

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 676
Finance Committee Substitute Adopted 5/13/03

Short Title: Revise the Banking Laws of North Carolina.

(Public)

Sponsors:

Referred to:

April 2, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE BANKING LAWS OF NORTH CAROLINA.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 53-1(3a) reads as rewritten:

5 "(3a) Limited Service Facility. – The term "limited service facility" means
6 ~~an office of a bank~~ a staffed physical location open to the public in
7 this State in which deposits are received, monies are paid, or other
8 duties and functions of a teller are performed. Loan applications shall
9 be taken in a limited service facility but notes may not be executed nor
10 loan proceeds disbursed in a limited service facility. a bank established
11 under the laws of this State or a bank or other depository institution
12 established under the laws of any other state conducts any activity of a
13 "branch" set forth in subdivision (1a) of this section, but which is not
14 considered a branch by virtue of the fact that the bank does not engage
15 in all activities of a branch at the location. A location is a limited
16 service facility of a bank notwithstanding that it is operated by a third
17 party if there exists an agreement between the third party and the bank
18 pursuant to which the third party (i) takes deposits or offers loans as an
19 agent of the bank or in the bank's name; or (ii) is obligated to sell or
20 otherwise transfer to the bank all or a substantial portion of the loan or
21 deposit production of that location."

22 **SECTION 2.** G.S. 53-17.2(e) reads as rewritten:

23 "(e) In the absence of the promulgation of rules under subsection (d), the
24 conditions to be met for approval of the application for conversion should include the
25 following:

26 (1) Condition. The applicant's general condition must reflect adequate
27 capital, liquidity, reserves, earnings, and asset composition necessary
28 for safe and sound operation of the resulting bank.

- 1 (2) Management. The management and the board of directors must be
2 capable of supervising a sound banking operation and overseeing the
3 changes that must be accomplished in the conversion from an
4 association or savings bank to a bank.
- 5 (3) Public Convenience. The ~~Commission must determine that the~~
6 conversion will have a positive impact on the convenience of the
7 public and will not substantially reduce the services available to the
8 public in the market area.
- 9 (4) Transition. Within a reasonable time after the effective date of the
10 conversion, the resulting bank must divest itself of all assets and
11 liabilities that do not conform to State banking law or rules. The length
12 of this transition period shall be determined by the Commissioner and
13 shall be specified when the application for conversion is approved.

14 In evaluating each of these conditions, the ~~Commission~~ Commissioner shall consider
15 a comparison of the relevant financial ratios of the applicant with the average ratios of
16 North Carolina banks of similar asset size. The ~~Commission may~~ Commissioner shall
17 not approve a conversion where the applicant presents an undue supervisory concern or
18 has not been operated in a safe and sound manner."

19 **SECTION 3.** G.S. 53-17.2(f) reads as rewritten:

20 "(f) If the ~~State Banking Commission~~ Commissioner approves the plan of
21 conversion, then the association or savings bank shall submit the plan to the
22 stockholders or members as provided in subsection (g). After approval of the plan of
23 conversion, the Commissioner of Banks shall supervise and monitor the conversion
24 process and shall ensure that the conversion is conducted pursuant to law and the
25 association's or savings bank's approved plan of conversion."

26 **SECTION 4.** G.S. 53-43 reads as rewritten:

27 "**§ 53-43. General powers. Powers.**

28 ~~In addition to the powers conferred by law upon private corporations, banks shall~~
29 ~~have the power:~~

- 30 (1) ~~To exercise by its board of directors, or duly authorized officers and~~
31 ~~agents, subject to law, all such powers as shall be necessary to carry on~~
32 ~~the business of banking, by discounting and negotiating promissory~~
33 ~~notes, drafts, bills of exchange, and other evidences of indebtedness,~~
34 ~~by receiving deposits, by buying and selling exchange, coin, and~~
35 ~~bullion, and by loaning money on personal security or real and~~
36 ~~personal property. Such corporation at the time of making loans may~~
37 ~~not take and receive interest or discounts in advance where the~~
38 ~~effective rates of interest or discounts collected shall exceed the~~
39 ~~maximum rates of interest provided under this section, G.S. 24 1.1 and~~
40 ~~24 1.2 if such interest or discount had not been collected in advance.~~
- 41 (2) ~~To adopt regulations for the government of the corporation not~~
42 ~~inconsistent with the Constitution and laws of this State.~~
- 43 (3) ~~To purchase, hold, and convey real estate for the following purposes:~~

- 1 a. ~~Such as shall be necessary for the convenient transaction of its~~
2 ~~business, including furniture and fixtures, with its banking~~
3 ~~offices and other spaces to rent as a source of income, which~~
4 ~~investment shall not exceed fifty percent (50%) of its~~
5 ~~unimpaired capital fund: Provided, that this fifty percent (50%)~~
6 ~~limitation shall not apply to banking houses, furniture and~~
7 ~~fixtures leased for the purposes set forth in this subdivision.~~
8 ~~Provided, further, that if any bank shall demonstrate to the~~
9 ~~satisfaction of the Commissioner of Banks that an investment of~~
10 ~~more than fifty percent (50%) of its unimpaired capital fund in~~
11 ~~its banking houses, furniture and fixtures, would promote the~~
12 ~~convenience of the general public in transacting its banking~~
13 ~~business and would not adversely affect the financial stability of~~
14 ~~the bank, the Commissioner of Banks may, in his discretion,~~
15 ~~authorize any bank to invest more than fifty percent (50%) of its~~
16 ~~unimpaired capital fund in its banking houses, furniture and~~
17 ~~fixtures.~~
- 18 b. ~~Such as is mortgaged to it in good faith by way of security for~~
19 ~~loans made or moneys due to such banks.~~
- 20 c. ~~Such as has been purchased at sales upon foreclosures of~~
21 ~~mortgages and deeds of trust held or owned by it, or on~~
22 ~~judgments or decrees obtained and rendered for debts due to it,~~
23 ~~or in settlements affecting security of such debts. All real~~
24 ~~property referred to in this subdivision shall be sold by such~~
25 ~~bank within five years after it is acquired unless, upon~~
26 ~~application by the board of directors, the Commissioner of~~
27 ~~Banks extends the time within which such sale shall be made.~~
28 ~~Any and all powers and privileges heretofore granted and given~~
29 ~~to any person, firm, or corporation doing a banking business in~~
30 ~~connection with a fiduciary and insurance business, or the right~~
31 ~~to deal to any extent in real estate, inconsistent with this~~
32 ~~Chapter, are hereby repealed.~~
- 33 (4) ~~Nothing contained in this section shall be deemed to authorize banking~~
34 ~~corporations to engage in the business of dealing in investment~~
35 ~~securities: Provided, however, that the term "dealing in investment~~
36 ~~securities" as used herein, shall not be deemed to include the~~
37 ~~purchasing and selling of securities without recourse, solely upon~~
38 ~~order, and for the account of, customers; and provided further, that~~
39 ~~"investment securities," as used herein, shall not be deemed to include~~
40 ~~obligations of the United States, or general obligations of any state or~~
41 ~~of any political subdivision thereof, or of cities, towns, or other~~
42 ~~corporate municipalities of any state or obligations issued under~~
43 ~~authority of the Federal Farm Loan Act, as amended, or issued by the~~
44 ~~federal home loan banks or the Home Owner's Loan Corporation.~~

1 Any provision in conflict with this subdivision contained in the
2 articles of incorporation heretofore issued to any banking corporation
3 is hereby revoked.

4 (5) Repealed by Session Laws 1989, c. 187, s. 5.

5 (6) Maintain separate departments and deposit in its commercial
6 department to the credit of its trust department all uninvested fiduciary
7 funds of cash and secure, under rules and regulations of the State
8 Banking Commission, all such deposits in the name of the trust
9 department whether in consolidated deposits or for separate fiduciary
10 accounts, by segregating and delivering to the trust department such
11 securities as may be eligible for the investment of the sinking funds of
12 the State of North Carolina, equal in market value to such deposited
13 funds, or readily marketable commercial bonds having not less than a
14 recognized "A" rating equal to one hundred and twenty five per
15 centum (125%) of such deposits. Such securities shall be held by the
16 trust department as security for the full payment or repayment of all
17 such deposits, and shall be kept separate and apart from other assets of
18 the trust department. Until all of such deposits shall have been
19 accounted for to the trust department or to the individual fiduciary
20 accounts, no creditor of the bank shall have any claim or right to such
21 security. When fiduciary funds are deposited by the trust department in
22 the commercial department of the bank, the deposit thereof shall not be
23 deemed to constitute a use of such funds in the general business of the
24 bank and the bank in such instance shall not be liable for interest on
25 such funds. To the extent and in the amount such deposits may be
26 insured by the Federal Deposit Insurance Corporation, the amount of
27 security required for such deposits by this section may be reduced.

28 The Banking Commission shall have power to make such rules and
29 regulations as it may deem necessary for the enforcement of the
30 provisions of the preceding paragraph, and such authority shall exist
31 and is hereby conferred under the general authority heretofore
32 conferred upon said Commission as well as by this paragraph.

33 (7) To issue, advise and confirm letters of credit authorizing the
34 beneficiaries thereof to draw upon the institution or its correspondents.

35 (8) To receive money for transmission.

36 (9) To become a member of a clearinghouse association and to pledge
37 assets required for its qualification.

38 (10) To provide for the performance of bank service corporation services,
39 such as data processing services and bookkeeping, subject to such
40 rules and regulations as may be adopted by the State Banking
41 Commission.

42 (a) General Powers. – Except as otherwise specifically provided by this Chapter,
43 a bank shall have the powers conferred upon corporations by the North Carolina
44 Business Corporation Act, Chapter 55 of the General Statutes, including the power to:

- 1 (1) Carry on the business of banking.
- 2 (2) Make any investments authorized by G.S. 53-47 or any other section
3 of this Chapter.
- 4 (3) Engage in any other activities approved by rule, order, or interpretation
5 of the Commissioner of Banks.

6 For the purposes of this section, the "business of banking" includes, without
7 limitation, discounting and negotiating promissory notes, drafts, bills of exchange, and
8 other evidences of indebtedness; receiving deposits; issuing, advising, and confirming
9 letters of credit; receiving money for transmission; and loaning money on personal
10 security or real or personal property.

11 (b) Parity Powers. – A bank also has the power to engage:

- 12 (1) As principal in any activity permissible for a national bank under any
13 law, including the National Bank Act, 12 U.S.C. § 21, as well as
14 activities recognized as permissible for a national bank in any
15 regulation, official circular, bulletin, order or written interpretation
16 issued by the Office of the Comptroller of the Currency.
- 17 (2) As principal in any activity that is permissible, or determined by the
18 Federal Deposit Insurance Corporation to be permissible, for a bank
19 under the Federal Deposit Insurance Act, 12 U.S.C. § 1813, and
20 regulations thereunder.
- 21 (3) As principal in any activity that is permissible for a savings and loan
22 association or savings bank organized, respectively, under Chapters
23 54B and 54C of the General Statutes, or that is permissible for a
24 federally chartered savings association or federally chartered savings
25 bank under the Home Owners' Loan Act of 1933, 12 U.S.C. § 1461
26 through 1468 and regulations thereunder.
- 27 (4) In "trust business", as that term is defined by G.S. 53-301(50).
- 28 (5) In any activity other than as principal pursuant to the Federal Deposit
29 Insurance Act, 12 U.S.C. § 1813, and regulations thereunder.

30 (c) Incidental Powers. – In addition to the other powers described in this section,
31 a bank has the power to exercise all other powers that are reasonably necessary,
32 convenient, or complementary to the exercise of the powers authorized in subsections
33 (a) and (b) of this section.

34 (d) Prior Approval Required. – Except as provided in subsection (e) of this
35 section, a bank which proposes to engage in any new activity shall apply to the
36 Commissioner of Banks for approval to engage in the activity before its
37 commencement. If the activity will be conducted in a subsidiary in which the bank
38 intends to make an investment, the bank shall apply to the Commissioner of Banks for
39 approval to engage in the activity before entering into the investment. The bank shall
40 not engage in the activity or make the investment unless and until the Commissioner of
41 Banks issues a written approval of the application. For the purpose of this subsection,
42 the terms "subsidiary" and "investment" have the same meanings as set forth in G.S.
43 53-47.

1 An application for approval shall contain a description of the proposed activity and
2 any other information required by the Commissioner of Banks. A copy of any notice or
3 application the bank is required to file with any federal banking regulator shall also be
4 provided to the Commissioner of Banks.

5 For the purposes of this section, a "new activity" is any business activity in which
6 the bank is not currently engaged. The extension or relocation of an existing activity
7 into a new department, division, or subsidiary of the bank shall not be considered a
8 "new activity"; provided, however, that any investment in a subsidiary shall be subject
9 to all applicable provisions of this Chapter pertaining to investments by banks,
10 including G.S. 53-47.

11 (e) Exceptions. – No application for approval to engage in a new activity shall be
12 required, provided all of the following conditions are met as of the date the activity is
13 commenced:

- 14 (1) The activity is one described in subsection (a), (b), or (c) of this
15 section.
- 16 (2) The bank has received a composite rating of 1 or 2 under the Uniform
17 Financial Institutions Rating System in connection with its most recent
18 examination.
- 19 (3) No notice or application to engage in the activity is required to be filed
20 by the bank with any federal banking regulator.

21 A bank commencing an activity without prior application and approval pursuant to
22 this subsection shall notify the Commissioner of Banks in writing of the commencement
23 of the activity no later than the 30th day after the earlier of (i) commencing the activity;
24 or (ii) if applicable, making an investment in an entity through which the activity is to
25 be conducted.

26 (f) Continuing Authority of the Commissioner of Banks. – Nothing in this
27 section shall be construed as being in derogation of the Commissioner of Banks'
28 ongoing authority under this Chapter to take corrective action regarding the activities of
29 any bank which the Commissioner deems appropriate in order to ensure the continued
30 integrity, safety, and soundness of an individual bank and the State banking system in
31 general."

32 **SECTION 5.** G.S. 53-47 reads as rewritten:

33 **"§ 53-47. Limitations on ~~investments in stocks~~ subsidiary and other investments.**

34 (a) In addition to any powers or investments authorized by any other section of
35 this Chapter, a bank may invest in the capital stock or other securities of any other state,
36 national or foreign bank or trust company, and in any other industrial bank, savings
37 bank, Morris Plan bank, savings and loan association, bankers' bank or other deposit
38 taking entity chartered or existing under any federal, state, or foreign law including, but
39 not limited to, the capital stock of clearing corporations defined in G.S. 25-8-102, the
40 capital stock or other securities of central reserve banks whose capital stock exceeds one
41 million dollars (\$1,000,000) and the capital stock of an Edge or Agreement corporation.
42 As used in this Chapter, the term "bankers' bank" means an insured depository financial
43 institution, organized and chartered to do business exclusively with other banks and
44 savings institutions, and the stock of which, or the stock of the holding company which

1 controls such bank, is owned exclusively (except to the extent directors' qualifying
2 shares are required by law) by banks or savings institutions. To constitute a central
3 reserve bank as contemplated by this Chapter, at least fifty percent (50%) of the capital
4 stock of such bank shall be owned by other banks. The investment of any bank in the
5 capital stock of such central reserve bank or bank organized under the "Edge Act", (12
6 U.S.C. § 611 et seq.) shall at no time exceed ten percent (10%) of the paid-in capital and
7 permanent surplus of the bank making the investment.

8 (b) ~~A bank may invest, without limitation, in a corporation, firm, partnership, or~~
9 ~~company:~~

10 (1) ~~Which is a bank operating subsidiary, or~~

11 (2) ~~To protect the bank from loss.~~

12 A bank may make an investment in a subsidiary that will be operated as a bank
13 operating subsidiary or as a DPC subsidiary. Investments made pursuant to this
14 subsection shall not be subject to the seventy-five percent (75%) of unimpaired capital
15 fund limit contained in subsection (c) of this section.

16 (c) ~~In addition to the foregoing, upon 30 days prior written notice to the~~
17 ~~Commissioner of Banks, providing such detail as the Commissioner may require, a A~~
18 ~~bank may invest, invest up to, in the aggregate, up to seventy-five percent (75%) of its~~
19 ~~unimpaired capital fund in the stock or assets of other corporations, firms, partnerships,~~
20 ~~or companies which are: subsidiaries which are or will be primarily engaged in:~~

21 (1) ~~Primarily engaging in activities~~ Activities permissible for national
22 banks or bank holding companies under applicable laws, rules,
23 regulations or orders;

24 (2) ~~Primarily engaging in activities of a financial nature, Activities that~~
25 are financial in nature or incidental to a financial activity, including the
26 transmission or processing of information or data relating to such
27 activities. For the purpose of this subsection, activities of a financial
28 nature shall include, but not be limited to, that are financial in nature
29 include insurance activities, all forms of securities activities, including
30 underwriting, distribution, and brokerage, together with such and any
31 other activities as the Commissioner of Banks shall determine by
32 regulation rule or order; or

33 (3) ~~Engaging in any other activity approved by the Commissioner of~~
34 ~~Banks. Other activities determined by the Commissioner of Banks to be~~
35 permissible for a bank or a bank operating subsidiary.

36 (c1) A bank operating subsidiary may make an investment of any size in a lower
37 tier subsidiary.

38 (c2) A bank or bank operating subsidiary proposing to make an investment
39 described in subsection (b), (c), or (c1) of this section shall give prior written notice to
40 the Commissioner of Banks, providing such detail as the Commissioner may require.
41 Unless the Commissioner of Banks, within 30 days following receipt of the notice,
42 notifies the bank or bank operating subsidiary that the Commissioner objects to the
43 proposed investment, the bank or bank operating subsidiary may complete the
44 investment. However, the Commissioner of Banks may extend the period within which

1 to object to the proposed investment if the Commissioner determines that it raises issues
2 which require additional information or additional time for analysis. If the objection
3 period is so extended, the bank or bank operating subsidiary may proceed with respect
4 to the proposed investment.

5 (d) Any state or national bank subsidiary which engages in an activity subject to
6 licensure and/or regulation under other than Chapter 53 of the General Statutes shall be
7 subject to licensure and/or regulation on a basis that does not arbitrarily discriminate by
8 the appropriate regulatory agency which licenses and/or regulates nonbanks which
9 engage in the same activity.

10 ~~(e) Unless otherwise notified by the Commissioner within 30 days following~~
11 ~~receipt of the written notice, a bank may complete its investment in the stock or assets~~
12 ~~of the other corporation, firm, partnership, or company, or commence a new activity~~
13 ~~through an existing subsidiary. The Commissioner may extend the 30-day period if the~~
14 ~~Commissioner determines that the proposed investment or activity raises issues which~~
15 ~~require additional information or additional time for analysis. If the 30-day period is~~
16 ~~extended, the bank may proceed with respect to the proposed investment or activity only~~
17 ~~upon written approval of the Commissioner of Banks.~~

18 (f) The Commissioner of Banks shall monitor the impact of investment activities
19 of banks under this section on the safety and soundness of such banks. Any stocks
20 owned or hereafter acquired in excess of the limitations herein imposed shall be
21 disposed of at public or private sale within six months after the date of acquiring the
22 stocks, and if not so disposed of, they shall be charged to profit and loss account, and no
23 longer carried on the books as an asset. The limit of time in which said stocks shall be
24 disposed of or charged off the books of the bank may be extended by the Commissioner
25 of Banks if in the Commissioner's judgment it is for the best interest of the bank that
26 such extension be granted; provided that the limitations imposed in this section on the
27 ownership of stock in or securities of corporations are suspended only to the extent that
28 any bank operating under the supervision of the Commissioner of Banks may subscribe
29 for and purchase shares of stock in or debentures, bonds, or other types of securities of
30 any corporation organized under the laws of the United States for the purposes of
31 insuring to depositors a part or all of their funds on deposit in banks where and to such
32 extent as such stock or security ownership is required in order to obtain the benefits of
33 such deposit insurance for its depositors.

34 (g) The prior notice requirement of subsection (c2) of this section shall not apply
35 if:

36 (1) The bank has received a composite rating of 1 or 2 under the Uniform
37 Financial Institutions Rating System in connection with its most recent
38 examination at the time of the investment; and

39 (2) Each activity of the subsidiary in which the investment is to be made is
40 either:

41 a. One in which the bank is then engaged or has previously been
42 engaged, directly or through a different subsidiary, and for
43 which all necessary approvals of federal bank regulatory

1 agencies and of the Commissioner of Banks have previously
2 been obtained and remain in effect; or

- 3 b. One for which no prior notice or application for approval to any
4 federal banking regulator is required.

5 A bank that makes an investment pursuant to the exception created by this
6 subsection shall nevertheless notify the Commissioner of Banks in writing of the
7 investment within 30 days thereafter.

8 (h) A bank may invest through purchase, lease, or otherwise in any interest in
9 bank premises, furniture, equipment, and fixtures as may be necessary for the
10 convenient transaction of its business. The total of all investments authorized by this
11 subsection shall not exceed fifty percent (50%) of the bank's unimpaired capital fund;
12 provided, however, that the value of leased bank premises, furniture, equipment, and
13 fixtures shall be included in the bank's total investments only to the extent that the
14 related lease may be capitalized under current generally accepted accounting principles
15 consistently applied.

16 If any bank demonstrates to the satisfaction of the Commissioner of Banks that an
17 investment of more than fifty percent (50%) of its unimpaired capital fund in its bank
18 premises, furniture, equipment, and fixtures would promote the convenience of the
19 general public in transacting its banking business and would not adversely affect the
20 financial stability of the bank, the Commissioner of Banks may authorize the bank to
21 invest more than fifty percent (50%) of its unimpaired capital funds in its bank
22 premises, furniture, equipment, and fixtures.

23 (i) A bank may purchase, hold, and convey real estate other than bank premises
24 for the following purposes:

25 (1) As security for loans made or moneys due to it when that real estate
26 has been mortgaged to it in good faith.

27 (2) When the real estate has been purchased at sales upon foreclosures of
28 mortgages and deeds of trust held or owned by it, on judgments or
29 decrees obtained and rendered for debts due to it, or in settlements
30 affecting security of those debts. All real property referred to in this
31 subdivision shall be sold by the bank within five years after it is
32 acquired unless, upon application by the board of directors, the
33 Commissioner of Banks extends the time within which the sale shall
34 be made.

35 (j) Nothing in this section shall be construed as being in derogation of the
36 Commissioner of Banks' ongoing authority under this Chapter to take corrective action
37 regarding the activities of any bank which the Commissioner deems appropriate in order
38 to ensure the continued integrity, safety, and soundness of an individual bank and the
39 State banking system in general.

40 (k) The following definitions apply in this section:

41 (1) "Bank operating subsidiary" means a subsidiary which:

42 a. Is under the control of a bank; and

43 b. Engages only in activities in which a bank may engage pursuant
44 to G.S. 53-43.

- 1 (2) "Bank premises" means any improved or unimproved real estate,
2 whether or not open to the public, which is utilized, intended to be
3 utilized, or has previously been utilized in connection with any activity
4 or business in which the bank is or was engaged or intends to be
5 engaged.
- 6 (3) "Control" means an ownership interest in a subsidiary which:
7 a. Constitutes more than fifty percent (50%) of the total ownership
8 interests in the subsidiary; or
9 b. Constitutes fifty percent (50%) or less of the total ownership
10 interests in the subsidiary but is required to be consolidated
11 with the bank pursuant to generally accepted accounting
12 principles.
- 13 (4) "DPC subsidiary" means any subsidiary in which the bank has
14 acquired in good faith an ownership interest through foreclosure or
15 other realization on collateral by way of a compromise of a disputed or
16 contested claim or to avoid a loss in connection with a debt previously
17 contracted.
- 18 (5) "Lower-tier subsidiary" means any bank operating subsidiary in which
19 a bank operating subsidiary has an ownership interest.
- 20 (6) "Ownership interest" means any beneficial equity or similar interest,
21 whether direct or indirect, including stock, limited or general
22 partnership interests, or shares in a limited liability company.
- 23 (7) "Subsidiary" means any corporation, partnership, business trust,
24 association, joint venture, pool, syndicate, limited liability company, or
25 any other similar business organization in which a bank has an
26 ownership interest."

27 **SECTION 6.** G.S. 53-48 reads as rewritten:

28 **"§ 53-48. Limitation of loans.**

29 (a) The total loans and extensions of credit, both direct and indirect, by a bank to
30 a person, other than a municipal corporation for money borrowed, including in the
31 liabilities of a firm the liabilities of the several members thereof, outstanding at one time
32 and not fully secured, as determined in a manner consistent with subsection (b) of this
33 section, by collateral having a market value at least equal to the amount of the loan or
34 extension of credit shall not exceed the greater of fifteen percent (15%) of the
35 unimpaired capital fund of the ~~bank~~, bank or the percentage permitted for national banks
36 in this State or by statute or regulation of the Comptroller of the Currency.

37 (b) The total loans and extensions of credit, both direct and indirect, by a bank to
38 a person outstanding at one time and fully secured by readily marketable collateral
39 having a market value, as determined by reliable and continuously available price
40 quotations, at least equal to the amount of the ~~funds~~ loan or extension of credit
41 outstanding shall not exceed the greater of ten percent (10%) of the unimpaired capital
42 fund of the ~~bank~~, bank or the percentage permitted for national banks by statute or
43 regulation of the Comptroller of the Currency. This limitation shall be separate from and
44 in addition to the limitation contained in subsection (a) ~~above~~ of this section.

1 (c) The discount of bills of exchange drawn in good faith against actual existing
2 values, the discount of solvent trade acceptances or other solvent commercial or
3 business paper actually owned by the person negotiating the same, loans or extensions
4 of credit secured by a segregated deposit account in the lending bank, the purchase of
5 bankers acceptances of the kind described in section 13 of the Federal Reserve Act and
6 issued by other banks, and the purchase of any notes and the making of any loans,
7 secured by not less than a like face amount of bonds of the United States, or an agency
8 of the United States, or other obligations guaranteed by the United States Government,
9 or State of North Carolina or certificates of indebtedness of the United States, or agency
10 thereof, or other obligations guaranteed by the United States Government, shall not be
11 considered as money borrowed within the meaning of this section: Provided, however,
12 that the limitations of this section shall not apply to loans or obligations to the extent
13 that they are secured or covered by guarantees or by commitments or agreements to take
14 over or purchase the same, made by any federal reserve bank or by the United States or
15 any department, board, bureau, commission or establishment of the United States,
16 including any corporation wholly owned directly or indirectly by the United States.

17 (d) For purposes of this section, the term "person" shall be deemed to include an
18 individual, or a corporation, partnership, trust, association, joint venture, pool,
19 syndicate, sole proprietorship, unincorporated organization or any other form of entity
20 not specifically listed herein. Loans or extensions of credit to one person include loans
21 made to other persons when the proceeds of the loans or extensions of credit are to be
22 used for the direct benefit of the first person or the persons are engaged in a common
23 enterprise. The Commissioner of Banks shall monitor the lending activities of banks
24 under this section for undue credit concentrations and inadequate risk diversification
25 which could adversely affect the safety and soundness of such banks."

26 **SECTION 7.** G.S. 53-62 reads as rewritten:

27 **"§ 53-62. Establishment of branches; limited service facilities; and off-premises**
28 **customer-bank communications terminals.**

29 (a) The word "capital" as used in this section means capital stock and unimpaired
30 surplus.

31 ~~(b) A bank doing business under this Chapter may establish branches or limited~~
32 ~~service facilities within this State after having first obtained the written approval of the~~
33 ~~Commissioner of Banks, which approval may be given or withheld by the~~
34 ~~Commissioner of Banks, in his discretion. The Commissioner of Banks, in exercising~~
35 ~~such discretion, shall take into account, but not by way of limitation, such factors as the~~
36 ~~financial history and condition of the applicant bank, the adequacy of its capital~~
37 ~~structure, its future earnings prospects, and the general character of its management.~~
38 ~~Such approval shall not be given until he shall find (i) that the establishment of such~~
39 ~~branch or limited service facility will meet the needs and promote the convenience of~~
40 ~~the community to be served by the bank, and (ii) that the probable volume of business~~
41 ~~and reasonable public demand in such community are sufficient to assure and maintain~~
42 ~~the solvency of said branch or limited service facility and of the existing bank or banks~~
43 ~~in said community. A bank, with the prior written approval of the Commissioner of~~
44 ~~Banks, may:~~

- 1 (1) Establish a branch or limited service facility; or
2 (2) Convert an existing limited service facility to a branch.

3 The application for approval to establish or convert a branch or limited service
4 facility shall be in a form prescribed by the Commissioner of Banks and shall be
5 accompanied by the application fee established by the Banking Commission by rule.
6 Approval may be given or withheld by the Commissioner of Banks. In determining
7 whether to give or withhold approval, the Commissioner of Banks shall take into
8 account factors, including the financial history and condition of the applicant
9 association, the adequacy of its capital structure, its future earnings prospects, and the
10 general character of its management. The Commissioner of Banks shall not give
11 approval pursuant to this subsection unless the Commissioner finds that:

- 12 (1) The establishment or conversion of the branch or limited service
13 facility will meet the needs and promote the convenience of the
14 community to be served thereby; and
15 (2) The probable volume of business and reasonable public demand in the
16 community are sufficient to assure and maintain the solvency of the
17 branch office or limited service facility and of the existing depository
18 institutions in the community.
- 19 (c) (1) ~~A branch or limited service facility of a bank shall be operated as a~~
20 ~~branch or office of and under the name of the bank, and under the~~
21 ~~control and direction of the board of directors and executive officers of~~
22 ~~the bank.~~ bank and under the name of the bank as set forth in its
23 Certificate of Incorporation filed with the Office of the Secretary of
24 State, except that the Commissioner of Banks may permit the
25 operation of a branch or limited service facility under an assumed
26 name under the conditions and terms imposed by the Commissioner if
27 the Commissioner of Banks finds that the name will not result in
28 confusion among customers of the bank or among the general public.
29 The board of directors of the bank shall elect such officers as may be
30 required to properly conduct the business of any branch or limited
31 service facility.
- 32 (2) The Commissioner of Banks shall not authorize the establishment or
33 conversion of a branch or limited service facility until he is satisfied
34 that the applicant bank has sufficient capital to maintain a minimum
35 capital to asset ratio as the Commissioner of Banks, in his discretion,
36 may require. In determining such ratio the Commissioner of Banks
37 shall give due consideration to (i) the amount of capital required to
38 support the bank's projected growth, (ii) the bank's earnings history
39 and projected earnings, (iii) the quality of the bank's assets, (iv)
40 compliance with the fixed asset limitation contained in G.S. 53-43(3),
41 subsection (f) of this section and (v) the business experience and
42 reputation of bank management.
- 43 (3) ~~The Commissioner of Banks may, on written application by a bank, in~~
44 ~~his discretion authorize the bank to establish a limited service facility~~

1 ~~after considering the criteria and making the findings required in~~
2 ~~subsection (b).~~

3 (d) ~~A limited service facility, upon written request to the Commissioner of~~
4 ~~Banks, and after meeting the requirements of subsection (c) may convert to a branch. If~~
5 ~~branch status is granted then the branch shall be subject to all of the conditions and~~
6 ~~requirements of that type of banking office.~~

7 Upon 30 days written notice to the Commissioner of Banks, a bank may discontinue
8 any limited service facility ~~operation; provided, however, if a limited service facility has~~
9 ~~within five years preceding the proposed closing date been a branch of any bank, it shall~~
10 ~~comply with the requirements of subsection (e) below before closing. operation.~~

11 (d1) Subject to such rules and regulations as may be prescribed by the State
12 Banking Commission with regard to their use, maintenance and supervision, any bank
13 may establish off the premises of any principal office, branch or limited service facility
14 a customer-bank communications terminal, point-of-sale terminal, automated teller
15 machine, automated banking facility or other direct or remote information-processing
16 device or machine, whether manned or unmanned, through or by means of which
17 information relating to any financial service or transaction rendered to the public is
18 stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank
19 terminal; and the establishment and use of such a device or machine shall not be
20 deemed a branch or limited service facility, and the capital requirements and standards
21 for approval of a branch or limited service facility, all as set forth in subsections (b) and
22 (c) of this section, shall not be applicable to the establishment of any such off-premises
23 terminal device or machine.

24 (e) A bank may, upon resolution by the board of directors, discontinue a branch
25 office subject to the following:

26 (1) The bank shall notify the Commissioner in writing of its intent to close
27 a branch not later than 90 days prior to the proposed closing date. Such
28 notice shall include a detailed statement of the reasons for the decision
29 to close a branch and statistical or other information in support of such
30 reasons.

31 (2) The bank shall provide a notice of its intent to close a branch to its
32 customers. Such notice shall be posted in a conspicuous manner on the
33 branch premises for a period of 30 days prior to the proposed closing
34 date, and shall either be included in at least one of any regular account
35 statements mailed to customers of such branch, or in a separate
36 mailing to such customers. The later notice shall be given at least 90
37 days prior to the proposed closing date.

38 No branch shall be closed until approved by the Commissioner of Banks, provided,
39 however, the consolidation of two or more branches into a single location in the same
40 vicinity shall not be considered a closure subject to the provisions of this subsection.

41 (f) Any action taken by the Commissioner of Banks pursuant to this section shall
42 be subject to review by the State Banking Commission which shall have the authority to
43 approve, modify or disapprove any action taken or recommended by the Commissioner
44 of Banks."

1 **SECTION 8.** G.S. 53-64 reads as rewritten:

2 "**§ 53-64. Loans secured by bank's own stock or stock of parent bank holding**
3 **company.**

4 (a) It shall be lawful for a bank to make a loan secured by the pledge of its own
5 shares of stock or the stock of its parent holding company; provided that whenever any
6 bank shall exercise its security interest in the shares of the bank or its parent holding
7 company upon a loan default or other transfer, it shall dispose of all of such shares of
8 stock within a period of six months. If such stock has not been disposed of within six
9 months, the same shall be charged to profit and loss and no longer carried as an asset of
10 the bank. The Commissioner may extend the six-month period not to exceed an
11 additional six months.

12 (b) A bank may not make a loan to finance the purchase of or to carry its stock or
13 the stock of its parent holding company. For purposes of this subsection, the phrase "to
14 carry" shall have the meaning set forth in 12 C.F.R. Part 221, by the Board of
15 Governors of the Federal Reserve System.

16 (c) A bank may not purchase any portion of its shares of stock, ~~nor the stock of~~
17 ~~its parent holding company, unless the same is purchased or pledged to the bank to~~
18 ~~prevent a loss upon a debt previously contracted in good faith. In the event the bank~~
19 ~~shall become the owner of its shares, or those of its parent holding company, the bank~~
20 ~~shall dispose of the same as provided in subsection (a) of this section.~~except with the
21 prior approval of the Commissioner. The Commissioner shall not give approval for a
22 bank to purchase any portion of its shares of stock unless the Commissioner determines
23 the bank will remain well-capitalized following the purchase. In approving a purchase,
24 the Commissioner may impose any conditions that are prudent and necessary to protect
25 the interests of the shareholders and creditors of the bank."

26 **SECTION 9.** G.S. 53-67 reads as rewritten:

27 "**§ 53-67. Banks controlled by boards of directors.**

28 The corporate powers, business, and property of banks doing business under this
29 Chapter shall be exercised, conducted, and controlled by its board of directors, which
30 shall meet at least quarterly. Such board shall consist of not less than five directors, to
31 be chosen by the stockholders, and shall hold office for the term for which they are
32 elected, and until their successors are elected and qualified. The annual meeting of
33 stockholders for the election of directors shall be held at such time as may be designated
34 by the charter or the bylaws of the bank but shall be held not later than ~~the thirtieth day~~
35 ~~of June in each year.~~June 30 each year; provided, however, that any bank which has
36 been open for business for fewer than 12 months as of June 30 of the current year shall
37 hold its first annual meeting by not later than June 30 of the following year. In addition
38 to the foregoing powers relating to the fixing of the number and the election of
39 directors, the stockholders of a bank, at any stockholders' meeting, special or annual,
40 may authorize not more than two additional directorships which may be left unfilled and
41 to be filled in the discretion of the directors of the institution during the interval between
42 such stockholders' meetings. Aside from the specific provisions of this section, the
43 number, election, term and classification of the directors of banks doing business under

1 this Chapter shall be governed by the provisions of the North Carolina Business
2 Corporation Act."

3 **SECTION 10.** G.S. 53-99(b)(7b) reads as rewritten:

4 "(7b) Records of applications, examinations, examinations, and
5 investigations of registrants-applicants, licensees, and exempt persons
6 under the Mortgage Lending Act, Article 19A of this Chapter;".

7 **SECTION 11.** G.S. 53-115 reads as rewritten:

8 "**§ 53-115. State Banking Commission to make rules and regulations.**

9 (a) The State Banking Commission is hereby authorized, empowered and
10 directed to make all necessary rules and regulations, and to give all necessary
11 instructions with respect to such actions of banking corporations which the
12 Commissioner of Banks may authorize, permit and/or direct and require to be conducted
13 under the provisions of G.S. 53-77, 53-114, 53-115, and 53-116. And it shall be the duty
14 of all such banking corporations and their officers, agents and employees, to comply
15 fully with any and all such rules, regulations and instructions, established and
16 promulgated by the State Banking Commission with respect to such banking
17 corporations under the terms of G.S. 53-77, 53-114, 53-115, and 53-116; and such
18 orders, rules, and regulations shall have the same force and effect as rules, regulations
19 and instructions promulgated under the existing banking laws. with respect to the
20 establishment, operation, conduct, and termination of any and all activities and
21 businesses that are subject to licensing, regulation, supervision, or examination by the
22 Commissioner of Banks under this Chapter.

23 (b) The rule-making authority conferred on the State Banking Commission by
24 this section shall be in addition to and not in derogation of any specific rule-making
25 authority by any other provision of this Chapter."

26 **SECTION 12.** G.S. 53-160 reads as rewritten:

27 "**§ 53-160. License to do business.**

28 Before any such bank or trust company is authorized to act in any fiduciary capacity
29 without bond, it must be licensed by the Commissioner of Banks of the State. For such
30 license the ~~licensee~~ licensee, for the purpose of defraying necessary expenses of the
31 Commissioner of Banks and the Commissioner's agents in supervising and examining
32 the licensee, shall pay to the State Banking Commission an annual license fee of two
33 hundred dollars (\$200.00), which shall be remitted to the State Treasurer for the use of
34 the Commissioner of Banks in the supervision of banks and trust companies acting in a
35 fiduciary capacity, insofar as it may be necessary, and the surplus, if any, shall remain
36 in the State treasury for the use of the general fund of the State: Commissioner of Banks
37 an annual license fee not to exceed five hundred dollars (\$500.00) as required by rule of
38 the State Banking Commission. Provided, however, that a national bank which has
39 been granted trust powers by the Comptroller of the Currency or his duly authorized
40 agent shall be annually licensed as required in this section and shall be granted a
41 certificate of solvency which will meet the provisions of G.S. 53-162 without
42 examination by the Commissioner of Banks as required in G.S. 53-161."

43 **SECTION 13.** G.S. 53-208.12 reads as rewritten:

44 "**§ 53-208.12. Quarterly reports.**

1 A licensee shall file for each calendar quarter, no later than 60 days after the quarter
2 has ended, a report which contains the total number of authorized delegates in this State.
3 In addition, a licensee shall promptly provide any additional information regarding any
4 or all of its current and prior authorized delegates requested by the Commissioner."

5 **SECTION 14.** G.S. 53-243.02(c) reads as rewritten:

6 "(c) The license of a loan officer is not effective during any period when that
7 person is not employed by a mortgage broker or mortgage banker licensed under this
8 Article. The license of an exclusive mortgage broker is not effective during any period
9 when that person is not authorized to act as a single licensee or exempt person pursuant
10 to G.S. 53-243.05(c)(1a).

11 When a loan officer ceases to be employed by a mortgage broker or mortgage
12 banker licensed under this Article, the loan officer and the mortgage broker or mortgage
13 banker licensed under this Article by whom that person is employed shall promptly
14 notify the Commissioner in writing. When the authority of an exclusive mortgage
15 broker to act on behalf of the principal licensee or exempt person identified in G.S.
16 53-243.05(c)(1a) has been terminated, the exclusive mortgage broker and the licensee or
17 exempt person for whom the exclusive mortgage broker is an agent shall promptly
18 notify the Commissioner in writing. The mortgage broker, mortgage banker, or exempt
19 person's notice shall include a statement of the specific reason or reasons for, as
20 applicable, the termination of the loan officer's employment or exclusive mortgage
21 broker's authority.

22 A loan officer shall not be employed simultaneously by more than one mortgage
23 broker or mortgage banker licensed under this Article."

24 **SECTION 15.** G.S. 53-243.05(a)(6) reads as rewritten:

25 "(6) The applicant's consent to a federal and State criminal history record
26 check and a set of the applicant's fingerprints in a form acceptable to
27 the Commissioner. In the case of an applicant that is a corporation,
28 partnership, limited liability company, association, or trust, each
29 individual who has control of the applicant or who is the managing
30 principal or a branch manager shall consent to a federal and State
31 criminal history record check and submit a set of that individual's
32 fingerprints pursuant to this subdivision. Refusal to consent to a
33 criminal history record check ~~may constitute~~ constitutes grounds for
34 the Commissioner to deny licensure to the ~~applicant~~ applicant as well
35 as to any entity (i) by whom or by which the applicant is employed, (ii)
36 over which the applicant has control, or (iii) as to which the applicant
37 is the current or proposed managing principal or a current or proposed
38 branch manager."

39 **SECTION 16.** G.S. 53-243.06(b1) reads as rewritten:

40 "(b1) When required by the Commissioner, ~~the licensee~~ each individual described
41 in G.S. 53-245.05(a)(6) shall furnish to the Commissioner the licensee's his or her
42 consent to a criminal history record check and a set of the licensee's his or her
43 fingerprints in a form acceptable to the Commissioner. Refusal to consent to a criminal
44 history record check may constitute grounds for the Commissioner to deny renewal of

1 ~~licensure to the licensee~~ the license of the person as well as the license of any other
2 person by which he or she is employed, over which he or she has control, or as to which
3 he or she is the current or proposed managing principal or a current or proposed branch
4 manager."

5 **SECTION 17.** G.S. 53-243.11 is amended by adding a new subdivision to
6 read:

7 "(12) To fail to comply with the mortgage loan servicing transfer, escrow
8 account administration, or borrower inquiry response requirements
9 imposed by sections 6 and 10 of the Real Estate Settlement Procedures
10 Act (RESPA), 12 U.S.C. § 2605 and § 2609, and regulations adopted
11 thereunder by the Secretary of the Department of Housing and Urban
12 Development."

13 **SECTION 18.** G.S. 53-243.12(a)(2) reads as rewritten:

14 "(2) That any of the following circumstances apply to the applicant,
15 licensee, or any partner, member, manager, officer, director, loan
16 officer, managing ~~broker,~~ principal, or any person occupying a similar
17 status or performing similar functions or any person directly or
18 indirectly controlling the applicant or licensee. The person:

- 19 a. Has filed an application for license that, as of its effective date
20 or as of any date after filing, contained any statement that, in
21 light of the circumstances under which it was made, is false or
22 misleading with respect to any material fact.
- 23 b. Has violated or failed to comply with any provision of this
24 Article, rule adopted by the Commissioner, or order of the
25 Commissioner.
- 26 c. Has been convicted of any felony, or, within the past 10 years,
27 has been convicted of any misdemeanor involving mortgage
28 lending or any aspect of the mortgage lending business, or any
29 offense involving breach of trust, moral turpitude, or fraudulent
30 or dishonest dealing.
- 31 d. Is permanently or temporarily enjoined by any court of
32 competent jurisdiction from engaging in or continuing any
33 conduct or practice involving any aspect of the mortgage
34 lending business.
- 35 e. Is the subject of an order of the Commissioner denying,
36 suspending, or revoking that person's license as a mortgage
37 broker or mortgage banker.
- 38 f. Is the subject of an order entered within the past five years by
39 the authority of any state with jurisdiction over that state's
40 mortgage brokerage or mortgage banking industry denying or
41 revoking that person's license as a mortgage broker or mortgage
42 banking industry or denying or revoking that person's license as
43 a mortgage broker or mortgage banker.

- 1 g. Does not meet the qualifications or the financial responsibility,
2 character, or general fitness requirements under G.S. 53-243.05
3 or any bond or capital requirements under this Article.
4 h. Has been the executive officer or controlling shareholder or
5 owned a controlling interest in any mortgage broker or
6 mortgage banker who has been subject to an order or injunction
7 described in sub-subdivision d., e., or f. of this subdivision.
8 i. Has failed to pay the proper filing or renewal fee under this
9 Article. However, the Commissioner may enter only a denial
10 order under this sub-subdivision, and the Commissioner shall
11 vacate the order when the deficiency has been corrected."

12 **SECTION 19.** G.S. 53-243.12(g) reads as rewritten:

13 "(g) If the Commissioner has reasonable grounds to believe that a licensee or other
14 person has violated the provisions of this Article or that facts exist that would be the
15 basis for an order against a licensee or other person, the Commissioner may at any time,
16 either personally or by a person duly designated by the Commissioner, investigate or
17 examine the loans and business of the licensee and examine the books, accounts,
18 records, and files of any licensee or other person relating to the complaint or matter
19 under investigation. The Commissioner may require any licensee or other person to
20 submit a consent to a criminal history record check and a set of that person's fingerprints
21 in a form acceptable to the Commissioner in connection with any examination or
22 investigation. Refusal to submit the requested criminal history record check or a set of
23 fingerprints shall be grounds for disciplinary action. The reasonable cost of this
24 investigation or examination shall be charged against the licensee."

25 **SECTION 20.** G.S. 53-243.12(k) reads as rewritten:

26 "(k) If the Commissioner finds that the managing principal, branch manager, or
27 loan officer of a licensee had knowledge of or reasonably should have had knowledge
28 of, or participated in, any activity that results in the entry of an order under this section
29 suspending or withdrawing the license of a licensee, the Commissioner may prohibit the
30 branch manager, managing ~~broker~~ principal, or loan officer from serving as a branch
31 manager, managing ~~broker~~ principal, or loan officer for any period of time the
32 Commissioner deems necessary."

33 **SECTION 21.** G.S. 53-243.16 reads as rewritten:

34 **"§ 53-243.16. Criminal history record checks.**

35 (a) The Department of Justice may provide a criminal record check to the
36 Commissioner for a any person who has applied for or holds a mortgage banker,
37 mortgage broker, exclusive mortgage broker, or loan officer license through the
38 Commissioner under this Article.

39 (b) In addition, if a person described in subsection (a) of this section is a
40 corporation, partnership, limited liability company, association, or trust, the Department
41 of Justice may provide a criminal record check to the Commissioner for any person who
42 has control of that person, or who is the managing principal or a branch manager of that
43 person.

1 (c) The Commissioner shall provide to the Department of Justice, along with the
2 request, the fingerprints of the ~~applicant, person~~, any additional information required by
3 the Department of Justice, and a form signed by the ~~applicant-person~~ consenting to the
4 check of the criminal record and to the use of the fingerprints and other identifying
5 information required by the State or national repositories. The ~~applicant's person's~~
6 fingerprints shall be forwarded to the State Bureau of Investigation for a search of the
7 State's criminal history record file, and the State Bureau of Investigation shall forward a
8 set of the fingerprints to the Federal Bureau of Investigation for a national criminal
9 history check. The Commissioner shall keep all information pursuant to this section
10 privileged, in accordance with applicable State law and federal guidelines, and the
11 information shall be confidential and shall not be a public record under Chapter 132 of
12 the General Statutes.

13 The Department of Justice may charge a fee for each ~~applicant-person~~ for
14 conducting the checks of criminal history records authorized by this section."

15 **SECTION 22.** G.S. 53-257(6) reads as rewritten:

16 "(6) Reverse mortgage loan or loan. – A loan for a definite or indefinite
17 term (i) secured by a first mortgage or first deed of trust on the
18 principal residence of the ~~mortgagor~~, mortgagor located in North
19 Carolina, (ii) the proceeds of which are disbursed to the mortgagor in
20 one or more lump sums, or in equal or unequal installments, either
21 directly by the lender or the lender's agent, and (iii) that requires no
22 repayment until a future time, upon the earliest occurrence of one or
23 more events specified in the reverse mortgage loan contract."

24 **SECTION 23.** G.S. 53-258 reads as rewritten:

25 **"§ 53-258. Authority and procedures governing reverse mortgage loans.**

26 (a) ~~No-Except as provided in subsection (b1) of this section, no person, firm, or~~
27 ~~corporation shall engage in the business of making reverse mortgage loans without first~~
28 ~~being approved as an authorized lender by the Commissioner, unless the lender is the~~
29 ~~North Carolina Housing Finance Agency, or is a bank, savings institution, or credit~~
30 ~~union authorized to do business under the laws of this State or authorized to do business~~
31 ~~under the laws of the United States and chartered to do business in this~~
32 ~~State.~~Commissioner.

33 (b) An application for authorization to make reverse mortgage loans shall be in
34 writing to the Commissioner and in the form prescribed by the Commissioner. The
35 application shall contain the name and complete business address or addresses of the
36 applicant. The application shall also include affirmation of financial solvency and all
37 capitalization requirements that are required by the Commissioner. The application shall
38 be accompanied by a nonrefundable fee, payable to the Commissioner, of five hundred
39 dollars (\$500.00).

40 (b1) Each of the following lenders shall be considered authorized to engage in the
41 business of making reverse mortgage loans without being required to apply pursuant to
42 subsection (b) of this section and may represent to the public that it is so authorized:

43 (1) The North Carolina Housing Finance Agency.

1 (2) A bank, savings institution, or credit union formed under the laws of
2 this or any other state or of the United States.

3 (3) A wholly owned subsidiary of an entity described in subdivision (2) of
4 this subsection.

5 Each lender listed in this subsection may, upon written request to the Commissioner
6 of Banks, obtain written confirmation of its authority to engage in the business of
7 making reverse mortgage loans. In the case of lenders listed in subdivisions (2) and (3)
8 of this subsection, the request shall be accompanied by the fee set forth in subsection (d)
9 of this section.

10 ~~(e) The North Carolina Housing Finance Agency, and any bank, savings~~
11 ~~institution, or credit union that is not required to obtain authorization to make reverse~~
12 ~~mortgage loans under subsection (a) of this section, shall, prior to making any reverse~~
13 ~~mortgage loan, notify the Commissioner of its intent to make reverse mortgage loans.~~
14 ~~This notification shall be made on a form prescribed by the Commissioner and shall~~
15 ~~contain all information required by the Commissioner.~~

16 (d) The Commissioner shall, upon determination that ~~a lender~~ an applicant
17 should be authorized to make reverse mortgage loans, issue notice of this authority to
18 the lender. The authority to issue reverse mortgage loans is valid for the period of time
19 specified by the Commissioner. A lender to whom a notice of authority is issued shall
20 display the notice prominently in any and all offices of the lender that make reverse
21 mortgage loans. Authorizations issued under this section are ~~nontransferable and subject~~
22 ~~to nontransferable.~~ Except for lenders described in subsection (b1) of this section, each
23 lender to which an authorization is issued shall pay an annual renewal fee of two
24 hundred fifty dollars (\$250.00)."

25 **SECTION 24.** G.S. 54B-4(b) is amended by adding the following new
26 subdivision to read:

27 "(32b) "Limited service facility" means a staffed physical location open to the
28 public in this State in which a State association conducts any activity
29 of a "branch office" set forth in subdivision (7) of this subsection, but
30 which is not considered a branch by virtue of the fact that the State
31 association does not engage in all activities of a branch at the location.
32 A location is a limited service facility of a State association
33 notwithstanding that it is operated by a third party if there exists an
34 agreement between the third party and the State association pursuant to
35 which the third party (i) takes deposits or offers loans as an agent of
36 the State association or in the State association's name; or (ii) is
37 obligated to sell or otherwise transfer to the State association all or a
38 substantial portion of the loan or deposit production of that location."

39 **SECTION 25.** G.S. 54B-22 reads as rewritten:

40 "**§ 54B-22. Branch offices. offices and limited service facilities.**

41 ~~(a) Any State association may apply to the Commissioner of Banks for~~
42 ~~permission to establish a branch office. The application shall be in such form as may be~~
43 ~~prescribed by the Commissioner of Banks and shall be accompanied by the proper~~

1 ~~branch application fee. Branch applications shall be approved or denied by the~~
2 ~~Commissioner of Banks within 120 days of filing.~~

3 ~~(b) The Commissioner of Banks shall approve a branch application when all of~~
4 ~~the following criteria are met:~~

5 ~~(1) The applicant has gross assets of at least ten million dollars~~
6 ~~(\$10,000,000);~~

7 ~~(2) The applicant has evidenced financial responsibility;~~

8 ~~(3) The applicant has a net worth equal to or exceeding the amount~~
9 ~~required by the insurer of the applicant's withdrawable accounts;~~

10 ~~(4) The applicant has an acceptable internal control system. Such a system~~
11 ~~would include certain basic internal control requirements essential to~~
12 ~~the protection of assets and the promotion of operational efficiency~~
13 ~~regardless of the size of the applicant. Some of the factors which~~
14 ~~require extensive internal control requirements such as the use of the~~
15 ~~controller or internal auditor and more distinctive placement~~
16 ~~responsibilities include the applicant's size, number of personnel and~~
17 ~~history of and anticipated plans for expansion.~~

18 ~~(c) Upon receipt of a branch application, the Commissioner of Banks shall~~
19 ~~examine or cause to be examined all the relevant facts connected with the establishment~~
20 ~~of the proposed branch office. If it appears to the satisfaction of the Commissioner of~~
21 ~~Banks that the applicant has complied with all the requirements set forth in this section~~
22 ~~and the regulations for the establishment of a branch office and that the association is~~
23 ~~otherwise lawfully entitled to establish such branch office, then the administrator shall~~
24 ~~approve the branch application.~~

25 ~~(d) Not more than 10 days following the filing of the branch application with the~~
26 ~~Commissioner of Banks, the applicant shall cause a notice to be published in a~~
27 ~~newspaper of general circulation in the area to be served by the proposed branch office.~~
28 ~~Such notice shall contain:~~

29 ~~(1) A statement that the branch application has been filed with the~~
30 ~~Commissioner of Banks;~~

31 ~~(2) The proposed address of the branch office, including city or town and~~
32 ~~street; and~~

33 ~~(3) A statement that any interested or affected party may file a written~~
34 ~~statement with the Commissioner of Banks, within 30 days of the date~~
35 ~~of the publication of the notice, protesting the establishment of the~~
36 ~~proposed branch office and requesting a hearing before the~~
37 ~~Commissioner of Banks on the application.~~

38 ~~(e) Any interested or affected party may file a written statement with the~~
39 ~~Commissioner of Banks within 30 days of the date of initial publication of the branch~~
40 ~~application notice, protesting the establishment of the proposed branch office and~~
41 ~~requesting a hearing before the Commissioner of Banks on the application. If a hearing~~
42 ~~is held on the branch application, the Commissioner of Banks shall only receive~~
43 ~~information and hear testimony from the applicant and from any interested or affected~~
44 ~~party which is relevant to the branch application and the operation of the proposed~~

1 branch office. The Commissioner of Banks shall issue his final decision on the branch
2 application within 30 days following the hearing. Such final decision shall be in
3 accordance with the applicable provisions of Chapter 150B of the General Statutes.

4 (f) If a hearing is not held on the branch application, the Commissioner of Banks
5 shall issue his final decision within 120 days of the filing of the application. Such final
6 decision shall be in accordance with the applicable provisions of Chapter 150B of the
7 General Statutes.

8 (g) to (i) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1238, s. 3.

9 (j) Any party to a branch application may appeal the final decision of the
10 Commission at any time after final decision, but not later than 30 days after a written
11 copy of the final decision is served upon the party and his attorney of record by personal
12 service or by certified mail. Failure to file such appeal within the time stated shall
13 operate as a waiver of the right of such party to review by the Commission and by a
14 court of competent jurisdiction in accordance with Chapter 150B of the General
15 Statutes, relating to judicial review.

16 (a) A State association, with the prior written approval of the Commissioner of
17 Banks, may:

18 (1) Establish a branch office or limited service facility; or

19 (2) Convert an existing limited service facility to a branch office.

20 The application for approval to establish or convert a branch office or limited service
21 facility shall be in a form prescribed by the Commissioner of Banks and shall be
22 accompanied by the application fee established by the Banking Commission by rule.
23 Approval may be given or withheld by the Commissioner of Banks. In determining
24 whether to give or withhold approval, the Commissioner of Banks shall take into
25 account factors including the financial history and condition of the applicant
26 association, the adequacy of its capital structure, its future earnings prospects, and the
27 general character of its management.

28 The Commissioner of Banks shall not give approval pursuant to this subsection
29 unless the Commissioner finds that:

30 (1) The establishment or conversion of the branch office or limited service
31 facility will meet the needs and promote the convenience of the
32 community to be served thereby; and

33 (2) The probable volume of business and reasonable public demand in the
34 community are sufficient to assure and maintain the solvency of the
35 branch office or limited service facility and of the existing depository
36 instructions in the community.

37 (b) A branch or limited service facility of a State association shall be operated
38 under the control and direction of the board of directors and executive officers of the
39 State association and under the name of the State association as set forth in its
40 Certificate of Incorporation filed with the Office of the Secretary of State, except that
41 the Commissioner of Banks may permit the operation of a branch office or limited
42 service facility under an assumed name under the conditions and terms imposed by the
43 Commissioner if the Commissioner finds that the name will not result in confusion
44 among customers of the State association or among the general public. The board of

1 directors of the State association shall elect officers required to conduct the business of
2 any branch or limited service facility.

3 The Commissioner of Banks shall not authorize the establishment or conversion of a
4 branch office or limited service facility until the Commissioner is satisfied that the
5 applicant State association has sufficient capital to maintain a minimum capital to asset
6 ratio as the Commissioner of Banks may require. In determining the ratio, the
7 Commissioner of Banks shall give due consideration to (i) the amount of capital
8 required to support the association's projected growth, (ii) the association's earnings
9 history and projected earnings, (iii) the quality of the association's assets, (iv) the
10 amount of capital then invested by the State association in fixed assets, and (v) the
11 business experience and reputation of the management.

12 (c) Subject to rules adopted by the State Banking Commission with regard to its
13 use, maintenance, and supervision, any State association may establish off the premises
14 of any principal office, branch office, or limited service facility a customer-bank
15 communications terminal, point-of-sale terminal, automated teller machine, automated
16 banking facility, or other direct or remote information-processing device or machine,
17 whether manned or unmanned, through or by means of which information relating to
18 any financial service or transaction rendered to the public is stored and transmitted,
19 instantaneously or otherwise, to or from an association or other terminal. The
20 establishment and use of the device or machine shall not be deemed a branch or limited
21 service facility, and the net worth requirements and standards for approval of a branch,
22 all as set forth in this section, shall not be applicable to the establishment of any off-
23 premises terminal device or machine."

24 **SECTION 26.** G.S. 54C-4(18) reads as rewritten:

25 ~~"(18) Loan production office. — An office of a savings bank other than the~~
26 ~~principal or branch offices whose activities are limited to the~~
27 ~~generation of loans.~~

28 Limited service facility. — A staffed physical location open to the
29 public in this State in which a State savings bank conducts any activity
30 of a "branch office" set forth in subdivision (5) of this subsection, but
31 which is not considered a branch by virtue of the fact that the State
32 savings bank does not engage in all activities of a branch at the
33 location. A location is a limited service facility of a State savings bank
34 notwithstanding that it is operated by a third party if there exists an
35 agreement between the third party and the State savings bank pursuant
36 to which the third party (i) takes deposits or offers loans as an agent of
37 the State savings bank or in the State savings bank's name; or (ii) is
38 obligated to sell or otherwise transfer to the State savings bank all or a
39 substantial portion of the loan or deposit production of that location."

40 **SECTION 27.** G.S. 54C-23 reads as rewritten:

41 **§ 54C-23. Branch offices-offices and limited service facilities.**

42 ~~(a) A State savings bank may apply to the Commissioner of Banks for~~
43 ~~permission to establish a branch office. The application shall be in the form prescribed~~
44 ~~by the Commissioner of Banks and shall be accompanied by the proper branch~~

1 application fee. The Commissioner of Banks shall approve or deny branch applications
2 within 120 days of filing.

3 (b) The Commissioner of Banks shall approve a branch application when all of
4 the following criteria are met:

5 (1) The applicant has gross assets of at least ten million dollars
6 (\$10,000,000).

7 (2) The applicant has evidenced financial responsibility.

8 (3) The applicant has a net worth equal to or exceeding the amount
9 required by the insurer of deposit accounts.

10 (4) The applicant has an acceptable internal control system that includes
11 certain basic internal control requirements essential to the protection of
12 assets and the promotion of operational efficiency regardless of the
13 size of the applicant.

14 (c) Upon receipt of a branch application, the Commissioner of Banks shall
15 examine or cause to be examined all the relevant facts connected with the establishment
16 of the proposed branch office. If it appears to the satisfaction of the Commissioner of
17 Banks that the applicant has complied with all the requirements set forth in this section
18 and the regulations for the establishment of a branch office and that the savings bank is
19 otherwise lawfully entitled to establish the branch office, then the Commissioner of
20 Banks shall approve the branch application.

21 (d) Not more than 10 days following the filing of the branch application with the
22 Commissioner of Banks, the applicant shall cause a notice to be published in a
23 newspaper of general circulation in the area to be served by the proposed branch office.
24 The notice shall contain:

25 (1) A statement that the branch application has been filed with the
26 Commissioner of Banks;

27 (2) The proposed address of the branch office, including city or town and
28 street; and

29 (3) A statement that any interested or affected party may file a written
30 statement with the Commissioner of Banks, within 30 days of the date
31 of the publication of the notice, protesting the establishment of the
32 proposed branch office and requesting a hearing before the
33 Commissioner of Banks on the application.

34 (e) Any interested or affected party may file a written statement with the
35 Commissioner of Banks within 30 days of the date of initial publication of the branch
36 application notice, protesting the establishment of the proposed branch office and
37 requesting a hearing before the Commissioner of Banks on the application. If a hearing
38 is held on the branch application, the Commissioner of Banks shall receive information
39 and hear testimony only from the applicant and from any interested or affected party
40 that is relevant to the branch application and the operation of the proposed branch
41 office. The Commissioner of Banks shall issue the final decision on the branch
42 application within 30 days following the hearing. The final decision shall be in
43 accordance with Chapter 150B of the General Statutes.

1 ~~(f) If a hearing is not held on the branch application, the Commissioner of Banks~~
2 ~~shall issue the final decision within 120 days of the filing of the application. The final~~
3 ~~decision shall be in accordance with Chapter 150B of the General Statutes.~~

4 ~~(g) A party to a branch application may appeal the final decision of the~~
5 ~~Commissioner of Banks to the Commission at any time after the final decision, but not~~
6 ~~later than 30 days after a written copy of the final decision is served upon the party and~~
7 ~~the party's attorney of record by personal service or by certified mail. Failure to file an~~
8 ~~appeal within the time stated shall operate as a waiver of the right of the party to review~~
9 ~~by the Commission and by a court of competent jurisdiction in accordance with Chapter~~
10 ~~150B of the General Statutes, relating to judicial review.~~

11 (a) A State savings bank, with the prior written approval of the Commissioner of
12 Banks, may:

13 (1) Establish a branch office or limited service facility; or

14 (2) Convert an existing limited service facility to a branch office.

15 The application for approval to establish or convert a branch office or limited service
16 facility shall be in a form prescribed by the Commissioner of Banks and shall be
17 accompanied by the application fee established by the Banking Commission by rule.
18 Approval may be given or withheld by the Commissioner of Banks. In determining
19 whether to give or withhold approval, the Commissioner of Banks shall take into
20 account factors including the financial history and condition of the applicant State
21 savings bank, the adequacy of its capital structure, its future earnings prospects, and the
22 general character of its management.

23 The Commissioner of Banks shall not give approval pursuant to this subsection
24 unless the Commissioner finds that:

25 (1) The establishment or conversion of the branch office or limited service
26 facility will meet the needs and promote the convenience of the
27 community to be served thereby; and

28 (2) The probable volume of business and reasonable public demand in the
29 community are sufficient to assure and maintain the solvency of the
30 branch office or limited service facility and of the existing depository
31 instructions in the community.

32 (b) A branch or limited service facility of a State savings bank shall be operated
33 under the control and direction of the board of directors and executive officers of the
34 State savings bank and under the name of the State savings bank as set forth in its
35 Certificate of Incorporation filed with the Office of the Secretary of State, except that
36 the Commissioner of Banks may permit the operation of a branch office or limited
37 service facility under an assumed name under the conditions and terms imposed by the
38 Commissioner if the Commissioner finds that the name will not result in confusion
39 among customers of the State savings bank or among the general public. The board of
40 directors of the State savings bank shall elect officers required to conduct the business
41 of any branch or limited service facility.

42 The Commissioner of Banks shall not authorize the establishment or conversion of a
43 branch office or limited service facility until the Commissioner is satisfied that the
44 applicant State savings bank has sufficient capital to maintain a minimum capital to

1 asset ratio as the Commissioner of Banks may require. In determining the ratio, the
2 Commissioner of Banks shall give due consideration to (i) the amount of capital
3 required to support the State savings bank's projected growth, (ii) the State savings
4 bank's earnings history and projected earnings, (iii) the quality of the savings bank's
5 assets, (iv) the amount of capital then invested by the State association in fixed assets,
6 and (v) the business experience and reputation of the management.

7 (c) Subject to rules adopted by the State Banking Commission with regard to its
8 use, maintenance, and supervision, any State savings bank may establish off the
9 premises of any principal office, branch office, or limited service facility a
10 customer-bank communications terminal, point-of-sale terminal, automated teller
11 machine, automated banking facility, or other direct or remote information-processing
12 device or machine, whether manned or unmanned, through or by means of which
13 information relating to any financial service or transaction rendered to the public is
14 stored and transmitted, instantaneously or otherwise, to or from a savings bank or other
15 terminal. The establishment and use of the device or machine shall not be deemed a
16 branch or limited service facility, and the net worth requirements and standards for
17 approval of a branch, all as set forth in this section, shall not be applicable to the
18 establishment of any off-premises terminal device or machine."

19 **SECTION 28.** G.S. 54C-27 is repealed.

20 **SECTION 29.** G.S. 150B-21.1 is amended by adding a new subsection to
21 read:

22 "(a11) Notwithstanding the provisions of subsection (a) of this section, the State
23 Banking Commission, in accordance with the provisions of Article 8 of Chapter 53 of
24 the General Statutes, may adopt a temporary rule for one or more of the following
25 reasons:

- 26 (1) To ensure the safe and sound management of the financial institutions
27 under the Commissioner's supervision pursuant to Chapters 53, 54B,
28 and 54C of the General Statutes.
29 (2) To implement any provision of State or federal law for which the
30 Commissioner of Banks or the State Banking Commission has been
31 authorized to adopt rules.
32 (3) To preserve the operational integrity of the system of regulated
33 financial institutions serving the citizens of this State.
34 (4) To prevent catastrophic loss to the interests of depositors, creditors,
35 stockholders, or the public in their relations with the system of
36 regulated financial institutions.

37 After having the proposed temporary rule published in the North Carolina Register
38 and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the
39 Commission shall:

- 40 (1) Notify persons on its mailing list maintained pursuant to G.S.
41 150B-21.2(d) and any other interested parties of its intent to adopt a
42 temporary rule;
43 (2) Accept oral and written comments on the proposed temporary rule;
44 and

1 (3) Hold at least one public hearing on the proposed temporary rule.

2 When the State Banking Commission adopts a temporary rule pursuant to this
3 subsection, the Commission shall submit the reference to this subsection as the agency's
4 statement of need to the Codifier of Rules."

5 **SECTION 30.** The Legislative Research Commission shall undertake a
6 comprehensive study of those laws, including Chapters 53, 54B, 54C, and 24 of the
7 General Statutes, which affect the establishment and operation of banks in North
8 Carolina and shall make recommendations to the 2003 General Assembly, prior to the
9 convening of the 2004 Regular Session as to which laws (i) are obsolete, unnecessary or
10 duplicative, (ii) are unnecessarily inconsistent in the treatment of banks, savings and
11 loan associations, and savings banks, and (iii) unnecessarily restrict, impede, or prohibit
12 activities of banks, savings and loan associations, and savings banks or the ability of the
13 Commissioner of Banks to regulate banks and savings institutions in an effective,
14 efficient, and equitable manner.

15 In preparing its recommendations, the Commission shall actively solicit and
16 consider information received from representatives of banks, savings and loan
17 associations, savings banks, the State Banking Commission, the Commissioner of
18 Banks and the Commissioner's staff, and the general public.

19 **SECTION 31.** Section 30 of this act is effective when it becomes law. The
20 remainder of this act becomes effective October 1, 2003, and applies to acts occurring
21 and transactions or agreements entered into on or after that date.