

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 742
SENATE BILL 1301

AN ACT TO MAKE VARIOUS TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND TO MAKE OTHER TECHNICAL CORRECTIONS TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 1-50(a)(7) is recodified as G.S. 1-47(6). G.S. 1-47(6), as recodified by this section, reads as rewritten:

- "(6) a. ~~No action against~~ Against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical damage or for economic or monetary loss due to negligence or a deficiency in the performance of surveying or ~~platting shall be brought more than 10 platting, within 10 years from~~ after the last act or omission giving rise to the cause of action.
- b. For purposes of this subdivision, 'surveying and platting' means boundary surveys, topographical surveys, surveys of property lines, and any other measurement or surveying of real property and the consequent graphic representation thereof.
- c. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c) and G.S. 1-52(16)."

(b) G.S. 1-52(18) reads as rewritten:

"(18) Against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical damage or economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting as defined in ~~G.S. 1-50(7)-1-47(6).~~"

Sec. 2. G.S. 1-349 reads as rewritten:

"§ 1-349. Procedure where plaintiff is under disability.

If the party by or for whom the land is claimed in the suit is a ~~married woman, minor, minor~~ or insane person, such value is deemed to be real estate, and shall be disposed of as the court considers proper for the benefit of the persons interested therein."

Sec. 3. G.S. 1-538.2(a) reads as rewritten:

"(a) Any person, other than an unemancipated minor, who commits an act that is punishable under G.S. 14-72, 14-72.1, 14-74, 14-90, or 14-100 is liable for civil

damages to the owner of the property. In any action brought by the owner of the ~~property~~ ~~he~~ ~~property~~, the owner is entitled to recover the value of the goods or merchandise, if the goods or merchandise have been destroyed, or any loss of value to the goods or merchandise, if the goods or merchandise were recovered, or the amount of any money lost by reason of the theft or embezzlement or fraud of an employee. In addition to the above, the owner of the property is entitled to recover any consequential damages, and punitive damages, together with reasonable ~~attorneys~~ attorneys' fees. The total compensatory and consequential damages awarded to a plaintiff against a defendant under this section shall not be less than one hundred fifty dollars (\$150.00) and shall not exceed one thousand dollars (\$1,000), except an act punishable under G.S. 14-74 or G.S. 14-90 shall have no maximum limit under this section."

Sec. 4. G.S. 1A-1-30(b)(4) reads as rewritten:

"(4) Unless the court orders otherwise, testimony at a deposition may be recorded by sound recording, sound-and-visual, or stenographic ~~means/methods~~ means. If the testimony is to be taken by other means in addition to or in lieu of stenographic means, the notice shall state the methods by which it shall be taken and shall state whether a stenographer will be present at the deposition. In the case of a deposition taken by stenographic means, the party that provides for the stenographer shall provide for the transcribing of the testimony taken. If the deposition is by sound recording only, the party noticing the deposition shall provide for the transcribing of the testimony taken. If the deposition is by sound-and-visual means, the appearance or demeanor of deponents or attorneys shall not be distorted through camera techniques. Regardless of the method stated in the notice, any party or the deponent may have the testimony recorded by stenographic means."

Sec. 5. G.S. 6-21.3 reads as rewritten:

"§ 6-21.3. Remedies for returned check.

(a) Notwithstanding any criminal sanctions that may apply, a person, firm, or corporation who knowingly draws, makes, utters, or issues and delivers to another any check or draft drawn on any bank or depository that refuses to honor the same because the maker or drawer does not have sufficient funds on deposit in or credit with the bank or depository with which to pay the check or draft upon presentation, and who fails to pay the same amount, any service charges imposed on the payee by a bank or depository for processing the dishonored check, and any processing fees imposed by the payee pursuant to G.S. ~~25-3-512~~ 25-3-506 in cash to the payee within 30 days following written demand therefor, shall be liable to the payee (i) for the amount owing on the check, the service charges, and processing fees and (ii) for additional damages of three times the amount owing on the check, not to exceed five hundred dollars (\$500.00) or to be less than one hundred dollars (\$100.00). If the amount claimed in the first demand letter is not paid, the claim for the amount of the check, the service charges and processing fees, and the treble damages provided for in this subsection may be made by a subsequent letter of demand prior to filing an action. In an action under this section

the court or jury may, however, waive all or part of the additional damages upon a finding that the defendant's failure to satisfy the dishonored check or draft was due to economic hardship.

The initial written demand for the amount of the check, the service charges, and processing fees shall be mailed by certified mail to the defendant at the defendant's last known address and shall be in the form set out in subsection (a1) of this section. The subsequent demand letter demanding the amount of the check, the service charges, the processing fees, and treble damages shall be mailed by certified mail to the defendant at the defendant's last known address and shall be in the form set out in subsection (a2) of this section. If the payee chooses to send the demand letter set out in subsection (a2) of this section, then the payee may not file an action to collect the amount of the check, the service charges, the processing fees, or treble damages until 30 days following the written demand set out in subsection (a2) of this section.

(a1) The first notification letter shall be substantially in the following form:

This letter is written pursuant to G.S. 6-21.3 to inform you that on _____, you made and delivered to the business listed above a check payable to this business containing your name and address in the sum of \$ _____, drawn upon _____ (bank or institution), account # _____. [If the check was received in a face-to-face transaction insert this sentence: This check contained a drivers license identification number from a card with your photograph and mailing address, which was used to identify you at the time the check was accepted.] [If the check was delivered by mail insert this sentence: We have compared your name, address, and signature on the check with the name, address, and signature on file in the account previously established by you or on your behalf, and the signature on the check appears to be genuine.] Also, we have received no information that this was a stolen check, if that is the circumstance.

The check has been dishonored by the bank for the following reasons:

As acceptor of the check, we give you notice to rectify any bank error or other error in connection with the transaction, and to pay the face value of the check, plus the fees as authorized under G.S. ~~25-3-512~~ 25-3-506 and G.S. 6-21.3(a) as follows:

Face value of the check #	\$ _____
Processing fee authorized under G.S. 25-3-512 <u>25-3-506</u>	\$ _____
Bank service fees authorized under G.S. 6-21.3	\$ _____
Total amount due:	\$ _____

If the total amount due listed above is not paid within 30 days of the mailing of this letter, thereafter we may file a civil action to seek civil damages of three times the amount of the check (with a minimum damage

of one hundred dollars (\$100.00) and a maximum damage of five hundred dollars (\$500.00) for allegedly giving a worthless check in violation of law (G.S. 6-21.3), in addition to the amount of the check and the fees specified above.

Appropriate relief will then be sought before a court of proper jurisdiction for full payment of the check plus all costs, treble damages, and witness fees.

If you do not believe you are liable for these amounts, you will have a right to present your defense in court. To pay the check or obtain information, contact the undersigned at the above business location. Cash or a bank official check will be the only acceptable means of redeeming the dishonored check.

If you do not believe that you owe the amount claimed in this letter or if you believe you have received this letter in error, please notify the undersigned at the above business location as soon as possible.

(a2) If the total amount due in subsection (a1) has not been paid within 30 days after the mailing of the notification letter, a subsequent demand letter may be sent and shall be substantially in the following form:

On _____, we informed you that we received a check payable to this business containing your name and address in the sum of \$ _____, drawn upon _____ (bank or institution), account # _____. This check contained identification information which was used to identify you as the maker of the check. Also, we have received no information that this was a stolen check, if that is the circumstance.

The check has been dishonored by the bank for the following reasons:

We notified you that you were responsible for the face value of the check (\$_____) plus the fees authorized under G.S. ~~25-3-512~~25-3-506 (\$_____) and G.S. 6-21.3(a) (\$_____) for a total amount due of \$_____. Thirty days have passed since the mailing of that notification letter, and you have not made payment to us for that total amount due.

Under G.S. 6-21.3, we claim you are now liable for the face value of the check, the fees, and treble damages. The damages we claim are three times the amount of the check or one hundred dollars (\$100.00), whichever is greater, but cannot exceed five hundred dollars (\$500.00). The total amount we claim now due is:

Face value of the check	\$_____
Processing fee authorized under G.S. 25-3-512 <u>25-3-506</u>	\$_____
Bank service fees authorized under G.S. 6-21.3	\$_____

Three times the face value of the
check, with a minimum of \$100.00
and a maximum of \$500.00 \$ _____
Total amount due: \$ _____

Payment of the total amount claimed above within 30 days of the mailing of this letter shall satisfy this civil remedy for the returned check.

If payment has not been received within this 30-day period, we will seek appropriate relief before a court of proper jurisdiction for full payment of the check plus all costs, treble damages, and witness fees.

If you do not believe you are liable for these amounts, you will have a right to present your defense in court. To pay the check or obtain information, contact the undersigned at the above business location. Cash or a bank official check will be the only acceptable means of redeeming the dishonored check.

If you do not believe that you owe the amount claimed in this letter or if you believe you have received this letter in error, please notify the undersigned at the above business location as soon as possible.

(b) In an action under subsection (a) of this section, the presiding judge or magistrate may award the prevailing party, as part of the court costs payable, a reasonable attorney's fee to the duly licensed attorney representing the prevailing party in such suit.

(c) It shall be an affirmative defense, in addition to other defenses, to an action under this section if it is found that: (i) full satisfaction of the amount of the check or draft was made prior to the commencement of the action, or (ii) that the bank or depository erred in dishonoring the check or draft, or (iii) that the acceptor of the check knew at the time of acceptance that there were insufficient funds on deposit in the bank or depository with which to cause the check to be honored.

(d) The remedy provided for herein shall apply only if the check was drawn, made, uttered or issued with knowledge there were insufficient funds in the account or that no credit existed with the bank or depository with which to pay the check or draft upon presentation."

Sec. 6. G.S. 14-3(c) reads as rewritten:

"(c) If any Class 2 or Class 3 misdemeanor is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class 1 misdemeanor. If any Class A1 or Class 1 misdemeanor offense is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class I felony."

Sec. 7. G.S. 14-32.2(b) reads as rewritten:

"(b) Unless the conduct is prohibited by some other provision of law providing for greater ~~punishment.~~ punishment,

(1) Any person who violates subsection (a) above is guilty of a Class C felony where intentional conduct proximately causes the death of the patient or resident;

- (2) Any person who violates subsection (a) above is guilty of a Class E felony where culpably negligent conduct proximately causes the death of the patient or resident;
- (3) Any person who violates subsection (a) above is guilty of a Class F felony where such conduct proximately causes serious bodily injury to the patient or resident."

Sec. 8. G.S. 14-32.2(e) reads as rewritten:

"(e) 'Culpably negligent' shall mean conduct of a ~~willful~~willful, gross and flagrant character, evincing reckless disregard of human life."

Sec. 9. G.S. 14-32.3(c) reads as rewritten:

"(c) Exploitation. – A person is guilty of exploitation if that person is a caretaker of a disabled or elder adult who is residing in a domestic setting, and knowingly, willfully and with the intent to permanently deprive the owner of property or money: (i) makes a false representation, (ii) abuses a position of trust or fiduciary duty, or (iii) coerces, commands, or threatens, and, as a result of the act, the disabled or elder adult gives or loses possession and control of property or money.

If the loss of property or money is of a value of more than one thousand dollars (\$1,000) the caretaker is guilty of a Class H felony. If the loss of property or money is of a value of ~~less than~~ one thousand dollars (\$1,000) or less, the caretaker is guilty of a Class 1 misdemeanor."

Sec. 10. G.S. 14-34.5 reads as rewritten:

"§ 14-34.5. Assault with a firearm on a law enforcement officer.

Any person who commits an assault with a firearm upon a law enforcement officer while the law enforcement officer is in the performance of his or her duties is guilty of a Class E felony."

Sec. 11. G.S. 14-107 reads as rewritten:

"§ 14-107. Worthless checks.

It shall be unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering such check or draft as aforesaid, that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same upon presentation.

It shall be unlawful for any person, firm or corporation to solicit or to aid and abet any other person, firm or corporation to draw, make, utter or issue and deliver to any person, firm or corporation, any check or draft on any bank or depository for the payment of money or its equivalent, being informed, knowing or having reasonable grounds for believing at the time of the soliciting or the aiding and abetting that the maker or the drawer of the check or draft has not sufficient funds on deposit in, or credit with, such bank or depository with which to pay the same upon presentation.

The word 'credit' as used herein shall be construed to mean an arrangement or understanding with the bank or depository for the payment of any such check or draft.

A violation of this section shall be a Class I felony if the amount of the check or draft is more than two thousand dollars (\$2,000). If the amount of the check or draft is

two thousand dollars (\$2,000) or less, a violation of this section shall be a misdemeanor punishable as follows:

- (1) If the amount of the check or draft is not over one hundred dollars (\$100.00), the person is guilty of a Class 2 misdemeanor. Provided, however, if such person has been convicted three times of violating G.S. 14-107, he shall on the fourth and all subsequent convictions (i) be punished as for a Class 1 misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.
- (2) If the amount of the check or draft is over one hundred dollars (\$100.00), the person is guilty of a Class 2 misdemeanor. Provided, however, if such person has been convicted three times of violating G.S. 14-107, he shall on the fourth and all subsequent convictions (i) be punished in the discretion of the district or superior court as for a Class 1 misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.
- (3) If the check or draft is drawn upon a nonexistent account, the person is guilty of a Class 1 misdemeanor.
- (4) If the check or draft is drawn upon an account that has been closed by the drawer prior to time the check is drawn, the person is guilty of a Class 1 misdemeanor.

In deciding to impose any sentence other than an active prison sentence, the sentencing judge shall consider and may require, in accordance with the provisions of G.S. 15A-1343, restitution to the victim for (i) the amount of the check or draft, (ii) any service charges imposed on the payee by a bank or depository for processing the dishonored check, and (iii) any processing fees imposed by the payee pursuant to G.S. ~~25-3-512, 25-3-506,~~ and each prosecuting witness (whether or not under subpoena) shall be entitled to a witness fee as provided by G.S. 7A-314 which shall be taxed as part of the cost and assessed to the defendant."

Sec. 12. G.S. 14-202.2(b) reads as rewritten:

"(b) ~~Indecent liberties between minors~~ A violation of this section is punishable as a Class 1 misdemeanor."

Sec. 13. G.S. 15A-1002(b) reads as rewritten:

"(b) When the capacity of the defendant to proceed is questioned, the court shall hold a hearing to determine the defendant's capacity to proceed. If an examination is ordered pursuant to ~~subdivisions~~ subdivision (1) or (2) below, of this subsection, the hearing shall be held after the examination. Reasonable notice shall be given to the defendant and prosecutor, and the State and the defendant may introduce evidence. The court:

- (1) May appoint one or more impartial medical experts, including forensic evaluators approved under rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, to examine the defendant and return a written report describing the present state of

the defendant's mental health; reports so prepared are admissible at the hearing and the court may call any expert so appointed to testify at the hearing; any expert so appointed may be called to testify at the hearing by the court at the request of either party; or

- (2) In the case of a defendant charged with a misdemeanor only after the examination pursuant to subsection (b)(1) of this section or at any time in the case of a defendant charged with a felony, may order the defendant to a State facility for the mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to determine the defendant's capacity to proceed; in the case of a defendant charged with a felony, if a defendant is ordered to a State facility without first having an examination pursuant to subsection (b)(1) of this section, the judge shall make a finding that an examination pursuant to this subsection would be more appropriate to determine the defendant's capacity; the sheriff shall return the defendant to the county when notified that the evaluation has been completed; the director of the facility shall direct his report on defendant's condition to the defense attorney and to the clerk of superior court, who shall bring it to the attention of the court; the report is admissible at the hearing.

- (3) Repealed by Session Laws 1989, c. 486, s. 1."

Sec. 14. G.S. 15A-1002(b1) reads as rewritten:

"(b1) If the report pursuant to ~~subdivisions~~ subdivision (1) or (2) of subsection (b) of this section indicates that the defendant lacks capacity to proceed, proceedings for involuntary civil commitment under Chapter 122C of the General Statutes may be instituted on the basis of the report in either the county where the criminal proceedings are pending or, if the defendant is hospitalized, in the county in which the defendant is hospitalized."

Sec. 15. G.S. 15A-1340.14(e) reads as rewritten:

"(e) Classification of Prior Convictions From Other Jurisdictions. – Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 or Class 1 misdemeanor in North Carolina, the

conviction is treated as a Class A1 or Class 1 misdemeanor for assigning prior record level points."

Sec. 16. G.S. 15A-1340.22(a) reads as rewritten:

"(a) Limits on Consecutive Sentences. – If the court elects to impose consecutive sentences for two or more misdemeanors and the most serious misdemeanor is classified in Class ~~4~~A1, Class 1, or Class 2, the cumulative length of the sentences of imprisonment shall not exceed twice the maximum sentence authorized for the class and prior conviction level of the most serious offense. Consecutive sentences shall not be imposed if all convictions are for Class 3 misdemeanors."

Sec. 17. G.S. 30-26 reads as rewritten:

"§ 30-26. When above allowance is in full.

If the estate of a deceased be insolvent, or if his personal estate does not exceed ten thousand dollars (\$10,000), the allowances for the year's support of the surviving spouse and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and G.S. 30-17; and the allowances made to them as above prescribed shall preclude them from any further allowances."

Sec. 18. G.S. 47-41.01(b) reads as rewritten:

"(b) If the deed or other instrument is executed by the corporation's chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer signing the name of such corporation by him as such officer, is sealed with its common or corporate seal, and is attested by another person who is its secretary or assistant secretary, trust officer, assistant trust officer, associate trust officer, or, in case of a bank, its secretary, assistant secretary, cashier or assistant cashier, the following form of acknowledgment is sufficient:

.....

(State and county, or other description of place where acknowledgment is taken)

I,,,

(Name of officer taking acknowledgment) (Official title of officer taking acknowledgment)

certify thatpersonally came before

(Name of secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)

me this day and acknowledged that he (or she) is.....

(Secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)

of, a corporation, and that by authority duly

(Name of corporation)

given and as the act of the corporation, the foregoing instrument was signed in its name by its.....,

(Chairman, president, chief executive officer, vice-president, assistant

vice-president, treasurer, or chief financial officer)

sealed with its corporate seal, and attested by himself (or herself) as its

.....

(Secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)

My commission expires

(Date of expiration of commission as notary public)

Witness my hand and official seal, this theday of

.....,
(Month)

.....
(Year)

.....
(Signature of officer taking acknowledgment)

(Official seal, if officer taking acknowledgment has one)

My commission expires

(Date of expiration of commission as notary public)

- (1) The words 'a corporation' following the blank for the name of the corporation may be omitted when the name of the corporation ends with the word 'Corporation' or 'Incorporated.'
- (2) The words 'My commission expires' and the date of expiration of the notary public's commission may be omitted except when a notary public is the officer taking the acknowledgment. The fact that these words and this date may be located in a position on the form different from the position indicated in this subsection does not by itself invalidate the form.
- (3) The words 'and official seal' and the seal itself may be omitted when the officer taking the acknowledgment has no seal or when such officer is the clerk, assistant clerk, or deputy clerk of the superior court of the county in which the deed or other instrument acknowledged is to be registered."

Sec. 19. G.S. 47-46.3 reads as rewritten:

"§ 47-46.3. Affidavit of lost note.

The form of an affidavit of lost note, if required pursuant to G.S. 45-37(a)(6), shall be substantially as follows:

AFFIDAVIT OF LOST NOTE

[Name of affiant] personally appeared before me in _____ County, State of _____, and having been duly sworn (or affirmed) made the following affidavit:

1. The affiant is the owner of the note or other indebtedness secured by the deed of trust, mortgage, or other instrument executed by _____ (grantor, mortgagor), _____ (trustee), and _____ (beneficiary, mortgagee), and recorded in _____ County at _____ (book and page); and
2. The note or other indebtedness has been lost and after the exercise of due diligence cannot be located.
3. The affiant certifies that all indebtedness secured by the deed of trust, mortgage, or other instrument ~~has been~~ was satisfied on _____ (date of satisfaction), and the affiant is responsible for cancellation of the same.

(Signature of affiant)

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 19 _____.

[Signature and seal of notary public or other official authorized to administer oaths]."

Sec. 20. G.S. 53-141 reads as rewritten:

"§ 53-141. Powers.

Industrial banks shall have perpetual duration and succession in their corporate name unless a limited period of duration is stated in their certificate of incorporation. They shall have the powers conferred by paragraphs 1, 2, 3, 5 and 7 of G.S. 55-17, subdivisions (1), (2), and (3) of subsection (a) of G.S. 55-3-02, and subdivision (3) of G.S. 53-43, such additional powers as may be necessary or incidental for the carrying out of their corporate purposes, and in addition thereto the following powers:

- (1) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of indebtedness, and to loan money on real or personal security, and to purchase notes, bills of exchange, acceptances or other choses in action, and to take and receive interest or discounts subject to G.S. 53-43(1).
- (2) To make loans and charge and receive interest at rates not exceeding the rates of interest provided in G.S. 24-1.1 and G.S. 24-1.2.
- (3) To establish branch offices or places of business within the county in which its principal office is located, and elsewhere in the State, after having first obtained the written approval of the Commissioner of Banks, which approval may be given or withheld by the Commissioner of Banks in his discretion. The Commissioner of Banks, in exercising such discretion, shall take into account, but not by way of limitation, such factors as the financial history and condition of the applicant bank, the adequacy of its capital structure, its future earnings

prospects, and the general character of its management. Such approval shall not be given until he shall find

- a. That the establishment of such branch or limited service facility will meet the needs and promote the convenience of the community to be served by the bank, and
- b. That the probable volume of business and reasonable public demand in such community are sufficient to assure and maintain the solvency of said branch or limited service facility and of the existing bank or banks in said community.

Provided, that the Commissioner of Banks shall not authorize the establishment of any branch the paid-in capital of whose parent bank is not sufficient in amount to provide for capital in an amount equal to that required with respect to the establishment of branches of commercial banks under the provisions of G.S. 53-62. For the purposes of this paragraph, the provisions of G.S. 53-62 as to the meaning of the word 'capital' shall be applicable.

A bank may discontinue a branch office upon resolution of its board of directors. Upon the adoption of such a resolution, the bank shall follow the procedures for closing a branch as set forth at G.S. 53-62(e). No branch shall be closed until approved by the Commissioner of Banks.

- (4) Subject to the approval of the Commissioner of Banks and on the authority of its board of directors, or a majority thereof, to enter into such contract, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be available or inure to banking institutions, or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of section eight of the Federal Banking Act of 1933 (section twelve B of the Federal Reserve Act as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or any other act or resolution of Congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporations.
- (5) To solicit, receive and accept money or its equivalent on deposit both in savings accounts and upon certificates of deposit.
- (6) Subject to the approval of the State Banking Commission, to solicit, receive and accept money or its equivalent on deposit subject to check;

provided, however, no such approval shall be given unless and until such industrial bank meets the capital requirements of a commercial bank as set forth in G.S. 53-2.

- (7) To transact any lawful business in aid of the United States in time of war or engagement of the nation's armed forces in hostile military operations."

Sec. 21. G.S. 53-175 reads as rewritten:

"§ 53-175. Fee for returned checks.

A licensee may collect the fee for returned checks to the extent permitted by G.S. ~~25-3-512.~~ 25-3-506. This section shall apply to any loan made by any licensee under this Article."

Sec. 22. G.S. 53-224.21 reads as rewritten:

"§ 53-224.21. Conditions for interstate merger prior to June 1, 1997.

An interstate merger transaction prior to June 1, 1997, involving a North Carolina bank shall not be consummated, and any out-of-state bank resulting from such a merger shall not operate any branch in North Carolina, unless the laws of the home state of each out-of-state bank involved in the interstate merger transaction ~~permits~~ permit North Carolina banks under substantially the same terms and conditions as are set forth in Part 3 to acquire banks and establish and maintain branches in that state by means of interstate merger transactions."

Sec. 23. G.S. 58-14-15 reads as rewritten:

"§ 58-14-15. Penalties provided for unauthorized acts.

When any domestic insurer knowingly engages in the practice of soliciting, advertising or making contracts for insurance in states or jurisdictions in which it is not licensed, the Commissioner may issue an order requiring the company to cease and desist from engaging in such activities and, for the purposes of this section, the acts prohibited by G.S. 58-14-10 and the foregoing sections, are declared to be an unfair trade practice within the meaning of G.S. 58-63-15 and G.S. 58-63-40. When the Commissioner has reason to believe that any domestic company has been engaged or is engaging in the practice of knowingly soliciting, advertising or writing contracts of insurance on risks within a state or jurisdiction in which it is not licensed, the Commissioner shall serve the company with notice of hearing and the hearing shall conform with the hearing procedure set forth in G.S. 58-63-25. Any action taken by the Commissioner after the hearing shall comply with G.S. 58-63-32, and any company aggrieved by an order of the Commissioner is entitled to the judicial review provided in G.S. 58-63-35."

Sec. 24. G.S. 58-30-10(7) reads as rewritten:

- "(7) 'Domestic guaranty association' means the Postassessment Insurance Guaranty Association in Article 48 of this Chapter, as amended; ~~the~~ the North Carolina Self-Insurance Guaranty Association in Article 4 of Chapter 97 of the General Statutes; the Life and Accident and Health Insurance Guaranty Association in Article 62 of this Chapter, as amended; or any other similar entity hereafter created by the General Assembly for the payment of claims of insolvent insurers."

Sec. 25. G.S. 58-35-10(b) reads as rewritten:

"(b) An insurance company duly licensed in this State may make an installment payment charge as set forth in the rate filings and approved by the Commissioner and ~~are~~ is thereby exempt from the provisions of this Article."

Sec. 26. G.S. 58-40-90 reads as rewritten:

"§ 58-40-90. Examination of rating, joint underwriting, and joint reinsurance organizations.

The Commissioner shall, at least once every three years, make or cause to be made an examination of each rating organization licensed pursuant to G.S. 58-40-50 and each advisory organization licensed pursuant to G.S. 58-40-55. The Commissioner may, as often as deemed expedient, make or cause to be made, an examination of each group, association, or other organization referred to in G.S. 58-40-60. This examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall exhibit all books, records, ~~account,~~ accounts, documents or agreements governing its method of operation. In lieu of any such examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of that state."

Sec. 27. G.S. 58-51-15(a)(2)a. reads as rewritten:

"a. After two years from the date of issue or reinstatement of this policy no misstatements except fraudulent misstatements made by the applicant in the application for such policy shall be used to void the policy or deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

The foregoing policy ~~provisions~~ provision may be used in its entirety only in major or catastrophe hospitalization policies and major medical policies each affording benefits of five thousand dollars (\$5,000) or more for any one sickness or ~~injury.~~ Disability ~~injury;~~ disability income policies affording benefits of one hundred dollars (\$100.00) or more per month for not less than 12 ~~months~~ months; and franchise policies. Other policies to which this section applies must delete the words 'except fraudulent misstatements.'

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of G.S. 58-51-15(b), (1), (2), (3), (4) and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium:

1. Until at least age 50 or,

2. In the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provisions (from which the clause in parentheses may be omitted at the insurer's option) under the caption 'INCONTESTABLE.'

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)"

Sec. 28. The catch line of G.S. 58-66-35 reads as rewritten:

"§ 58-66-35. Application to policies; ~~dates; duties of the Commissioner.~~ dates."

Sec. 29. G.S. 62-2(3a) reads as rewritten:

"(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility ~~bills.~~ bills."

Sec. 30. G.S. 62-2(4a) reads as rewritten:

"(4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in ~~plant~~ plants under construction;"

Sec. 31. G.S. 62-2(7) reads as rewritten:

"(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development; ~~and~~."

Sec. 32. G.S. 62-2(8) reads as rewritten:

"(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy ~~supply.~~ supply; and ".

Sec. 33. G.S. 62-200(c) reads as rewritten:

"(c) In reckoning what is a reasonable time for such transportation, it shall be considered that such common carrier has transported household goods within a reasonable time if it has done so in the ordinary time required for transporting such articles by similar carriers between the receiving and shipping stations. The

Commission is authorized to establish reasonable times for transportation by the various modes of carriage which shall be held to be prima facie reasonable, and a failure to transport within such times shall be held prima facie unreasonable. This section shall be construed to refer not only to delay in starting the household goods from the station where ~~it is~~ they are received, but to require the delivery at ~~its~~ their destination within the time specified: Provided, that if such delay shall be due to causes which could not in the exercise of ordinary care have been foreseen or which were unavoidable, then upon the establishment of these facts to the satisfaction of the court trying the cause, the defendant common carrier shall be relieved from any penalty for delay in the transportation of household goods, but it shall not be relieved from the costs of such action. In all actions to recover penalties against a common carrier under this section, the burden of proof shall be upon such carrier to show where the delay, if any, occurred. The penalties provided in this section shall be in addition to the damages recoverable for failure to transport within a reasonable time."

Sec. 34. G.S. 66-234(d) reads as rewritten:

"(d) The registration of the membership camping operator shall be renewed annually with the fee required in G.S. ~~66-226-66-236~~ not later than 30 days prior to the anniversary of the current registration. The application shall include all changes which have occurred in the information included in the application previously filed."

Sec. 35. G.S. 89C-25(7) reads as rewritten:

"(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, ~~railroad,~~ railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work,

not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a registered professional engineer, or in accordance with standards prepared or approved by a registered professional engineer."

Sec. 36. G.S. 90-411 reads as rewritten:

"§ 90-411. Record copy fee.

A health care provider may charge a reasonable fee to cover the costs incurred in searching, handling, copying, and mailing medical records to the patient or the patient's designated representative. The maximum fee shall be fifty cents (50¢) per page, provided that the health care provider may impose a minimum fee of up to ten dollars (\$10.00), inclusive of copying costs. If requested by the patient or the patient's designated representative, nothing herein shall limit a reasonable professional fee charged by a physician for the review and preparation of a narrative summary of the patient's medical record. This section shall only apply with respect to liability claims for personal injury, except that charges for medical records and reports related to claims under Article 1 of Chapter 97 of the General Statutes shall be governed by the fees established by the North Carolina Industrial Commission pursuant to G.S. ~~97-26.4.~~ 97-26.1."

Sec. 37. G.S. 91A-8 reads as rewritten:

"§ 91A-8. Pawnbroker fees; interest rates.

No pawnbroker shall demand or receive an effective rate of interest greater than two percent (2%) per month, and no other charge of any description or for any purpose shall be made by the pawnbroker, except that the pawnbroker may charge, contract for, and recover an additional monthly fee for the following services, including but not limited to:

- (1) Title investigation;
- (2) Handling, appraisal, and storage;
- (3) Insuring a security;
- (4) Application fee;
- (5) Making daily reports to local law enforcement officers; and
- (6) For other expenses, including losses of every nature, and all other services.

In no event may the total of the above listed monthly fees on a pawn transaction exceed twenty percent (20%) of the principal up to a maximum of the following:

First month	\$100.00
Second month	75.00
Third month	75.00
Fourth month and thereafter	50.00

In addition, pawnbrokers may charge fees for returned checks as allowed by G.S. ~~25-3-512.~~ 25-3-506."

Sec. 38. G.S. 153A-405(b) reads as rewritten:

"(b) The proposition submitted to the voters shall be substantially in one or more of the following forms and may include part or all of the bracketed language as appropriate and other such modifications as may be needed to reflect the issued debt

secured by a pledge of faith and credit of any of the consolidating units or the portion of the authorized but unissued debt secured by a pledge of faith and credit of any of the consolidating units the right to issue which is proposed to be assumed by the consolidated city-county:

- (1) 'Shall the County ofand the County ofbe consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said counties on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and ~~credit?~~credit]?
[] YES [] NO'
- (2) 'Shall the City of and the City ofbe consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said cities on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and ~~credit?~~credit]?
[] YES [] NO'
- (3) 'Shall the City of and the County ofbe consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said city or county on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and ~~credit?~~credit]?
[] YES [] NO"'

Sec. 39. G.S. 159I-30(e) reads as rewritten:

"(e) Special obligation bonds and notes shall be special obligations of the unit of local government issuing them. The principal of, and interest and any premium on, special obligation bonds and notes shall be payable solely from any one or more of the sources of payment authorized by this section as may be specified in the proceedings, resolution, or trust agreement under which they are authorized or secured. Neither the faith and credit nor the taxing power of the unit of local government are pledged for the payment of the principal of, or interest or any premium on, any special obligation bonds or notes, and no owner of special obligation bonds or notes has the right to compel the exercise of the taxing power by the unit in connection with any default thereon. Every

special obligation bond and note shall recite in substance that the principal and interest and any premium on such bond or note are payable solely from the sources of payment specified in the bond order or trust, agreement under which it is authorized or secured, provided that:

- (1) Any such use of such sources will not constitute a pledge of the unit's taxing ~~owner~~, power, and
- (2) The municipality is not obligated to pay such principal or interest or premium except from such sources."

Sec. 40. G.S. 160B-20(b) reads as rewritten:

"(b) Assumption of Debt Secured by a Pledge of Faith and Credit by Consolidated City-County. – Subject to the requirement of referendum approval of certain debt assumption for consolidation ~~by the General Assembly and effective upon the effective date of the consolidation~~ provided in G.S. 160B-18(a), upon enactment of the consolidation by the General Assembly and effective upon the effective date of the consolidation provided in G.S. 160B-18(b), the debt secured by a pledge of faith and credit of the consolidating city at the effective date of the consolidation (including formerly authorized but unissued debt secured by a pledge of faith and credit as may have been issued at the time) is assumed by, and becomes a binding obligation of the consolidated city-county, and the faith and credit of the consolidated city-county is pledged to secure any such assumed debt secured by a pledge of faith and credit. In addition, any debt secured by a pledge of faith and credit of the county at the effective date of the consolidation shall become a binding obligation of the consolidated city-county and the faith and credit of the consolidated city-county is pledged to secure any such debt."

Sec. 41. G.S. 160B-21(a) reads as rewritten:

"(a) Publication of Notice of Enactment. – Following ratification of an act of the General Assembly authorizing consolidation, there shall be published once in a newspaper of general circulation in the county a notice of said enactment and, if applicable, the fact that in connection with said enactment there is an assumption by the consolidated city-county of the debt secured by a pledge of faith and credit of the consolidating city and, if applicable, assumption of the right to issue authorized but unissued debt secured by a pledge of faith and credit of the consolidating city and that there is also binding on the consolidated city-county the debt secured by a pledge of faith and credit of the county and, if applicable, there is vested in the consolidated city-county the right to issue authorized but unissued debt secured by a pledge of faith and credit of the county with the following statement appended:

'Any action or proceeding challenging the regularity or validity of this ~~referendum enactment~~ must be begun within 30 days after the date of publication of this ~~statement of result notice~~.'

The notice shall be published by the governing bodies of the units proposed to be consolidated or, if applicable, the interim governing board of the consolidated city-county by their respective clerks or by such other persons as shall be designated by each applicable governing body or board."

Sec. 42. G.S. 75A-13.2(a) reads as rewritten:

"(a) No person shall operate a personal watercraft on the waters of this State at any time between the hours from one hour after sunset to one hour before sunrise. For purposes of this section, 'personal watercraft' means a small ~~class A-1 or A-2~~ vessel which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vehicle."

Sec. 42.1. Section 2 of Chapter 591 of the 1995 Session Laws, (Reg. Sess., 1996), reads as rewritten:

"Sec. 2. G.S. 50B-3 reads as rewritten:

"§ 50B-3. Relief.

(a) The court may grant any protective order or approve any consent agreement to bring about a cessation of acts of domestic violence. The orders or agreements may:

- (1) Direct a party to refrain from such acts;
- (2) Grant to a ~~spouse-party~~ possession of the residence or household of the parties and exclude the other ~~spouse-party~~ from the residence or household;
- (3) Require a party to provide a spouse and his or her children suitable alternate housing;
- (4) Award temporary custody of minor children and establish temporary visitation rights;
- (5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;
- (6) Order either party to make payments for the support of a minor child as required by law;
- (7) Order either party to make payments for the support of a spouse as required by law;
- (8) Provide for possession of personal property of the parties;
- (9) Order a party to refrain from ~~harassing or interfering with the other;~~ doing any or all of the following:
 - a. Threatening, abusing, or following the other party,
 - b. Harassing the other party, including by telephone, visiting the home or workplace, or other means, or
 - c. Otherwise interfering with the other party;
- (10) Award costs and attorney's fees to either party;
- (11) Prohibit a party from purchasing a firearm for a time fixed in the order;
- (12) **(Effective October 1, 1996)** Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is available within a reasonable distance of that party's residence and is approved by the Department of Administration; and
- (13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(b) Protective orders entered or consent orders approved pursuant to this Chapter shall be for a fixed period of time not to exceed one year. Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to one additional year. Protective orders entered or consent orders approved shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides.

(d) **(Effective April 1, 1996)** The sheriff of the county where a domestic violence order is entered shall provide for immediate entry of the order onto the Division of Criminal Information Network and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications of the order shall also be entered."

Sec. 42.2. Section 5 of Chapter 606 of the 1995 Session Laws, (Reg. Sess., 1996) reads as rewritten:

"Sec. 5. This act becomes effective January 1, 1997, except that the requirements imposed by Section 3 of this act on home care agencies become effective January 1, 1998. Sections ~~3-2~~ and ~~4-3~~ apply to applicants who apply for employment on or after the appropriate effective date."

Sec. 42.3. G.S. 1-285 reads as rewritten:

"§ 1-285. Undertaking on appeal.

(a) To render an appeal effectual for any purpose in a civil cause or special proceeding, a written undertaking must be executed on the part of the appellant, with good and sufficient surety, in the sum of two hundred fifty dollars (\$250.00), or any lesser sum as might be adjudged by the court, to the effect that the appellant will pay all costs awarded against him on the appeal, and this undertaking must be filed with the clerk ~~by with whom the judgment or order was entered; filed;~~ or such sum must be deposited with the appropriate clerk by whom the judgment or order was entered, to abide the event of the appeal. of the appellate division in compliance with the North Carolina Rules of Appellate Procedure.

(b) The provisions of this section do not apply to the State of North Carolina, a city or a county or a local board of education, an officer thereof in his official capacity, or an agency thereof."

Sec. 42.4. G.S. 1-286 reads as rewritten:

"§ 1-286. Justification of sureties.

The written undertaking on appeal must be accompanied by the affidavit of one of the sureties that he is worth double the amount specified therein. The respondent may except to the sufficiency of the sureties within ten days after the notice of appeal; and unless they or other sureties justify within the ten days thereafter, the appeal shall be

regarded as if no undertaking had been given. The justification must be upon a notice of not less than five days."

Sec. 42.5. Sections 6 and 7 of Chapter 636 of the 1995 Session Laws (Reg. Sess., 1996) are repealed.

Sec. 43. G.S. 150B-21.3(b) reads as rewritten:

"(b) Permanent Rule. – A permanent rule approved by the Commission becomes effective on the earlier of the thirty-first legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Commission approved the rule, unless a ~~later~~ different effective date applies under this ~~subsection~~ section. If a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. If the agency adopting the rule specifies a later effective date than the date that would otherwise apply under this subsection, the later date applies. A permanent rule that is not approved by the Commission or that is specifically disapproved by a bill ratified by the General Assembly before it becomes effective does not become effective.

A bill specifically disapproves a rule if it contains a provision that refers to the rule by appropriate North Carolina Administrative Code citation and states that the rule is disapproved. Notwithstanding any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill during the first 30 legislative days of any regular session to disapprove a rule that has been approved by the Commission and that either has not become effective or has become effective by executive order under subsection (c) of this section."

Sec. 44. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives