

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 70

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Finance Committee Substitute #2 Adopted 5/15/91  
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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 a new  
6 Article to read:

7 **“ARTICLE 18A.**

8 **“NORTH CAROLINA INTERNATIONAL BANKING ACT.**

9 **“§ 53-232.1. Title and scope.**

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

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

14 **“§ 53-232.2. Definitions.**

15 (a) The following definitions apply in this Article:

16 (1) Commissioner. The North Carolina Commissioner of Banks.

17 (2) Federal international bank institution. 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 its regulations.

- 1           (3) Foreign country. A country other than the United States, but including  
2 a territory or possession of the United States.
- 3           (4) International bank agency. A business or any part of a banking  
4 business conducted in this State or through an office located in this  
5 State, other than a federal international bank institution, which  
6 exercises powers as set forth in G.S. 53-232.9(f) on behalf of an  
7 international banking corporation.
- 8           (5) International bank branch. A business or any part of a banking  
9 business conducted in this State or through an office located in this  
10 State, other than a federal international bank institution, which  
11 exercises powers as set forth in G.S. 53-232.9(e) on behalf of an  
12 international banking corporation.
- 13           (6) International banking corporation. A banking corporation organized  
14 and licensed under the laws of a foreign country or a political  
15 subdivision of a foreign country.
- 16           (7) International representative office. A business location of a  
17 representative of an international banking corporation, other than a  
18 federal international bank institution, established to act in a liaison  
19 capacity with existing and potential customers of the international  
20 banking corporation and to generate new loans and other activities for  
21 the international banking corporation that is operating outside the  
22 State.

23           (b) Legal and financial terms used in this Article refer to equivalent terms used  
24 by the country in which the international banking corporation is organized.

25 **"§ 53-232.3. Authority to establish and operate federal international bank**  
26 **institutions, international bank branches, international bank agencies,**  
27 **and international representative offices.**

28           (a) An international banking corporation with a home state other than North  
29 Carolina may establish and operate, directly or indirectly, a federal international bank  
30 institution in this State in accordance with applicable federal law.

31           (b) An international banking corporation with no home state may establish and  
32 operate, directly or indirectly, a federal international bank institution in this State in  
33 accordance with applicable federal law.

34           (c) An international banking corporation with a home state other than North  
35 Carolina may establish and operate, directly or indirectly, an international bank branch,  
36 an international bank agency, or an international representative office in accordance  
37 with this Article and applicable federal law.

38           (d) An international banking corporation with no home state may establish and  
39 operate, directly or indirectly, an international bank branch, an international bank  
40 agency, or an international representative office in accordance with this Article and  
41 applicable federal law.

42           (e) For the purposes of this section, the home state of an international banking  
43 corporation that has branches, agencies, subsidiary commercial lending companies, or  
44 subsidiary banks, or any combination of branches, agencies, subsidiary commercial

1 lending companies, or subsidiary banks in more than one state is whichever of the states  
2 is so elected by the international banking corporation. If the international banking  
3 corporation does not elect a home state, the Board of Governors of the Federal Reserve  
4 System or the Commissioner, as applicable, shall elect the home state.

5 **"§ 53-232.4. Application of this Chapter.**

6 (a) International banking corporations, other than federal international bank  
7 institutions, are subject to Articles 1 through 14 and Articles 17 and 18 of this Chapter,  
8 except where it appears, from the context or otherwise, that a provision is clearly  
9 applicable only to banks or trust companies organized under the laws of this State or the  
10 United States. An international banking corporation has no greater right under, or by  
11 virtue of, this Article than is granted to banks organized under the laws of this State.

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

17 **"§ 53-232.5. Application of the North Carolina Business Corporation Act.**

18 Notwithstanding the definition of the term 'foreign corporation' in G.S. 55-1-40(10),  
19 Article 15 of Chapter 55, relating to foreign corporations, where it is not inconsistent  
20 with Chapter 53, shall apply to all international banking corporations doing business in  
21 this State.

22 **"§ 53-232.6. Requirements for carrying on banking business.**

23 (a) No international banking corporation, other than a federal international bank  
24 institution, shall transact a banking business or maintain in this State any office for  
25 carrying on a banking business or any part of a banking business unless the corporation:

- 26 (1) Is authorized by its Articles to carry on a banking business and has  
27 complied with the laws of the country under which it is chartered;  
28 (2) Has furnished to the Commissioner any proof as to the nature and  
29 character of its business and as to its financial condition as the  
30 Commissioner may require;  
31 (3) Has filed with the Commissioner:  
32 a. A duly executed instrument in writing, by its terms of indefinite  
33 duration and irrevocable, appointing the Commissioner its true  
34 and lawful attorney upon whom all process in any action  
35 against it may be served with the same force and effect as if it  
36 were a domestic corporation and had been lawfully served with  
37 process within the State;  
38 b. A written certificate of designation, which may be changed  
39 from time to time thereafter by the filing of a new certificate of  
40 designation, specifying the name and address of the officer,  
41 agent, or other person to whom the Commissioner shall forward  
42 the process; and

1                   c.     A certified copy of that information required to be supplied by  
2                         foreign corporations to the Secretary of State by Article 15 of  
3                         Chapter 55 of the General Statutes.

4                   (4)   Has paid to the Commissioner the fee established by regulation to  
5                         defray the cost of investigation and supervision; and

6                   (5)   Has received a license duly issued to it by the Commissioner.

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

10    **"§ 53-232.7. Actions against international banking corporations.**

11                   (a)   A resident of this State may maintain an action against an international  
12                         banking corporation doing business in this State for any cause of action. For purposes  
13                         of this subsection, the term 'resident of this State' includes any individual domiciled in  
14                         this State, or any corporation, partnership, or trust formed under the laws of this State.

15                   (b)   An international banking corporation or a nonresident of this State may  
16                         maintain an action against an international banking corporation doing business in this  
17                         State in the following cases only:

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

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

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

26                   (4)   Where the action is based on a liability for acts done within this State  
27                         by an international banking corporation or its international bank  
28                         agency, international bank branch, or international representative  
29                         office.

30                   (c)   The limitations contained in subsection (b) of this section do not apply to a  
31                         corporation formed and existing under the laws of the United States and that maintains  
32                         an office in this State.

33    **"§ 53-232.8. Application for license.**

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

40                   (1)   The name of the international banking corporation;

41                   (2)   The location by street and post office address and county where its  
42                         business is to be transacted in this State and the name of the person  
43                         who is in charge of the business and affairs of the office;

1           (3) The location where its initial registered office will be located in this  
2           State;

3           (4) The amount of its capital actually paid in and the amount subscribed  
4           for and unpaid; and

5           (5) The actual value of the assets of the international banking corporation,  
6           which must be at least fifty million dollars (\$50,000,000) in excess of  
7           its liabilities, and a complete and detailed statement of its financial  
8           condition as of a date within 60 days before the date of the application;  
9           except that the Commissioner may, when necessary or expedient,  
10          accept the statement of financial condition as of a date within 120 days  
11          before the date of the application.

12          (b) When the application is submitted to the Commissioner, the corporation shall  
13          also submit a duly authenticated copy of its Articles of Incorporation, or equivalent  
14          corporate document, and an authenticated copy of its bylaws, or an equivalent of the  
15          bylaws that is satisfactory to the Commissioner, and pay an investigation and  
16          supervision fee to be established by regulation. The international banking corporation  
17          shall also submit to the Commissioner a certificate issued by the banking or supervisory  
18          authority of the country in which the international banking corporation is organized and  
19          licensed stating that the international banking corporation is duly organized and licensed  
20          and lawfully existing in good standing, and is empowered to conduct a general banking  
21          business.

22          (c) The Commissioner may approve or disapprove the application, but the  
23          Commissioner shall not approve the application unless, in the Commissioner's opinion,  
24          the applicant meets every requirement of this Article and any other applicable provision  
25          of this Chapter and any regulations adopted under this Chapter. The Commissioner may  
26          specify any conditions as the Commissioner deems appropriate, considering the public  
27          interest, the need to maintain a sound and competitive banking system, and the  
28          preservation of an environment conducive to the conduct of an international banking  
29          business in this State.

30          (d) An international banking corporation may operate more than one  
31          international bank branch in this State, each at a different place of business, provided  
32          each branch office is separately licensed to transact a banking business or any part of a  
33          banking business under this Article. An international banking corporation may operate  
34          more than one international bank agency in this State, each at a different place of  
35          business, provided each agency office is separately licensed to transact a banking  
36          business or any part of a banking business under this Article.

37          (e) Notwithstanding subsection (d) of this section, no international banking  
38          corporation licensed to maintain one or more international bank branches in this State  
39          shall be licensed to maintain an international bank agency in this State except upon  
40          termination of the operation of its international bank branches under G.S. 53-232.13(b),  
41          and no international banking corporation licensed to maintain one or more international  
42          bank agencies in this State shall be licensed to maintain an international bank branch in  
43          this State except upon the termination of the operation of its international bank agencies  
44          under G.S. 53-232.13(b).

1 **"§ 53-232.9. Effect, renewal, and revocation of licenses; permissible activities.**

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

8 (b) The international banking corporation may renew the license annually upon  
9 application to the Commissioner upon forms to be supplied by the Commissioner for  
10 that purpose. The application for renewal shall be submitted to the Commissioner no  
11 later than 60 days before the expiration of the license. The license may be renewed by  
12 the Commissioner upon a determination, with or without examination, that the  
13 international banking corporation is in a safe and satisfactory condition, that it has  
14 complied with applicable requirements of law, and that the renewal of the license is  
15 proper and has been duly authorized by proper corporate action. Each application for  
16 renewal of an international banking corporation license shall be accompanied by an  
17 annual renewal fee to be determined by the Commissioner by regulation.

18 (c) The Commissioner may revoke the license, with or without examination,  
19 upon a determination that the international banking corporation does not meet the  
20 criteria established by subsection (b) of this section for renewal of licenses.

21 (d) If the Commissioner refuses to renew the license and, as a result, the license  
22 is revoked, all the rights and privileges of the international banking corporation to  
23 transact the business for which it was licensed shall immediately cease, and the license  
24 shall be surrendered to the Commissioner within 24 hours after written notice of the  
25 decision has been mailed by the Commissioner to the registered office of the  
26 international banking corporation set forth in its application, as amended, or has been  
27 personally delivered to any officer, director, employee, or agent of the international  
28 banking corporation who is physically present in this State.

29 (e) An international banking corporation licensed under this Article to carry on  
30 business in this State as an international bank branch may conduct a general banking  
31 business, including the right to receive deposits and exercise fiduciary powers, through  
32 its international bank branch in the same manner as banks existing under the laws of this  
33 State and under applicable federal law.

34 (f) An international banking corporation licensed under this Article to carry on  
35 business in this State as an international bank agency may conduct a general banking  
36 business through its international bank agency in the same manner as banks existing  
37 under the laws of this State, except that no international banking corporation shall,  
38 through its bank agency, exercise fiduciary powers or receive deposits, but may  
39 maintain for the account of others credit balances incidental to or arising out of the  
40 exercise of its lawful powers.

41 **"§ 53-232.10. Securities, etc., to be held in this State.**

42 (a) An international banking corporation licensed under this Article shall hold, at  
43 its office in this State, currency, bonds, notes, debentures, drafts, bills of exchange, or  
44 other evidence of indebtedness or other obligations payable in the United States or in

1 United States funds or, with the prior approval of the Commissioner, in funds freely  
2 convertible into United States funds in an amount that is not less than one hundred eight  
3 percent (108%) of the aggregate amount of liabilities of the international banking  
4 corporation payable at or through its office in this State or as a result of the operations  
5 of the international bank branch or international bank agency, including acceptances,  
6 but excluding:

7 (1) Accrued expenses; and

8 (2) Amounts due and other liabilities to other offices, agencies, or  
9 branches of and wholly owned, except for a nominal number of  
10 directors' shares, subsidiaries of the international banking corporation.

11 (b) For the purpose of this Article, the Commissioner shall value marketable  
12 securities at principal amount or market value, whichever is lower, and may determine  
13 the value of any nonmarketable bond, note, debenture, draft, bill of exchange, or other  
14 evidence of indebtedness or of any other obligation held by or owed to the international  
15 banking corporation in this State. In determining the amount of assets for the purpose  
16 of computing the above ratio of assets, the Commissioner may exclude any particular  
17 assets, but may give credit, subject to any rules adopted by the Commissioner, to  
18 deposits and credit balances with unaffiliated banking institutions outside this State if  
19 the deposits or credit balances are payable in United States funds or in currencies freely  
20 convertible into United States funds. In no case shall credit given for the deposits and  
21 credit balances exceed in aggregate amounts any percentage, but not less than eight  
22 percent (8%), as the Commissioner may from time to time prescribe, of the aggregate  
23 amount of liabilities of the international banking corporations.

24 (c) If, by reason of the existence or the potential occurrence of unusual or  
25 extraordinary circumstances, the Commissioner considers it necessary or desirable for  
26 the maintenance of a sound financial condition, for the protection of creditors and the  
27 public interest, and to maintain public confidence in the business of the international  
28 bank agency of the international banking corporation, the Commissioner may reduce the  
29 credit to be given as provided in this section for deposits and credit balances with  
30 unaffiliated banking institutions outside this State and may require the assets to be held  
31 in this State under this Article with any bank or trust company existing under the laws  
32 of this State that the international banking corporation designates and the Commissioner  
33 approves.

34 (d) An international bank branch and international bank agency shall file any  
35 reports with the Commissioner as the Commissioner may require in order to determine  
36 compliance by the international bank branch or international bank agency with this  
37 section.

38 **"§ 53-232.11. Financial certification; restrictions on investments, loans, and**  
39 **acceptances.**

40 (a) Before opening an office in this State, and annually thereafter so long as a  
41 bank office is maintained in this State, an international banking corporation licensed  
42 under this Article shall certify to the Commissioner the amount of its paid-in capital, its  
43 surplus, and its undivided profits, each expressed in the currency of the country of its  
44 incorporation. The dollar equivalent of this amount, as determined by the

1 Commissioner, is considered to be the amount of its capital, surplus, and undivided  
2 profits.

3 (b) Purchases and discounts of bills of exchange, bonds, debentures, and other  
4 obligations and extensions of credit and acceptances by an international bank agency  
5 within this State are subject to the same limitations as to amount in relation to capital,  
6 surplus, and undivided profits as are applicable to banks organized under the laws of  
7 this State. With the prior approval of the Commissioner, the capital notes and capital  
8 debentures of the international banking corporation may be treated as capital in  
9 computing the limitations.

10 **"§ 53-232.12. Reports.**

11 (a) An international banking corporation licensed under this Article shall, at the  
12 times and in the form prescribed by the Commissioner, make written reports in the  
13 English language to the Commissioner, under the oath of one of its officers, managers,  
14 or agents transacting business in this State, showing the amount of its assets and  
15 liabilities and containing any other matters required by the Commissioner. If an  
16 international banking corporation fails to make a report, as directed by the  
17 Commissioner, or if a report contains a false statement knowingly made, this is grounds  
18 for revocation of the license of the international banking corporation.

19 (b) G.S. 53-105 shall not apply to international banking corporations.

20 **"§ 53-232.13. Dissolution.**

21 (a) When an international banking corporation licensed to maintain an  
22 international bank branch or an international bank agency in this State is dissolved or its  
23 authority or existence is otherwise terminated or canceled in the jurisdiction of its  
24 incorporation, a certificate of the official responsible for records of banking  
25 corporations of the jurisdiction of incorporation of the international banking corporation  
26 attesting to the occurrence of this event or a certified copy of an order or decree of a  
27 court of the jurisdiction directing the dissolution of the international banking  
28 corporation or the termination of its existence or the cancellation of its authority shall be  
29 delivered to the Commissioner. The filing of the certificate, order, or decree has the  
30 same effect as the revocation of the international banking corporation's license as  
31 provided in G.S. 53-232.9(d).

32 (b) An international banking corporation that proposes to terminate the operation  
33 in this State of an international bank branch, an international bank agency, or an  
34 international representative office in this State shall comply with any procedures as the  
35 Commissioner may prescribe by rule to insure an orderly cessation of business in a  
36 manner that is not harmful to the public interest and shall surrender its license to the  
37 Commissioner or shall surrender its right to maintain an office in this State, as  
38 applicable.

39 (c) The Commissioner shall continue as agent of the international banking  
40 corporation upon whom process against it may be served in any action based upon any  
41 liability or obligation incurred by the international banking corporation within this State  
42 before the filing of the certificate, order, or decree; and the Commissioner shall  
43 promptly cause a copy of the process to be mailed by registered or certified mail, return



1 receipt requested, to the international banking corporation at the post office address  
2 specified for this purpose on file with the Commissioner's office.

3 **"§ 53-232.14. International representative offices.**

4 (a) An international banking corporation that does not transact a banking  
5 business or any part of a banking business in or through an office in this State, but  
6 maintains an office in this State for other purposes is considered to have an international  
7 representative office in this State.

8 (b) An international representative office located in this State shall register with  
9 the Commissioner annually on forms prescribed by the Commissioner. The registration  
10 shall be filed before January 31 of each year, shall be accompanied by a registration fee  
11 prescribed by regulation, and shall list the name of the local representative, the street  
12 address of the office, and the nature of the business to be transacted in or through the  
13 office.

14 (c) The Commissioner may review the operations of an international  
15 representative office annually or at any greater frequency as is necessary to assure that  
16 the office does not transact a banking business.

17 (d) An international banking corporation desiring to convert its existing  
18 registered international representative office to a licensed international bank branch or  
19 licensed international bank agency shall submit to the Commissioner the application  
20 required by G.S. 53-232.8, and is required to meet the minimum criteria for licensing of  
21 an international bank branch or licensed international bank agency under this Article.

22 (e) An international representative office may act in a liaison capacity with  
23 existing and potential customers of an international banking corporation and in  
24 undertaking these activities may, through its employees or agents, without limitation,  
25 solicit loans, assemble credit information, make proprietary inspections and appraisals,  
26 complete loan applications and other preliminary paperwork in preparation for making a  
27 loan, but may not solicit or accept deposits. No international representative office shall  
28 conduct any banking business or part of a banking business in this State.

29 **"§ 53-232.15. Rules.**

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

31 **"§ 53-232.16. Cease and desist.**

32 Upon a finding that any action of an international banking corporation or its  
33 international banking agency, international banking branch, or international  
34 representative office subject to this Article may be in violation of any North Carolina  
35 banking law, the Commissioner, after a reasonable notice to the international banking  
36 corporation, international bank agency, international bank branch, or international  
37 representative office and an opportunity for it to be heard, may order it to cease and  
38 desist from the action. If the international banking corporation, international bank  
39 agency, international bank branch, or international representative office fails to appeal  
40 the decision in accordance with G.S. 53-232.17 and continues to engage in the action in  
41 violation of the Commissioner's order to cease and desist the action, it is subject to a  
42 penalty of one thousand dollars (\$1,000), to be recovered with costs by the  
43 Commissioner in any court of competent jurisdiction in a civil action prosecuted by the  
44 Commissioner. This penalty is in addition to and not in lieu of any other law applicable

1 to the failure of an international banking corporation, international bank agency,  
2 international bank branch, or international representative office to comply with an order  
3 of the Commissioner. All civil money penalties collected under this section shall be  
4 deposited in the General Fund.

5 **"§ 53-232.17. Appeal of Commissioner's decision.**

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

18 Sec. 2. G.S. 7A-29(a), as amended by Chapter 546 of the 1991 Session Laws,  
19 reads as rewritten:

20 "(a) From any final order or decision of the North Carolina Utilities Commission  
21 not governed by subsection ~~(b)~~, (b) of this section, the Department of Human Resources  
22 under G.S. 131E-188(b), the Commissioner of Banks under Articles 17, 18, 18A, and 21  
23 of Chapter 53 of the General Statutes, the Administrator of Savings and Loans under  
24 Article 3A of Chapter 54B of the General Statutes, the North Carolina Industrial  
25 Commission, the North Carolina State Bar under G.S. 84-28, the Property Tax  
26 Commission under G.S. 105-290 and G.S. 105-342, or an appeal from the  
27 Commissioner of Insurance under G.S. 58-9.4, or from the Governor's Waste  
28 Management Board under G.S. 130A-293 and G.S. 104E-6.2, appeal as of right lies  
29 directly to the Court of Appeals."

30 Sec. 3. This act becomes effective October 1, 1991.