

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 70

Banks and Thrift Institutions Committee Substitute Adopted 4/29/91

Short Title: International Banking Act.

(Public)

Sponsors:

Referred to:

February 13, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE FOREIGN BANKING OFFICES IN NORTH
3 CAROLINA.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 53 of the General Statutes is amended by adding Article
6 18A to read:

7 **“ARTICLE 18A.**

8 **“§ 53-232.1. Title and Scope.**

9 (a) This act shall be known and cited as the North Carolina International Banking
10 Act.

11 (b) This Article is intended to set forth the terms and conditions under which an
12 international banking corporation may enter and do business in North Carolina.

13 **“§ 53-232.2. Definitions.**

14 As used in this Article, the term:

15 (1) ‘Commissioner’ means the Commissioner of Banks for the State of
16 North Carolina.

17 (2) ‘Federal international bank institution’ means a branch, agency, or
18 representative office of an international banking corporation
19 established and operating under the federal International Banking Act
20 of 1978, 12 U.S.C. §§ 3101 et seq., as amended, and any regulations
21 promulgated thereunder.

22 (3) ‘International bank agency’ means a business or activities conducted in
23 this State or through an office located in this State, other than a federal

1 international bank institution, which exercises powers as set forth in
2 G.S. 53-232.8(f).

3 (4) 'International bank branch' means a business or activities conducted in
4 this State or through an office located in this State, other than a federal
5 international bank institution, which exercises powers as set forth in
6 G.S. 53-232.8(e).

7 (5) 'International banking corporation' means a banking corporation
8 organized and licensed under the laws of some foreign country or a
9 political subdivision thereof, other than the United States of America
10 or any of the states within the United States of America. For purposes
11 of this Article, a foreign country shall include any territories or
12 possessions of the United States.

13 (6) 'International representative office' means a business location of a
14 representative of an international banking corporation, other than a
15 federal international bank institution, established for the purpose of
16 acting in a liaison capacity with existing and potential customers of
17 such international banking corporation and to generate new loans and
18 other activities for such international banking corporation which is
19 operating outside the State.

20 **"§ 53-232.2.1. Authority to establish and operate federal international bank**
21 **institutions, international bank branches, international bank agencies,**
22 **and international representative offices.**

23 (a) An international banking corporation with a home state other than the State of
24 North Carolina is expressly permitted to establish and operate, directly or indirectly, a
25 federal international bank institution in this State in accordance with the provisions of
26 applicable federal law.

27 (b) An international banking corporation with no home state is expressly
28 permitted to establish and operate, directly or indirectly, a federal international bank
29 institution in this State in accordance with the provisions of applicable federal law.

30 (c) An international banking corporation with a home state other than the State of
31 North Carolina is expressly authorized to establish and operate, directly or indirectly, an
32 international bank branch, an international bank agency, or an international
33 representative office in accordance with the provisions of this Article and the provisions
34 of applicable federal law.

35 (d) An international banking corporation with no home state is expressly
36 permitted to establish and operate, directly or indirectly, an international bank branch,
37 an international bank agency, or an international representative office in accordance
38 with the provisions of this Article and the provisions of applicable federal law.

39 (e) For the purposes of this section, the home state of an international banking
40 corporation is the state in which such international banking corporation has branches,
41 agencies, subsidiary commercial lending companies, or subsidiary banks, or any
42 combination thereof; if the international banking corporation has branches, agencies,
43 subsidiary commercial lending companies, or subsidiary banks, or any combination
44 thereof in more than one state, the home state of such international banking corporation

1 is whichever of such states is so determined by election of the international banking
2 corporation, or in default of such election, by the Board of Governors of the Federal
3 Reserve System or the Commissioner, as applicable.

4 **"§ 53-232.3. Application of this Chapter.**

5 (a) International banking corporations, other than federal international bank
6 institutions, shall be subject to all the provisions, duties, restrictions, penalties,
7 liabilities, conditions, and limitations of Articles 1 through 14 and Articles 17 and 18 of
8 this Chapter, except where it may appear, from the context or otherwise, that such
9 provisions are clearly applicable only to banks or trust companies organized under the
10 laws of this State or the United States. An international banking corporation shall have
11 no greater right under, or by virtue of, this Article and amendments thereto than is
12 granted to banks organized under the laws of this State. Legal and financial terms used
13 herein shall be deemed to refer to equivalent terms used by the country in which the
14 international banking corporation is organized.

15 (b) Nothing contained in this Article shall be construed as granting any authority,
16 directly or indirectly, for any domestic bank or domestic bank holding company, the
17 operations of which are conducted principally outside this State, to operate a branch in
18 this State or to acquire, directly or indirectly, any voting shares of, or interest in, or all
19 or substantially all of the assets of a bank in this State.

20 **"§ 53-232.4. Application of Article 15 of Chapter 2 of Title 14.**

21 Notwithstanding the definition of the term 'foreign corporation' appearing in
22 paragraph (10) of G.S. 55-1-40, all of the provisions of Article 15 of Chapter 55,
23 relating to foreign corporations, where the same are not inconsistent with the provisions
24 of Chapter 53, shall apply to all international banking corporations doing business in
25 this State.

26 **"§ 53-232.5. Requirements for carrying on banking business.**

27 (a) No international banking corporation shall transact a banking business or
28 maintain in this State any office for carrying on such business or any part thereof, other
29 than a federal international bank institution, unless such corporation shall have:

- 30 (1) Been authorized by its Articles to carry on such business and shall
31 have complied with the laws of the country under which it is chartered;
32 (2) Furnished to the Commissioner such proof as to the nature and
33 character of its business and as to its financial condition as the
34 Commissioner may require;

- 35 (3) Filed with the Commissioner;

36 a. A duly executed instrument in writing, by its terms of indefinite
37 duration and irrevocable, appointing the Commissioner its true
38 and lawful attorney upon whom all process in any action
39 against it may be served with the same force and effect as if it
40 were a domestic corporation and had been lawfully served with
41 process within the State; and

42 b. A written certificate of designation, which may be changed
43 from time to time thereafter by the filing of a new certificate of
44 designation, specifying the name and address of the officer,

1 agent, or other person to whom such process shall be forwarded
2 by the Commissioner;

3 c. A certified copy of that information required to be supplied to
4 the Secretary of State by those provisions of Article 15 of
5 Chapter 55 which are applicable to foreign corporations.

6 (4) Paid to the Commissioner the fee established by regulation to defray
7 the cost of investigation and supervision; and

8 (5) Received a license duly issued to it by the Commissioner.

9 (b) The Commissioner shall not issue a license to an international banking
10 corporation unless it is chartered in a country which permits banks chartered in the
11 United States of America or any of its states to establish similar facilities therein.

12 **"§ 53-232.6. Actions against international banking corporations.**

13 (a) An action against an international banking corporation doing business in this
14 State may be maintained by a resident of this State for any cause of action. For
15 purposes of this subsection, the term 'resident of this State' shall include, without
16 limitation, any individual domiciled in this State, or any corporation, partnership, or
17 trust formed under the laws of this State.

18 (b) An action against an international banking corporation doing business in this
19 State may be maintained by another international banking corporation or by a
20 nonresident of this State in the following cases only:

21 (1) Where the action is brought to recover damages for the breach of a
22 contract made or to be performed within this State or relating to
23 property situated within this State at the time of the making of the
24 contract;

25 (2) Where the subject matter of the litigation is situated within this State;

26 (3) Where the cause of action arose within this State, except where the
27 object of the action is to affect the title of real property situated outside
28 this State; or

29 (4) Where the action is based on a liability for acts done within this State
30 by an international banking corporation or its international bank
31 agency.

32 (c) The limitations contained in subsection (b) hereof do not apply to a
33 corporation formed and existing under the laws of the United States of America and
34 which maintains an office in this State.

35 **"§ 53-232.7. Application for license.**

36 (a) Every international banking corporation, before being licensed by the
37 Commissioner to transact a banking business in this State as an international bank
38 branch or as an international bank agency or before maintaining in this State any office
39 to carry on such business or any part thereof, shall subscribe and acknowledge and
40 submit to the Commissioner at his office a separate application, in duplicate, which
41 shall state:

42 (1) The name of such international banking corporation;

- 1 (2) The location by street and post office address and county where its
2 business is to be transacted in this State and the name of the person
3 who shall be in charge of the business and affairs of such agency;
4 (3) The location where its initial registered office will be located in this
5 State;
6 (4) The amount of its capital actually paid in and the amount subscribed
7 for and unpaid; and
8 (5) The actual value of the assets of such international banking
9 corporation, which must be at least fifty million dollars (\$50,000,000)
10 in excess of its liabilities, and a complete and detailed statement of its
11 financial condition as of a date within 60 days prior to the date of such
12 application; except that the Commissioner, in his discretion, may,
13 when necessary or expedient, accept such statement of financial
14 condition as of a date within 120 days prior to the date of such
15 application.
- 16 (b) At the time such application is submitted to the Commissioner, such
17 corporation shall also submit a duly authenticated copy of its Articles of Incorporation
18 or equivalent corporate document and an authenticated copy of its bylaws, or an
19 equivalent thereof satisfactory to the Commissioner, and pay an investigation and
20 supervision fee to be established by regulation. The international banking corporation
21 shall also submit to the Commissioner a certificate issued by the banking or supervisory
22 authority of the country in which the international banking corporation is organized and
23 licensed stating that the international banking corporation is duly organized and licensed
24 and lawfully existing in good standing, and is empowered to conduct a general banking
25 business.
- 26 (c) The Commissioner may, in the Commissioner's discretion, approve or
27 disapprove such application, but the Commissioner shall not approve such application
28 unless, in the Commissioner's opinion, the applicant meets each and every requirement
29 of this Article and any other applicable provision of this Chapter and any regulations
30 promulgated thereunder. The Commissioner may specify such conditions as the
31 Commissioner deems appropriate, considering the public interest, the need to maintain a
32 sound and competitive banking system, and the preservation of an environment
33 conducive to the conduct of an international banking business in this State.
- 34 (d) An international banking corporation may operate more than one
35 international bank branch in this State, each at a different place of business, provided
36 each such branch office is separately licensed to transact a banking business or any part
37 thereof pursuant to this Article, and an international banking corporation may operate
38 more than one international bank agency in this State, each at a different place of
39 business, provided each such agency office is separately licensed to transact a banking
40 business or any part thereof pursuant to this Article; provided, however, no international
41 banking corporation licensed to maintain one or more international bank branches in
42 this State shall be licensed to maintain an international bank agency in this State except
43 upon termination of such international bank branch or branches pursuant to G.S. 53-
44 232.12(b), and no international banking corporation licensed to maintain one or more

1 international bank agencies in this State shall be licensed to maintain an international
2 bank branch in this State except upon the termination of such international bank agency
3 or agencies pursuant to G.S. 53-232.12(b).

4 **"§ 53-232.8. Effect, renewal, and revocation of licenses; permissible activities.**

5 (a) When the Commissioner shall have issued a license to any such international
6 banking corporation, it may engage in the business authorized by this Article at, and
7 only at, the office specified in such license for a period not exceeding one year from the
8 date of such license or until such license is surrendered or revoked. No such license
9 shall be transferable or assignable. Every such license shall be, at all times,
10 conspicuously displayed in the place of business specified therein.

11 (b) Such license may be renewed annually by an international banking
12 corporation upon application to the Commissioner upon forms to be supplied by him for
13 that purpose. Such application for renewal must be submitted to the Commissioner no
14 later than 60 days prior to the expiration of such license. Such license may be renewed
15 by the Commissioner upon his determination, with or without examination, that the
16 international banking corporation is in a safe and satisfactory condition, that it has
17 complied with requirements of law with respect to the international bank agency, and
18 that such renewal of the license is proper and has been duly authorized by proper
19 corporate action. Each application for renewal of an international bank agency license
20 shall be accompanied by an annual renewal fee to be determined by the Commissioner
21 by regulation.

22 (c) Such license may be revoked by the Commissioner with or without
23 examination, upon his determination that the international banking corporation does not
24 meet the criteria established by subsection (b) hereof for renewal of licenses.

25 (d) In the event any such license shall be revoked by the Commissioner for the
26 renewal thereof refused by the Commissioner, all the rights and privileges of such
27 international banking corporation to transact the business thus licensed shall forthwith
28 cease, and such license shall be surrendered to the Commissioner within 24 hours after
29 written notice of such decision has been mailed by the Commissioner to the registered
30 office of the international banking corporation set forth in its application, as amended,
31 or has been personally delivered to any officer, director, employee, or agent of the
32 international banking corporation who is physically present in this State.

33 (e) An international banking corporation licensed under the terms of this Article
34 to carry on business in this State as an international bank branch shall be authorized to
35 conduct a general banking business including the right to receive deposits and exercise
36 fiduciary powers, through its international bank branch in like manner as banks existing
37 under the laws of this State and pursuant to the provisions of applicable federal law.
38 The Commissioner shall by rule provide appropriate guidance and limitations on
39 permissible powers of international bank branches consistent with the provisions of this
40 Article.

41 (f) An international banking corporation licensed under the terms of this Article
42 to carry on business in this State as an international bank agency shall be authorized to
43 conduct a general banking business through its international bank agency in like manner
44 as banks existing under the laws of this State, except that no such international banking

1 corporation shall, through such agency, exercise fiduciary powers or receive deposits
2 but may maintain for the account of others credit balances incidental to or arising out of
3 the exercise of its lawful powers. The Commissioner shall by rule provide appropriate
4 guidance and limitations on permissible powers of international bank agencies
5 consistent with the provisions of this Article.

6 **"§ 53-232.9. Securities, etc., to be held in this State.**

7 (a) Each international banking corporation licensed under the terms of this
8 Article shall hold, at its office in this State, currency, bonds, notes, debentures, drafts,
9 bills of exchange, or other evidence of indebtedness or other obligations payable in the
10 United States or in United States funds or, with the prior approval of the Commissioner,
11 in funds freely convertible into United States funds in an amount which shall be not less
12 than 108 percent (108%) of the aggregate amount of liabilities of such international
13 banking corporation payable at or through its office in this State or as a result of the
14 operations of the international bank branch or international bank agency, including
15 acceptances but excluding:

16 (1) Accrued expenses; and

17 (2) Amounts due and other liabilities to other offices, agencies or branches
18 of and wholly owned (except for a nominal number of directors'
19 shares) subsidiaries of such international banking corporation.

20 (b) For the purpose of this Article, the Commissioner shall value marketable
21 securities at principal amount or market value, whichever is lower; shall have the right
22 to determine the value of any nonmarketable bond, note, debenture, draft, bill of
23 exchange, or other evidence of indebtedness or of any other obligation held by or owed
24 to the international banking corporation in this State; and, in determining the amount of
25 assets for the purpose of computing the above ratio of assets but may give credit, subject
26 to such rules and regulations as the Commissioner may from time to time promulgate, to
27 deposits and credit balances with unaffiliated banking institutions outside this State if
28 such deposits or credit balances are payable in United States funds or in currencies
29 freely convertible into United States funds, provided that credit given for such deposits
30 and credit balances shall not exceed in aggregate amounts such percentage, but not less
31 than eight percent (8%), as the Commissioner may from time to time prescribe of the
32 aggregate amount of liabilities of such international banking corporations, determined
33 as hereinabove provided.

34 (c) If by reason of the existence or the potential occurrence of unusual of
35 extraordinary circumstances the Commissioner deems it necessary or desirable for the
36 maintenance of a sound financial condition, for the protection of creditors and the public
37 interest, and to maintain public confidence in the business of the international bank
38 agency of the international banking corporation, he may reduce the credit to be given as
39 above provided for deposits and credit balances with unaffiliated banking institutions
40 outside this State and may require such rules and regulations as he shall from time to
41 time promulgate, the assets required to be held in this State pursuant to this Article with
42 such bank or trust company existing under the laws of this State as such international
43 banking corporation may designate and the Commissioner may approve.

1 (d) Each international bank branch and international bank agency shall file such
2 reports with the Commissioner as the Commissioner may require in order to determine
3 compliance by the international bank branch or international bank agency with the
4 provisions of this section.

5 **"§ 53-232.10. Financial certification; restrictions on investments, loans, and**
6 **acceptances.**

7 (a) Before opening an office in this State and annually thereafter so long as a
8 bank office is maintained in this State, an international banking corporation, licensed
9 pursuant to this Article, shall certify to the Commissioner the amount of its paid-in
10 capital, its surplus, and its undivided profits, each expressed in the currency of the
11 country of its incorporation. The dollar equivalent of which amount, as determined by
12 the Commissioner, shall be deemed to be the amount of its capital, surplus, and
13 undivided profits.

14 (b) Purchases and discounts of bills of exchange, bonds, debentures, and other
15 obligations and extensions of credit and acceptances by an international bank agency
16 within this State shall be subject to the same limitations as to amount in relation to
17 capital, surplus, and undivided profits as are applicable to banks organized under the
18 laws of this State; provided, however, that, with the prior approval of the
19 Commissioner, the capital notes and capital debentures of such international banking
20 corporation may be treated as capital in computing such limitations.

21 **"§ 53-232.11. Reports.**

22 (a) Every international banking corporation licensed under the terms of this
23 Article shall, at such times and in such form as the Commissioner shall prescribe, make
24 written reports in the English language to him under the oath of one of its officers,
25 managers, or agents transacting business in this State, showing the amount of its assets
26 and liabilities and containing such other matters as the Commissioner shall prescribe. If
27 any such international banking corporation shall fail to make any such report, as
28 directed by the Commissioner, or if any such report shall contain any false statement
29 knowingly made, the same shall be grounds for revocation of the license of the
30 international banking corporation.

31 (b) The provisions of G.S. 53-105 shall not apply to international banking
32 corporations.

33 **"§ 53-232.12. Dissolution.**

34 (a) When an international banking corporation licensed to maintain an
35 international bank branch or an international bank agency in this State is dissolved or its
36 authority or existence is otherwise terminated or canceled in the jurisdiction of its
37 incorporation, a certificate of the official responsible for records of banking
38 corporations of the jurisdiction of incorporation of such international banking
39 corporation attesting to the occurrence of any such event or a certified copy of an order
40 or decree of a court of such jurisdiction directing the dissolution of such international
41 banking corporation or the termination of its existence or the cancellation of its
42 authority shall be delivered to the Commissioner. The filing of the certificate, order, or
43 decree shall have the same effect as the revocation of such international banking
44 corporation's license as provided in G.S. 53-232.8(d).

1 **(b)** An international banking corporation which proposes to terminate the
2 operation in this State of an international bank branch, an international bank agency, or
3 an international representative office in this State as defined in G.S. 53-232.13, shall
4 comply with such procedures as the Commissioner may prescribe by rule to insure an
5 orderly cessation of business in a manner which is not harmful to the public interest and
6 shall surrender its license to the Commissioner or shall surrender its right to maintain an
7 office in this State, as applicable.

8 **(c)** The Commissioner shall continue as agent of the international banking
9 corporation upon whom process against it may be served in any action based upon any
10 liability or obligation incurred by the international banking corporation within this State
11 prior to the filing of such certificate, order, or decree; and he shall promptly cause a
12 copy of such process to be mailed by registered or certified mail, return receipt
13 requested, to such international banking corporation at the post office address specified
14 for such purpose on file with his office.

15 **"§ 53-232.13. International representative offices.**

16 **(a)** An international bank agency which does not transact a banking business or
17 any part thereof in or through an office in this State but maintains an office in this State
18 for other purposes shall be deemed to have an international representative office.

19 **(b)** Each international representative office located in this State shall register with
20 the Commissioner annually on forms prescribed by him. Such registration shall be filed
21 before January 31 of each year, shall be accompanied by a registration fee prescribed by
22 regulation, and shall list the name of the local representative, the street address of the
23 office, and the nature of the business to be transacted in or through the office.

24 **(c)** The Commissioner may review the operations of any international
25 representative office annually or at such greater frequency as he deems necessary to
26 assure that the office does not transact a banking business.

27 **(d)** An international banking corporation desiring to convert its existing
28 registered international representative office to a licensed international bank branch or
29 licensed international bank agency shall submit to the Commissioner the application
30 required by G.S. 53-232.7, and shall be required to meet the minimum criteria for
31 licensing of an international bank branch or licensed international bank agency pursuant
32 to this Article.

33 **(e)** An international representative office may act in a liaison capacity with
34 existing and potential customers of such international banking corporation and in
35 undertaking such activities may, through its employees or agents, without limitation,
36 solicit loans, assemble credit information, make proprietary inspections and appraisals,
37 complete loan applications and other preliminary paperwork in preparation for making a
38 loan, but may not solicit or accept deposits. No international representative office shall
39 conduct any banking business or part thereof in this State.

40 **"§ 53-232.14. Rules.**

41 Notwithstanding the provision of G.S. 53-95, the Commissioner may promulgate
42 such reasonable rules as may be necessary to effectuate the purposes of this Article.

43 **"§ 53-232.15. Cease and desist.**

1 Upon a finding that any action of an international bank agency subject to this Article
2 may be in violation of any North Carolina banking law, the Commissioner, after a
3 reasonable notice to the international bank branch or international bank agency and an
4 opportunity for it to be heard, shall have the authority to order it to cease and desist
5 from such action. If the international bank branch or international bank agency fails to
6 appeal such decision in accordance with G.S. 53-232.16 and continues to engage in such
7 action in violation of the Commissioner's order to cease and desist such action, it shall
8 be subject to a penalty of one thousand dollars (\$1,000), to be recovered with costs by
9 the Commissioner in any court of competent jurisdiction in a civil action prosecuted by
10 the Commissioner. The penalty provision of this section shall be in addition to and not
11 in lieu of any other provision of law applicable to the failure of an international bank
12 branch or international bank agency to comply with an order of the Commissioner.

13 **"§ 53-232.16. Appeal of Commissioner's decision.**

14 Notwithstanding any other provision of law, any aggrieved party may, within 30
15 days after final decision of the Commissioner and by written notice to the
16 Commissioner, appeal directly to the North Carolina Court of Appeals for judicial
17 review on the record. In the event of an appeal, the Commissioner shall certify the
18 record to the Clerk of the Court of Appeals within 30 days thereafter. Such record shall
19 include all memoranda, briefs and any other documents, data, information, or evidence
20 submitted by any party to such proceeding except for material such as trade secrets
21 normally not available through commercial publication of which such party has made a
22 claim of confidentiality and requested exclusion from the record which the
23 Commissioner deems confidential. All factual information contained in any report of
24 examination or investigation submitted to or obtained by the Commissioner's staff shall
25 also be made a part of the record unless deemed confidential by the Commissioner."

26 Sec. 2. This act becomes effective October 1, 1991.