

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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HOUSE BILL 1099  
Senate Judiciary I Committee Substitute Adopted 7/17/02

Short Title: Financial Institutions Asset Securitization.

(Public)

Sponsors:

Referred to:

April 11, 2001

1 A BILL TO BE ENTITLED  
2 AN ACT TO PERMIT THE WAIVER OF THE RIGHT OF EQUITY OF  
3 REDEMPTION BY FINANCIAL INSTITUTIONS IN CERTAIN SECURITIZED  
4 FINANCIAL ASSETS AND TO STUDY ITS APPLICABILITY TO OTHER  
5 BUSINESS ENTITIES.

6 The General Assembly of North Carolina enacts:

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

9 "Article 9A.

10 "Asset-Backed Securities Facilitation.

11 "**§ 25-9A-101. Definitions.**

12 The following definitions apply in this Article:

- 13 (1) Beneficial interest. – Debt or equity interests or obligations of any type  
14 that are issued by a special purpose entity and entitle the holder of the  
15 interest or obligation to receive payments that depend primarily on the  
16 cash flow from financial assets owned by the special purpose entity.
- 17 (2) Financial asset. – Cash or a contract or instrument that conveys to an  
18 entity a contractual right to receive cash or another financial  
19 instrument from another entity.
- 20 (3) Securitization. – The issuance by a special purpose entity of evidences  
21 of beneficial interest that meets one of the following criteria:
- 22 a. Its most senior class at the time of issuance is rated in one of the  
23 four highest categories assigned to long-term debt or in an  
24 equivalent short-term category (within either of which there  
25 may be sub-categories or graduations indicating relative  
26 standing) by one or more nationally recognized rating  
27 organizations.
- 28 b. It is sold in transactions by an issuer not involving any public  
29 offering under section 4 of the Securities Act of 1933 (15

1                   U.S.C. 77d), as amended, or in transactions exempt from  
2                   registration under the Securities Act of 1933 pursuant to  
3                   Regulation S issued in accordance with the Act, or any  
4                   successor regulations issued under the Act.

5           (4)   Special purpose entity. – A trust, corporation, limited liability  
6           company, or other entity demonstrably distinct from the transferor that  
7           is primarily engaged in acquiring and holding (or transferring to  
8           another special purpose entity) financial assets, and in activities related  
9           or incidental thereto, in connection with the issuance by the special  
10           purpose entity (or by another special purpose entity that acquires  
11           financial assets directly or indirectly from the special purpose entity)  
12           of evidences of beneficial interests.

13           (5)   Transferor. – A financial institution insured by the Federal Deposit  
14           Insurance Corporation.

15   **§ 25-9A-102. Waiver of equity of redemption.**

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

18                   (1)   Any property, assets, or rights purported to be transferred, in whole or  
19                   in part, in a securitization or in connection with a securitization are  
20                   considered no longer the property, assets, or rights of the transferor, to  
21                   the extent purported to be transferred.

22                   (2)   A transferor in the securitization, its creditors, and, in any insolvency  
23                   proceeding with respect to the transferor or the transferor's property, a  
24                   bankruptcy trustee, receiver, debtor, debtor in possession, or similar  
25                   person, to the extent the transfer is governed by State law, has no  
26                   rights, legal or equitable, to reacquire, reclaim, recover, repudiate,  
27                   disaffirm, redeem, or recharacterize as property of the transferor any  
28                   property, assets, or rights purported to be transferred to the special  
29                   purpose entity, in whole or in part, by the transferor.

30                   (3)   In the event of a bankruptcy, receivership, or other insolvency  
31                   proceeding with respect to the transferor or the transferor's property, to  
32                   the extent the transfer of property, assets, and rights are governed by  
33                   State law, the property, assets, and rights are not considered part of the  
34                   transferor's property, assets, rights, or estate.

35           (b)   Nothing in this Article:

36                   (1)   Requires any securitization to be treated as a sale for federal or state  
37                   tax purposes;

38                   (2)   Precludes the treatment of any securitization as debt for federal or state  
39                   tax purposes; or

40                   (3)   Changes any applicable laws relating to the perfection and priority of  
41                   security or ownership interests of persons other than the transferor, any  
42                   hypothetical lien creditor of the transferor, or, in the event of a  
43                   bankruptcy, receivership, or other insolvency proceeding with respect

1                           to the transferor or its property, a bankruptcy trustee, receiver, debtor,  
2                           debtor in possession, or other similar person."

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

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