

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 414

Commerce Committee Substitute Adopted 4/4/95

House Committee Substitute Favorable 5/23/95

House Committee Substitute #2 Favorable 6/8/95

Short Title: Interstate Branching Early Opt-In.

(Public)

Sponsors:

Referred to:

March 20, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO "OPT-IN" FOR INTERSTATE BRANCHING AUTHORITY UNDER
3 THE RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY
4 ACT OF 1994, AND TO MAKE A CONFORMING CHANGE TO THE REVENUE
5 LAWS.

Whereas, section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, provides that before June 1, 1997, states may enact legislation that expressly permits interstate branching legislation that applies equally to all banks; and

Whereas, the General Assembly of North Carolina enacted the North Carolina Interstate Branching Act as Chapter 191 of the 1993 Session Laws, in order to permit nationwide reciprocal interstate branching; and

Whereas, the General Assembly desires to conform the North Carolina Interstate Branching Act to Public Law 103-328 and to confirm that it elects to opt for immediate interstate branching authority; Now, therefore,

6 The General Assembly of North Carolina enacts:

7 Section 1. Article 17A of Chapter 53 of the General Statutes is repealed.

1 Sec. 2. Chapter 53 of the General Statutes is amended by adding a new Article
2 to read:

3 **"ARTICLE 17B.**
4 **"INTERSTATE BRANCH BANKING.**
5 **"PART 1. DEFINITIONS.**

6 **"§ 53-224.9. Definitions.**

7 The following definitions apply in this Article:

- 8 (1) 'Acquisition of a branch' means the acquisition of a branch located in a
9 host state without engaging in an 'interstate merger transaction' as
10 defined in Part 2 of this Article.
- 11 (2) 'Bank' has the meaning set forth in 12 U.S.C. § 1813(h); provided that
12 the term 'bank' shall not include any 'foreign bank' as defined in 12
13 U.S.C. § 3101(7), except that such term shall include any foreign bank
14 organized under the laws of a territory of the United States, Puerto Rico,
15 Guam, American Samoa, or the Virgin Islands, the deposits of which
16 are insured by the Federal Deposit Insurance Corporation.
- 17 (3) 'Bank holding company' has the meaning set forth in 12 U.S.C. §
18 1841(a)(1).
- 19 (4) 'Bank supervisory agency' means:
- 20 a. The Office of the Comptroller of the Currency, the Federal
21 Deposit Insurance Corporation, the Board of Governors of the
22 Federal Reserve System, and any successor to these agencies;
23 and
- 24 b. Any agency of another state with primary responsibility for
25 chartering and supervising banks.
- 26 (5) 'Branch' means a full service office of a bank through which it receives
27 deposits, checks are paid, or loans are made, other than its principal
28 office. Any of the functions or services authorized to be engaged in by
29 a bank may be carried out in an authorized branch office.
- 30 (6) 'Commissioner' means the Commissioner of Banks for the State of
31 North Carolina.
- 32 (7) 'Control' has the meaning set forth in 12 U.S.C. § 1841(a)(2).
- 33 (8) 'De novo branch' means a branch of a bank located in a host state which
34 (i) is originally established by the bank as a branch and (ii) does not
35 become a branch of the bank as a result of (A) the acquisition of another
36 bank or a branch of another bank, or (B) the merger, consolidation, or
37 conversion involving any such bank or branch.
- 38 (9) 'Home state' means:
- 39 a. With respect to a national bank, the state in which the main office
40 of the bank is located;
- 41 b. With respect to a state bank, the state by which the bank is
42 chartered;

- 1 c. With respect to a foreign bank, the state determined to be the
2 home state of such foreign bank under 12 U.S.C. § 103(c).
- 3 (10) 'Host state' means a state, other than the home state of a bank, in which
4 the bank maintains, or seeks to establish and maintain a branch.
- 5 (11) 'Interstate merger transaction' means:
- 6 a. The merger or consolidation of banks with different home states,
7 and the conversion of branches of any bank involved in the
8 merger or consolidation into branches of the resulting bank; or
- 9 b. The purchase of all or substantially all of the assets, including all
10 or substantially all of the branches, of a bank whose home state is
11 different from the home state of the acquiring bank.
- 12 (12) 'North Carolina bank' means a bank whose home state is North Carolina.
- 13 (13) 'North Carolina State bank' means a bank chartered under the laws of
14 North Carolina.
- 15 (14) 'Out-of-state bank' means a bank whose home state is a state other than
16 North Carolina.
- 17 (15) 'Out-of-state state bank' means a bank chartered under the laws of any
18 state other than North Carolina.
- 19 (16) 'Resulting bank' means a bank that has resulted from an interstate
20 merger transaction under this Article.
- 21 (17) 'State' means any state of the United States, the District of Columbia,
22 any territory of the United States, Puerto Rico, Guam, American Samoa,
23 the Trust Territory of the Pacific Islands, the Virgin Islands, and the
24 Northern Mariana Islands.

25 "Part 2. Interstate de novo Branching and Acquisition of Branches.

26 "§ 53-224.10. Purpose.

27 It is the express intent of this Part to permit interstate branching under sections 102
28 and 103 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,
29 Public Law 103-328, in accordance with the provisions in this Part.

30 "§ 53-224.11. Interstate branching by North Carolina State banks.

31 (a) With the prior approval of the Commissioner, any North Carolina State bank
32 may establish and maintain a de novo branch or acquire a branch in a state other than
33 North Carolina.

34 (b) A North Carolina State bank desiring to establish and maintain a branch in
35 another state under this section shall file an application on a form prescribed by the
36 Commissioner and pay the branch application fee prescribed by regulation pursuant to
37 G.S. 53-122. If the Commissioner finds that the applicant has the financial resources
38 sufficient to undertake the proposed expansion without adversely affecting its safety or
39 soundness and that the establishment of the proposed branch is in the public interest, the
40 Commissioner may approve the application. In acting on the application, the
41 Commissioner shall consider the views of the appropriate bank supervisory agencies.
42 The applicant bank may establish the branch when it has received the written approval of
43 the Commissioner.

1 **"§ 53-224.12. Interstate branching by de novo entry.**

2 An out-of-state bank that does not have a branch in North Carolina and that meets the
3 requirements of this Article may establish and maintain a de novo branch in this State.

4 **"§ 53-224.13. Interstate branching through the acquisition of a branch.**

5 An out-of-state bank that does not have a branch in North Carolina and that meets the
6 requirements of this Article may establish and maintain a branch in this State through the
7 acquisition of a branch.

8 **"§ 53-224.14. Requirement of notice and other conditions.**

9 (a) An out-of-state bank desiring to establish and maintain a de novo branch or to
10 acquire a branch in this State shall provide written notice of the proposed transaction to
11 the Commissioner not later than the date on which the bank applies to the responsible
12 federal bank supervisory agency for approval to establish or acquire the branch. The
13 filing of such notice shall be accompanied by the filing fee prescribed by the
14 Commissioner by regulation.

15 (b) The out-of-state bank shall comply with the applicable requirements of Article
16 15 of Chapter 55 of the North Carolina General Statutes.

17 (c) Prior to June 1, 1997, an out-of-state bank may establish and maintain a de
18 novo branch or may establish and maintain a branch through acquisition of a branch if:

19 (1) In the case of a de novo branch, the laws of the home state of the out-of-
20 state bank permit North Carolina banks to establish and maintain de
21 novo branches in that state under substantially the same terms and
22 conditions as herein set forth; and

23 (2) In the case of a branch established through the acquisition of a branch,
24 the laws of the home state of the out-of-state bank permit North
25 Carolina banks to establish and maintain branches in that state through
26 the acquisition of branches under substantially the same terms and
27 conditions as herein set forth.

28 **"§ 53-224.15. Conditions for approval.**

29 In the case of notice under G.S. 53-224.14 by an out-of-state state bank, the notice
30 shall be subject to approval by the Commissioner, which approval shall be effective only
31 if:

32 (1) The bank confirms in writing to the Commissioner that as long as it
33 maintains a branch in North Carolina, it will comply with all applicable
34 laws of this State.

35 (2) The Commissioner, acting within 60 days after receiving notice of an
36 application under G.S. 53-224.14, certifies to the responsible federal
37 bank supervisory agency that the requirements of this Part have been
38 met by the bank.

39 **"§ 53-224.16. Powers.**

40 (a) An out-of-state state bank which establishes and maintains one or more
41 branches in North Carolina under this Article may conduct any activities at such branch
42 or branches that are authorized under the laws of this State for North Carolina State

1 banks, except to the extent such activities may be prohibited by other laws, regulations,
2 or orders applicable to the out-of-state state bank.

3 (b) A North Carolina State bank may conduct any activities at a branch outside of
4 North Carolina that are permissible for a bank chartered by the host state where the
5 branch is located, except to the extent such activities are expressly prohibited by the laws
6 of this State or by any regulation or order of the Commissioner applicable to the North
7 Carolina State bank.

8 **"PART 3. INTERSTATE BANK MERGERS.**

9 **"§ 53-224.17. Purpose.**

10 It is the express intent of this Part to permit interstate branching by merger under
11 section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,
12 Public Law 103-328, in accordance with the provisions of this Part.

13 **"§ 53-224.18. Authority of State banks to establish interstate branches by merger.**

14 With the prior approval of the Commissioner, a North Carolina State bank may
15 establish, maintain, and operate one or more branches in a state other than North Carolina
16 pursuant to an interstate merger transaction in which the North Carolina State bank is the
17 resulting bank. Not later than the date on which the required application for the interstate
18 merger transaction is filed with the responsible federal bank supervisory agency, the
19 applicant North Carolina State bank shall file an application on a form prescribed by the
20 Commissioner and pay the fee prescribed by regulation pursuant to G.S. 53-122. The
21 applicant shall also comply with the applicable provisions of G.S. 53-12. If the
22 Commissioner finds that (i)the proposed transaction will not be detrimental to the safety
23 and soundness of the applicant or the resulting bank, (ii) any new officers and directors of
24 the resulting bank are qualified by character, experience, and financial responsibility to
25 direct and manage the resulting bank, and (iii) the proposed merger is consistent with the
26 convenience and needs of the communities to be served by the resulting bank in this State
27 and is otherwise in the public interest, it shall approve the interstate merger transaction
28 and the operation of branches outside of North Carolina by the North Carolina State
29 bank. Such an interstate merger transaction may be consummated only after the applicant
30 has received the Commissioner's written approval.

31 **"§ 53-224.19. Interstate merger transactions and branching permitted.**

32 One or more North Carolina banks may enter into an interstate merger transaction
33 with one or more out-of-state banks under this Article, and an out-of-state bank resulting
34 from such an interstate merger transaction may maintain and operate the branches in
35 North Carolina of a merged North Carolina bank provided that the conditions and filing
36 requirements of this Article are met.

37 **"§ 53-224.20. Notice and filing requirements.**

38 Any out-of-state bank that will be the resulting bank pursuant to an interstate merger
39 transaction involving a North Carolina bank shall notify the Commissioner of the
40 proposed merger not later than the date on which it files an application for an interstate
41 merger transaction with the responsible federal bank supervisory agency, and shall
42 submit a copy of that application to the Commissioner and pay the filing fee required by
43 the Commissioner. All banks which are parties to such interstate merger transaction

1 involving a North Carolina State bank shall comply with G.S. 53-12 and with other
2 applicable state and federal laws. Any out-of-state bank which shall be the resulting bank
3 in such an interstate merger transaction shall comply with Article 15 of Chapter 55 of the
4 North Carolina General Statutes.

5 **"§ 53-224.21. Conditions for interstate merger prior to June 1, 1997.**

6 An interstate merger transaction prior to June 1, 1997, involving a North Carolina
7 bank shall not be consummated, and any out-of-state bank resulting from such a merger
8 shall not operate any branch in North Carolina, unless the laws of the home state of each
9 out-of-state bank involved in the interstate merger transaction permits North Carolina
10 banks under substantially the same terms and conditions as are set forth in Part 2 to
11 acquire banks and establish and maintain branches in that state by means of interstate
12 merger transactions.

13 **"§ 53-224.22. Powers.**

14 (a) An out-of-state state bank which establishes and maintains one or more
15 branches in North Carolina under this Article may conduct any activities at such branch
16 or branches that are authorized under the laws of this State for North Carolina State
17 banks, except to the extent such activities may be prohibited by other laws, regulations,
18 or orders applicable to the out-of-state state bank.

19 (b) A North Carolina State bank may conduct any activities at a branch outside of
20 North Carolina that are permissible for a bank chartered by the host state where the
21 branch is located, except to the extent such activities are expressly prohibited by the laws
22 of this State or by any regulation or order of the Commissioner applicable to the North
23 Carolina State bank.

24 **"PART 3. SUPERVISORY AUTHORITY.**

25 **"§ 53-224.23. Applicability of supervisory authority.**

26 The supervisory powers and other provisions set forth in G.S. 53-224.25 through G.S.
27 53-224.32 shall apply to Parts 1 and 2 of this Article.

28 **"§ 53-224.24. Examinations; periodic reports; cooperative agreements; assessment**
29 **of fees.**

30 (a) The Commissioner may make such examinations of any branch of an out-of-
31 state state bank established under this Article and located in this State as the
32 Commissioner may deem necessary to determine whether the branch is operating in
33 compliance with the laws of this State and to ensure that the branch is being operated in a
34 safe and sound manner. The provisions of G.S. 53-117 apply to such examinations.

35 (b) The Commissioner may require periodic reports regarding any branch in North
36 Carolina of an out-of-state bank to the extent that comparable reports are required from
37 North Carolina State banks. Such reports shall be filed under oath with such frequency
38 and in such scope and detail as may be appropriate for the purpose of assuring continuing
39 compliance with the provisions of this Article.

40 (c) The Commissioner may enter into cooperative, coordinating, and information-
41 sharing agreements with any other bank supervisory agencies or any organization
42 affiliated with or representing one or more bank supervisory agencies with respect to the
43 periodic examination or other supervision of any branch in North Carolina of an out-of-

1 state state bank, or any branch of a North Carolina State bank in a host state, and the
2 Commissioner may accept such parties' reports of examination and reports of
3 investigation in lieu of conducting an additional examination or investigation. The
4 Commissioner may enter into joint examinations or joint enforcement actions with other
5 bank supervisory agencies having concurrent jurisdiction over any branch in North
6 Carolina of an out-of-state state bank or any branch of a North Carolina State bank in any
7 host state; provided, however, that the Commissioner may at any time take such actions
8 independently if the Commissioner deems such actions to be necessary or appropriate to
9 carry out the Commissioner's responsibilities under this Article and to ensure compliance
10 with the laws of this State.

11 (d) Each out-of-state state bank that maintains one or more branches in this State
12 may be assessed and, if assessed, shall pay supervisory and examination fees in
13 accordance with the laws of this State and regulations of the Commissioner. Such fees
14 may be shared with other bank supervisory agencies or any organization affiliated with or
15 representing one or more bank supervisory agencies in accordance with agreements
16 between such parties and the Commissioner.

17 **"§ 53-224.25. Enforcement.**

18 If the Commissioner determines that a branch maintained by an out-of-state state bank
19 in this State is being operated in violation of any provision of the laws of this State, or
20 that such branch is being operated in an unsafe and unsound manner, the Commissioner
21 shall have the authority to take all such enforcement actions as the Commissioner would
22 be empowered to take if the branch were a North Carolina State bank.

23 **"§ 53-224.26. Rules.**

24 The Commissioner, subject to review and approval of the North Carolina State
25 Banking Commission, may adopt rules needed to implement this Article. Chapter 150B
26 of the General Statutes governs the adoption of rules by the Commissioner.

27 **"§ 53-224.27. Additional branches.**

28 An out-of-state bank that has a branch in North Carolina may establish and acquire
29 additional branches in this State to the same extent as a North Carolina State bank or to
30 the same extent otherwise permitted by federal law.

31 **"§ 53-224.28. Notice of subsequent merger or other change in control.**

32 An out-of-state bank that maintains a branch in this State established pursuant to this
33 Article shall give 30 days' prior written notice to the Commissioner of any merger,
34 consolidation, or other transaction that would cause a change of control with respect to
35 such out-of-state bank or any bank holding company that controls such bank, with the
36 result that an application would be required to be filed pursuant to the federal Change in
37 Bank Control Act of 1978, as amended, 12 U.S.C. § 1817(j) or the federal Bank
38 Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or any successor
39 statutes thereto.

40 **"§ 53-224.29. Branch closings.**

41 An out-of-state state bank that is subject to an order or written agreement revoking its
42 authority to establish or maintain a branch in North Carolina and any North Carolina
43 State bank that is subject to an order or written agreement revoking its authority to

1 establish or maintain a branch in another state shall wind up the business of that branch in
2 an orderly manner that protects the depositors, customers, and creditors of the branch and
3 that complies with all North Carolina laws and all other applicable laws regarding the
4 closing of the branch.

5 **"§ 53-224.30. Appeal of Commissioner's decision.**

6 Any aggrieved party in a proceeding under this Article may, within 30 days after final
7 decision of the Commissioner, appeal such decision to the North Carolina State Banking
8 Commission. The State Banking Commission, within 30 days of receipt of the notice of
9 appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the
10 State Banking Commission to act within 30 days of receipt of notice of appeal shall
11 constitute a final decision of the State Banking Commission approving the decision of the
12 Commissioner. Notwithstanding any other provision of law, any aggrieved party to a
13 decision of the Commission shall be entitled to an appeal pursuant to G.S. 53-92.

14 **"§ 53-224.31. Severability.**

15 If any provision of this Article or the application of such provision is found invalid as
16 to any bank, branch, bank holding company, person, or circumstances, or shall otherwise
17 be deemed superseded by federal law, the remaining provisions of this Article shall not
18 be affected and shall remain valid and in effect as to any bank, branch, bank holding
19 company, person, or circumstance."

20 Sec. 2. G.S. 105-102.3 reads as rewritten:

21 **"§ 105-102.3. Banks.**

22 There is hereby imposed upon every bank or banking association, including each
23 national banking association, that is operating in this State as a commercial bank, an
24 industrial bank, a savings bank created other than under Chapter 54B of the General
25 Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), a trust
26 company, or any combination of such facilities or services, and whether such bank or
27 banking association, hereinafter to be referred to as a bank or banks, be organized, under
28 the laws of the United States or the laws of North Carolina, in the corporate form or in
29 some other form of business organization, an annual privilege tax in the amount of thirty
30 dollars (\$30.00) for each one million dollars (\$1,000,000) or fractional part thereof of
31 total assets held as hereinafter provided. The assets upon which the tax is levied shall be
32 determined by averaging the total assets shown in the four quarterly call reports of
33 condition (consolidating domestic subsidiaries) for the preceding calendar year as
34 required by bank regulatory authorities; provided, however, where a new bank
35 commences operations within the State there shall be levied and paid an annual privilege
36 tax of one hundred dollars (\$100.00) until such bank shall have made four quarterly call
37 reports of condition (consolidating domestic subsidiaries) for a single calendar year;
38 provided further, however, where a bank operates an international banking facility, as
39 defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied shall be reduced
40 by the average amount for the taxable year of all assets of the international banking
41 facility which are employed outside the United States, as computed pursuant to G.S. 105-
42 130.5(b)(13)c. For an out-of-state bank with one or more branches in this State, or for an
43 in-state bank with one or more branches outside this State, the assets of the out-of-state

1 bank or of the in-state bank upon which the tax is levied shall be reduced by the average
2 amount for the taxable year of all assets of the out-of-state bank or of the in-state bank
3 which are employed outside this State. The tax imposed hereunder shall be for the
4 privilege of carrying on the businesses herein defined on a statewide basis regardless of
5 the number of places or locations of business within the State. Counties, cities and towns
6 shall not levy a license or privilege tax on the businesses taxed under this section, nor on
7 the business of an international banking facility as defined in subsection (b)(13) of G.S.
8 105-130.5."

9 Sec. 3. Section 2 of this act is effective July 1, 1995. The remainder of this act
10 is effective upon ratification.