

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2002-88
HOUSE BILL 1099**

AN ACT TO PERMIT THE WAIVER OF THE RIGHT OF EQUITY OF REDEMPTION BY FINANCIAL INSTITUTIONS IN CERTAIN SECURITIZED FINANCIAL ASSETS AND TO STUDY ITS APPLICABILITY TO OTHER BUSINESS ENTITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 25 of the General Statutes is amended by adding a new Article to read:

"Article 9A.

"Asset-Backed Securities Facilitation.

"§ 25-9A-101. Definitions.

The following definitions apply in this Article:

- (1) Beneficial interest. – Debt or equity interests or obligations of any type that are issued by a special purpose entity and entitle the holder of the interest or obligation to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.
- (2) Financial asset. – Cash or a contract or instrument that conveys to an entity a contractual right to receive cash or another financial instrument from another entity.
- (3) Securitization. – The issuance by a special purpose entity of evidences of beneficial interest that meets one of the following criteria:
 - a. Its most senior class at the time of issuance is rated in one of the four highest categories assigned to long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by one or more nationally recognized rating organizations.
 - b. It is sold in transactions by an issuer not involving any public offering under section 4 of the Securities Act of 1933 (15 U.S.C. 77d), as amended, or in transactions exempt from registration under the Securities Act of 1933 pursuant to Regulation S issued in accordance with the Act, or any successor regulations issued under the Act.
- (4) Special purpose entity. – A trust, corporation, limited liability company, or other entity demonstrably distinct from the transferor that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets, and in activities related or incidental thereto, in connection with the issuance by the special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from the special purpose entity) of evidences of beneficial interests.
- (5) Transferor. – A financial institution insured by the Federal Deposit Insurance Corporation.

"§ 25-9A-102. Waiver of equity of redemption.

(a) Notwithstanding any other provision of law, except to the extent otherwise set forth in the transaction documents relating to a securitization, all of the following apply:

- (1) Any property, assets, or rights purported to be transferred, in whole or in part, in a securitization or in connection with a securitization are considered no longer the property, assets, or rights of the transferor, to the extent purported to be transferred.
- (2) A transferor in the securitization, its creditors, and, in any insolvency proceeding with respect to the transferor or the transferor's property, a bankruptcy trustee, receiver, debtor, debtor in possession, or similar person, to the extent the transfer is governed by State law, has no rights, legal or equitable, to reacquire, reclaim, recover, repudiate, disaffirm, redeem, or recharacterize as property of the transferor any property, assets, or rights purported to be transferred to the special purpose entity, in whole or in part, by the transferor.
- (3) In the event of a bankruptcy, receivership, or other insolvency proceeding with respect to the transferor or the transferor's property, to the extent the transfer of property, assets, and rights are governed by State law, the property, assets, and rights are not considered part of the transferor's property, assets, rights, or estate.

(b) Nothing in this Article:

- (1) Requires any securitization to be treated as a sale for federal or state tax purposes;
- (2) Precludes the treatment of any securitization as debt for federal or state tax purposes; or
- (3) Changes any applicable laws relating to the perfection and priority of security or ownership interests of persons other than the transferor, any hypothetical lien creditor of the transferor, or, in the event of a bankruptcy, receivership, or other insolvency proceeding with respect to the transferor or its property, a bankruptcy trustee, receiver, debtor, debtor in possession, or other similar person."

SECTION 2. The General Statutes Commission is directed to study and report to the 2003 General Assembly on the question of whether the waiver of the equity of redemption, as permitted under this act for certain financial institutions, should be extended to apply to other business entities in other commercial transactions. The report should include any recommended legislation necessary to implement the Commission's recommendations.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of August, 2002.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:35 p.m. this 22nd day of August, 2002