



General Statutes Commission

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MEMORANDUM

To: Senate Judiciary
From: General Statutes Commission
Re: SB 198 (GSC Good Funds Settlement/Comm. Receivership)
Date: March 29, 2021

General Comments

This bill, recommended by the General Statutes Commission, consists of three parts. Part I amends the Good Funds Settlement Act to provide that a settlement agent may disburse settlement proceeds in reliance on a check drawn on the account of or issued by a licensed mortgage lender. Part II makes amendments relating to the N.C. Commercial Receivership Act, enacted last year by S.L. 2020-75. Part III makes technical changes to various laws regulating financial practices.

Parts I and III consist of amendments requested by the N.C. Office of the Commissioner of Banks and technical changes. These parts were circulated to the N.C. Bankers Association. Part II consists of amendments requested by the Bankruptcy Section of the N.C. Bar Association and technical changes. During the drafting process, the General Statutes Commission published all its drafts online. There is no known opposition to any part of this bill.

Specific Comments

Part I of the bill, which consists of **Section 1**, amends G.S. 45A-4, a provision of the Good Funds Settlement Act, as follows:

- In subdivision (a)(7):
 - Provides that a settlement agent may disburse settlement proceeds in reliance on a check drawn on the account of or issued by a licensed mortgage lender without requiring that the mortgage lender also have a surety bond of at least \$300,000. Under the current mortgage licensing article (Article 19B of Chapter 53 of the General Statutes), a licensed mortgage lender must post a surety bond in an amount related to the amount of mortgage loans it originates.
 - Updates an obsolete reference to the former mortgage licensing article (Article 19A of Chapter 53 of the General Statutes) with a reference to the current mortgage licensing article (Article 19B of Chapter 53 of the General Statutes).
 - Updates the obsolete term "mortgage banker" by replacing it with the comparable term "mortgage lender," which is used in the current mortgage licensing article.
- Elsewhere in subsection (a), replaces "may not" with "shall not" to conform to this State's drafting conventions, modernizes the format of a list, and removes unnecessary words.
- In subsection (b), updates an obsolete reference to the former mortgage licensing article with a reference to the successor provision in the current mortgage licensing article, removes a reference to a definition that no longer exists, fixes relative pronouns, and replaces legalese with plain English.

Part II of the bill consists of the following amendments relating to the N.C. Commercial Receivership Act, which was enacted by S.L. 2020-75:

Section 2 amends G.S. 1-502 to delete obsolete references to provisions repealed by S.L. 2020-75.

Section 3 amends G.S. 1-507.20 as follows:

- In subdivision (b)(27), in defining "receivership property," adds a reference to G.S. 131E-91(d)(5) to a nonexclusive list of statutes that exempt certain property from the claims of creditors. This section also replaces legalese with plain English in this definition.
- In the introductory language of subsection (b), removes unnecessary words.
- In subdivision (b)(5), updates an obsolete reference to the former partition chapter (Chapter 46 of the General Statutes) with a reference to the successor provision in the current partition chapter (Chapter 46A of the General Statutes).
- In subdivisions (b)(16) and (b)(24), replaces legalese with plain English.

Section 4 amends G.S. 1-507.24 as follows:

- In subsection (b), replaces "senior district judge" with "chief district court judge" to conform to the rest of the section and replaces legalese with plain English.
- In subsection (a), replaces "may not" with "shall not" to conform to this State's drafting conventions.
- In subsections (e) and (k), replaces legalese with plain English.

Section 5 amends G.S. 1-507.30 as follows:

- In subdivision (a)(2), adds the phrase "and demand" to provide that a debtor shall deliver receivership property to the receiver upon the receiver's appointment and demand.
- Elsewhere in subsection (a), replaces legalese with plain English, fixes punctuation, and makes a stylistic change for greater clarity.
- In subsection (c), fixes punctuation.

Section 6 amends G.S. 1-507.40 to correct the format of an internal citation and to replace "may not" with "shall not" to conform to this State's drafting conventions.

Section 7 amends G.S. 1-507.42 to correct a typographical error in a reference to the U.S. Bankruptcy Code and to fix punctuation.

Section 8 amends G.S. 46A-28 to add back a reference to G.S. 1-502(6) that was deleted by S.L. 2020-75. This reference complements a reciprocating reference in G.S. 1-502(6) to G.S. 46A-28 that provides that a court may appoint a receiver in a partition proceeding of real property.

Section 9 amends G.S. 53C-9-401 to update an obsolete reference with a reference to the N.C. Commercial Receivership Act and makes a conforming change in the section catchline. It also replaces legalese with plain English.

Part III of the bill, consists of the following technical changes to various laws regulating financial practices:

Section 10 amends G.S. 53-249, located in the Refund Anticipation Loan Act, as follows:

- In subdivision (d)(1), replaces "fee for the loan" with "refund anticipation loan fee," which is a defined term for the Refund Anticipation Loan Act.
- Throughout the section, adds missing dashes.
- In subsection (b), fixes the format of an internal citation, makes language gender-neutral, and removes unnecessary words.
- In subsection (c), fixes the format of an internal citation.

Section 11 amends G.S. 53-258 to replace an obsolete reference to the former mortgage licensing article (Article 19A of Chapter 53 of the General Statutes) with a reference to the current mortgage licensing article (Article 19B of Chapter 53 of the General Statutes) and removes unnecessary words.

Section 12 amends G.S. 53-277 as follows:

- In subsection (b), replaces obsolete references to a former money transmitters article (Article 16A of Chapter 53 of the General Statutes) with references to the current money transmitters article (Article 16B of Chapter 53 of the General Statutes). It also updates the obsolete term "authorized agent" by replacing it with the comparable term "authorized delegate," which is a defined term in the current money transmitters article.
- In subsection (a), replaces legalese with plain English, modernizes the format of a list, fixes a relative pronoun, fixes punctuation, and makes a stylistic change for greater clarity.

Section 13 amends G.S. 53-366 as follows:

- In subsection (c), replaces an obsolete reference to a former money transmitters article (Article 16 of Chapter 53 of the General Statutes) with a reference to the current money transmitters article (Article 16B of Chapter 53 of the General Statutes). It also replaces "the sale or issuance of checks" with "money transmission," which is a defined term in the current money transmitters article.
- In subsection (a), replaces legalese with plain English and modernizes the format of a list.
- In subsections (b) and (d), replaces legalese with plain English.
- In subsection (e), adds the phrase "is deemed to be" to clarify the nature of a list, modernizes the format of that list, and removes unnecessary words.
- In subsection (f), updates a reference to federal banking law to conform to the redesignation of the referenced provision and replaces legalese with plain English.
- In subsection (g), fixes punctuation and replaces legalese with plain English.

Section 14 amends G.S. 66-106 as follows:

- In subsection (b):
 - Replaces "mortgage loans" with "residential mortgage loans," which are alternative terms for the same definition in the current mortgage licensing article.
 - Updates obsolete references to terms and statutes from the former mortgage licensing article (Article 19A of Chapter 53 of the General Statutes) with references to the successor terms and statutes from the current mortgage licensing article (Article 19B of Chapter 53 of the General Statutes).

- Replaces legalese with plain English, tabulates a list for greater clarity, fixes punctuation, makes a term singular for greater clarity, removes unnecessary language, and transfers to subsection (a) the substance of the last sentence for greater clarity.
- In subsection (a), fixes punctuation, recodifies definitions to achieve alphabetical order, replaces legalese with plain English, removes the word "a" to cause items in the same list to be parallel, fixes a relative pronoun, and tabulates a list for greater clarity.

Part IV of the bill, which consists of **Section 15**, provides that this act is effective when it becomes law.