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MINUTES
HOUSE SUBCOMMITTEE FOR FINANCIAL INSTITUTIONS
SUBCOMMITTEE APPOINTED BY THE CHAIRMAN

May 6, 1991

The Subcommittee appointed by the Financial Institutions chairman, Representative Ray Fletcher, met Monday, May 6, 1991, at 5:00 o'clock p.m. in Room 1328 of the Legislative Building. Representative Robert Hunter presided, with the following members present: Representatives Joe Hege, Jr., Liston Ramsey, Harold Brubaker, and Mary McAllister. Robin Johnson, Research person, was also present.

The following bills were discussed:

House Bill 869-Commercial Loans/Fees-was first on the agenda. Representative Brubaker, bill sponsor, brought to the committee a Proposed Committee Substitute for this bill. He moved for adoption of the Proposed Committee Substitute for discussion. The motion carried.

Representative Brubaker explained that this Proposed Committee Substitute makes several major changes in the original bill.

Ed Aycock, NC Bankers Association, was called upon by the bill sponsor to further explain the Proposed Committee Substitute. He stated that Section 3 provides for a new section of Chapter 24 in the Usury Laws. This new section is 24-10.2. He further stated that Subsection A provides for loan modification fee not to exceed the greater of 1% of the

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May 6, 1991

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outstanding balance of the loan at the time of modification or \$25.00. He added that the last sections in the Proposed Committee Substitute relates to House Bills 155-Interest Rates/Revolving Credit and 242-Credit Card Deregulation and Banks.

Chairman Hunter called on committee members for discussion. He then called upon those outside the committee who wished to speak. The following visitors spoke:

Phil Lehmon-Attorney General's office

Bill Rustin-N.C. Retail Merchants Association

Margot Saunders-N.C Legal Services

Al Fuqua-N.C. Bankers Association-who stated that his organization favors deregulation in revolving credit and House Bill 869.

Chairman Hunter called on Representative Brubaker to explain House Bill 53-Assumption Fee Changes-as bill sponsor. He explained that this bill comes from a study commission. A Recommendation from the Mortgage Bankers of the Carolinas for the Passage of House Bill 53 is attached.

Chairman Hunter called on members of the committee and those outside the committee to comment on this bill. Representative Hege made comments from the position of realtors. Georg Teague, Mortgage Bankers Association, spoke on the bill.

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Chairman Hunter told the members they would receive a copy of this bill to study for the next SUB-committee meeting.

The meeting adjourned at 6:00 o'clock p.m.

Respectfully submitted,

Robert Hunter

Robert Hunter, Chairman

Dorothy Anderson

Dorothy Anderson, Committee Clerk

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April 29, 1991

MEMORANDUM

TO: House Subcommittee on Financial Institutions
FROM: Robin S. Johnson, Committee Counsel *Rdau*
RE: House Bill 869 Summary: Commercial Loans/Fees.
Introduced by Representative Brubaker.

Section 1 amends G.S. 24-10 (which sets maximum interest rates on loans secured by real property) to add a new subsection (h) permitting the parties to such a loan to agree to the fee to be charged by a bank, savings and loan association, savings bank, or credit union (or any subsidiary or affiliate thereof) for an appraisal performed by an employee of lender. Section 2 rewrites G.S. 24-9 to permit the parties to a loan, extension of credit, or loan commitment, primarily for a business or commercial purpose, to contract in writing for any level of interest or fees to which they agree. This would replace current law, which permits the parties to agree to any level of interest where the borrower is a "corporation substantially engaged in commercial, manufacturing or industrial pursuits for pecuniary gain." Section 3 adds a new G.S. 24-10.2 permitting: (1) a fee for the modification, renewal, extension, or amendment of terms, not to exceed the greater of 1% of outstanding balance or \$25, for contractual loans or extensions of credit (other than credit card, open-end, or similar loans), installment loans, or equity lines of credit; and (2) an origination fee for contractual loans or extensions of credit (other than credit card, open-end, or similar loans) or installment loans at a level agreed to by the parties if the principal is more than \$25,000, and no more than the greater of 2% of the loan or \$50 for smaller loans. Section 4 makes a conforming amendment to G.S. 24-1.2A to allow lenders to charge a fee for the modification, renewal, extension, or amendment of any of the terms of an equity line of credit.

The act would be effective October 1, 1991.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

H869-CSRH-4
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 869
THIS IS A DRAFT 8-MAY-91 09:29:25
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Loans/Fees.

(Public)

Sponsors:

Referred to: Commerce.

April 18, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CERTAIN LOAN AND APPRAISAL FEES, TO AMEND THE
3 USURY LAWS APPLICABLE TO COMMERCIAL LOANS, TO AUTHORIZE THE
4 IMPOSITION OF AN ANNUAL FEE OR MONTHLY SERVICE CHARGE ON CREDIT
5 PLANS, AND TO AMEND THE LAW REGARDING ASSUMPTION FEES IN
6 CONNECTION WITH CERTAIN REAL ESTATE LOANS.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 24-1.1 reads as rewritten:
9 "\$24-1.1. Contract rates and fees.
10 (a) Except as otherwise provided in this Chapter or other
11 applicable law, the parties to a loan, purchase money loan,
12 advance, commitment for a loan or forbearance other than a credit
13 card, open- end, or similar loan may contract in writing for the
14 payment of interest not in excess of:
15 (1) Where the principal amount is twenty-five thousand
16 dollars (\$25,000) or less, the rate set under ~~subdivision (3)~~
17 subsection (c) of this section; or
18 (2) Any rate agreed upon by the parties where the
19 principal amount is more than twenty-five thousand dollars
20 (\$25,000).

1 (b) As used in this section, interest shall not be deemed in
2 excess of the rates provided where interest is computed monthly
3 on the outstanding principal balance and is collected not more
4 than 31 days in advance of its due date. Nothing in this section
5 shall be construed to authorize the charging of interest on
6 committed funds prior to the disbursement of said funds.

7 ~~(3)~~ (c) On the fifteenth day of each month, the Commissioner
8 of Banks shall announce and publish the maximum rate of interest
9 permitted by subdivision (1) of this section on that date. Such
10 rate shall be the latest published ~~non-competitive~~
11 noncompetitive rate for U.S. Treasury bills with a six-month
12 maturity as of the fifteenth day of the month plus six percent
13 (6%), rounded upward or downward, as the case may be, to the
14 nearest one-half of one percent ($1/2$ of 1%) or sixteen percent
15 (16%), whichever is greater. If there is no nearest one-half of
16 one percent ($1/2$ of 1%), the Commissioner shall round downward to
17 the lower one-half of one percent ($1/2$ of 1%). The rate so
18 announced shall be the maximum rate permitted for the term of
19 loans made under this section during the following calendar month
20 when the parties to such loans have agreed that the rate of
21 interest to be charged by the lender and paid by the borrower
22 shall not vary or be adjusted during the term of the loan. The
23 parties to a loan made under this section may agree to a rate of
24 interest which shall vary or be adjusted during the term of the
25 loan in which case the maximum rate of interest permitted on such
26 loans during a month during the term of the loan shall be the
27 rate announced by the Commissioner in the preceding calendar
28 month.

29 (d) Any lender may charge a party to a loan or extension of
30 credit governed by this section a fee for the modification,
31 renewal, extension, or amendment of any terms of the loan or
32 extension of credit, such fee not to exceed the greater of one
33 quarter of one percent ($1/4$ of 1%) of the balance outstanding at
34 the time of the modification, renewal, extension, or amendment of
35 terms, or fifty dollars (\$50.00).

36 (e) Any lender may charge a party to a loan or extension of
37 credit governed by this section an origination fee not to exceed
38 the greater of one quarter of one percent ($1/4$ of 1%) of the
39 outstanding balance or fifty dollars (\$50.00)."

40 Sec. 2. G.S. 24-1.2 reads as rewritten:

41 "§ 24-1.2. Installment rates and fees.

42 Except as otherwise provided in this Chapter or other
43 applicable law, the parties to a loan, purchase money loan,

Proposed Committee Substitute
HB 1103/SB 757

A BILL TO BE ENTITLED
AN ACT TO INCREASE EXEMPT PROPERTY VALUES AND TO CLARIFY THE EFFECT
OF EXEMPTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1C-1601(a) is rewritten to read as follows:

"(a) Exempt property. -- Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of his creditors:

- (1) The debtors's aggregate interest, not to exceed ~~seven thousand five hundred dollars--(\$7,500)~~ ten thousand (\$10,000) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or a burial plot for the debtor or a dependent of the debtor.
- (2) The debtor's aggregate interest in any property, not to exceed ~~two thousand five hundred dollars--(\$2,500)~~ three thousand five hundred (\$3,500) in value less any amount of the exemption used under subdivision (1).
- (3) The debtor's interest, not to exceed ~~one thousand dollars (\$1,000)~~ one thousand five hundred (\$1,500) in value, in one motor vehicle.
- (4) The debtor's aggregate interest, not to exceed ~~two thousand five hundred dollars--(\$2,500)~~ three thousand eight hundred (\$3,800) in value for the debtor plus ~~five hundred dollars--(\$500)~~ seven hundred fifty (\$750) for each dependent of the debtor, not to exceed ~~two thousand dollars--(\$2,000)~~ three thousand (\$3,000) total for dependents, in household furnishings household, goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or dependent of the debtor.
- (5) The debtor's aggregate interest, not to exceed ~~five hundred dollars--(\$500)~~ seven hundred fifty (\$750) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.
- (6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.
- (7) Professionally prescribed health aids for the debtor or a dependent of the debtor.
- (8) Compensation for personal injury or compensation for the death of a person upon whom the debtor was dependent for

support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation."

Section 2. G.S. 1C-1601 is further amended by adding a new sub-section (g) to read as follows:

"(g) Effect of Exemptions. --- Notwithstanding any other provision of law, a creditor shall not obtain possession of a debtor's household goods and furnishings in which the creditor holds a nonpossessory, nonpurchase money security interest until ~~he~~ has fully complied with the procedures required by G.S. 1C-1603.

Section 3. The first paragraph of G.S. 1C-1603(a)(4) is rewritten to read as follows:

"(4) After judgment, except as provided in G.S. 1C-1603(a)(3), ~~or when exemptions have already been designated,~~ the clerk may not issue an execution or writ of possession unless, within 1 year preceding the time an execution or writ of possession is sought, notice ~~from issued by the~~ court has been served on the judgment debtor advising him of his rights. The judgment creditor must attempt service of the notice ~~cause the notice to be served on the debtor by either the sheriff or certified mail, at the option of the creditor,~~ as provided G.S. 1A-1, Rule 4(j)(1). If the judgment debtor is not served by one of these methods, cannot be served as provided above, the judgment creditor ~~shall~~ may serve him by mailing a copy of the notice to the judgment debtor at his last known address. Proof of service by certified or registered mail or personal service is as provided G.S. 1A-1, Rule 4. The judgment creditor may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service. The notice be substantially in the following form:"

Section 4. This Act shall be effective October 1, 1991.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 1103*

Short Title: Property Exemptions.

(Public)

Sponsors: Representative Payne.

Referred to: Courts, Justice, Constitutional Amendments, and Referenda.

April 24, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE EXEMPT PROPERTY VALUES AND TO CLARIFY
3 THE EFFECT OF EXEMPTIONS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 1C-1601 reads as rewritten:

6 "§ 1C-1601. What property exempt; waiver; exceptions.

7 (a) Exempt property. -- Each individual, resident of this State, who is a debtor is
8 entitled to retain free of the enforcement of the claims of his creditors:

- 9 (1) The debtor's aggregate interest, not to exceed ~~seven thousand five~~
10 ~~hundred dollars (\$7,500)~~ eleven thousand five hundred dollars
11 (\$11,500) in value, in real property or personal property that the
12 debtor or a dependent of the debtor uses as a residence, in a
13 cooperative that owns property that the debtor or a dependent of
14 the debtor uses as a residence, or in a burial plot for the debtor or
15 a dependent of the debtor.
- 16 (2) The debtor's aggregate interest in any property, not to exceed ~~two~~
17 ~~thousand five hundred dollars (\$2,500)~~ three thousand eight
18 hundred dollars (\$3,800) in value less any amount of the
19 exemption used under subdivision (1).
- 20 (3) The debtor's interest, not to exceed ~~one thousand dollars (\$1,000)~~
21 one thousand five hundred dollars (\$1,500) in value, in one motor
22 vehicle.
- 23 (4) The debtor's aggregate interest, not to exceed ~~two thousand five~~
24 ~~hundred dollars (\$2,500)~~ three thousand eight hundred dollars

1 ~~(\$3,800)~~ in value for the debtor plus ~~five hundred dollars (\$500)~~
2 seven hundred fifty dollars (\$750.00) for each dependent of the
3 debtor, not to exceed ~~two thousand dollars (\$2,000)~~ three thousand
4 dollars (\$3,000) total for dependents, in household furnishings,
5 household goods, wearing apparel, appliances, books, animals,
6 crops, or musical instruments, that are held primarily for the
7 personal, family, or household use of the debtor or a dependent of
8 the debtor.

9 (5) The debtor's aggregate interest, not to exceed ~~five hundred dollars~~
10 ~~(\$500)~~ seven hundred fifty dollars (\$750.00) in value, in any
11 implements, professional books, or tools of the trade of the debtor
12 or the trade of a dependent of the debtor.

13 (6) Life insurance as provided in Article X, Section 5 of the
14 Constitution of North Carolina.

15 (7) Professionally prescribed health aids for the debtor or a dependent
16 of the debtor.

17 (8) Compensation for personal injury or compensation for the death of
18 a person upon whom the debtor was dependent for support, but
19 such compensation is not exempt from claims for funeral, legal,
20 medical, dental, hospital, and health care charges related to the
21 accident or injury giving rise to the compensation.

22 (b) Definition. -- 'Value' as used in this Article means fair market value of an
23 individual's interest in property, less valid liens superior to the judgment lien sought
24 to be enforced.

25 (c) Waiver. -- The exemptions provided in this Article and in Sections 1 and 2 of
26 Article X of the North Carolina Constitution, cannot be waived except by:

27 (1) Transfer to a third party of property ~~allocated~~ which may be
28 claimed as exempt (and in that event only as to the specific
29 property transferred), or

30 (2) Written waiver, after judgment, approved by the clerk or district
31 court judge. The clerk or district court judge must find that the
32 waiver is made freely, voluntarily, and with full knowledge of the
33 debtor's rights to exemptions and that he is not required to waive
34 ~~them; them.~~

35 (3) ~~Failure to assert the exemption after notice to do so pursuant to~~
36 ~~G.S. 1C-1603. The clerk or district court judge may relieve such a~~
37 ~~waiver made by reason of mistake, surprise or excusable neglect, to~~
38 ~~the extent that the rights of innocent third parties are not affected.~~

39 (d) Recent purchases. -- The exemptions provided in subdivisions (2), (3), (4) and
40 (5) of subsection (a) of this section are inapplicable with respect to tangible personal
41 property purchased by the debtor less than 90 days preceding ~~the initiation of~~
42 ~~judgment collection proceedings or the filing of a petition for bankruptcy.~~

43 (e) Exceptions. -- The exemptions provided in this Article are inapplicable to
44 claims

- 1 (1) Of the United States or its agencies as provided by federal law;
2 (2) Of the State or its subdivisions for taxes, appearance bonds or
3 fiduciary bonds;
4 (3) Of lien by a laborer for work done and performed for the person
5 claiming the exemption, but only as to the specific property
6 affected;
7 (4) Of lien by a mechanic for work done on the premises, but only as
8 to the specific property affected;
9 (5) For payment of obligations contracted for the purchase of the
10 specific real property affected;
11 (6) Repealed by Session Laws 1981 (Reg. Sess., 1982), c. 1224, s. 6,
12 effective September 1, 1982;
13 (7) For contractual security interests in the specific property affected;
14 provided, that the exemptions shall apply to the debtor's
15 household goods notwithstanding any contract for a nonpossessory,
16 nonpurchase money security interest in any such goods;
17 (8) For statutory liens, on the specific property affected, other than
18 judicial liens;
19 (9) For child support, alimony or distributive award order pursuant to
20 Chapter 50 of the General Statutes.

21 (f) Federal Bankruptcy Act. -- The exemptions provided in The Bankruptcy Act,
22 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions
23 provided by this Article shall apply for purposes of The Bankruptcy Act, 11 U.S.C. §
24 522(b).

25 (g) Effect of exemptions. -- Notwithstanding any other provision of law, a creditor
26 shall not obtain possession of any property which may be claimed as exempt under
27 this section, until the procedures required by G.S. 1C-1603 have been fully complied
28 with.

29 Sec. 2. G.S. 1C-1603(a) reads as rewritten:

30 "(a) Motion or Petition; Notice. --

- 31 (1) A judgment debtor may have his exempt property designated by
32 motion after judgment has been entered against him.
33 (2) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s.
34 10, effective September 1, 1982.
35 (3) The clerk or district court judge may determine that particular
36 property is not exempt even though there has been no proceeding
37 to designate the exemption.
38 (4) ~~After judgment, except~~ Except as provided in ~~G.S. 1C-1603(a)(3)~~
39 ~~or when exemptions have already been designated, G.S. 1C-~~
40 ~~1603(a)(3),~~ the clerk may not issue an execution or writ of
41 possession ~~unless~~ unless, within 60 days preceding the time an
42 execution or writ of possession is sought, notice from issued by the
43 court has been served upon the judgment debtor advising him of
44 his rights. The judgment creditor must cause the notice to be

served on the debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as provided above, the judgment creditor may serve him by mailing a copy of the notice to the judgment debtor at his last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The judgment creditor may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service. The notice must be substantially in the following form:

NORTH CAROLINA
.....COUNTY

IN THE GENERAL COURT
OF JUSTICE DISTRICT
COURT DIVISION
CvD

.....
Judgment Creditor

vs.

.....

) NOTICE OF
) PETITION (OR
) MOTION) TO SET
) OFF DEBTOR'S
) EXEMPT PROPERTY

GREETINGS:

You have been named as a 'judgment debtor' in a proceeding initiated by a 'judgment creditor'. A 'judgment debtor' is a person who a court has declared owes money to another, the 'judgment creditor'. The purpose of this proceeding is to make arrangements to collect that debt from you personally or from property you own.

It is important that you respond to this notice no later than 20 days after you receive it because you may lose valuable rights if you do nothing. You may wish to consider hiring an attorney to help you with this proceeding to make certain that you receive all the protections to which you are entitled under the North Carolina Constitution and laws."

Sec. 3. G.S. 1C-1603(e) reads as rewritten:

"(e) Procedure for Setting Aside Exempt Property. --

- (1) When served with the notice provided in G.S. 1C-1603(a)(4), the judgment debtor may either file a motion to designate his exemptions with a schedule of assets or may request, in writing, a hearing before the clerk to claim exemptions.
- (2) If the judgment debtor does not file a motion to designate exemptions with a schedule of ~~assets within 20 days after notice of his rights was served in accordance with G.S. 1C-1603(a)(4) or if he does not request a hearing before the clerk within 20 days after service of the notice of rights and appear at the requested hearing, the judgment debtor has waived the exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina~~

1 ~~Constitution. Upon request of the judgment creditor, the clerk~~
2 ~~shall issue a writ of execution or writ of possession. assets, the~~
3 ~~clerk may issue a writ of execution or a writ of possession after 30~~
4 ~~days from the date the Notice of Right To Claim Exempt Property~~
5 ~~has been served upon the debtor in accordance with G.S. 1C-~~
6 ~~1603(a).~~

7 (2a) The judgment debtor may file a motion to claim exempt property
8 at any time. Such motion shall be ineffective as to property which
9 has been sold to a third party. If execution has issued, within 24
10 hours after a motion to exempt property is filed, the clerk shall
11 notify the sheriff of the motion and the sheriff shall cease execution
12 proceedings until the process set forth in G.S. 1C-1603(e) has been
13 completed. If execution proceedings are suspended pursuant to
14 this section, the 90-day period set forth in G.S. 1-310 shall be
15 tolled during the period of suspension. If the property has been
16 removed from the possession of the debtor, it shall be returned to
17 the debtor upon payment to the creditor of the costs incurred by
18 the judgment creditor in levying on the property.

19 (3) If the judgment debtor moves to designate his exemptions by filing
20 a motion and schedule of assets, the judgment creditor is served as
21 provided in G.S. 1C-1603(d).

22 (4) If the judgment debtor requests a hearing before the clerk to claim
23 exemptions, the clerk sets a hearing date and gives notice of the
24 hearing to the judgment debtor and judgment creditor. At the
25 hearing, the judgment debtor may claim his exemptions.

26 (5) The judgment creditor has 10 days from the date served with a
27 motion and schedule of assets or from the date of a hearing to
28 claim exemptions to file an objection to the judgment debtor's
29 schedule of exemptions.

30 (6) If the judgment creditor files no objection to the schedule filed by
31 the judgment debtor or claimed at the requested hearing, the clerk
32 shall enter an order designating the property allowed by law and
33 scheduled by the judgment debtor as exempt property. Upon
34 request of the judgment creditor, the clerk shall issue an execution
35 or writ of possession except for exempt property.

36 (7) If the judgment creditor objects to the schedule filed or claimed by
37 the judgment debtor, the clerk must place the motion for hearing
38 by the district court judge, without a jury, at the next civil session.

39 (8) The district court judge must determine the value of the property.
40 The district court judge or the clerk, upon order of the judge, may
41 appoint a qualified person to examine the property and report its
42 value to the judge. Compensation of that person must be advanced
43 by the person requesting the valuation and is a court cost having
44 priority over the claims.

- 1 (9) The district court judge must enter an order designating exempt
2 property. Supplemental reports and orders may be filed and
3 entered as necessary to implement the order.
- 4 (10) Where the order designating exemptions indicates excess value in
5 exempt property, the clerk, in an execution, may order the sale of
6 property having excess value and appropriate distribution of the
7 proceeds.
- 8 (11) The clerk or district court judge may permit a particular item of
9 property having value in excess of the allowable exemption to be
10 retained by the judgment debtor upon his making available to
11 judgment creditors money or property not otherwise available to
12 them in an amount equivalent to the excess value. Priorities of
13 judgment creditors are the same in the substituted property as they
14 were in the original property.
- 15 (12) Appeal from a designation of exempt property by the clerk is to
16 the district court judge. A party has 10 days from the date of entry
17 of an order to appeal. Appeal from a designation of exempt
18 property by a district court judge is to the Court of Appeals.
19 Decisions of the Court of Appeals with regard to questions of
20 valuation of property are final as provided in G.S. 7A-28. Other
21 questions may be appealed as provided in G.S. 7A-30 and 7A-31."
- 22 Sec. 4. This act becomes effective October 1, 1991.