

Article 10.

Penalties.

**§ 53-124. Examiner making false report.**

If any bank examiner shall knowingly and willfully make any false or fraudulent report of the condition of any bank, which shall have been examined by him, with the intent to aid or abet the officers, owners, or agents of such bank in continuing to operate an insolvent bank, or if any such examiner shall keep or accept any bribe or gratuity given for the purpose of inducing him not to file any report of examination of any bank made by him, or shall neglect to make an examination of any bank by reason of having received or accepted any bribe or gratuity, he shall be guilty of a Class H felony. (1921, c. 4, s. 79; C.S., s. 224(a); 1993, c. 539, s. 1265; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 53-125. Examiners disclosing confidential information.**

If any bank examiner or other employee of the Commissioner of Banks fails to keep secret the facts and information obtained in the course of an examination of a bank, except when the public duty of such examiner or employee requires him to report upon or take official action regarding the affairs of such bank, he shall be guilty of a Class 1 misdemeanor. Nothing in this section shall prevent the proper exchange of information with the representatives of the banking departments of other states, with the federal reserve bank or national bank examiners, or other authorities, with the creditors of such bank or others with whom a proper exchange of information is wise or necessary. (1921, c. 4, s. 80; C.S., s. 224(b); 1931, c. 243, s. 5; 1993, c. 539, s. 420; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 129, s. 25.)

**§ 53-126. Loans or gratuities forbidden.**

No State bank, or any officer, director or employee thereof shall hereafter make any loan or grant any gratuity to the Commissioner of Banks, any bank examiner or assistant bank examiner of the Commissioner of Banks of North Carolina. Any such officer, director or employee violating this provision shall be guilty of a Class 1 misdemeanor; and they may be fined a further sum equal to the money so loaned or gratuity given. If the Commissioner of Banks, or any bank examiner, or assistant bank examiner of the Commissioner of Banks of North Carolina shall accept a loan or gratuity from any State bank, or from any officer, director or employee thereof, he shall be guilty of a Class 1 misdemeanor, and may be fined a further sum equal to the money so loaned or gratuity given. (1927, c. 29, s. 1; 1931, c. 243, s. 5; 1993, c. 539, s. 421; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 53-127. Unlawful use of terms indicating that business is bank or trust company; unauthorized use of name of banking entity.**

- (a) Definitions. The following definitions apply in this section.
- (1) Banking. – The business of receiving or soliciting money on deposit.
  - (2) Banking entity. – A person, partnership, corporation, or other entity that is engaged in the banking or trust business in North Carolina and is (i) subject to the supervision of the Commissioner of Banks under this Chapter, (ii) subject to supervision by the Commissioner of Banks under Chapter 54B or Chapter 54C, or (iii) a banking or savings institution authorized to transact a banking or trust business in this State under federal law. The term "banking entity" includes a credit union chartered under the laws of this State or under federal law, but only with regard to subsections (c1), (d), (e), and (f) of this section.
  - (3) Nonbanking entity. – A person, partnership, corporation, or other entity that is not a banking entity.

(b) Restrictions. No nonbanking entity may use any sign or written or printed paper indicating that it is a bank, savings bank, trust company, or place of banking. No entity may use the word "bank", "savings bank", "banking", "banker", or "trust company", or the equivalent or plural of any of these words in connection with any business other than that of banking. This section does not prohibit an individual from acting in a trust capacity.

(c) Exceptions.

- (1) A nonbanking entity may use any of the terms listed above in its name if the context or remaining words show clearly that the business is not a bank or trust company and is not engaged in the banking or trust business.
- (2) A nonbanking entity may use any of the terms listed above where the term is the proper name of a principal or former principal in the entity and the use of the name is made in good faith and not in an effort to deceive the public.
- (3) A corporation that is a bank holding company as defined in G.S. 53-226(2) or a savings and loan holding company as defined in G.S. 54B-261(d) may use the words "bank", "banker", and "trust company", and the equivalent and plural of these words in its name and may use a name similar to that of any of its subsidiary banks or stock associations.
- (4) A corporation incorporated before January 1, 1905, may retain the word "trust" in its name, although it does not transact a business that requires examination by the Commissioner of Banks.

(c1) No person shall use the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity.

(d) Penalty. Violation of subsections (a) through (c1) of this section is a Class 3 misdemeanor, punishable only by a fine of up to five hundred dollars (\$500.00).

(e) Any banking entity may file an action to enjoin the use of the banking entity's name or logo in connection with the sale, offering for sale, distribution, or advertising of any financial product or service without the express written consent of the banking entity. Any court of competent jurisdiction may grant injunctions to restrain the use and may require the defendants to pay to the banking entity all profits derived from, and all damages suffered by, reason of the wrongful use of the name or logo.

(f) The provisions of this section are not exclusive remedies and do not preclude the use of any other remedy by law. (1921, c. 4, s. 81; C.S., s. 224(c); 1931, c. 243, s. 5; 1943, c. 543; 1985, c. 677, s. 6; 1989 (Reg. Sess., 1990), c. 805, s. 1; 1991, c. 680, s. 4; 1993, c. 539, s. 422; 1994, Ex. Sess., c. 24, s. 14(c); 2001-193, s. 16; 2005-162, s. 1.)

### **§ 53-128. Willfully and maliciously making derogatory reports.**

Any person who shall willfully and maliciously make, circulate, or transmit to another or others any statement, rumor, or suggestion, written, printed, or by word of mouth, which is directly or by inference false and derogatory to the financial condition, or affects the solvency or financial standing of any bank, or who shall counsel, aid, procure, or induce another to state, transmit, or circulate any such statement or rumor shall be guilty of a Class 1 misdemeanor. (1921, c. 4, s. 82; C.S., s. 224(d); 1989, c. 187, s. 17; 1993, c. 539, s. 423; 1994, Ex. Sess., c. 24, s. 14(c).)

### **§ 53-129. Misapplication, embezzlement of funds, etc.**

Whoever being an officer, employee, agent or director of a bank, with intent to defraud or injure the bank, or any person or corporation, or to deceive an officer of the bank or an agent appointed to examine the affairs of such bank, embezzles, abstracts, or misapplies any of the money, funds, credit or property of such bank, whether owned by it or held in trust, or who, with such intent, willfully and fraudulently issues or puts forth a certificate of deposit, draws an

order or bill of exchange, makes an acceptance, assigns a note, bond, draft, bill of exchange, mortgage, judgment, decree or fictitiously borrows or solicits, obtains or receives money for a bank not in good faith, intended to become the property of such bank; or whoever being an officer, employee, agent, or director of a bank, makes or permits the making of a false statement or certificate, as to a deposit, trust fund or contract, or makes or permits to be made a false entry in a book, report, statement or record of such bank, or conceals or permits to be concealed by any means or manner, the true and correct entries of said bank, or its true and correct transactions, who knowingly loans, or permits to be loaned, the funds or credit of any bank to any insolvent company or corporation, or corporation which has ceased to exist, or which never had any existence, or upon collateral consisting of stocks or bonds of such company or corporation, or who makes or publishes or knowingly permits to be made or published a false report, statement or certificate as to the true financial condition of such bank, shall be guilty of a felony. If an offense committed under this section involves money, funds, credit, or property with a value of one hundred thousand dollars (\$100,000) or more, it is a Class C felony. If an offense committed under this section involves money, funds, credit, or property with a value of less than one hundred thousand dollars (\$100,000), it is a Class H felony. Any other offense committed under this section is a Class H felony. (1921, c. 4, s. 83; C.S., s. 224(e); 1927, c. 47, s. 16; 1979, c. 760, s. 5; 1993, c. 539, s. 1266; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 19.25(m).)

**§ 53-130. Making false entries in banking accounts; misrepresenting assets and liabilities of banks.**

If any person shall willfully and knowingly subscribe to, or make, or cause to be made, any false statement or false entry in the books of any bank, or shall knowingly subscribe to or exhibit false papers, with intent to deceive any person authorized to examine into the affairs of such bank, or shall willfully and knowingly make, state or publish any false statement of the amount of the assets or liabilities of any bank, he shall be guilty of a Class H felony. (1903, c. 275, s. 27; Rev., s. 3326; C.S., s. 4402; 1993, c. 539, s. 1267; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 53-131. False certification of a check.**

Whoever, being an officer, employee, agent, or director of a bank, certifies a check drawn on such bank, and willfully fails to forthwith charge the amount thereof against the account of the drawer thereof, or willfully certifies a check drawn on such bank unless the drawer of such check has on deposit with the bank an amount of money subject to the payment of such check and equivalent to the amount therein specified, shall be guilty of a Class I felony which may include a fine not more than five thousand dollars (\$5,000). (1921, c. 4, s. 84; C.S., s. 224(f); 1993, c. 539, s. 1268; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 53-132. Receiving deposits in insolvent banks.**

Any person, being an officer or employee of a bank, who receives, or being an officer thereof, permits an employee to receive money, checks, drafts, or other property as a deposit therein when he has knowledge that such bank is insolvent, shall be guilty of a Class I felony which may include a fine not more than five thousand dollars (\$5,000). Provided, that in any indictment hereunder, insolvency shall not be deemed to include insolvency as defined under paragraph d of subdivision (3) in the definition of insolvency under G.S. 53-1. (1921, c. 4, s. 85; C.S., s. 224(g); 1927, c. 47, s. 17; 1993, c. 539, s. 1269; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 53-133. Advertising larger amount than that paid in capital stock.**

It shall be unlawful for any bank to advertise in a newspaper, letterhead, or any other way, a larger capital stock than has been actually paid in in cash. Any bank violating this section shall be subject to a penalty of five hundred dollars (\$500.00) for each and every offense. The

penalty herein provided for shall be recovered by the State in a civil action in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions.

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1921, c. 4, s. 86; C.S., s. 224(h); 1998-215, s. 31.)

**§ 53-134. Offenses declared misdemeanors; prosecution; employment of counsel; punishment.**

Any offense against the banking laws of the State of North Carolina which is not elsewhere specifically declared to be a crime, or for which elsewhere a penalty is not specifically provided, is a Class 1 misdemeanor. The Commissioner of Banks is authorized and directed to prosecute all offenses against the banking laws of the State, and to that end is expressly authorized to employ counsel to prosecute in the inferior courts and to aid the district attorney in the superior courts. The Commissioner of Banks shall compensate the counsel so employed, and the State Treasurer shall pay the same out of the funds in the treasury and not otherwise appropriated. (Ex. Sess. 1921, c. 56, s. 4; C.S., s. 224(i); 1927, c. 47, s. 18; 1931, c. 243, s. 5; 1973, c. 47, s. 2; 1993, c. 257, s. 2, c. 539, s. 424; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 53-135. General corporation law to apply.**

All provisions of the law relating to private corporations, and particularly those enumerated in the Chapter entitled "North Carolina Business Corporation Act," not inconsistent with this Chapter or with the business of banking, shall be applicable to banks. (1921, c. 4, s. 87; C.S., s. 224(j); 1989 (Reg. Sess., 1990), c. 1024, s. 3.)