmitters in the State.

H1320e1-SMRO

Joyce Fuller (Rep. Church)

From: Neta Grady (Rep. Grady)

Sent: Wednesday, April 27, 2005 4:08 PM

To: Rep. Joe Hackney; @House/Financial Institutions; @HouseCommitteeNotice; Drupti Chauhan (Research); Interested Parties; Karen Cochrane-Brown (Research); Susan Phillips (Rep. Eddins); Valerie Rustin (Rep. Cunningham); Walker Reagan (Research)

Subject: House Financial Institutions Meeting 05-03-2005

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on FINANCIAL INSTITUTIONS will meet as follows:

DAY & DATE: Tuesday, May 03, 2005

TIME: 1:00 PM

LOCATION: 1425

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB # 1320 AN ACT TO REQUIRE DISCLOSURES OF CERTAIN MONETARY TRANSMISSIONS. – Representative Hackney

Respectfully,
Representatives Church and Grady
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at 4:00 PM on
April 27, 2005.

____Principal Clerk
____Reading Clerk - House Chamber

Neta L. Grady..... Committee Assistant

FINANCIAL INSTITUTIONS

MAY 3, 2005

ROOM 1425

1:00 P.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND GRADY

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN, MS. DRUPTI
CHAUHAN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS –JOYCE FULLER AND NETA GRADY

SGT.-AT-ARMS – EARL COKER AND MARTHA GADISON

PAGES – CHRISTIAN LEONARD (FRANKLIN COUNTY) AND CAMERON
HARDWICK (ROWAN COUNTY)

BILLS TO BE CONSIDERED:

H.B. 1320 – DISCLOSE MONETARY TRANSMISSIONS – Rep. Hackney

CLOSING REMARKS

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

MAY 3, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

McNeil Chestnut	Spec. Dep. AG for the Banking Commission
DANIEL GARNER	OFFICE of the Com'r of BANKS
Paul Stock	NC Bankers
Betty Turner	BAC
Karen Johnson	Smith Anderson
RONOTTAVIO	WACHOVIA
LEE Hodge	Kennedy Covington
Martha Harris	Inst. of Govt.
Monteign	NMRS
Rodney Hamm, JR	CitiFinancial / Citigroup

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
JULY 5, 2005

The **House Committee on Financial Institutions** met on Tuesday, July 5, 2005, at 1:00 p.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chair Robert Grady. The following members of the committee were present: Co-Chairs Church and Grady; Vice Chairs Vinson and Wainwright; Reps. Carney, Dickson, Holliman, Jones, Miller, Rapp, Saunders and Williams.

H.B. 237 – DOT/MINORITY/WOMEN BUSINESSES PROGRAM – Co-Chair Grady stated that the committee would only vote on the committee substitute with the appropriate title. Rep. Saunders made a motion that the Proposed Committee substitute and title change along with the technical amendment presented by Co-Chair Church be adopted. Amendment adopted (see Amendment #1) . This Proposed Committee Substitute with the title change will be discussed later in the meeting.

S.B. 644 – EXEMPT BANKING COMM. STAFF FROM SPA – Rep. Grady called on Sen. David Hoyle to come forward and explain the bill. Currently the staff of the Office of the Commissioner of Banks is covered by Chapter 126, State Personnel Act, which among other things governs job classifications and compensation rates. The Office of the Commissioner is an independent fee-supported operation, administratively housed in the Department of Commerce. Rep. Grady called on Karen Cochrane-Brown, Committee Co-Counsel, to explain the Proposed Committee Substitute. This PCS exempts the employees of the office of the Commissioner of Banks from certain classification and compensation related rules established by the State Personnel Commission and also from Article 2 of Chapter 126 of the General Statutes. The exemptions are to be used to develop organizational and compensation innovations that will result in more efficient operations. The Commissioner of Banks and the Office of State Personnel are directed to report jointly to the General Assembly on the results of the demonstration projects by April 1, 2007. Rep. Saunders noted that this bill had an effective date of July 1, 2005 and he proposed an amendment to change the effective date to when the bill becomes law. (see Amendment # 4).

After much discussion, Rep. Saunders made a motion that **S.B. 644 give the Proposed Committee Substitute as amended a favorable report and roll into new Proposed Committee Substitute, unfavorable to original bill**. Motion passed. **S.B. 644 – PROPOSED COMMITTEE SUBSTITUTE AS AMENDED A FAVORABLE REPORT AND ROLL INTO NEW PROPOSED COMMITTEE SUBSTITUTE, UNFAVORABLE TO ORIGINAL BILL.**

H.B. 237 – DOT/MINORITY/WOMEN BUSINESSES PROGRAM – Co-Chair Grady called on Rep. Saunders to explain the bill. The Proposed Committee Substitute for House Bill 237 amends the Mortgage Lending Act to authorize the licensure of limited loan officers that are employed by affiliated mortgage bankers. The PCS also authorizes the Commissioner of Banks to allow certain loan officer applicants to act as a

loan officer during the pendency of their application and provides that exclusive mortgage brokers shall have branch managers to the same extent as other mortgage brokers or bankers. Finally, the PCS provides that the Commissioner may discipline a licensee or applicant for falsely certifying attendance or completion of a continuing education course.

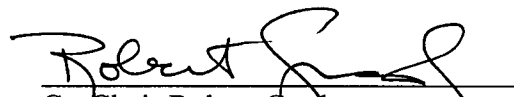
Co-Chair Grady stated that it was almost time for Session and he requested that the committee be in recess until 10 minutes after Session adjourns. The meeting was adjourned at 1:50 P.M.

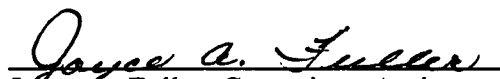
The meeting was called to order at 2:35 P.M. Members present were: Co-Chairs Church and Grady; Vice Chair Vinson; Reps. Blackwood, Carney, Clary, Dickson, Holliman, Jones, McGee, Miller, Moore, Rapp, Saunders and Williams.

Co-Chair Grady called on Rep. Saunders, the sponsor of H. B. 237, to come forward to answer any questions the committee might have. The Commissioner of Banks, Joe Smith, also spoke in favor of the bill and answered some questions from members of the committee. After discussion, Rep. Miller requested an amendment to amend the PCS on page 7, line 41 inserting between the words "provisionally" and "as" the words "for a period of up to six months". The Amendment was defeated (see Amendment #2.). Several members asked some more questions that Rep. Saunders and Mr. Joe Smith answered. Rep. Blackwood requested an amendment to amend the bill on page 8, line 19-20 by adding a new subsection to read: "An applicant for a loan officer license may act provisionally as a loan officer during the pendency of the application before the Commissioner upon submission of the completed forms and a written undertaking by the employer that it will be responsible for the applicant's mortgage banking activities". The amendment was defeated (see Amendment #3). There being no more questions, Rep. Holliman moved that that **H.B. 237 be given a favorable report for the committee substitute bill and unfavorable to the original bill and be re-referred to the committee on Finance.** The motion passed. **H.B. 237 - A FAVORABLE REPORT FOR THE COMMITTEE SUBSTITUTE BILL AND UNFAVORABLE TO THE ORIGINAL BILL AND BE RE-REFERRED TO THE COMMITTEE ON FINANCE.**

There being no further business, Co-Chair Grady adjourned the meeting at 3:10 P.M.


Co-Chair Walter G. Church, Sr.


Co-Chair Robert Grady


Joyce A. Fuller, Committee Assistant

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Church, Grady (Chairs) for the Committee on FINANCIAL INSTITUTIONS.

☐ Committee Substitute for

SB 644 A BILL TO BE ENTITLED AN ACT EXEMPTING THE EMPLOYEES OF THE STATE BANKING COMMISSION FROM COVERAGE UNDER THE COMPENSATION PROVISIONS OF THE STATE PERSONNEL ACT.

☒ With a favorable report as to House committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. _____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. _____) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 644
Second Edition Engrossed 4/28/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S644-CSRO-34 [v.4]

6/21/2005 10:46:35 AM

Short Title: Exempt Banking Comm. Staff from SPA.

(Public)

Sponsors:

Referred to:

March 17, 2005

1 A BILL TO BE ENTITLED
2 AN ACT EXEMPTING THE EMPLOYEES OF THE STATE BANKING
3 COMMISSION FROM COVERAGE UNDER CERTAIN CLASSIFICATION
4 AND COMPENSATION RELATED PROVISIONS OF THE STATE
5 PERSONNEL ACT.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. Article 8 of Chapter 53 of the General Statutes is amended by
8 adding the following section to read:

9 "§ 53-96.1. Salaries, promotions, and leave of employees of the Office of the
10 Commissioner of Banks.

11 (a) The Office of the Commissioner of Banks and its employees are exempt from
12 the classification and compensation rules established by the State Personnel
13 Commission pursuant to G.S. 126-4(1) through (4); G.S. 126-4(5) only as it applies to
14 hours and days of work, vacation and sick leave; G.S. 126-4(6) only as it applies to
15 promotion and transfer; G.S. 126-4(10) only as it applies to the prohibition of the
16 establishment of incentive pay programs; and Article 2 of Chapter 126 of the General
17 Statutes.

18 (b) The exemptions authorized by this section shall be used to develop
19 organizational and compensation innovations that will result in the enhanced efficiency
20 of operations. The Office of State Personnel shall assist the Commissioner of Banks in
21 the development and implementation of an organizational structure and human
22 resources programs that make the most appropriate use of the exemptions. The
23 Commissioner of Banks may, under the supervision of the Office of State Personnel,
24 undertake human resources demonstration projects to develop and implement
25 organizational and compensation innovations having the potential to benefit all State
26 agencies."

27 SECTION 2. G.S. 53-101 reads as rewritten:

1 **"§ 53-101. Clerical help.**

2 The Commissioner of Banks is empowered to employ sufficient clerical and
3 secretarial help, and other necessary labor to conduct the affairs of his— the
4 Commissioner's office with economy and efficiency; efficiently and effectively. Persons
5 ~~so employed shall be paid as other employees in the departments of the State and shall~~
6 ~~be under the same rules and regulations."~~

7 **SECTION 3.** By April 1, 2007, the Commissioner of Banks and the Office
8 of State Personnel shall report jointly to the General Assembly on the results of the
9 demonstration projects in meeting the agency's personnel needs and enhancing the
10 efficiency and effectiveness of its operations.

11 **SECTION 4.** This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

2

SENATE BILL 644
Second Edition Engrossed 4/28/05

Short Title: Exempt Banking Comm. Staff from SPA.

(Public)

Sponsors: Senator Hoyle.

Referred to: Commerce.

March 17, 2005

A BILL TO BE ENTITLED

AN ACT EXEMPTING THE EMPLOYEES OF THE STATE BANKING
COMMISSION FROM COVERAGE UNDER THE COMPENSATION
PROVISIONS OF THE STATE PERSONNEL ACT.

The General Assembly of North Carolina enacts:

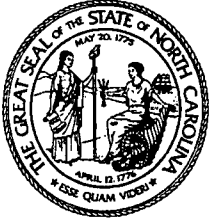
SECTION 1. Article 8 of Chapter 53 of the General Statutes is amended by
adding the following section to read:

**"§ 53-96.1. Salaries, promotions, and leave of employees of the Office of the
Commissioner of Banks.**

The employees of the Office of the Commissioner of Banks are exempt from Article
2 of Chapter 126 of the General Statutes. The exemption authorized by this section shall
be used to develop organizational and compensation innovations that will result in the
enhanced efficiency of operations. The Office of State Personnel shall assist the
Commissioner of Banks in the development and implementation of an organizational
structure and human resources programs that make the most appropriate use of the
exemption. The Commissioner of Banks may, under the supervision of the Office of
State Personnel, undertake human resources demonstration projects to develop and
implement organizational and compensation innovations having the potential to benefit
all State agencies."

SECTION 2. By April 1, 2007, the Commissioner of Banks and the Office
of State Personnel shall report jointly to the General Assembly on the results of the
demonstration projects in meeting the agency's personnel needs and enhancing the
efficiency of its operations.

SECTION 3. This act becomes effective July 1, 2005.



SENATE BILL 644: Exempt Banking Comm. Staff from SPA

BILL ANALYSIS

Committee:	House Financial Institutions	Date:	June 20, 2005
Introduced by:	Sen. Hoyle	Summary by:	Karen Cochrane-Brown
Version:	PCS to Second Edition S644-CSRO-34[v.4]		Committee Co-Counsel

SUMMARY: *The Proposed Committee Substitute for Senate Bill 644 exempts the employees of the Office of the Commissioner of Banks from certain classification and compensation related rules established by the State Personnel Commission and also from Article 2 of Chapter 126 of the General Statutes. The exemptions are to be used to develop organizational and compensation innovations that will result in more efficient operations. The Office of State Personnel is directed to assist the Commissioner of Banks and to undertake human resources demonstration projects having the potential to benefit all State agencies. The Commissioner of Banks and the Office of State Personnel are directed to report jointly to the General Assembly on the results of the demonstration projects by April 1, 2007.*

CURRENT LAW:

Currently the staff of the Office of the Commissioner of Banks is covered by Chapter 126, State Personnel Act, which among other things governs job classifications and compensation rates. The Office of the Commissioner is an independent fee-supported operation, administratively housed in the Department of Commerce.

BILL ANALYSIS:

Section 1 of the bill adds a new section to the Banking law, exempting the employees of the Office of the Commissioner of Banks from certain rules established by the State Personnel Commission relating to classification, compensation, days and hours of work, leave, promotion, transfer, and the prohibition against incentive pay programs. The Office is also exempt from Article 2 of Chapter 126, which authorizes the Comprehensive Compensation System. This System is intended to provide for salary increases to further "the recruitment, retention, career service and outstanding performance of State employees". Implementation of the System is dependant on the availability and appropriation of funds, which has not occurred. The Commissioner of Banks, with the assistance of the Office of State Personnel (OSP), must develop and implement an organizational structure and human resources programs that make the best use of the exemptions. The Commissioner, under the supervision of OSP, may also undertake demonstration projects having the potential to benefit all State agencies.

Section 2 of the bill makes a conforming amendment to another section of the Banking law relating to the employment of clerical help.

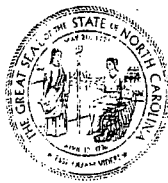
Senate Bill 644

Page 2

Section 3 directs the Commissioner of Banks and the Office of State Personnel to report jointly to the General Assembly on the results of the demonstration projects in meeting the agency's needs and improving its operations by April 1, 2007.

EFFECTIVE DATE: This act becomes effective July 1, 2005.

S0644e2-SMRO-CSRO-34v4



State of North Carolina

OFFICE OF THE COMMISSIONER OF BANKS

MICHAEL F. EASLEY
GOVERNOR

June 14, 2005

JOSEPH A. SMITH, JR.
COMMISSIONER OF BANKS

BY HAND

Representative Walter G. Church, Sr.
1311 Legislative Building
Raleigh, NC 27601

Representative W. Robert Grady
302 Legislative Office Building
Raleigh, NC 27603

Re: S.B. 644
An Act Exempting The Employees of the State Banking Commission from
Coverage Under the Compensation Provisions of the State Personnel Act

Dear Representative Church and Representative Grady:

This letter is to request the prompt consideration by the House Financial Institutions Committee of the above legislation. In support of that request, I have set forth below some information regarding the Office of Commissioner of Banks ("OCOB") and the reasons this legislation is being sought.

Background

The Office of the Commissioner of Banks is a Type II agency that is housed in the Department of Commerce. OCOB supervises 92 banks and thrift institutions with over \$146 billion in total assets. In addition, OCOB regulates 1,485 mortgage bankers and brokers who employ over 15,000 loan originators in North Carolina; ninety (90) consumer finance enterprises operating at 568 licensed locations in the Tar Heel State; 176 check cashing companies with 1,448 licensed offices; 731 refund anticipation lenders; 20 reverse mortgage lenders; and 57 money transmitters. These significant governmental activities are conducted by a staff of seventy-two (72) employees, one of whom is part-time.



The headcount mentioned above is sixteen less than the budgeted complement of eighty-seven (87) authorized positions. By job category, our full-time employees break down as follows:

- Forty-eight (48) positions are field examiners and investigators [Pay grades 70 to 81]. Of this group, (i) three employees have 20 years or more of service; (ii) ten (10) have fifteen years or more; (iii) four have ten years or more; (iv) six have five years or more; (v) thirteen (13) have less than five years of service; and (vi) twelve (12) positions are vacant.
- Twenty-two (22) positions are Raleigh office supervisory staff [Pay grades 77 to 83]. Of this group, (i) three employees have thirty (30) years of service or more; (ii) two have twenty-five years or more; (iii) one has twenty (20) or more years of service; (iv) five have 15 or more years; (v) seven have ten or more years; (vi) one has five years of service; and (vii) three positions are vacant.
- Sixteen (16) positions are administrative office staff [Pay grades 57 to 66]. Of this group, (i) one employee has over 15 years of service; (ii) three have 10 or more years; (iii) four have five or more years; (iv) seven have less than five years of service; and (v) there is one vacant position.

The position of Commissioner of Banks, which is expressly created by statute and is subject to appointment by the Governor and confirmation by the General Assembly, is not included in the foregoing summary.

A fair reading of the summary just presented shows:

- OCOB is short-handed, particularly in the examiner and investigator ranks. This shortage, which has a real and adverse effect on the agency's performance, is directly related to insufficient compensation to attract and retain qualified personnel. While we have been able to replace personnel lost to retirement or voluntary termination, we have not been able to replace our losses with the skilled and experienced personnel we need to most effectively handle our supervisory responsibilities.
- OCOB faces a potentially severe loss of experienced personnel from the staff supervisory group in the near future. The longest serving employees, in addition to years of relevant experience, are currently in leadership roles. Developing a successor leadership group will require strengthening the examiner ranks through training and lateral hiring. Both are greatly aided by enhanced compensation.

- The protections afforded by the State Personnel Act have not resulted in any noticeable longevity in our clerical and support group. If anything, that group has a lower average longevity than the other groups mentioned above.

Each of the employee categories mentioned above has a human resources deficit, ranging from a matter of concern, in the case of clerical and support personnel; to moderate concern, in the case of staff supervisory personnel; to serious concern in the case of examiners and investigators. Failure to fulfill OCOB's human resource requirements over time will have a serious and adverse effect on the agency's performance.

Why OCOB sought exemption from the State Personnel Act

Over the last three years, OCOB management has had difficulty in obtaining compensation enhancements for its personnel because of the restrictions contained in the State Personnel Act and the regulations thereunder. Accordingly, after a discussion of this matter with the Office of State Personnel ("OSP"), it was determined that the best way to meet OCOB's needs was to obtain exemption from the State Personnel Act and to alter our human resources and compensation structures under the guidance of OSP. These determinations are the basis for my request that S.B. 644 be enacted.

If S.B. 644 is enacted, OCOB and OSP will engage in a series of demonstration projects, the intention of which is to show how alteration of the personnel and compensation policies of the agency can result in improved performance by (i) increasing its ability to attract, motivate and retain needed personnel, (ii) improving efficiency of all personnel through incentive pay, and (iii) enhancing job satisfaction for employees. These projects will be based on a thorough review of OCOB's organizational structure, the work it performs, and the views of management and employees regarding shortcomings and possible improvements. Once this research is completed, alterations of OCOB policy will be implemented. As required by proposed legislation, OCOB and OSP will report to the General Assembly regarding outcomes in 2007.

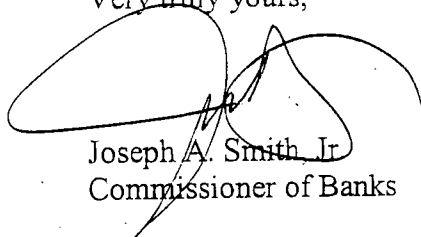
OCOB seeks this exemption from certain provisions of Article 1 and all of Article 2 of the State Personnel Act to give itself the latitude to satisfy personnel needs that are critical to its mission. Freedom to alter our compensation structure to reflect the needs of a knowledge-based enterprise, including performance-based compensation, are critical to this goal. Relief from the grievance protections of Article 8 of the State Personnel Act is not critical to achievement of these goals. Accordingly, S.B. 644 was amended prior to its passage in the Senate to retain such protections for all employees of the agency.

Representative Walter G. Church, Sr.
Representative W. Robert Grady
June 14, 2005
Page 4

I hope this letter is helpful to you. If you need anything further, please do not hesitate to contact Chief Deputy Commissioner David Hanson or me.

As always, your agreement to take up this legislation is greatly appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph A. Smith, Jr.", is written over the typed name. The signature is stylized with large loops and a long horizontal stroke.

Joseph A. Smith, Jr.
Commissioner of Banks

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Church, Grady (Chairs) for the Committee on FINANCIAL INSTITUTIONS.

☐ Committee Substitute for

HB 237 A BILL TO BE ENTITLED AN ACT TO REAFFIRM AND CLARIFY STATE POLICY CONCERNING PARTICIPATION BY DISADVANTAGED MINORITY-OWNED AND WOMEN-OWNED BUSINESSES IN HIGHWAY CONSTRUCTION, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the House committee substitute bill be re-referred to the Committee on Finance.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. _____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. _____) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 237*
PROPOSED COMMITTEE SUBSTITUTE H237-CSRO-35 [v.5]

7/5/2005 11:59:58 AM

Short Title: Revise Mortgage Lending Act.

(Public)

Sponsors:

Referred to:

February 16, 2005

A BILL TO BE ENTITLED
AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY ALLOWING
REGISTRATION OF LIMITED LOAN OFFICERS OF DEFINED AFFILIATED
MORTGAGE BANKERS AND TO ESTABLISH ADDITIONAL SUPERVISION
AND ENFORCEMENT AUTHORITY FOR THE COMMISSIONER OF BANKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.01 reads as rewritten:

"§ 53-243.01. Definitions.

The following definitions apply in this Article:

(1) Act as a mortgage broker. – To act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by 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, or engaging in tablefunding of mortgage loans, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

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

(2a) Affiliate. – Any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841) et seq. as amended from time to time. For purposes of this subdivision, the term control means ownership of all of the voting stock or comparable voting interest of the controlled person.

1 (2b) Affiliated mortgage banker. – A licensed mortgage banker that meets
2 the criteria of either sub-subdivisions a., b., and c. of this subdivision,
3 or sub-subdivisions d. and e. of this subdivision:

4 a. The licensee, by itself or with its affiliates, is licensed in five or
5 more states to engage in the mortgage lending business and (i)
6 is supervised by a State or federal regulatory agency whose
7 regulatory scheme has been determined by the Commissioner to
8 be substantially similar to that of North Carolina, (ii) is
9 organized and supervised under the laws of a State that has
10 adopted a model licensing law endorsed by the Commissioner;
11 or (iii) is supervised by a state or federal agency that is a party
12 to an interstate compact, or has otherwise entered into a
13 cooperative reciprocal agreement by which the state or federal
14 regulatory agency and the State of North Carolina, directly or
15 by duly authorized act of the Commissioner have mutually
16 agreed to recognize state licensing laws which have specific
17 enumerated criteria.

18 b. The licensee, including its affiliates and wholly-owned
19 subsidiaries, has more than 100 employees that are licensed
20 pursuant to this Article.

21 c. The licensee has a consolidated net worth of one hundred
22 million dollars (\$100,000,000.00) or more, or if the licensee
23 does not have the required net worth, its parent shall provide to
24 the Commissioner (i) evidence satisfactory to the Commissioner
25 that the parent has a net worth of one hundred million dollars
26 (\$100,000,000.00) or more, and (ii) an unconditional guarantee
27 or comparable instrument of surety satisfactory to the
28 Commissioner of the performance of the licensee of its
29 obligations under this Article.

30 d. The licensee is a direct or indirect wholly-owned subsidiary of a
31 bank holding company or financial services holding company
32 subject to regulation by the Federal Reserve Board or the Office
33 of Thrift Supervision.

34 e. The licensee has a net worth of one hundred million dollars
35 (\$100,000,000.00) or, if the licensee does not have the required
36 net worth, (i) its parent, if it is not a bank holding company or
37 financial holding company, meets the requirements of sub-
38 subdivision c. of this subdivision or (ii) its parent, if such parent
39 is a bank holding company or financial holding company, has
40 total assets in excess of ten billion dollars (\$10,000,000,000.00)
41 and provides the Commissioner with the unconditional
42 guarantee or comparable instrument of surety required by sub-
43 subdivision c. of this subdivision.

- (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~~ Except as provided in subdivision (2a) of this section, "control" means 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.
- (7a) Exclusive mortgage broker. – An individual who acts as a mortgage broker exclusively for a single mortgage banker or single exempt person and who is licensed under the provisions of G.S. 53-243.05(c)(1a).
- (8) Exempt person. – The term includes any of the following:
- a. Any agency of the federal government or any state or municipal government granting 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 person authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system, savings institution, or a wholly owned subsidiary of a savings institution, or credit union or a wholly owned subsidiary of a credit union, under the laws of the United States, this State, or any other state. Except for G.S. 53-243.11 and G.S. 53-243.15, this Article does not apply to the exempt persons set forth in this sub-subdivision (8)c.
 - 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.

- 1 e. Any officer or employee of an exempt person described in
2 sub-subdivision c. of this subdivision when acting in the scope
3 of employment for the exempt person.
- 4 f. Any person who, as seller, receives in one calendar year no
5 more than five mortgages, deeds of trust, or other security
6 instruments on real estate as security for a purchase money
7 obligation.
- 8 g. The North Carolina Housing Finance Agency as established by
9 Article 122A of the General Statutes and the North Carolina
10 Agricultural Finance Authority as established by Article 122D
11 of the General Statutes.
- 12 h. Any nonprofit corporation qualifying under section 501(c)(3) of
13 the Internal Revenue Code which makes mortgage loans to
14 promote home ownership or home improvements for the
15 disadvantaged, provided that such corporation is not primarily
16 in the business of soliciting or brokering mortgage loans.
- 17 i. Any life insurance companies licensed to do business in North
18 Carolina with regard to provisions concerning mortgage
19 lenders.
- 20 (9) Licensee. – A loan officer, mortgage broker, or mortgage banker who
21 is licensed pursuant to this Article.
- 22 (10) Loan officer. – An individual who, in exchange for compensation as an
23 employee of another person, accepts or offers to accept applications
24 for mortgage loans. The definition of loan officer shall not include any
25 exempt person described in sub-subdivision (8)b. of this section.
- 26 (10a) Limited loan officer. – An individual who, in exchange for
27 compensation as an employee of an affiliated mortgage banker,
28 directly solicits, negotiates, offers, or makes commitments for
29 mortgage loans. The definition of limited loan officer shall not include
30 any exempt person described in sub-subdivision (8)b. of this section.
- 31 (11) Make a mortgage loan. – To close a mortgage loan, to advance funds,
32 to offer to advance funds, or to make a commitment to advance funds
33 to a borrower under a mortgage loan.
- 34 (12) Managing principal. – A person who meets the requirements of
35 G.S. 53-243.05(c) and who agrees to be primarily responsible for the
36 operations of a licensed mortgage broker or mortgage banker.
- 37 (13) Mortgage banker. – A person who acts as a mortgage lender as that
38 term is defined in subdivision (2) of this section. However, the
39 definition does not include a person who acts as a mortgage lender
40 only in tablefunding transactions.
- 41 (14) Mortgage broker. – A person who acts as a mortgage broker as that
42 term is defined in subdivision (1) of this section. The term "mortgage
43 broker" includes an exclusive mortgage broker, except when expressly
44 provided otherwise.

- 1 (15) Mortgage loan. – A loan made to a natural person or persons primarily
2 for personal, family, or household use, primarily secured by either a
3 mortgage or a deed of trust on residential real property located in
4 North Carolina.
- 5 (15a) Parent – The person that controls an affiliated mortgage banker, as
6 control is defined in subdivision (2a) of this section.
- 7 (16) Person. – An individual, partnership, limited liability company, limited
8 partnership, corporation, association, or other group engaged in joint
9 business activities, however organized.
- 10 (17) Qualified lender. – A person who is engaged as a mortgage lender in
11 North Carolina and is either a supervised or a nonsupervised
12 institution, as these terms are defined in 24 C.F.R. § 202.2, approved
13 by the United States Department of Housing and Urban Development.
- 14 (18) Qualified person. – A person who is employed as a loan officer by a
15 qualified lender, or by a mortgage banker or broker registered with the
16 Commissioner under former Article 19 of this Chapter, or who is a
17 general partner, manager, or officer of a qualified lender, registered
18 mortgage banker, or registered mortgage broker.
- 19 (19) Residential real property. – Real property located in the State of North
20 Carolina upon which there is located or is to be located one or more
21 single-family dwellings or dwelling units.
- 22 (20) Tablefunding. – A transaction where a licensee closes a loan in its own
23 name with funds provided by others, and the loan is assigned
24 simultaneously to the mortgage lender providing the funding within
25 one business day of the funding of the loan."

26 **SECTION 2. G.S. 53-243.02 reads as rewritten:**

27 **"§ 53-243.02. License required; licensee records.**

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

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

39 (c) The license of a loan officer or limited loan officer is not effective during any
40 period when that person is not employed by a mortgage broker or mortgage banker
41 licensed under this Article. The license of an exclusive mortgage broker is not effective
42 during any period when that person is not authorized to act as a single licensee or
43 exempt person pursuant to G.S. 53-243.05(c)(1a).

1 When a loan officer or a limited loan officer ceases to be employed by a mortgage
2 broker or mortgage banker licensed under this Article, the ~~loan officer-officer, limited~~
3 loan officer, and the mortgage broker or mortgage banker licensed under this Article by
4 whom that person is employed shall promptly notify the Commissioner in writing.
5 When the authority of an exclusive mortgage broker to act on behalf of the principal
6 licensee or exempt person identified in G.S. 53-243.05(c)(1a) has been terminated, the
7 exclusive mortgage broker and the licensee or exempt person for whom the exclusive
8 mortgage broker is an agent shall promptly notify the Commissioner in writing. The
9 mortgage broker, mortgage banker, or exempt person's notice shall include a statement
10 of the specific reason or reasons for, as applicable, the termination of the loan officer's
11 employment or exclusive mortgage broker's authority.

12 A loan officer or limited loan officer shall not be employed simultaneously by more
13 than one mortgage broker or mortgage banker licensed under this Article.

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

17 (e) No person, other than an exempt person, shall hold himself or herself out as a
18 mortgage banker, a mortgage broker, limited loan officer, or loan officer unless such
19 person is licensed in accordance with this Article.

20 (f) Any person who has completed and filed with the Commissioner the
21 application and all documents required for licensure as a loan officer other than
22 documents relating to the required examination and the mortgage lending fundamentals
23 course may act as a loan officer during the period before action is taken on the
24 application by the Commissioner, if:

25 (1) The Commissioner has not denied, revoked or taken any adverse
26 action with respect to an application filed by or license held by such
27 person during the five-year period ending on the date of filing of the
28 application;

29 (2) The loan officer is employed by a licensed mortgage broker or
30 mortgage lender, and the managing principal of such mortgage broker
31 or mortgage lender (i) certifies to the Commissioner in writing that the
32 managing principal reasonably believes that the application of the
33 person for licensure as a loan officer meets or exceeds all of the
34 relevant requirements of this Article for licensure and (ii) undertakes
35 in writing that the managing principal and the employer will be
36 responsible for the acts of the applicant during the period that such
37 application is pending; and

38 (3) The person is currently or has within the six month period prior to the
39 date of the application been employed as and acting as a loan officer
40 for an exempt entity which entity is exempt by virtue of an exemption
41 claimed under G.S. 53-243.01(8)c..

42 (g) The Commissioner may deny or suspend the rights of a mortgage broker or
43 mortgage lender to employ a loan officer acting under subsection (f) of this section if
44 the Commissioner finds that the mortgage broker or mortgage lender, or the managing

1 principal thereof, makes the certification or undertaking set forth in subdivision (2) of
2 subsection (f) of this section not in good faith."

3 **SECTION 3.** G.S. 53-243.05(c)(1) reads as rewritten:

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

7 (1) Except as provided for in subdivision (1a) of this subsection, if the
8 applicant is a sole proprietor, the applicant shall have at least three
9 years of experience in residential mortgage lending or other experience
10 or competency requirements as the Commissioner may impose.
11 Experience as an exclusive mortgage broker or as a limited loan officer
12 shall not constitute mortgage-lending experience under this
13 subdivision."

14 **SECTION 4.** G.S. 53-243.05(e) reads as rewritten:

15 "(e) Every applicant for initial licensure shall pay a filing fee of one thousand
16 dollars (\$1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars
17 (\$50.00) for licensure as a ~~loan officer, officer or limited loan officer~~, in addition to the
18 actual cost of obtaining credit reports and State and national criminal history record
19 checks."

20 **SECTION 5.** Article 19A of Chapter 53 of the General Statutes is amended
21 by adding a new section to read:

22 **"§ 53-243.05A. Licensing for limited loan officers; qualifications, revoked,**
23 **suspended or barred.**

24 (a) An affiliated mortgage banker shall notify the Commissioner when it hires a
25 limited loan officer on forms prescribed by the Commissioner. The form shall contain
26 any information the Commissioner deems necessary including the name, social security
27 number, address, and business location of the limited loan officer. Limited loan officers
28 employed by an affiliated mortgage banker shall:

29 (1) Be at least 18 years of age.

30 (2) Work exclusively for an affiliated mortgage banker. The affiliated
31 mortgage banker who hires the limited loan officer shall:

32 a. Supervise the limited loan officer as required by this Article.

33 b. Sign the notification form regarding the hiring of the applicant.

34 c. Certify the applicant is qualified as a limited loan officer
35 subject to background checks, training, testing, and
36 fundamental education requirements.

37 d. Be jointly and severally liable for any and all claims and
38 damages of any type, including punitive damages pursuant to
39 Chapter 1D of the General Statutes arising out of the limited
40 loan officer's mortgage lending activities, as allowed by law.

41 (b) An applicant for a limited loan officer license may act provisionally as a
42 limited loan officer during the pendency of the application before the Commissioner
43 upon submission of the completed forms identified in subsection (a) of this section and

1 a written undertaking by the employing affiliated mortgage banker that it will be
2 responsible for all the applicant's mortgage banking activities.

3 (c) Systems, programs, and procedures used by the affiliated mortgage banker for
4 employment background checks, training, testing, and education by the affiliated
5 mortgage banker shall be submitted to and reviewed by the Commissioner who may
6 approve those which are comparable and functionally equivalent to those for loan
7 officers under G.S. 53-243.05 and G.S. 53-243.07. The Commissioner must be notified
8 of any material changes or modifications to such approved systems, programs, and
9 procedures. The Commissioner may approve those systems, programs and procedures
10 used by the affiliated mortgage banker for these purposes that meet or exceed programs
11 otherwise accredited by the Commissioner or that have been approved for the affiliated
12 mortgage banker by at least five other states in which the affiliated mortgage banker is
13 licensed and whose licensing requirements are substantially similar to those of North
14 Carolina.

15 (d) Except as specified in this section, limited loan officers are subject to
16 licensing standards and disciplinary authority in the same way as loan officers under
17 this Article.

18 (e) A person whose license is revoked, suspended, or barred under this section is
19 prohibited from participating in the mortgage lending business in this State.

20 **SECTION 6. G.S. 53-243.08 reads as rewritten:**

21 **"§ 53-243.08. Managing principals and branch managers.**

22 Each mortgage broker or mortgage banker licensed under this Article shall have a
23 managing principal who operates the business under that person's full charge, control,
24 and supervision. Mortgage bankers and mortgage brokers, other than exclusive
25 mortgage brokers, may operate branch offices subject to the requirements of this
26 Article. Each principal and branch office of a mortgage broker or mortgage banker
27 licensed under this Article, ~~other than an exclusive mortgage broker qualifying under~~
28 ~~G.S. 53-243.05(e)(1a),~~ shall have a branch manager who meets the experience
29 requirements under ~~G.S. 53-243.05(e)(1).~~ G.S. 53-243.05(c)(1); provided, that an
30 affiliated mortgage banker may designate a branch manager who does not meet the
31 experience requirements so long as at or before the designation, it certifies that the
32 person is competent in terms of training and experience, to perform the duties of a
33 branch manager. The managing principal for a licensee's business may also serve as the
34 branch manager of one of the licensee's branch offices. Each mortgage broker or
35 mortgage banker licensed under this Article shall file a form as prescribed by the
36 Commissioner indicating the business's designation of managing principal and branch
37 manager for each branch and each individual's acceptance of the responsibility. Each
38 mortgage broker or mortgage banker licensed under this Article shall notify the
39 Commissioner of any change in its managing principal or branch manager designated
40 for each branch. Any licensee who does not comply with this provision shall have the
41 licensee's license suspended pursuant to G.S. 53-243.12 until the licensee, ~~other than an~~
42 ~~exclusive mortgage broker,~~ licensee complies with this section. Any individual licensee
43 who operates as a sole proprietorship shall be considered a managing principal for the
44 purposes of this Article."

1 **SECTION 7.** G.S. 53-243.12(a) reads as rewritten:

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

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

8 (2) That any of the following circumstances apply to the applicant,
9 licensee, or any partner, member, manager, officer, director, loan
10 officer, managing principal, or any person occupying a similar status
11 or performing similar functions or any person directly or indirectly
12 controlling the applicant or licensee. The person:

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

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

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

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

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

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

38 g. Does not meet the qualifications or the financial responsibility,
39 character, or general fitness requirements under G.S. 53-243.05
40 or any bond or capital requirements under this Article.

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

- 1 i. Has failed to pay the proper filing or renewal fee under this
2 Article. However, the Commissioner may enter only a denial
3 order under this sub-subdivision, and the Commissioner shall
4 vacate the order when the deficiency has been corrected.
5 j. Has falsely certified attendance or completion of hours at an
6 approved mortgage lending continuing education course.
7 **SECTION 8.** This act is effective when it becomes law.
8
9

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 237*

Short Title: DOT Minority/Women Businesses Program.

(Public)

Sponsors: Representatives Coates, Saunders (Primary Sponsors); Alexander, B. Allen, Bordsen, Carney, Coleman, Culp, Faison, Farmer-Butterfield, Fisher, Hackney, Jones, Lucas, Luebke, McLawhorn, Parmon, Wainwright, Warren, Wilkins, and Wray.

Referred to: State Government, if favorable, Transportation.

February 16, 2005

A BILL TO BE ENTITLED

AN ACT TO REAFFIRM AND CLARIFY STATE POLICY CONCERNING PARTICIPATION BY DISADVANTAGED MINORITY-OWNED AND WOMEN-OWNED BUSINESSES IN HIGHWAY CONSTRUCTION, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-28.4 reads as rewritten:

"§ 136-28.4. State policy concerning participation by ~~disadvantaged-disadvantaged~~ minority-owned and women-owned businesses in highway contracts.

(a) It is the policy of this ~~State~~ State, based on a compelling governmental interest, to encourage and promote participation by ~~disadvantaged-disadvantaged~~ minority-owned and women-owned businesses in contracts let by the Department pursuant to this Chapter for the planning, design, preconstruction, construction, alteration, or maintenance of State highways, roads, streets, or bridges and in the procurement of materials for these projects. All State agencies, institutions, and political subdivisions shall cooperate with the Department of Transportation and ~~all other State agencies, institutions, and political subdivisions among themselves~~ in all efforts to conduct outreach and to encourage and promote the use of ~~disadvantaged-disadvantaged~~ minority-owned and women-owned businesses in these contracts.

(b) ~~A ten percent (10%) goal is established for participation by minority businesses and a five percent (5%) goal for participation by women businesses is established in contracts let by the Department of Transportation for the design, construction, alteration, or maintenance of State highways, roads, streets, or bridges and for the procurement of materials for these projects. The Department of Transportation shall endeavor to award to minority businesses at least ten percent (10%), by value, of~~

1 ~~the contracts it lets for these purposes, and shall endeavor to award to women~~
2 ~~businesses at least five percent (5%), by value, of the contracts it lets for these purposes.~~
3 ~~The Department shall adopt written procedures specifying the steps it will take to~~
4 ~~achieve these goals. The Department shall give equal opportunity for contracts it lets~~
5 ~~without regard to race, religion, color, creed, national origin, sex, age, or handicapping~~
6 ~~condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise~~
7 ~~qualified. At least every five years, the Department shall conduct a study on the~~
8 ~~availability and utilization of disadvantaged minority-owned and women-owned~~
9 ~~business enterprises and examine relevant evidence of the effects of race-based or~~
10 ~~gender-based discrimination upon the utilization of such business enterprises in~~
11 ~~contracts for planning, design, preconstruction, construction, alteration, or maintenance~~
12 ~~of State highways, roads, streets, or bridges and in the procurement of materials for~~
13 ~~these projects. Should the study show a strong basis in evidence of ongoing effects of~~
14 ~~past or present discrimination that prevents or limits disadvantaged minority-owned and~~
15 ~~women-owned businesses from participating in the above contracts at a level which~~
16 ~~would have existed absent such discrimination, such evidence shall constitute a basis for~~
17 ~~the State's continued compelling governmental interest in remedying such race and~~
18 ~~gender discrimination in highway contracting. Under such circumstances, the~~
19 ~~Department shall, in conformity with State and federal law, adopt by rule and contract~~
20 ~~provisions a specific program to remedy such discrimination. This specific program~~
21 ~~shall, to the extent reasonably practicable, address each barrier identified in such study~~
22 ~~that adversely affects contract participation by disadvantaged minority-owned and~~
23 ~~women-owned businesses.~~

24 (b1) Based upon the findings of the Department's Second Generation Disparity
25 Study completed in 2004, hereinafter referred to as 'Study', the program design shall, to
26 the extent reasonably practicable, incorporate narrowly tailored remedies identified in
27 the Study, and the Department shall implement a comprehensive antidiscrimination
28 enforcement policy. As appropriate, the program design shall be modified by rules
29 adopted by the Department that are consistent with findings made in the Study and in
30 subsequent studies conducted in accordance with subsection (b) of this section. As part
31 of this program, the Department shall review its budget and establish annual aspirational
32 goals, not mandatory goals, in percentages, for the overall participation in contracts by
33 disadvantaged minority-owned and women-owned businesses. These annual
34 aspirational goals for disadvantaged minority-owned and women-owned businesses
35 shall be established consistent with methodology specified in the Study, and they shall
36 not be applied rigidly on specific contracts or projects. Instead, the Department shall
37 establish contract-specific goals or project-specific goals for the participation of such
38 firms in a manner consistent with availability of disadvantaged minority-owned and
39 women-owned businesses, as appropriately defined by its most recent Study, for each
40 disadvantaged minority-owned and women-owned business category that has
41 demonstrated significant disparity in contract utilization. Nothing in this section shall
42 authorize the use of quotas. Any program implemented as a result of the Study
43 conducted in accordance with this section shall be narrowly tailored to eliminate the
44 effects of historical and continuing discrimination and its impacts on such

1 disadvantaged minority-owned and women-owned businesses without any undue
2 burden on other contractors. The Department shall give equal opportunity for contracts
3 it lets without regard to race, religion, color, creed, national origin, sex, age, or
4 handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses
5 otherwise qualified.

6 (c) The following definitions apply in this section:

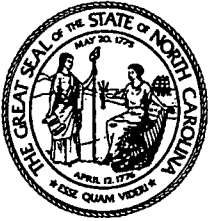
7 (1) "Disadvantaged business" has the same meaning as "disadvantaged
8 business enterprise" in 49 C.F.R. § 23.62-26.5 or any subsequently
9 promulgated replacement regulation.

10 (2) "~~Minority~~" ~~has the same meaning as in 49 C.F.R. § 23.5.~~ includes only
11 those racial or ethnicity classifications identified by a study conducted
12 in accordance with this section that have been subjected to
13 discrimination in the relevant marketplace, and that have been
14 adversely affected in their ability to obtain contracts with the
15 Department.

16 (d) The Department shall report semiannually to the Joint Legislative
17 Transportation Oversight Committee on the utilization of disadvantaged
18 minority-owned businesses and women-owned businesses and any program adopted to
19 promote contracting opportunities for those businesses. Following each study of
20 availability and utilization, the Department shall report to the Joint Legislative
21 Transportation Oversight Committee on the results of the study for the purpose of
22 determining whether the provisions of this section should continue in force and effect.

23 (e) This section expires August 31, 2009."

24 **SECTION 2.** This act is effective when it becomes law.



HOUSE BILL 237: Revise Mortgage Lending Act.

BILL ANALYSIS

Committee: House Financial Institutions
Introduced by: Reps. Coates, Saunders
Version: PCS to First Edition
H237-CSRO-35[v.5]

Date: July 4, 2005
Summary by: Karen Cochrane-Brown
Committee Co-Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 237 amends the Mortgage Lending Act to authorize the licensure of limited loan officers that are employed by affiliated mortgage bankers. The PCS also authorizes the Commissioner of Banks to allow certain loan officer applicants to act as a loan officer during the pendency of their application and provides that exclusive mortgage brokers shall have branch managers to the same extent as other mortgage brokers or bankers. Finally, the PCS provides that the Commissioner may discipline a licensee or applicant for falsely certifying attendance or completion of a continuing education course.*

CURRENT LAW:

The Mortgage Lending Act is a licensing and regulatory statute for the mortgage lending industry, which was enacted in 2001. It replaced a registration law, which did not provide for uniform standards, education or experience, and gave the Commissioner only limited authority to enforce the prohibitions.

Under the current law, mortgage bankers, mortgage brokers, and loan officers are required to be licensed by the Commissioner of Banks before engaging in the business of mortgage lending or mortgage brokering, unless exempt. The law exempts from licensing depository institutions (banks, wholly owned subsidiaries of banks, savings and loans, credit unions), life insurance companies, governmental lenders, nonprofits that make mortgage loans, persons that make no more than five loans a year, and real estate brokers who do not receive compensation for making loans.

A loan officer, under current law, is a compensated employee who accepts or offers to accept applications for mortgage loans. To be licensed, a loan officer must be 18 years of age and have completed within the previous three years an approved mortgage lending fundamentals course. The application and renewal fee for loan officers is \$50.00.

The Commissioner of Banks has broad enforcement powers, including the power to revoke licenses and impose civil fines for violations of the law. Engaging in the mortgage banking or brokering business without a license is a Class I felony.

BILL ANALYSIS:

The PCS for House Bill 237 makes several changes to the Mortgage Lending Act.

Section 1 creates several new definitions, including:

- **Affiliate**, means any company that controls or is controlled by another person. For purposes of the definition, the term control means ownership of all of the voting stock or comparable interest of the controlled person.
- **Affiliated mortgage banker**, means a licensed mortgage banker that meets one of two sets of criteria. The first set of criteria relate to (1) licensure or supervision by other jurisdictions or under a compact or agreement authorized by the Commissioner, (2) the number of licensed employees, and (3) the licensee's net worth. The second set of criteria relate to (1) whether

House Bill 237

Page 2

the licensee is a subsidiary of a company regulated by the Federal Reserve Board or the Office of Thrift Supervision, and (2) the licensee's net worth.

- Limited loan officer, means an employee of an affiliated mortgage banker that directly solicits, negotiates, offers or makes commitments for mortgage loans.
- Parent, means the person that controls an affiliated mortgage banker, as control is defined under the term affiliate.

Section 2 amends the law related to required licenses under the Mortgage Lending Act to include a requirement that limited loan officers be licensed.

This section also adds new language allowing certain loan officer applicants to act as a loan officer while their application for licensure is pending. In order to qualify for this treatment, the applicant must (1) have had no negative action taken on an application or license in the preceding five years, (2) be employed by a licensed mortgage broker or lender that certifies that the applicant is qualified and that undertakes to be responsible for the acts of the applicant, and (3) currently be or have been employed as a loan officer within the previous six months by an exempt depository institution. The Commissioner can deny or suspend this treatment if the Commissioner finds that the certification and undertaking have not been made in good faith.

Section 3 excludes experience as a limited loan officer from the kinds of experience required to qualify for licensure as a mortgage broker or mortgage banker.

Section 4 subjects limited loan officers to the same \$50.00 fee requirement as currently applies to loan officers.

Section 5 establishes licensing requirements for limited loan officers and the affiliated mortgage bankers that employ them. A limited loan officer must be at least 18 and must work exclusively for an affiliated mortgage banker. An affiliated mortgage banker must notify the Commissioner when it hires a limited loan officer and provide any required information. It must also certify that the limited loan officer is qualified and agree to be liable for any claims and damages, including punitive damages arising from the limited loan officer's lending activities. The limited loan officer may act provisionally during the pendency of an application if the employer makes a written undertaking to responsible for the applicant's activities. The Commissioner must approve the employer's systems, programs and procedures for checking, training and testing a limited loan officer. Except as provided in this section, a limited loan officer is subject to all of the other requirements applied to loan officers under the Act. Any person whose license is revoked, suspended or barred under this section is prohibited from participating in the mortgage lending business in this State.

Section 6 allows affiliated mortgage bankers to designate a branch manager who does not meet the experience requirement if it certifies that the person is competent to perform the duties of a branch manager. This section also authorizes exclusive mortgage brokers to have branch managers who meet the experience requirements for mortgage brokers or mortgage bankers.

Section 7 adds a new item to the list of actions that the Commissioner may use as the basis for disciplining a licensee or applicant. The Commissioner may take action against a licensee or applicant who has falsely certified attendance or completion of hours at a continuing education course.

EFFECTIVE DATE: The act is effective when it becomes law.

H0237e1-SMRO-CSRO-35v5



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 237*

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H237-ARO-31 [v.3]

Page 1 of 2

Date July 5, 2005

Comm. Sub. [YES]
Amends Title [YES]
H237-CSRO-35[v.5]

Representative Church

1 moves to amend the bill on page 4, line 20, by inserting the following between the
2 words "officer," and "mortgage"
3 "limited loan officer";

4
5 and on page 5, line 40, by rewriting the line to read:

6
7 "period when that person is not employed by a mortgage ~~broker~~ broker, affiliated
8 mortgage banker, or mortgage banker";

9
10 and on page 6, lines 2-3, by rewriting the lines to read:

11
12 "~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this
13 Article, the loan officer, limited loan officer, and the mortgage broker, affiliated mortgage banker,
14 or mortgage banker licensed under this Article by";

15
16 and on page 6, lines 9-10, by rewriting the lines to read:

17
18 "mortgage broker, affiliated mortgage banker, mortgage banker, or exempt person's
19 notice shall include a statement of the specific reason or reasons for, as applicable, the
20 termination of the loan officer's or limited loan officer's";

21
22 and on page 8, lines 24-25, by rewriting the phrase "brokers, other than exclusive
23 mortgage brokers," to read:

24 "~~brokers, other than exclusive mortgage brokers,~~ brokers";

25



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 237*

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

H237-ARO-31 [v.3]

Page 2 of 2

- 1
- 2 and on page 9, line 10, by inserting the following after the word "officer,"
- 3 "limited loan officer,".

SIGNED

Walter Church Sr.
Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 237

DATE 7-5-05

S. B. No. _____

Amendment No. #2

COMMITTEE SUBSTITUTE H237-CS20-35(C.S.)

(to be filled in by
Principal Clerk)

Rep.) MILLER
Sen.)

1 moves to amend the bill on page 7, line ~~38~~ 41

2 () WHICH CHANGES THE TITLE

3 by INSERTING BETWEEN THE WORDS "PROVISIONALY" AND
4 "AS" THE WORDS "FOR A PERIOD OF UP TO SIX MONTHS"

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

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17 _____

18 _____

19 _____

SIGNED 

ADOPTED _____ FAILED X TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 237

DATE 7-5-05

S. B. No. 6A

Amendment No. #3

COMMITTEE SUBSTITUTE ☒

(to be filled in by
Principal Clerk)

Rep.) Blackwood
Sen.) _____

1 moves to amend the bill on page 8, line 19-20

2 () WHICH CHANGES THE TITLE

3 by inserting the following new section

4 _____
5 "Section 5(a) G.S. 33-243.05 is amended by
6 adding a new subsection to read:

7 '(h) An applicant for a loan officer license may
8 act provisionally as a loan officer during the
9 pendency of the application before the Commissioner
10 upon submission of the completed forms and a
11 written undertaking by the employer that it
12 will be responsible for the applicant's mortgage
13 banking activities.'"

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED Burtis Blackwood

ADOPTED _____ FAILED X TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS 5644-CSK0-34 CV.47

H. B. No. _____

DATE 7/5/05

S. B. No. _____

Amendment No. 4

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep.)

)
Sen.)

1 moves to amend the bill on page 2, line 11

2 () WHICH CHANGES THE TITLE

3 by revising the line to read:

4 "Section 4. This act becomes effective when it becomes law."

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

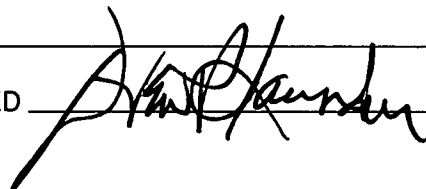
16 _____

17 _____

18 _____

19 _____

SIGNED



ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Joyce Fuller (Rep. Church)

From: Neta Grady (Rep. Grady)**Sent:** Wednesday, June 29, 2005 1:01 PM**To:** @House/Financial Institutions; @HouseCommitteeNotice; Drupti Chauhan (Research); Interested Parties; Karen Cochrane-Brown (Research); Penny Williams (Sen. Hoyle); Sen. David Hoyle; Susan Phillips (Rep. Eddins); Valerie Rustin (Rep. Cunningham); Walker Reagan (Research)**Subject:** HOUSE FINANCIAL INSTITUTIONS COMMITTEE MEETING

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on FINANCIAL INSTITUTIONS will meet as follows:

DAY & DATE: Tuesday, July 5, 2005**TIME:** 1:00 pm**LOCATION:** Room 1425

The following bills will be considered:

HB 237 DOT Minority/Women Businesses Program.....Reps. Coates and Saunders**SB 644 Exempt Banking Comm. Staff from SPA...Senator Hoyle**

Respectfully,
Representatives Church and Grady
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **1:00pm** on **June 29, 2005**.

____ Principal Clerk
____ Reading Clerk - House Chamber

Neta Grady (Committee Assistant)

FINANCIAL INSTITUTIONS

JULY 5, 2005

ROOM 1425

1:00 P.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND GRADY

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN, MS. DRUPTI
CHAUHAN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS –JOYCE FULLER AND NETA GRADY

SGT.-AT-ARMS – TOUSSAINT AVENT AND FRANK PREVO

PAGES – THERE ARE NO PAGES TODAY

BILLS TO BE CONSIDERED:

H.B.237 DOT MINORITY/WOMEN BUSINESSES PROGRAM - Reps. Coates
and Saunders

S.B. 644 EXEMPT BANKING COMMISSION STAFF FROM STATE
PERSONNEL ACT – Senator Hoyle

CLOSING REMARKS

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

7-05-05 - 1:00 P.M.

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Anteigen	NMRS
BILL SLOGIN	KCH
SHARIF DURAND	Charlotte O
Gene AINSWORTH	WINSTON-SALEM
Roger Bove	Bove and Assoc
Jeanne Blackman	NC DOJ law clerk
DANIEL GARNER	Atty, Office of the Comm of Banks
Markel Chestnut	Spec. Op. Atty for the Comm of Banks
Stephanie Lempin	NC AR
Larry Heckner	HSBC North America
Chris Fitzsimon	NC Policy Watch

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

JULY 5, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

JOE JOHNSON	TRAGSDALE / NC ASSN OF LILGETT / MORTGAGE PROFESSIONALS
Stephanie Dorko	Charlotte Chamber
PAUL STOLK	N C B A
Betty TURNER	BAC
ALAN WEST	CITIGROUP
Lee Hood	KCLH
Tom Harris	SEAN C
Addis Jutkins	SEAN C
Chris Kulka	Self-Help
Al Ropley	NC Justice Ctr.
Nathan Giff	Veritec

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

JULY 5, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

David Hanson	NC Office of the Commissioner of Banks
Lars Nance	NC DOJ
Joseph Smith	NC Commissioner of Banks
Margaret C. Lillard	AP
John Carlton	attly.
RONEY Lamm	Citigroup/Citi Financial
Arthur W. Yancey	Leg. Counsel Sen. Danwell
John M. M... ..	Gov Office
Bill Best	Regulator / NC Assn of Mortgage Professionals
John Sch...	NC assn. of Mortgage Professionals
Calvin M. Kirven	NC Assn of Mortgage Professionals

VISITOR REGISTRATION SHEET

Name of Committee

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Early Sept
Barn

WCSR

Chase

AFTER SESSION VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

JULY 5, 2005 - 2:35 P.M.

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McHugh	Gov Office
Bill Seaborn	ICCLH
Gene Ainsworth	Winston-Salem
Nathan Goff	Veritac
Monteagum	NMRS
ALAN WEST	CTI Group
Betty Turner	Bank of America
Sandy Sells	WCSR
Chris Kulda	FUT-HELP
Al Nolan	NC Justice Center
Suzanne Buckley	Gov. Office

AFTER SESSION

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

JULY 5, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mike Cawf	Cawf + Associates
Daniel Lamm	Atty. NC Office of the Comr of Banks
Joseph A. Smith, Jr.	Commissioner of Banks
Stephanie Simpson	NC association of REALTORS
Al Riphley	NC Justice Ctr
Chris Kutla	Self - Help
Lee H. Lee	Rogers/Leach
J. L. Lee	NC Assoc. of Mtg. Professionals
Calvin M. Kiersey	NC ASSN OF MORTG. PROFESSIONALS
Dick Carlson	atly
Roney Hamm	Citigroup/CitiFinancial

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
JULY 26, 2005

The **House Committee on Financial Institutions** met on Tuesday, July 26, 2005, at 1:00 p.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chair Robert Grady. Co-Chair Grady recognized the pages who were assigned to the meeting. The following members of the committee were present: Co-Chair Church and Co-Chair Grady; Vice Chair Vinson; Reps. Blackwood, Brubaker, Carney, Dickson, Holliman, Jones, McGee, Miller, Rapp, Saunders, Steen and Williams.

S.B. 517 – ACCOUNT TRANSFERS AND AGENCY APPOINTMENTS – Co-Chair Grady requested that without objection that the Proposed Committee Substitute be adopted for discussion. He then requested that Sen. Clodfelter, the sponsor of the bill, to come forward to explain the bill. This bill amends the Interstate Trust Company Act, adopted by the General Assembly in 2001, to allow a bank or trust company to transfer trust accounts, in bulk, to a sister, parent, or subsidiary company with trust powers, subject to important safeguards. These include notice of the proposed transfer from 90 to 30 days, and the right to be excluded from the transfer. Also, the transferring bank or trust company retains the responsibility for the new company's administration. It is believed that the added authority to transfer accounts allows greater flexibility for fiduciary services on a nationwide basis, customer may be better served with more options available. Next, the bill would allow affiliated trust companies to serve as agents of the other in the course of trust administration. Any of the provisions of this bill can be overridden in an instrument governing a trust account relationship.


After discussion Rep. Saunders made a motion that **S.B. 517 be given a favorable report as to the House Committee substitute bill, unfavorable as to Senate Committee Substitute bill.** The motion carried. **S.B. 517 – WITH A FAVORABLE REPORT AS TO THE HOUSE COMMITTEE SUBSTITUTE BILL, UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL.**

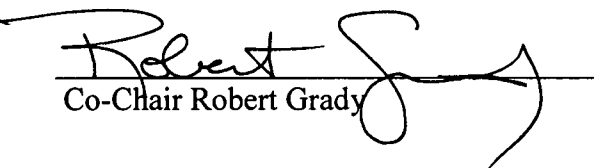
S.B. 519 – INTERSTATE TRUST SERVICES ON RECIPROCAL BASIS – Rep. Saunders made a motion that the Proposed Committee Substitute be adopted for discussion. Motion passed. Co-Chair Grady called on Sen. Clodfelter, the sponsor of the bill, to come forward and explain the bill. S.B. 519 amends the Interstate Trust Company Act to clarify that an out-of-state bank or trust company may serve in North Carolina without establishing an office here if the Commissioner of Banks allows it to register to do business here. It also clears the way for our state chartered banks and trust companies to conduct trust business on an interstate basis without having to establish an office out-of-state.

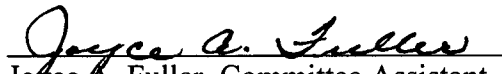
The Proposed Committee Substitute, Section 19 adds a new section to the banking laws to clarify that the cumulative preferred stock provisions in Article 13 of Chapter 53 of the General Statutes are for emergency purposes only, and that in other circumstances banks

can issue preferred stock on any terms approved by the Commissioner of Banks. McNeil Chestnut, Assistant Attorney General, and Joe Smith, Commissioner of Banks, also spoke for this bill. After discussion, Rep. Brubaker made a motion that **H.B. 519 be given a favorable report as to House Committee substitute bill, unfavorable as to original bill.** The motion carried. **S.B. 719 – WITH A FAVORABLE REPORT AS TO HOUSE COMMITTEE SUBSTITUTE BILL, UNFAVORABLE AS TO ORIGINAL BILL.**

There being no further business, Co-Chair Grady adjourned the meeting at 1:50 p.m.


Co-Chair Walter G. Church, Sr.


Co-Chair Robert Grady


Joyce A. Fuller, Committee Assistant

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Church, Grady (Chairs) for the Committee on FINANCIAL INSTITUTIONS.

☒ Committee Substitute for

SB 517 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR ACCOUNT TRANSFERS AND AGENCY APPOINTMENTS BETWEEN AFFILIATED TRUST INSTITUTIONS.

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill -1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. _____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. _____) is placed on the Unfavorable Calendar.

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. _____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. _____) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 517
Judiciary I Committee Substitute Adopted 3/30/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S517-CSRQ-56 [v.2]

7/26/2005 10:06:35 AM

Short Title: Account Transfers and Agency Appointments.

(Public)

Sponsors:

Referred to:

March 15, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR ACCOUNT TRANSFERS AND AGENCY
3 APPOINTMENTS BETWEEN AFFILIATED TRUST INSTITUTIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 53-301(a) is amended by adding the following new
6 subdivisions to read:

7 "(3a) "Affiliate transfer" means a transfer of an account pursuant to Part 7 of
8 this Article by one trust institution affiliate of that trust institution.

9 ...

10 (49a) "Transferring trust institution" means a trust institution that proposes
11 to make, or does make, an affiliate transfer.

12 (49b) "Transferee trust institution" means a trust institution to which an
13 affiliate transfer is proposed to be made, or is made.

14"

15 SECTION 2. Article 24 of Chapter 53 of the General Statutes is amended by
16 adding the following new Part to read:

17 "Part 7. Affiliate Transfers; Agent Appointments.

18 "§ 53-420. Affiliate transfers authorized; procedure.

19 (a) A trust institution may make an affiliate transfer of one or more accounts
20 subject to the provisions of this Part unless the provisions governing the account
21 explicitly provide that an affiliate transfer shall not be made.

22 (b) The affiliate transfer shall be made pursuant to a written agreement between
23 the transferring trust institution and the transferee trust institution.

24 (c) Between 90 and 30 days prior to the proposed date of the affiliate transfer, the
25 transferring trust institution shall give written notice of the proposed affiliate transfer to
26 all clients and other persons to whom the transferring trust institution last sent reports or

statements for the account or to whom the next regular report or statement would be sent. The notice shall include the following information:

- (1) A brief description of the proposed affiliate transfer.
- (2) The client's right to object in writing to the affiliate transfer, and the physical and mailing addresses to which the written objection may be sent; the transferring trust institution also may provide electronic mail or facsimile addresses, or both, as additional methods for giving written notice of objection.
- (3) The date upon which the affiliate transfer is proposed to be effective.
- (4) The identity, mailing address, and telephone number of one or more employees of the transferee trust institution who can respond to inquiries if the affiliate transfer is complete.
- (5) The identity, mailing address, and telephone number of one or more employees of the transferring trust institution who can respond to inquiries about the proposed affiliate transfer.

(d) Notices shall be sent to the addresses for clients or their representatives on record with the transferring trust institution and shall be effective upon receipt. Notices shall be deemed received three days after they have been posted for mailing with the United States Postal Service or deposited for delivery with a reputable courier service, with all postage or delivery charges prepaid.

"§ 53-421. Objection to affiliate transfer.

If a client, or a person acting on behalf of the client, delivers a written objection to the affiliate transfer to the transferring trust institution at anytime prior to the date of the affiliate transfer, the transferring trust institution shall exclude that account from the affiliate transfer unless the objection is withdrawn. An objection to an affiliate transfer shall not affect the right of the transferring trust institution to continue to administer the account or to seek to transfer the account pursuant to the documents and law governing the account.

"§ 53-422. Effect of affiliate transfer.

(a) Following an affiliate transfer, the transferee trust institution shall have all of the rights, powers, privileges, appointments, accounts, and designations of the transferring trust institution and shall be deemed successor to the transferring trust institution in any deed, trust, agreement, filing, instrument, notice, certificate, pleading, or other document related to the account.

(b) Following an affiliate transfer, the transferee trust institution is responsible for the performance of all duties, responsibilities, and obligations related to an account subject to the affiliate transfer.

(c) The affiliate transfer does not limit the transferring trust institution's liability for any of its acts as fiduciary.

(d) Unless the affiliate transfer is authorized by the documents governing the account, the transferring trust institution remains liable and responsible, while affiliated with the transferee trust institution, for the transferee trust institution's administration of accounts subject to an affiliate transfer. For purposes of this subsection, an affiliate

1 transfer of an account made in reliance on subsection (e) of this section shall not be
2 deemed to be authorized by the documents governing the account.

3 (e) Except as explicitly provided in provisions or laws governing accounts:

4 (1) Qualifications for administration such as capital, assets, assets under
5 management, or similar standards set forth in documents or laws
6 governing the account may be satisfied by the combined financial
7 resources of the transferring trust institution and the transferee trust
8 institution.

9 (2) Standards relating to the location or charter of the trust institution
10 administering the account may be satisfied by the transferring trust
11 institution or the transferee trust institution.

12 (f) Nothing in this Part shall be construed to impair any right of a trust institution
13 to resign from administration of an account, or the right of a trust institution or a person
14 interested in the account to seek the appointment of a replacement.

15 (g) Neither the rights of creditors to nor any liens upon the property held in an
16 account shall be impaired by an affiliate transfer.

17 (h) Any claim or proceeding by or against the transferring trust institution
18 pending at the time of the affiliate transfer may proceed as if the affiliate transfer had
19 not taken place.

20 **"§ 53-423. Trust institution as agent.**

21 A trust institution may appoint another trust institution that is its affiliate as its agent
22 for the performance of acts, obligations, and responsibilities with respect to any
23 account. In that event, the trust institution shall remain fully responsible and liable with
24 respect to all actions of the affiliated trust institution as if those actions were performed
25 by the trust institution. Except as explicitly provided in documents or laws governing an
26 account, appointment of an affiliate agent is not:

27 (1) An impermissible delegation of responsibility or duty by the
28 appointing trust institution.

29 (2) A transfer or relinquishment of account powers by the appointing
30 institution.

31 (3) A resignation or disqualification from the account by the appointing
32 trust institution.

33 **"§ 53-424. Construction.**

34 (a) Except as expressly provided in this Part, nothing in this Part shall be
35 construed to amend or modify the laws of this State governing the establishment or
36 administration of accounts or the actions of trust institutions.

37 (b) An affiliate transfer is not, in itself, a transfer of substantially all of the
38 transferring trust institution's assets and liabilities.

39 (c) Except as explicitly provided by the documents governing the account,
40 neither an affiliate transfer nor an agency appointment under G.S. 53-423 shall be
41 subject to G.S. 36A-13 or any other provision requiring court approval for removal of
42 fiduciary funds from this State.

43 (d) Except as explicitly provided by the documents governing the account, an
44 affiliate transfer, but not an agency appointment, shall be subject to any provision of law

1 requiring notice of a transfer of the principal place of administration of the account. The
2 manner or timing of a notice required under G.S. 53-420(c) may be altered to comport
3 with any provision of law requiring notice of a transfer of the principal place of
4 administration of the account."

5 **SECTION 3.** Effective January 1, 2006, G.S. 53-424(c) as enacted by
6 Section 2 of this act reads as rewritten:

7 "(c) Except as explicitly provided by the documents governing the account,
8 neither an affiliate transfer nor an agency appointment under G.S. 53 423 shall be
9 subject to ~~G.S. 36A-13 or any other~~ any provision of law requiring court approval for
10 removal of fiduciary funds from this State."

11 **SECTION 4.** This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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2

SENATE BILL 517
Judiciary I Committee Substitute Adopted 3/30/05

Short Title: Account Transfers and Agency Appointments.

(Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR ACCOUNT TRANSFERS AND AGENCY
APPOINTMENTS BETWEEN AFFILIATED TRUST INSTITUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-301(a) is amended by adding the following new subdivisions to read:

"(3a) "Affiliate transfer" means a transfer of an account pursuant to Part 7 of this Article by one trust institution affiliate of that trust institution.

...

(49a) "Transferring trust institution" means a trust institution that proposes to make, or does make, an affiliate transfer.

(49b) "Transferee trust institution" means a trust institution to which an affiliate transfer is proposed to be made, or is made.

...."

SECTION 2. Article 24 of Chapter 53 of the General Statutes is amended by adding the following new Part to read:

"Part 7. Affiliate Transfers; Agent Appointments.

"§ 53-420. Affiliate transfers authorized; procedure.

(a) A trust institution may make an affiliate transfer of one or more accounts subject to the provisions of this Part unless the provisions governing the account explicitly provide that an affiliate transfer shall not be made.

(b) The affiliate transfer shall be made pursuant to a written agreement between the transferring trust institution and the transferee trust institution.

(c) Between 90 and 30 days prior to the proposed date of the affiliate transfer, the transferring trust institution shall give written notice of the proposed affiliate transfer to all clients and other persons to whom the transferring trust institution last sent reports or statements for the account or to whom the next regular report or statement would be sent. The notice shall include the following information:

(1) A brief description of the proposed affiliate transfer.

(2) The client's right to object in writing to the affiliate transfer, and the physical and mailing addresses to which the written objection may be sent; the transferring trust institution also may provide electronic mail or facsimile addresses, or both, as additional methods for giving written notice of objection.

(3) The date upon which the affiliate transfer is proposed to be effective.

(4) The identity, mailing address, and telephone number of one or more employees of the transferee trust institution who can respond to inquiries if the affiliate transfer is complete.

(5) The identity, mailing address, and telephone number of one or more employees of the transferring trust institution who can respond to inquiries about the proposed affiliate transfer.

(d) Notices shall be sent to the addresses for clients or their representatives on record with the transferring trust institution and shall be effective upon receipt. Notices shall be deemed received three days after they have been posted for mailing with the United States Postal Service or deposited for delivery with a reputable courier service, with all postage or delivery charges prepaid.

"§ 53-421. Objection to affiliate transfer.

If a client, or a person acting on behalf of the client, delivers a written objection to the affiliate transfer to the transferring trust institution at anytime prior to the date of the affiliate transfer, the transferring trust institution shall exclude that account from the affiliate transfer unless the objection is withdrawn. An objection to an affiliate transfer shall not affect the right of the transferring trust institution to continue to administer the account or to seek to transfer the account pursuant to the documents and law governing the account.

"§ 53-422. Effect of affiliate transfer.

(a) Following an affiliate transfer, the transferee trust institution shall have all of the rights, powers, privileges, appointments, accounts, and designations of the transferring trust institution and shall be deemed successor to the transferring trust institution in any deed, trust, agreement, filing, instrument, notice, certificate, pleading, or other document related to the account.

(b) Following an affiliate transfer, the transferee trust institution is responsible for the performance of all duties, responsibilities, and obligations related to an account subject to the affiliate transfer.

(c) The affiliate transfer does not limit the transferring trust institution's liability for any of its acts as fiduciary.

(d) Unless the affiliate transfer is authorized by the documents governing the account, the transferring trust institution remains liable and responsible, while affiliated with the transferee trust institution, for the transferee trust institution's administration of accounts subject to an affiliate transfer. For purposes of this subsection, an affiliate transfer of an account made in reliance on subsection (e) of this section shall not be deemed to be authorized by the documents governing the account.

(e) Except as explicitly provided in provisions or laws governing accounts:

(1) Qualifications for administration such as capital, assets, assets under management, or similar standards set forth in documents or laws governing the account may be satisfied by the combined financial resources of the transferring trust institution and the transferee trust institution.

(2) Standards relating to the location or charter of the trust institution administering the account may be satisfied by the transferring trust institution or the transferee trust institution.

(f) Nothing in this Part shall be construed to impair any right of a trust institution to resign from administration of an account, or the right of a trust institution or a person interested in the account to seek the appointment of a replacement.

(g) Neither the rights of creditors to nor any liens upon the property held in an account shall be impaired by an affiliate transfer.

(h) Any claim or proceeding by or against the transferring trust institution pending at the time of the affiliate transfer may proceed as if the affiliate transfer had not taken place.

"§ 53-423. Trust institution as agent.

A trust institution may appoint another trust institution that is its affiliate as its agent for the performance of acts, obligations, and responsibilities with respect to any account. In that event, the trust institution shall remain fully responsible and liable with respect to all actions of the affiliated trust institution as if those actions were performed by the trust institution. Except as explicitly provided in documents or laws governing an account, appointment of an affiliate agent is not:

(1) An impermissible delegation of responsibility or duty by the appointing trust institution.

(2) A transfer or relinquishment of account powers by the appointing institution.

(3) A resignation or disqualification from the account by the appointing trust institution.

"§ 53-424. Construction.

(a) Except as expressly provided in this Part, nothing in this Part shall be construed to amend or modify the laws of this State governing the establishment or administration of accounts or the actions of trust institutions.

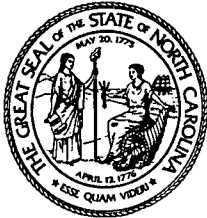
(b) An affiliate transfer is not, in itself, a transfer of substantially all of the transferring trust institution's assets and liabilities.

(c) Except as explicitly provided by the documents governing the account, neither an affiliate transfer nor an agency appointment under G.S. 53-423 shall be subject to G.S. 36A-13 or any other provision requiring court approval for removal of fiduciary funds from this State.

(d) Except as explicitly provided by the documents governing the account, an affiliate transfer, but not an agency appointment, shall be subject to any provision of law requiring notice of a transfer of the principal place of administration of the account. The manner or timing of a notice required under G.S. 53-420(c) may be altered to comport

1 with any provision of law requiring notice of a transfer of the principal place of
2 administration of the account."

3 **SECTION 3.** This act becomes effective October 1, 2005.



SENATE BILL 517: Account Transfers and Agency Appointments

BILL ANALYSIS

Committee:	House Financial Institutions	Date:	July 26, 2005
Introduced by:	Sen. Clodfelter	Summary by:	Drupti Chauhan
Version:	PCS to Second Edition		Committee Counsel*
	S517-CSRQ-56 [v.2]		

SUMMARY: *Senate Bill 517 would amend the Trust Company and Interstate Trust Business Act by adding a new Part to govern the transfer of trust accounts among affiliate trust companies and to authorize a trust institution to appoint another trust institution to act as the original trust institution's agent for trust administration purposes.*

The PCS adds a new Section 3 to the bill to make a conforming change pursuant to Senate Bill 679 which became Session Law 2005-192 earlier this session.

CURRENT LAW: Current law does not provide for the transfer of trust accounts or trust account administration to another trust company except when specifically authorized by instrument establishing the trust account.

BILL ANALYSIS: Senate Bill 517 would add a new Part 7 to the Article 24 of Chapter 53.

G.S. 53-420 would permit trust companies to transfer trust accounts to affiliate trust institutions unless the provisions creating and governing the trust account specifically prohibit such a transfer. Such a transfer must be made in writing and requires prior notice to all clients or persons entitled to notice of trust account activity between 90 and 30 days prior to the transfer taking place.

G.S. 53-421 provides that if any person entitled to notice of the transfer objects to the transfer prior to the effective date of the transfer, the transfer will not be made.

G.S. 53-422 provides that the transfer does not affect the liability of the transferring trust institution to the trust beneficiaries. The trust institution accepting the transfer of the account also agrees to assume all responsibilities for the trust account and to be governed by the provisions establishing and governing the account applicable immediately prior to the transfer. The transferring trust institution remains liable and responsible, while affiliated with the transfer trust institution, for the transferee trust's administration of accounts subject to the affiliate transfer.

G.S. 53-423 authorizes a trust institution to appoint another affiliate trust institution to act as its agent for the performance of any acts it is required or authorized to make.

The following definitions in G.S. 53-301 would apply to this new Part:

- (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.
- (3) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with another company.
- (9) "Client" means a person to whom a trust institution owes a duty or obligation under an account.
- (52) "Trust institution" means any company lawfully acting as a fiduciary in a state or in a foreign country.

EFFECTIVE DATE: The bill becomes effective October 1, 2005.

**Walker Reagan, counsel to House Financial Institutions, substantially contributed to this summary.*

S0517e2-SMRQ-CSRQ-56 v2

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Church, Grady (Chairs) for the Committee on FINANCIAL INSTITUTIONS.

Committee Substitute for

SB 519 A BILL TO BE ENTITLED AN ACT TO PROVIDE INTERSTATE SERVICES ON A RECIPROCAL BASIS AND TO MAKE TECHNICAL CORRECTIONS TO ARTICLE 24 OF CHAPTER 53 OF THE GENERAL STATUTES.

☒ With a favorable report as to House committee substitute bill, ^{which changes the title} unfavorable as to original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. _____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. _____) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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D

SENATE BILL 519
PROPOSED HOUSE COMMITTEE SUBSTITUTE S519-PCS35257-RO-42

Short Title: Interstate Trust Services on Reciprocal Basis.

(Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR INTERSTATE SERVICES ON A RECIPROCAL
BASIS AND TO MAKE TECHNICAL CORRECTIONS TO ARTICLE 24 AND
ARTICLE 13 OF CHAPTER 53 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-301(a)(34) reads as rewritten:

"(34) "Office" with respect to a trust institution means its principal office, a trust office, or a representative trust office, but not a branch. With respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the term "office" also means the registered office."

SECTION 2. G.S. 53-301(a) is amended by adding the following new subdivision to read:

"(39a) "Registered office" means a registered office as described in G.S. 55D-30."

SECTION 3. G.S. 53-301(a)(54) reads as rewritten:

"(54) "Trust office" means an office, other than the principal office, at through which a trust institution acts as a fiduciary. fiduciary, including, with respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the registered office."

SECTION 4. G.S. 53-306 reads as rewritten:

"§ 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~~ through such a trust office, representative trust

1 office, or branch that a State trust company or a State bank is authorized to conduct ~~at~~
2 through a trust office, representative trust office, or branch under the laws of this State."

3 **SECTION 5.** G.S. 53-307 reads as rewritten:

4 "**§ 53-307. Trust business of foreign trust institution.**

5 A foreign trust institution that establishes or acquires and maintains one or more
6 trust offices in this State under the provisions of this Part may, subject to the provisions
7 of this Part, also establish or acquire one or more representative trust offices and
8 conduct any activity ~~at~~ through the trust offices or representative trust offices that a
9 State trust company is authorized to conduct ~~at~~ through trust offices or representative
10 trust offices under the laws of this State."

11 **SECTION 6.** G.S. 53-310 reads as rewritten:

12 "**§ 53-310. Offices of State trust companies.**

13 (a) A State trust company may engage in trust business or trust marketing ~~at~~
14 through its principal office and ~~at~~ through each trust office as permitted by this Part.

15 (b) A State trust company may engage in trust marketing ~~at~~ through a
16 representative trust office as permitted by this Part.

17 (c) A State trust company may engage in trust business and trust marketing ~~in~~
18 through out-of-state trust offices or representative trust offices to the same extent
19 permitted for trust institutions located in the host state ~~in~~ through which those
20 out-of-state trust offices or representative trust offices are located, subject to the laws of
21 this State and as provided by rules, orders, or declaratory rulings of the Commissioner."

22 **SECTION 7.** G.S. 53-314 reads as rewritten:

23 "**§ 53-314. Trust business ~~at~~ through a branch or trust office.**

24 An out-of-state trust institution may engage in trust business in this State only if it (i)
25 maintains a trust office in this State as permitted by this Subpart, (ii) was allowed to
26 maintain a trust office in this State under laws, or rules or orders of the Commissioner in
27 effect prior to the date of enactment of this Article, but only to the extent allowed and
28 subject to all limitations and conditions imposed under those laws, rules, or orders, or
29 (iii) is a depository institution that maintains a branch in this State."

30 **SECTION 8.** G.S. 53-317 reads as rewritten:

31 "**§ 53-317. Requirement of notice.**

32 Before establishing or acquiring and maintaining a trust office in this State, an
33 out-of-state trust institution shall provide, or cause its home state regulator to provide,
34 notice to the Commissioner, in the form required by the Commissioner, along with
35 copies of any applications, notices, or similar filings made with the home state regulator
36 regarding the trust office. The notice shall be preceded or accompanied by:

37 (1) Evidence satisfactory to the Commissioner of compliance by the
38 out-of-state trust institution with ~~any~~ all applicable requirements of
39 Article 15 of Chapter 55 of the General Statutes;

40 (2) Evidence satisfactory to the Commissioner of compliance by the
41 out-of-state trust institution with any applicable requirements of its
42 home state regulator for maintenance of capital, for expansion within
43 the borders of the home state, and for acquiring or establishing and
44 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—Unless waived by the Commissioner, 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."

SECTION 9. G.S. 53-318(a) reads as rewritten:

"(a) The out-of-state trust institution may commence business in this State at through 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."

SECTION 10. G.S. 53-319(b) reads as rewritten:

"(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~~all 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—Unless waived by the Commissioner, 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."

SECTION 11. G.S. 53-320(a) reads as rewritten:

"(a) The Commissioner may examine any activity conducted through a trust office or representative trust office maintained in this State by an out-of-state trust institution to determine whether these activities are being conducted ~~the trust office or representative trust office is being operated~~ in compliance with the laws of this State

1 and in accordance with safe and sound practices. The pertinent provisions of Part 4 of
2 this Article shall apply to these examinations."

3 **SECTION 12.** G.S. 53-321(a) reads as rewritten:

4 "(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after
5 notice and opportunity for hearing, the Commissioner may determine:

6 (1) That activities of a trust office maintained by an out-of-state trust
7 institution in this State ~~is being operated~~ are being conducted in
8 violation of the laws of this State or any rule, order, or declaratory
9 ruling issued by the Commissioner, or in an unsafe and unsound
10 manner, or that the out-of-state trust institution does not meet or no
11 longer meets the requirements of this Subpart for maintaining a trust
12 office in this State; or

13 (2) That an out-of-state trust institution is engaged in unauthorized trust
14 activity.

15 In either event, the Commissioner may take any enforcement actions the
16 Commissioner would be authorized to take if the trust office or the out-of-state trust
17 institution were a State trust company and may issue an order temporarily or
18 permanently prohibiting the out-of-state trust institution from engaging in trust business
19 in this State."

20 **SECTION 13.** G.S. 53-322 reads as rewritten:

21 **"§ 53-322. Notice of transactions that cause a change in control.**

22 Each out-of-state trust institution that maintains a trust office or representative trust
23 office in this State, or the home state regulator of the trust institution, shall give at least
24 30 days' notice or, in the case of an emergency ~~transaction, transaction or the cessation~~
25 of trust activity in this State by an out-of-state trust institution or foreign trust institution
26 whose only office in this State is a registered office, as much notice as practicable, to
27 the Commissioner of:

28 (1) Any merger, consolidation, share exchange, or other transaction that
29 would cause a change in control of an out-of-state trust institution (i)
30 that would be subject to Subpart D of Part 3 of this Article if the
31 out-of-state trust institution were a State trust company or (ii) is
32 required to be filed with any bank supervisory agency;

33 (2) Any transfer of all or substantially all of the accounts or account assets
34 of the out-of-state trust institution to another person; or

35 (3) The ~~closing or transfer~~ closing, transfer, or discontinuance of any trust
36 office or representative trust office in this State."

37 **SECTION 14.** G.S. 53-323 reads as rewritten:

38 **"§ 53-323. Foreign trust institution application for trust office or representative**
39 **trust office.**

40 Before establishing or acquiring and maintaining a trust office in this State, a foreign
41 trust institution shall make application to the Commissioner for permission to do so in
42 the English language and in the form required by the Commissioner. The application
43 shall be preceded or accompanied by:

- (1) Evidence satisfactory to the Commissioner of compliance with ~~any~~ all 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~~ Unless waived by the Commissioner, 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."

SECTION 15. G.S. 53-324(a) reads as rewritten:

"(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."

SECTION 16. G.S. 53-326(a) reads as rewritten:

"(a) The Commissioner may examine any activity conducted through a 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 these~~ activities are being conducted 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."

SECTION 17. G.S. 53-327(a) reads as rewritten:

"(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

- (1) That activities of a trust office or representative trust office maintained by a foreign trust institution in this State ~~is being operated~~ are being conducted 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.

1 In either event, the Commissioner may take any enforcement actions the
2 Commissioner would be authorized to take if the foreign trust institution were a State
3 trust company and may issue an order temporarily or permanently prohibiting the
4 foreign trust institution from engaging in trust business or trust marketing in this State."

5 **SECTION 18.** G.S. 53-328 reads as rewritten:

6 **"§ 53-328. Notice of transactions that cause a change in control.**

7 Each foreign trust institution that maintains a trust office or representative trust
8 office in this State, or the home country regulator of the foreign trust institution, shall
9 give at least 30 days' notice (or, in the case of an emergency ~~transaction, transaction or~~
10 the cessation of trust activity in this State by an out-of-state trust institution or foreign
11 trust institution whose only office in this State is a registered office, as much notice as
12 practicable) to the Commissioner, in the form required by the Commissioner, of:

- 13 (1) Any merger, consolidation, share exchange, or other transaction that
14 would cause a change of control of a foreign trust institution:
15 a. That would be subject to Subpart D of Part 3 of this Article if
16 the foreign trust institution were a State trust company; or
17 b. Is required to be filed with any bank supervisory agency;
18 (2) Any transfer of all or substantially all of the accounts or account assets
19 of the foreign trust institution to another person; or
20 (3) ~~The closing or transfer~~ closing, transfer, or discontinuance of any trust
21 office or representative trust office in this State."

22 **SECTION 19.** Article 13 of Chapter 53 of the General Statutes is amended
23 by adding a new section to read:

24 **"§ 53-158.1. Scope of preferred stock provisions.**

25 All provisions of this Article relating to preferred stock apply only to the emergency
26 issuance of preferred stock, pursuant to the provisions of G.S. 53-154, by a bank in
27 conservatorship. The provisions of this Article do not affect the issuance or treatment of
28 preferred stock, or other shares authorized by Chapter 55 of the General Statutes in
29 accordance with G.S. 53-10(a) and G.S. 53-135, provided the issuance of preferred
30 stock or any shares other than common capital stock shall have been approved by the
31 Commissioner of Banks."

32 **SECTION 20.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 519

Short Title: Interstate Trust Services on Reciprocal Basis.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR INTERSTATE SERVICES ON A RECIPROCAL
BASIS AND TO MAKE TECHNICAL CORRECTIONS TO ARTICLE 24 OF
CHAPTER 53 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-301(a)(34) reads as rewritten:

"(34) "Office" with respect to a trust institution means its principal office, a trust office, or a representative trust office, but not a ~~branch~~ branch, with respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the term "office" also means the registered office."

SECTION 2. G.S. 53-301(a) is amended by adding the following new subdivision to read:

"(39a) "Registered office" means a registered office as described in G.S. 55D-30."

SECTION 3. G.S. 53-301(a)(54) reads as rewritten:

"(54) "Trust office" means an office, other than the principal office, at through which a trust institution acts as a ~~fidueiary~~ fiduciary, including, with respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the registered office."

SECTION 4. G.S. 53-306 reads as rewritten:

"§ 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~~ through such a trust office, representative trust office, or branch that a State trust company or a State bank is authorized to conduct at through a trust office, representative trust office, or branch under the laws of this State."

1 **SECTION 5.** G.S. 53-307 reads as rewritten:

2 **"§ 53-307. Trust business of foreign trust institution.**

3 A foreign trust institution that establishes or acquires and maintains one or more
4 trust offices in this State under the provisions of this Part may, subject to the provisions
5 of this Part, also establish or acquire one or more representative trust offices and
6 conduct any activity ~~at~~ through the trust offices or representative trust offices that a
7 State trust company is authorized to conduct ~~at~~ through trust offices or representative
8 trust offices under the laws of this State."

9 **SECTION 6.** G.S. 53-310 reads as rewritten:

10 **"§ 53-310. Offices of State trust companies.**

11 (a) A State trust company may engage in trust business or trust marketing ~~at~~
12 through its principal office and ~~at~~ through each trust office as permitted by this Part.

13 (b) A State trust company may engage in trust marketing ~~at~~ through a
14 representative trust office as permitted by this Part.

15 (c) A State trust company may engage in trust business and trust marketing ~~in~~
16 through out-of-state trust offices or representative trust offices to the same extent
17 permitted for trust institutions located in the host state ~~in~~ through which those
18 out-of-state trust offices or representative trust offices are located, subject to the laws of
19 this State and as provided by rules, orders, or declaratory rulings of the Commissioner."

20 **SECTION 7.** G.S. 53-314 reads as rewritten:

21 **"§ 53-314. Trust business ~~at~~ through a branch or trust office.**

22 An out-of-state trust institution may engage in trust business in this State only if it (i)
23 maintains a trust office in this State as permitted by this Subpart, (ii) was allowed to
24 maintain a trust office in this State under laws, or rules or orders of the Commissioner in
25 effect prior to the date of enactment of this Article, but only to the extent allowed and
26 subject to all limitations and conditions imposed under those laws, rules, or orders, or
27 (iii) is a depository institution that maintains a branch in this State."

28 **SECTION 8.** G.S. 53-317 reads as rewritten:

29 **"§ 53-317. Requirement of notice.**

30 Before establishing or acquiring and maintaining a trust office in this State, an
31 out-of-state trust institution shall provide, or cause its home state regulator to provide,
32 notice to the Commissioner, in the form required by the Commissioner, along with
33 copies of any applications, notices, or similar filings made with the home state regulator
34 regarding the trust office. The notice shall be preceded or accompanied by:

35 (1) Evidence satisfactory to the Commissioner of compliance by the
36 out-of-state trust institution with ~~any~~ all applicable requirements of
37 Article 15 of Chapter 55 of the General Statutes;

38 (2) Evidence satisfactory to the Commissioner of compliance by the
39 out-of-state trust institution with any applicable requirements of its
40 home state regulator for maintenance of capital, for expansion within
41 the borders of the home state, and for acquiring or establishing and
42 maintaining each trust office in this State;

43 (3) Evidence satisfactory to the Commissioner that the out-of-state trust
44 institution is not in a hazardous condition;

- 1 (4) ~~A—Unless waived by the Commissioner, a copy of the resolution~~
2 adopted by the board of directors of the out-of-state trust institution (or
3 similar governing body or a duly-authorized committee thereof)
4 authorizing the trust office; and

- 5 (5) Payment of any fee set by rule."

6 **SECTION 9.** G.S. 53-318(a) reads as rewritten:

7 "(a) The out-of-state trust institution may commence business in this State at
8 through the trust office on the sixty-first day following the date the Commissioner
9 receives the notice described in G.S. 53-317 unless the Commissioner, within 60 days of
10 receiving the notice:

- 11 (1) Specifies an earlier or later date for commencing business,

- 12 (2) Extends the period of review on a determination that the notice raises
13 issues that require additional information or additional time for
14 analysis; or

- 15 (3) Disapproves the proposed trust office."

16 **SECTION 10.** G.S. 53-319(b) reads as rewritten:

17 "(b) An out-of-state trust institution that does not maintain a trust office in this
18 State shall file a notice with the Commissioner, in the form required by the
19 Commissioner, before establishing or acquiring a representative trust office in this State.
20 The notice shall be preceded or accompanied by:

- 21 (1) Evidence satisfactory to the Commissioner of compliance by the
22 out-of-state trust institution with ~~any~~ all applicable requirements of
23 Article 15 of Chapter 55 of the General Statutes;

- 24 (2) Evidence satisfactory to the Commissioner of compliance by the
25 out-of-state trust institution with any applicable requirements of its
26 home state regulator for maintenance of capital, for expansion within
27 the borders of the home state, and for acquiring or establishing and
28 maintaining each representative trust office in this State;

- 29 (3) Evidence satisfactory to the Commissioner that the out-of-state trust
30 institution is not in a hazardous condition;

- 31 (4) ~~A— Unless waived by the Commissioner, a copy of the resolution~~
32 adopted by the board of directors of the out-of-state trust institution (or
33 similar governing body or a duly authorized committee thereof)
34 authorizing the representative trust office;

- 35 (5) The proposed location of each proposed representative trust office; and

- 36 (6) Payment of any fee set by rule."

37 **SECTION 11.** G.S. 53-320(a) reads as rewritten:

38 "(a) The Commissioner may examine any activity conducted through a trust office
39 or representative trust office maintained in this State by an out-of-state trust institution
40 to determine whether these activities are being conducted ~~the trust office or~~
41 ~~representative trust office is being operated~~ in compliance with the laws of this State
42 and in accordance with safe and sound practices. The pertinent provisions of Part 4 of
43 this Article shall apply to these examinations."

44 **SECTION 12.** G.S. 53-321(a) reads as rewritten:

"(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

(1) That activities of a trust office maintained by an out-of-state trust institution in this State ~~is being operated~~ are being conducted 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."

SECTION 13. G.S. 53-322 reads as rewritten:

"§ 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~~, transaction or the cessation of trust activity in this State by an out-of-state trust institution or foreign trust institution whose only office in this State is a registered office, 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~~ closing, transfer, or discontinuance of any trust office or representative trust office in this State."

SECTION 14. G.S. 53-323 reads as rewritten:

"§ 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~~ all 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—~~ Unless waived by the Commissioner, 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."

SECTION 15. G.S. 53-324(a) reads as rewritten:

"(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."

SECTION 16. G.S. 53-326(a) reads as rewritten:

"(a) The Commissioner may examine any activity conducted through a 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— these activities are being conducted 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."

SECTION 17. G.S. 53-327(a) reads as rewritten:

"(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

- (1) That activities of a trust office or representative trust office maintained by a foreign trust institution in this State is being operated— are being conducted 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."

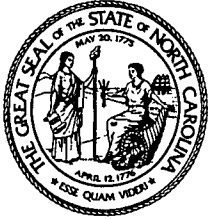
1 **SECTION 18.** G.S. 53-328 reads as rewritten:

2 "**§ 53-328. Notice of transactions that cause a change in control.**

3 Each foreign trust institution that maintains a trust office or representative trust
4 office in this State, or the home country regulator of the foreign trust institution, shall
5 give at least 30 days' notice (or, in the case of an emergency ~~transaction, transaction or~~
6 the cessation of trust activity in this State by an out-of-state trust institution or foreign
7 trust institution whose only office in this State is a registered office, as much notice as
8 practicable) to the Commissioner, in the form required by the Commissioner, of:

- 9 (1) Any merger, consolidation, share exchange, or other transaction that
10 would cause a change of control of a foreign trust institution:
11 a. That would be subject to Subpart D of Part 3 of this Article if
12 the foreign trust institution were a State trust company; or
13 b. Is required to be filed with any bank supervisory agency;
14 (2) Any transfer of all or substantially all of the accounts or account assets
15 of the foreign trust institution to another person; or
16 (3) ~~The closing or transfer~~ closing, transfer, or discontinuance of any trust
17 office or representative trust office in this State."

18 **SECTION 19.** This act becomes effective October 1, 2005.



SENATE BILL 519: Interstate Trust Services on Reciprocal Basis

BILL ANALYSIS

Committee:	House Financial Institutions	Date:	July 26, 2005
Introduced by:	Sen. Clodfelter	Summary by:	Karen Cochrane-Brown
Version:	PCS to First Edition S519-CSRO-42[v.2]		Committee Co-Counsel

SUMMARY: *Senate Bill 519 amends the Trust Companies and Interstate Trust Business Act to permit an out-of-state or foreign trust company to do business in the State on a reciprocal basis even when the trust company does not have a physical office in the State. The bill also makes other technical changes to the Act.*

The Proposed Committee Substitute adds a new section, which clarifies that any references to the issuance of preferred stock in Article 13 of the Banking Law relate only to banks that are placed in conservatorship under that Article. Banks not subject to Article 13 may issue preferred stock or other shares authorized by the Business Corporation Act, with the approval of the Commissioner of Banks.

The PCS also makes the act effective when it becomes law.

CURRENT LAW: Current law requires an out-of-state or foreign trust company to have a physical, principal office in the State from which its business in the State is conducted.

BILL ANALYSIS: Senate Bill 519 amends the Interstate Trust Act to permit out-of-state and foreign trust companies to operate in the State only through the use of a registered office, and to no longer require that these trust companies have a physical office in the State at which trust business done in the State is conducted. The bill provides that all other requirements of the Interstate Trust Act apply to these trust companies including the right of the Commissioner of Banks to regulate all activities conducted by these trust companies through these registered offices. These trust companies would still have to register with the Commissioner to do business in the State as is currently required.

The bill also authorizes the Commissioner of Banks to waive the requirement that the trust company furnish the Commissioner with a copy of the board of directors' resolution authorizing the trust company's operations in the State.

The following definitions in G.S. 53-301 would apply to the changes being made in this bill:

- (22) "Foreign trust institution" means a trust institution, other than a foreign bank, chartered in a foreign country.
- (35) "Out-of-state trust institution" means a trust institution that is neither a State trust institution nor a foreign trust institution.
- (37) "Principal office" means:
 - b. With respect to a trust institution other than a State trust company, its principal place of business.
- (50) "Trust business" means acting as a fiduciary or in other capacities permissible for a trust institution under G.S. 53-331.

Senate Bill 519

Page 2

- (52) "Trust institution" means any company lawfully acting as a fiduciary in a state or in a foreign country.

The bill also adds a new section to Article 13 of Chapter 53, which relates to *Conservation of Bank Assets and Issuance of Preferred Stock*. The amendment clarifies the law governing the issuance of preferred stock by North Carolina banks. Article 13 could be read to be the exclusive means for a bank to issue preferred stock and to require that preferred stock have a cumulative dividend. This provision clarifies that the reference in Article 13 to the issuance of preferred stock relates only to cases in which a bank has been placed in conservatorship under that Article. In other circumstances, a bank can issue preferred stock or other shares authorized by the Business Corporation Act, with the approval of the Commissioner of Banks.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

O. Walker Reagan, counsel to the Senate Judiciary I committee, substantially contributed to this summary.

S0519e1-SMRO-CSRO-42v2

Joyce Fuller (Rep. Church)

From: Neta Grady (Rep. Grady)

Sent: Tuesday, July 19, 2005 2:12 PM

To: @House/Financial Institutions; @HouseCommitteeNotice; Drupti Chauhan (Research); Interested Parties; Karen Cochrane-Brown (Research); Sen. Daniel Clodfelter; Susan Phillips (Rep. Eddins); Valerie Rustin (Rep. Cunningham); Walker Reagan (Research); Wanda Joyner (Sen. Clodfelter)

Subject: House Committee on Financial Institutions Meeting...July 26, 2005

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Financial Institutions will meet as follows:

DAY & DATE: July 26, 2005

TIME: 1:00 pm

LOCATION: 1425

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

SB 517 Account Transfers and Agency Appointments...Senator Clodfelter

SB 519 Interstate Trust Services on Reciprocal Basis... Senator Clodfelter

Respectfully,
Representatives Church and Grady
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **2:00PM** on **July 19, 2005**.

____Principal Clerk
____Reading Clerk - House Chamber

Neta L. Grady , Committee Assistant

FINANCIAL INSTITUTIONS

JULY 26, 2005

ROOM 1425

1:00 P.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND GRADY

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN, MS. DRUPTI CHAUHAN AND MR. WALKER REAGAN

COMMITTEE ASSISTANTS –JOYCE FULLER AND NETA GRADY

SGT.-AT-ARMS – EARL COKER, MARK CONE AND BILL SULLIVAN

PAGES – KHRISTINA CUNNINGHAM (MECKLENBERG COUNTY), DARYL STOREY (HARNETT COUNTY), ROBERT STORY (GUILFORD COUNTY) AND DARYL VEREEN (MECKLENBERG COUNTY)

BILLS TO BE CONSIDERED:

S.B. 517 ACCOUNT TRANSFERS AND AGENCY APPOINTMENTS -
Sen. Clodfelter

S.B. 519 INTERSTATE TRUST SERVICES ON RECIPROCAL BASIS -
Sen. Clodfelter

CLOSING REMARKS

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

JULY 26, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Off the Shelf</i>	<i>First Citizens Bank</i>
<i>Knox Program</i>	<i>Ward and Smith, PA</i>
<i>PAUL Stock</i>	<i>NCBA</i>
<i>Betty Turner</i>	<i>BAC</i>
<i>Ron Ottavio</i>	<i>Wachovia</i>
<i>Lee Hodge</i>	<i>KCLH</i>
<i>Bill Scoggin</i>	<i>KCLH</i>
<i>Dave HARR</i>	<i>NCGA</i>
<i>Amy Fullbright</i>	<i>Huntton : Williams</i>
<i>Kathleen Edwards</i>	<i>UNC-CH</i>
<i>Mark Benson</i>	<i>Capital Group</i>

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

JULY 26, 2005

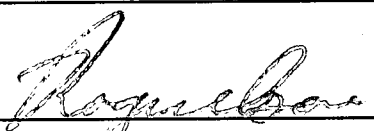

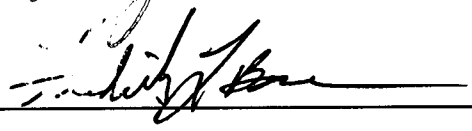
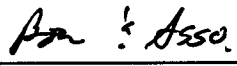
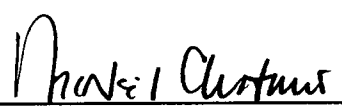
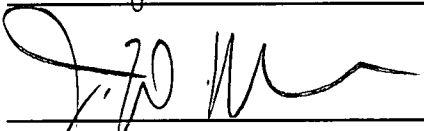
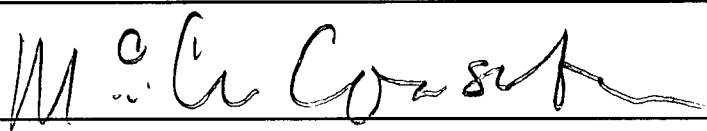
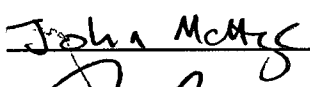
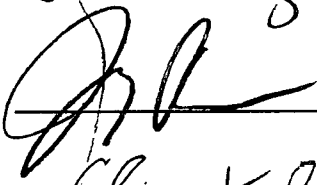
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

	
	
Jeanne E. Blackman	Law Clerk - NCDOT
	Dep. Atty. Gen. for the Comm. Bldg.
Joseph A. Smith, Jr.	NC Commission of B. & L.
	
Bonnie Stevens	Southern Rowan High School 1655 Patterson St. Cherish Grove, NC 28013
	Law Office
	NLAEC
Chip Killian	reborn principles