

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS55221-RO-8 (03/10)

Short Title: Banking Commission Appeals.

(Public)

Sponsors: Senators Soles, Hoyle, McKissick, and Rand.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE BANKING COMMISSION APPELLATE PROCEDURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-92(d) reads as rewritten:

"(d) The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this State. Upon an appeal to the Banking Commission by any party from an order entered by the Commissioner of Banks following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, ~~the Administrative Procedure Act,~~ the chairman of the Commission may appoint an appellate review panel of not less than five members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. Unless another time period for appeals is provided by this Chapter, any party to an order by the Commissioner of Banks may, within 20 days after the order and upon written notice to the Commissioner, appeal the Commissioner's order to the Banking Commission for review. The notice of appeal shall state the grounds for the appeal and set forth in numbered order the assignments of error for review by the Banking Commission. Failure to state the grounds for the appeal and assignments of error shall constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule provided by the Banking Commission shall also constitute grounds to dismiss the appeal. Upon receipt of a notice of an appeal, the Commissioner of Banks shall, within 30 days of the notice, certify to the Commission the record on appeal. Any party to a proceeding before the Banking Commission may, within 20 days after final order of ~~said the Commission and by written notice to the Commissioner of Banks, appeal to~~ Commission, petition the Superior Court of Wake County for judicial review of a final determination of any question of law which may be involved. The cause petition for judicial review shall be entitled "State of North Carolina on Relation of the Banking Commission against (here insert name of appellant)." "(insert name) Petitioner v. State of North Carolina on Relation of the Banking Commission." A copy of the petition for judicial review shall be served upon the Commissioner of Banks pursuant to G.S. 150B-46. The petition # shall be placed on the civil issue docket of such the court and shall have precedence over other civil actions. In the event of an appeal Within 15 days of service of the petition for judicial review, the Commissioner shall certify the record to the Clerk of Superior Court of Wake County within 15 days thereafter. County. The standard of review of a petition for judicial review of a final order of the Banking Commission shall be as provided in G.S. 150B-51(b)."

SECTION 2. G.S. 53-188 reads as rewritten:



1 **"§ 53-188. Review of regulations, order or act of Commission or Commissioner.**

2 The Commission ~~shall have full authority to~~ may review any rule, regulation, order or act of
3 the Commissioner done pursuant to or with respect to the provisions of this ~~Article and any~~
4 Article. Any person aggrieved by any such rule, regulation, order or act may appeal ~~appeal,~~
5 pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within
6 20 days after such rule, regulation, order or act complained of is adopted, issued or done.
7 Notwithstanding any other provision of law to the contrary, any aggrieved party to a decision of
8 the Commission shall be entitled to an appeal petition for judicial review pursuant to
9 G.S. 53-92. G.S. 53-92(d)."

10 **SECTION 3.** G.S. 53-208.27(b) reads as rewritten:

11 "(b) The Banking Commission may review any rule, regulation, order, or act of the
12 Commissioner done pursuant to or with respect to the provisions of this ~~Article; and any~~
13 Article. Any person aggrieved by any such rule, regulation, order, or act may appeal ~~appeal,~~
14 pursuant to G.S. 53-92(d), to the Commission for review upon providing notice in writing
15 within 20 days after any rule, regulation, order, or act complained of is adopted, issued, or
16 done. Notwithstanding any other provision of law, any aggrieved party to a decision of the
17 Banking Commission shall be entitled to an appeal petition for judicial review pursuant to
18 G.S. 53-92. G.S. 53-92(d)."

19 **SECTION 4.** G.S. 53-215 reads as rewritten:

20 **"§ 53-215. Appeal of Commissioner's decision.**

21 Any aggrieved party in a proceeding under G.S. 53-211 or G.S. 53-227.1 may, within ~~30~~
22 20 days after final decision of the Commissioner, appeal his ~~in writing any~~ decision to the
23 State Banking Commission. ~~The State Banking Commission, within 30 days of receipt of the~~
24 ~~notice of appeal, shall approve, disapprove or modify the Commissioner's decision. Failure of~~
25 ~~the State Banking Commission to act within 30 days of receipt of notice of appeal shall~~
26 ~~constitute a final decision of the State Banking Commission approving the decision of the~~
27 ~~Commissioner. An appeal under this section shall be made pursuant to G.S. 53-92(d).~~
28 Notwithstanding any other provision of law, any aggrieved party to a decision of the State
29 Banking Commission shall be entitled to an appeal petition for judicial review pursuant to
30 G.S. 53-92. G.S. 53-92(d)."

31 **SECTION 5.** G.S. 53-224.30 reads as rewritten:

32 **"§ 53-224.30. Appeal of Commissioner's decision.**

33 Any aggrieved party in a proceeding under this Article may, within ~~30~~ 20 days after final
34 decision of the Commissioner, appeal ~~appeal, in writing,~~ such decision to the North Carolina
35 State Banking Commission. ~~The State Banking Commission, within 30 days of receipt of the~~
36 ~~notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of~~
37 ~~the State Banking Commission to act within 30 days of receipt of notice of appeal shall~~
38 ~~constitute a final decision of the State Banking Commission approving the decision of the~~
39 ~~Commissioner. An appeal under this section shall be made pursuant to G.S. 53-92(d).~~
40 Notwithstanding any other provision of law, any aggrieved party to a decision of the
41 Commission shall be entitled to an appeal petition for judicial review pursuant to G.S. 53-92.
42 G.S. 53-92(d)."

43 **SECTION 6.** G.S. 53-231 reads as rewritten:

44 **"§ 53-231. Appeal of Commissioner's decision.**

45 Any aggrieved party in a proceeding under this Article may, within ~~30~~ 20 days after final
46 decision of the Commissioner, appeal such decision in writing to the Banking Commission.
47 ~~The Banking Commission, within 30 days of receipt of the notice of appeal, shall approve,~~
48 ~~disapprove, or modify the Commissioner's decision. Failure of the Banking Commission to act~~
49 ~~within 30 days of receipt of notice of appeal shall constitute a final decision of the Banking~~
50 ~~Commission approving the decision of the Commissioner. An appeal under this section shall be~~
51 made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved

1 party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for
2 judicial review pursuant to ~~G.S. 53-92~~. G.S. 53-92(d)."

3 **SECTION 7.** G.S. 53-232.17 reads as rewritten:

4 **"§ 53-232.17. Appeal of Commissioner's decision.**

5 Any aggrieved party in a proceeding under this Article may, within ~~30~~ 20 days after final
6 decision of the Commissioner, appeal such decision in writing to the Banking Commission.
7 ~~The Banking Commission, within 30 days of receipt of the notice of appeal, shall approve,~~
8 ~~disapprove, or modify the Commissioner's decision. Failure of the Banking Commission to act~~
9 ~~within 30 days of receipt of notice of appeal shall constitute a final decision of the Banking~~
10 ~~Commission approving the decision of the Commissioner. An appeal under this section shall be~~
11 made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved
12 party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for
13 judicial review pursuant to ~~G.S. 53-92~~. G.S. 53-92(d)."

14 **SECTION 8.** G.S. 53-252 reads as rewritten:

15 **"§ 53-252. Appeal of Commissioner's decision.**

16 The Commission ~~shall have full authority to~~ may review any rule, regulation, order, or act
17 of the Commissioner done pursuant to or with respect to the provisions of this ~~Article; and any~~
18 ~~Article. Any person aggrieved by any such rule, regulation, order, or act may~~ appeal ~~appeal,~~
19 pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within
20 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done.
21 Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking
22 Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92~~.
23 G.S. 53-92(d)."

24 **SECTION 9.** G.S. 53-272 reads as rewritten:

25 **"§ 53-272. Appeals.**

26 The Banking Commission ~~shall have full authority to~~ may review any rule, regulation,
27 order, or act of the Commissioner done pursuant to or with respect to the provisions of this
28 ~~Article; and any Article. Any person aggrieved by any such rule, regulation, order, or act may~~
29 ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in
30 writing within 20 days after such rule, regulation, order, or act complained of is adopted,
31 issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision
32 of the Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant
33 to ~~G.S. 53-92~~. G.S. 53-92(d)."

34 **SECTION 10.** G.S. 53-289 reads as rewritten:

35 **"§ 53-289. Commission may review rules, orders, or acts by Commissioner.**

36 The Commission ~~shall have full authority to~~ may review any rule, regulation, order, or act
37 of the Commissioner done pursuant to or with respect to the provisions of this ~~Article; and any~~
38 ~~Article. Any person aggrieved by any such rule, regulation, order, or act may~~ appeal ~~appeal,~~
39 pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within
40 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done.
41 Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking
42 Commission shall be entitled to petition for judicial review pursuant to G.S. 53-92(d)."

43 **SECTION 11.** G.S. 53-412 reads as rewritten:

44 **"§ 53-412. Commissioner hearings; appeals.**

45 (a) This section does not grant a right to a hearing to a person that is not otherwise
46 granted by governing law.

47 (b) The Commissioner may convene a hearing to receive evidence and argument
48 regarding any matter before the Commissioner for decision or review under the provisions of
49 this Article. The hearing shall be conducted in accordance with Article 3A of Chapter 150B of
50 the General Statutes.

- 1 (c) Disputes over decisions and actions of the Commissioner under the provisions of
2 this Article shall be "contested cases" as defined in G.S. 150B-2(2).
- 3 (d) Except as expressly provided otherwise by this Chapter, an order of the
4 Commissioner may be ~~appealed~~ appealed, in writing, to the Commission for ~~review,~~ review,
5 pursuant to G.S. 53-92(d). The Commission may affirm, modify, or reverse a decision of the
6 Commissioner.
- 7 (e) ~~Appeals~~ Petitions for judicial review from the Commission shall be made to the
8 Wake County Superior Court and shall proceed as provided in ~~G.S. 53-92,~~ G.S. 53-92(d)."
9 **SECTION 12.** This act is effective when it becomes law.