

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 42

Banks and Thrift Institutions Committee Substitute Adopted 3/26/91

House Committee Substitute Favorable 6/28/91

Short Title: Banking Technical Amendments.

(Public)

Sponsors:

Referred to:

February 7, 1991

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN TECHNICAL AMENDMENTS TO THE BANKING LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-20(h) reads as rewritten:

"(h) Bond of Commissioner of Banks; Surety; Condition; Minimum Penalty. – Upon taking possession of any bank, the Commissioner of Banks, or the duly appointed agent, shall execute and file a bond payable to the State of North Carolina, with some surety company as surety thereon, with the clerk of the superior court of the county where the bank is located, conditioned upon the faithful performance of all duties imposed by reason of the liquidation of such bank by the said Commissioner of Banks, or the duly appointed agent, or any agent or assistant assisting in the liquidation of the said bank, the penal sum of said bond to be fixed by order of the Commissioner of Banks, which in no case shall be less than five thousand dollars (\$5,000). Any person interested, by motion in the pending action, shall be heard by the resident or presiding judge as to the sufficiency of the bond; the judge hearing the motion may thereupon fix the bond; provided, that where such bank under this section is taken possession of by the Commissioner of Banks, he may, in his discretion with the approval of the State Banking Commission, appoint as his agent with the powers, duties and responsibilities of such agent under this section, the Federal Deposit Insurance Corporation or any corporation or agency established under and by virtue of the laws of the United States of America which is established for the purposes for which the said Federal Deposit

1 Insurance Corporation was created under the Banking Act of 1933, enacted by
2 Congress; and provided further that such appointment may be made when and only
3 when the liabilities of such bank to its depositors are insured by said corporation or
4 agency, either in whole or in part. In the event of such appointment such corporation or
5 agency, with the approval of the Commissioner of Banks, may serve as such agent
6 without giving the bond required under all other circumstances in this subsection. Also,
7 in the event of such appointment, the Commissioner of Banks shall thereafter be forever
8 relieved from any and all responsibility and liability in respect to the liquidation of such
9 bank."

10 Sec. 2. G.S. 53-47 reads as rewritten:

11 **"§ 53-47. Limitations on investment in stocks.**

12 No bank shall make any investment in the capital stock of any other state or national
13 bank: Provided, that nothing herein shall be construed to prevent banks doing business
14 under this Chapter from subscribing to or purchasing, upon such terms as may be agreed
15 upon, the capital stock of clearing corporations as defined in G.S. 25-8-102(3), the
16 capital stock of banks organized under that act of Congress known as the 'Edge Act', ~~or~~
17 the capital stock of central reserve banks whose capital stock exceeds one million
18 dollars ~~(\$1,000,000)-(\$1,000,000), or capital stock of the Federal Home Loan Bank.~~ To
19 constitute a central reserve bank as contemplated by this Chapter, at least fifty percent
20 (50%) of the capital stock of such bank shall be owned by other banks. The investment
21 of any bank in the capital stock of such central reserve bank or bank organized under the
22 act of Congress commonly known as the 'Edge Act,' shall at no time exceed ten percent
23 (10%) of the paid-in capital and permanent surplus of the bank making same. No bank
24 shall invest more than seventy-five percent (75%) of its unimpaired capital fund in the
25 stocks of other corporations, firms, partnerships, or companies, unless such stock is
26 purchased to protect the bank from loss. The foregoing limitation shall not apply to
27 stock or ownership interests acquired in corporations, firms, partnerships or companies
28 which hold banking premises or which are bank operating subsidiaries of such bank.
29 The term 'invest' shall be deemed to include operating a business entity acquired by the
30 bank, provided, however, that no bank shall make any such investment resulting in
31 operations which are not closely related to banking without the prior written approval of
32 the Commissioner of Banks. The Commissioner of Banks shall monitor the impact of
33 investment activities of banks under this section on the safety and soundness of such
34 banks. Any stocks owned or hereafter acquired in excess of the limitations herein
35 imposed shall be disposed of at public or private sale within six months after the date of
36 acquiring the same, and if not so disposed of they shall be charged to profit and loss
37 account, and no longer carried on the books as an asset. The limit of time in which said
38 stocks shall be disposed of or charged off the books of the bank may be extended by the
39 Commissioner of Banks if in his judgment it is for the best interest of the bank that such
40 extension be granted; provided that the limitations imposed in this section on the
41 ownership of stock in or securities of corporations is suspended to the extent (and to that
42 extent only) that any bank operating under the supervision of the Commissioner of
43 Banks may subscribe for and purchase shares of stock in or debentures, bonds or other
44 types of securities of any corporation organized under the laws of the United States of

1 America for the purpose of insuring to depositors a part or all of their funds on deposit
2 in banks where and to such extent as such stock or security ownership is required in
3 order to obtain the benefits of such deposit insurance for its depositors."

4 Sec. 3. G.S. 53-59 is repealed.

5 Sec. 4. G.S. 53-87 reads as rewritten:

6 **"§ 53-87. Directors may declare dividends.**

7 The board of directors of any bank may declare a dividend of so much of its
8 undivided profits as they may deem expedient, subject to the requirements hereinafter
9 provided. When the surplus of any bank having a capital stock of fifteen thousand
10 dollars (\$15,000) or more is less than fifty percent (50%) of its paid-in capital stock,
11 such bank shall not declare any dividend until it has transferred from undivided profits
12 to surplus twenty-five percent (25%) of said undivided profits, or any lesser percentage
13 that may be required to restore the surplus to an amount equal to fifty percent (50%) of
14 the paid-in capital stock. When the surplus of any bank having a capital stock of less
15 than fifteen thousand dollars (\$15,000) is less than one hundred percent (100%) of its
16 paid-in capital stock, such bank shall not declare any dividend until it has transferred
17 from undivided profits to surplus fifty percent (50%) of said undivided profits, or any
18 lesser percentage that may be required to restore the surplus to an amount equal to one
19 hundred percent (100%) of the paid-in capital stock. In order to ascertain the undivided
20 profits from which such dividend may be made, there shall be charged and deducted
21 from the actual profits:

- 22 (1) All ordinary and extraordinary expenses, paid or incurred, in managing
23 the affairs and transacting the business of the bank;
- 24 (2) Interest paid or then due on debts which it owes;
- 25 (3) All taxes due;
- 26 (4) All overdrafts over one thousand dollars (\$1,000) which have been
27 standing on the books of the bank for a period of 60 days or longer;
- 28 (5) All losses sustained by the bank. In computing the losses, there shall
29 be included debts owing the bank which have become due and are not
30 in process of collection, and on which interest for one year or more is
31 due and unpaid, unless said debts are well secured; and debts reduced
32 to final judgments which have been unsatisfied for more than one year
33 and on which no interest has been paid for a period of one year, unless
34 said judgments are well secured.
- 35 (6) All investments carried on its books, which are prohibited under the
36 provisions of this Chapter, or rules and regulations made by the
37 Commissioner of Banks, pursuant to the powers conferred under this
38 Chapter."

39 Sec. 5. Article 7 of Chapter 53 is amended by adding a new section to read:

40 **"§ 53-91.1. Assets to be written off.**

41 Every bank doing business under this Chapter shall be required to write off any
42 asset, or portion thereof, which, following the most recent report of examination issued
43 by the Commissioner of Banks, is classified as uncollectible. Provided, however, such

1 asset need not be written off if the same is secured by collateral acceptable to the
2 Commissioner."

3 Sec. 6. Article 8 of Chapter 53 of the General Statutes is amended by adding
4 two new sections to read:

5 **"§ 53-107.1. Administrative orders; penalties for violation.**

6 (a) In addition to any other powers conferred by this Chapter, the Commissioner
7 shall have the power to:

8 (1) Order any bank, trust company, or subsidiary thereof, or any director,
9 officer, or employee to cease and desist violating any provision of this
10 Chapter or any lawful regulation issued thereunder; and

11 (2) Order any bank, trust company, or subsidiary thereof, or any director,
12 officer, or employee to cease and desist from a course of conduct that
13 is unsafe or unsound and which is likely to cause insolvency or
14 dissipation of assets or is likely to jeopardize or otherwise seriously
15 prejudice the interests of a depositor.

16 (b) Consistent with Article 3A of Chapter 150B of the General Statutes, notice
17 and opportunity for hearing shall be provided before any of the foregoing actions shall
18 be undertaken by the Commissioner. Provided, however, in cases involving
19 extraordinary circumstances requiring immediate action, the Commissioner may take
20 such action, but shall promptly afford a subsequent hearing upon application to rescind
21 the action taken.

22 (c) The Commissioner shall have the power to subpoena witnesses, compel their
23 attendance, require the production of evidence, administer oaths, and examine any
24 person under oath in connection with any subject related to a duty imposed or a power
25 vested in the Commissioner.

26 (d) The Commissioner may impose a civil money penalty of not more than one
27 thousand dollars (\$1,000) for each violation by any bank, trust company, or subsidiary
28 thereof, or any director, officer, or employee of an order issued under subdivision (1) of
29 subsection (a) of this section. Provided further, the Commissioner may impose a civil
30 money penalty of not more than five hundred dollars (\$500.00) per day for each day that
31 a bank, trust company, or subsidiary thereof, or any director, officer, or employee
32 violates a cease and desist order issued under subdivision (2) of subsection (a) of this
33 section. All civil money penalties collected under this section shall be deposited in the
34 General Fund.

35 **"§ 53-107.2. Review by the Banking Commission; additional penalties.**

36 (a) Administrative orders issued by the Commissioner of Banks and civil money
37 penalties imposed for violation of such orders shall be subject to review by the Banking
38 Commission which shall have power to amend, modify, or disapprove the same at any
39 regular or special meeting.

40 (b) Notwithstanding any penalty imposed by the Commissioner of Banks, the
41 Banking Commission may after notice of and opportunity for hearing, impose, enter
42 judgment for, and enforce by appropriate process, a penalty of not more than ten
43 thousand dollars (\$10,000) against any bank, trust company, or subsidiary thereof, or
44 against any of its directors, officers, or employees for violating any lawful orders of the

1 Commission or Commissioner of Banks. All civil money penalties collected under this
2 section shall be deposited in the General Fund."

3 Sec. 7. G.S. 53-110 reads as rewritten:

4 **"§ 53-110. Banking Commission to prescribe books, records, etc.; retention,**
5 **reproduction and disposition of records.**

6 (a) Whenever in its judgment it may appear to be advisable, the State Banking
7 Commission may issue such rules, instructions, and regulations prescribing the manner
8 of keeping books, accounts, and records of banks as will tend to produce uniformity in
9 the books, accounts, and records of banks of the same class.

10 (b) The following provisions shall be applicable to banks and trust companies
11 operating under Chapter 53 of the General Statutes and amendments thereto, and to
12 national banking associations insofar as this section does not contravene paramount
13 federal law:

14 (1) Each bank shall retain permanently the minute books of meetings of its
15 stockholders and directors, its capital stock ledger and capital stock
16 certificate ledger or stubs, and all records which the Banking
17 Commission shall in accordance with the terms of this section require
18 to be retained permanently.

19 (2) All other bank records shall be retained for such periods as the
20 Banking Commission shall in accordance with the terms of this section
21 prescribe.

22 (3) The Banking Commission shall from time to time issue regulations
23 classifying all records kept by banks and prescribing the period for
24 which records of each class shall be retained. Such periods may be
25 permanent or for a lesser term of years. Such regulations may from
26 time to time be amended or repealed, but any amendment or repeal
27 shall not affect any action taken prior to such amendment or repeal.
28 Prior to issuing any such regulations the Commission shall consider:

- 29 a. Actions at law and administrative proceedings in which the
30 production of bank records might be necessary or desirable;
31 b. State and federal statutes of limitation applicable to such actions
32 or proceedings;
33 c. The availability of information contained in bank records from
34 other sources; and
35 d. Such other matters as the Banking Commission shall deem
36 pertinent in order that its regulation will require banks to retain
37 their records for as short a period as is commensurate with the
38 interest of bank customers and stockholders and of the people
39 of this State in having bank records available.

40 (4) Any bank may cause any or all records kept by it to be recorded,
41 copied or reproduced by any photographic, photostatic or miniature
42 photographic or reproduction process of any kind which is capable of
43 conversion into written form within a reasonable time process—and
44 which correctly, accurately, and permanently copies, reproduces or

1 forms a medium for copying or reproducing the original record on a
2 film or other durable material.

3 (5) Any such photographic, photostatic or miniature photographic copy or
4 reproduction of any kind, including electronic or computer-generated
5 data, which is capable of conversion into written form within a
6 reasonable time, shall be deemed to be an original record for all
7 purposes and shall be treated as an original record in all courts and
8 administrative agencies for the purpose of its admissibility in evidence.
9 A facsimile, exemplification or certified copy of any such
10 photographic copy or reproduction shall, for all purposes, be deemed a
11 facsimile, exemplification or certified copy of the original record.

12 (6) Any bank may dispose of any record which has been retained for the
13 period prescribed by the Banking Commission or in accordance with
14 the terms of this section for retention of records for its class."

15 Sec. 8. G.S. 53-84 reads as rewritten:

16 "**§ 53-84. Depositories designated by directors.**

17 By resolution of the board of directors, other banks organized under the laws of this
18 State, or of another state, or ~~of the National Banking Act of the United States~~ under the laws
19 of the United States, shall be designated as depositories or reserve banks in which a part
20 of such bank's reserve shall be deposited, subject to payment on demand. A copy of
21 such resolution shall, upon its adoption, be forthwith certified to the Commissioner of
22 Banks and the depository so designated shall be subject to the approval of the
23 Commissioner of Banks. For causes which he may deem adequate, the Commissioner of
24 Banks shall have authority at any time to withdraw such approval.

25 A bank may deposit funds in a bank of a foreign country, but such deposits shall not
26 constitute any part of its reserve as defined in G.S. 53-51."

27 Sec. 9. This act becomes effective October 1, 1991.