

2001 Del. ALS 214, \*; 73 Del. Laws 214;  
2001 Del. HB 348

DELAWARE ADVANCE LEGISLATIVE SERVICE  
STATENET

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DELAWARE SECOND YEAR OF THE 141ST GENERAL ASSEMBLY

73RD LEGISLATURE  
PUBLIC ACT 214

HOUSE BILL 348

2001 Del. ALS 214; 73 Del. Laws 214; 2001 Del. HB 348

**SYNOPSIS:** AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO SECURITIZATIONS OF PROPERTY, ASSETS OR RIGHTS, TO PROVIDE FOR THE RIGHTS OF A TRANSFEROR OF PROPERTY, ASSETS OR RIGHTS AND THE RIGHTS OF THE TRANSFEROR'S CREDITORS OR, IN ANY INSOLVENCY PROCEEDING WITH RESPECT TO THE TRANSFEROR OR THE TRANSFEROR'S PROPERTY, A BANKRUPTCY TRUSTEE, RECEIVER, DEBTOR, DEBTOR IN POSSESSION OR SIMILAR PERSON, IN PROPERTY, ASSETS OR RIGHTS PURPORTED TO BE TRANSFERRED AS A PART OF A SECURITIZATION TRANSACTION, AND TO PROVIDE THAT CERTAIN OF THESE RIGHTS DEPEND UPON THE PROVISIONS SET FORTH IN THE TRANSACTION DOCUMENTS RELATING TO THE SECURITIZATION TRANSACTION.

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To view the next section, type .np\* TRANSMIT.  
To view a specific section, transmit p\* and the section number. e.g. p\*1  
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

**[\*1]** Section 1. Amend Title 6 of the Delaware Code by adding a new chapter to read as follows:

"Chapter 27A. Asset-Backed Securities Facilitation Act.

Section 2701A. Title.

This Act may be referred to as the "Asset-Backed Securities Facilitation Act".

Section 2702A. Intent.

It is intended by the General Assembly that the term "securitization transaction" shall be construed broadly.

Section 2703A. Securitization transaction.

(a) Notwithstanding any other provision of law including, but not limited to, Sections 9-506 of this title 'Debtor's right to redeem collateral' as said section existed prior to July 1, 2001, and 9-623 of the title, 'Right to redeem collateral' that became effective July 1, 2001, to the

extent set forth in the transaction documents relating to a securitization transaction:

(1) Any property, assets or rights purported to be transferred, in whole or in part, in the securitization transaction shall be deemed to no longer be the property, assets or rights of the transferor;

(2) A transferor in the securitization transaction, its creditors or, in any insolvency proceeding with respect to the transferor or the transferor's property, a bankruptcy trustee, receiver, debtor, debtor in possession or similar person, to the extent the issue is governed by Delaware law, shall have no rights, legal or equitable, whatsoever to reacquire, reclaim, recover, repudiate, disaffirm, redeem or recharacterize as property of the transferor any property, assets or rights purported to be transferred, in whole or in part, by the transferor; and

(3) In the event of a bankruptcy, receivership or other insolvency proceeding with respect to the transferor or the transferor's property, to the extent the issue is governed by Delaware law, such property, assets and rights shall not be deemed to be part of the transferor's property, assets, rights or estate.

(b) Nothing contained in this chapter shall be deemed to require any securitization transaction to be treated as a sale for federal or state tax purposes or to preclude the treatment of any securitization transaction as debt for federal or state tax purposes or to change any applicable laws relating to the perfection and priority of security or ownership interests of persons other than the transferor, hypothetical lien creditor or, in the event of a bankruptcy, receivership or other insolvency proceeding with respect to the transferor or its property, a bankruptcy trustee, receiver, debtor, debtor in possession or similar person.

It is not the purpose of this Chapter to change the tax treatment of securitizations that take place pursuant to this Chapter."

**[\*2]** Section 2. Any Act which becomes effective after the effective date of this Act shall not be construed to amend or repeal any provision of this Act unless the subsequent Act specifically references this Act and states that this Act is repealed or states the manner in which this Act is to be amended. Without limiting the foregoing, 72 Del. Laws, c. 401 does not amend or repeal any provision of this Act.

**[\*3]** Section 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application and, to that end, the provisions of the Act are declared to be severable.

**[\*4]** Section 4. All laws or parts of laws which conflict with this Act are hereby repealed.

**HISTORY:**

Approved by the Governor January 17, 2002

**SPONSOR:** Stone

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