



HOUSE BILL 755: Bankruptcy Amendments.

2017-2018 General Assembly

Committee:	House Judiciary II	Date:	April 25, 2017
Introduced by:	Rep. Blust	Prepared by:	Susan Sitze
Analysis of:	PCS to First Edition H755-CSSA-19		Committee Counsel

OVERVIEW: *House Bill 755 extends authorization to seek Chapter 9 bankruptcy relief to additional governmental units and updates references to bankruptcy laws appearing throughout the General Statutes.*

BILL ANALYSIS:

Part I. Municipalities and Other Governmental Units Seeking Bankruptcy Relief

Section 1 would provide that the following governmental entities may seek relief under Chapter 9 bankruptcy:

- A taxing district, local improvement district, county, or municipality, with the approval of the Local Government Commission.
- A correction enterprise, with the approval of the Secretary of the Department of Public Safety.
- A local school administrative unit, with the approval of the State Board of Education.
- A community college, with the approval of the State Board of Community Colleges. However, a community college must not seek relief if the filing of a bankruptcy petition would result in the community college's loss of eligibility for federally funded financial aid.

A governmental unit that is denied approval may appeal the decision to superior court. The superior court is to review whether the decision is arbitrary and capricious.

Section 1 also provides that notwithstanding any other provision of the General Statutes, a governmental unit that may seek bankruptcy relief may use or borrow additional working capital as part of a plan of adjustment confirmed by a United States Bankruptcy Court or pursuant to an order issued by a United States Bankruptcy Court.

This section becomes effective October 1, 2017.

Part II. Update References to Bankruptcy Law

Section 2 makes modifications to G.S. 1-245 dealing with notices of judgment discharged through bankruptcy proceedings. The changes correct terminology and make clarifying changes. Section 2 also provides that the effect of any form, order, or certificate filed by the clerk pursuant to the statute is governed by Title 11 of the U.S. Code and other applicable federal law.

Section 3 amends the statute dealing with the filing of a statutory lien on real property. It provides that in addition to claims of lien on real property which must be filed in the office of the clerk of superior court, an additional copy may be filed with the receiver, bankruptcy trustee, debtor in possession, or

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assignee for the benefit of creditors who obtains legal authority over the property. This section makes other technical changes.

Section 4 amends G.S. 44A-13(a) to provide that the filing of a proof of claim under 11 U.S.C. 501 satisfies the requirement for commencement of a civil action.

Section 5 modifies G.S. 47-29 (Recording of bankruptcy records) to now provide that a copy of the petition with the schedules omitted beginning a proceeding under Title 11 of the U.S. Code or of any form, order, or certificate of a U.S. Bankruptcy Court in the proceeding must be recorded in the office of any register of deeds in North Carolina. It also makes technical changes.

Section 6 modifies the definition of "bankrupt" to include (1) a debtor having filed a petition under any applicable chapter of Title 11 of the United States Code, (2) a debtor against which an order for relief has been entered pursuant to 11 U.S.C. § 303, and (3) insolvent under any State insolvent act (was, bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent act).

Section 7 amends G.S. 84-5(a)(2)l, requiring the performance of legal services in insolvency proceedings or before a U.S. Bankruptcy Court (was, before a referee in bankruptcy or in court) to be performed for a corporation by a duly licensed attorney.

Section 8 amends G.S. 96-10(c) to eliminate the provision pertaining to the priority of employer contributions to the Employment Security Administration Fund then or thereafter due in the event of an employer's adjudication in bankruptcy under the Federal Bankruptcy Act of 1898. This section makes other technical changes.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.

Brad Krehely, Staff Attorney, contributed substantially to this summary.