

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 70

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

Finance Committee Substitute #2 Adopted 5/15/91

Short Title: International Banking Act.

(Public)

Sponsors:

Referred to:

February 13, 1991

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE FOREIGN BANKING OFFICES IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

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

**“ARTICLE 18A.**

**“NORTH CAROLINA INTERNATIONAL BANKING ACT.**

**“§ 53-232.1. Title and scope.**

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

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

**“§ 53-232.2. Definitions.**

As used in this Article, the term:

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

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

- 1           (3)    'International bank agency' means a business or activities conducted in  
2           this State or through an office located in this State, other than a federal  
3           international bank institution, which exercises powers as set forth in  
4           G.S. 53-232.9(f).
- 5           (4)    'International bank branch' means a business or activities conducted in  
6           this State or through an office located in this State, other than a federal  
7           international bank institution, which exercises powers as set forth in  
8           G.S. 53-232.9(e).
- 9           (5)    'International banking corporation' means a banking corporation  
10          organized and licensed under the laws of some foreign country or a  
11          political subdivision thereof, other than the United States of America  
12          or any of the states within the United States of America. For purposes  
13          of this Article, a foreign country shall include any territories or  
14          possessions of the United States.
- 15          (6)    'International representative office' means a business location of a  
16          representative of an international banking corporation, other than a  
17          federal international bank institution, established for the purpose of  
18          acting in a liaison capacity with existing and potential customers of  
19          such international banking corporation and to generate new loans and  
20          other activities for such international banking corporation which is  
21          operating outside the State.

22    **"§ 53-232.3. Authority to establish and operate federal international bank**  
23    **institutions, international bank branches, international bank agencies,**  
24    **and international representative offices.**

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

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

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

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

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

1 subsidiary commercial lending companies, or subsidiary banks, or any combination  
2 thereof in more than one state, the home state of such international banking corporation  
3 is whichever of such states is so determined by election of the international banking  
4 corporation, or in default of such election, by the Board of Governors of the Federal  
5 Reserve System or the Commissioner, as applicable.

6 **"§ 53-232.4. Application of this Chapter.**

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

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

22 **"§ 53-232.5. Application of the North Carolina Business Corporation Act.**

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

28 **"§ 53-232.6. Requirements for carrying on banking business.**

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

32 (1) Been authorized by its Articles to carry on such business and shall  
33 have complied with the laws of the country under which it is chartered;

34 (2) Furnished to the Commissioner such proof as to the nature and  
35 character of its business and as to its financial condition as the  
36 Commissioner may require;

37 (3) Filed with the Commissioner:

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

1           b. A written certificate of designation, which may be changed  
2 from time to time thereafter by the filing of a new certificate of  
3 designation, specifying the name and address of the officer,  
4 agent, or other person to whom such process shall be forwarded  
5 by the Commissioner; and

6           c. A certified copy of that information required to be supplied to  
7 the Secretary of State by those provisions of Article 15 of  
8 Chapter 55 of the General Statutes which are applicable to  
9 foreign corporations.

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

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

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

16 **"§ 53-232.7. Actions against international banking corporations.**

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

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

25       (1) Where the action is brought to recover damages for the breach of a  
26 contract made or to be performed within this State or relating to  
27 property situated within this State at the time of the making of the  
28 contract;

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

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

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

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

39 **"§ 53-232.8. Application for license.**

40       (a) Every international banking corporation, before being licensed by the  
41 Commissioner to transact a banking business in this State as an international bank  
42 branch or as an international bank agency or before maintaining in this State any office  
43 to carry on such business or any part thereof, shall subscribe and acknowledge and

1 submit to the Commissioner at his office a separate application, in duplicate, which  
2 shall state:

- 3 (1) The name of such international banking corporation;
- 4 (2) The location by street and post office address and county where its  
5 business is to be transacted in this State and the name of the person  
6 who shall be in charge of the business and affairs of such agency;
- 7 (3) The location where its initial registered office will be located in this  
8 State;
- 9 (4) The amount of its capital actually paid in and the amount subscribed  
10 for and unpaid; and
- 11 (5) The actual value of the assets of such international banking  
12 corporation, which must be at least fifty million dollars (\$50,000,000)  
13 in excess of its liabilities, and a complete and detailed statement of its  
14 financial condition as of a date within 60 days prior to the date of such  
15 application; except that the Commissioner, in his discretion, may,  
16 when necessary or expedient, accept such statement of financial  
17 condition as of a date within 120 days prior to the date of such  
18 application.

19 (b) At the time such application is submitted to the Commissioner, such  
20 corporation shall also submit a duly authenticated copy of its Articles of Incorporation  
21 or equivalent corporate document and an authenticated copy of its bylaws, or an  
22 equivalent thereof satisfactory to the Commissioner, and pay an investigation and  
23 supervision fee to be established by regulation. The international banking corporation  
24 shall also submit to the Commissioner a certificate issued by the banking or supervisory  
25 authority of the country in which the international banking corporation is organized and  
26 licensed stating that the international banking corporation is duly organized and licensed  
27 and lawfully existing in good standing, and is empowered to conduct a general banking  
28 business.

29 (c) The Commissioner may, in the Commissioner's discretion, approve or  
30 disapprove such application, but the Commissioner shall not approve such application  
31 unless, in the Commissioner's opinion, the applicant meets each and every requirement  
32 of this Article and any other applicable provision of this Chapter and any regulations  
33 promulgated thereunder. The Commissioner may specify such conditions as the  
34 Commissioner deems appropriate, considering the public interest, the need to maintain a  
35 sound and competitive banking system, and the preservation of an environment  
36 conducive to the conduct of an international banking business in this State.

37 (d) An international banking corporation may operate more than one  
38 international bank branch in this State, each at a different place of business, provided  
39 each such branch office is separately licensed to transact a banking business or any part  
40 thereof pursuant to this Article, and an international banking corporation may operate  
41 more than one international bank agency in this State, each at a different place of  
42 business, provided each such agency office is separately licensed to transact a banking  
43 business or any part thereof pursuant to this Article; provided, however, no international  
44 banking corporation licensed to maintain one or more international bank branches in

1 this State shall be licensed to maintain an international bank agency in this State except  
2 upon termination of such international bank branch or branches pursuant to G.S. 53-  
3 232.13(b), and no international banking corporation licensed to maintain one or more  
4 international bank agencies in this State shall be licensed to maintain an international  
5 bank branch in this State except upon the termination of such international bank agency  
6 or agencies pursuant to G.S. 53-232.13(b).

7 **"§ 53-232.9. Effect, renewal, and revocation of licenses; permissible activities.**

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

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

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

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

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

1       (f) An international banking corporation licensed under the terms of this Article  
2 to carry on business in this State as an international bank agency shall be authorized to  
3 conduct a general banking business through its international bank agency in like manner  
4 as banks existing under the laws of this State, except that no such international banking  
5 corporation shall, through such agency, exercise fiduciary powers or receive deposits  
6 but may maintain for the account of others credit balances incidental to or arising out of  
7 the exercise of its lawful powers. The Commissioner shall by rule provide appropriate  
8 guidance and limitations on permissible powers of international bank agencies  
9 consistent with the provisions of this Article.

10 **"§ 53-232.10. Securities, etc., to be held in this State.**

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

20           (1) Accrued expenses; and

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

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

39       (c) If by reason of the existence or the potential occurrence of unusual or  
40 extraordinary circumstances the Commissioner deems it necessary or desirable for the  
41 maintenance of a sound financial condition, for the protection of creditors and the public  
42 interest, and to maintain public confidence in the business of the international bank  
43 agency of the international banking corporation, he may reduce the credit to be given as  
44 above provided for deposits and credit balances with unaffiliated banking institutions

1 outside this State and may require such rules and regulations as he shall from time to  
2 time promulgate, the assets required to be held in this State pursuant to this Article with  
3 such bank or trust company existing under the laws of this State as such international  
4 banking corporation may designate and the Commissioner may approve.

5 (d) Each international bank branch and international bank agency shall file such  
6 reports with the Commissioner as the Commissioner may require in order to determine  
7 compliance by the international bank branch or international bank agency with the  
8 provisions of this section.

9 **"§ 53-232.11. Financial certification; restrictions on investments, loans, and**  
10 **acceptances.**

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

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

25 **"§ 53-232.12. Reports.**

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

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

37 **"§ 53-232.13. Dissolution.**

38 (a) When an international banking corporation licensed to maintain an  
39 international bank branch or an international bank agency in this State is dissolved or its  
40 authority or existence is otherwise terminated or canceled in the jurisdiction of its  
41 incorporation, a certificate of the official responsible for records of banking  
42 corporations of the jurisdiction of incorporation of such international banking  
43 corporation attesting to the occurrence of any such event or a certified copy of an order  
44 or decree of a court of such jurisdiction directing the dissolution of such international



1 banking corporation or the termination of its existence or the cancellation of its  
2 authority shall be delivered to the Commissioner. The filing of the certificate, order, or  
3 decree shall have the same effect as the revocation of such international banking  
4 corporation's license as provided in G.S. 53-232.9(d).

5 (b) An international banking corporation which proposes to terminate the  
6 operation in this State of an international bank branch, an international bank agency, or  
7 an international representative office in this State as defined in G.S. 53-232.14, shall  
8 comply with such procedures as the Commissioner may prescribe by rule to insure an  
9 orderly cessation of business in a manner which is not harmful to the public interest and  
10 shall surrender its license to the Commissioner or shall surrender its right to maintain an  
11 office in this State, as applicable.

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

19 **"§ 53-232.14. International representative offices.**

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

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

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

31 (d) An international banking corporation desiring to convert its existing  
32 registered international representative office to a licensed international bank branch or  
33 licensed international bank agency shall submit to the Commissioner the application  
34 required by G.S. 53-232.8, and shall be required to meet the minimum criteria for  
35 licensing of an international bank branch or licensed international bank agency pursuant  
36 to this Article.

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

44 **"§ 53-232.15. Rules.**

1       The Banking Commission may adopt rules necessary to implement this Article.

2       "**§ 53-232.16. Cease and desist.**

3       Upon a finding that any action of an international bank agency subject to this Article  
4 may be in violation of any North Carolina banking law, the Commissioner, after a  
5 reasonable notice to the international bank branch or international bank agency and an  
6 opportunity for it to be heard, shall have the authority to order it to cease and desist  
7 from such action. If the international bank branch or international bank agency fails to  
8 appeal such decision in accordance with G.S. 53-232.17 and continues to engage in such  
9 action in violation of the Commissioner's order to cease and desist such action, it shall  
10 be subject to a penalty of one thousand dollars (\$1,000), to be recovered with costs by  
11 the Commissioner in any court of competent jurisdiction in a civil action prosecuted by  
12 the Commissioner. The penalty provision of this section shall be in addition to and not  
13 in lieu of any other provision of law applicable to the failure of an international bank  
14 branch or international bank agency to comply with an order of the Commissioner.

15       "**§ 53-232.17. Appeal of Commissioner's decision.**

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

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