

## Article 2.

### Commission and Commissioner.

#### **§ 53C-2-1. The Commission.**

(a) The Commission consists of 15 members, including the State Treasurer, who shall serve as an ex officio member; 12 members appointed by the Governor; and two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate and one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives. The Governor shall appoint to the Commission three practical bankers, one consumer finance licensee, one member who is, or is employed by a person that is, licensed under Article 19B of Chapter 53 of the General Statutes, and seven public members. The member appointed upon the recommendation of the President Pro Tempore of the Senate shall be a practical banker, and the member appointed upon the recommendation of the Speaker of the House shall be a practical banker. Members shall serve terms of four years. No individual shall serve more than two complete consecutive terms on the Commission. Any vacancy occurring in the membership of the Commission shall be filled by the appropriate appointing officer for the unexpired term, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. The appointed members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. This compensation shall be paid from the revenues of the OCOB.

(b) The Commission shall meet at such times, but not less than once every three months, as the Commission may by resolution prescribe, and the Commission shall be convened in special session at the call of the Governor or the Commissioner. The State Treasurer shall be chair of the Commission. The Commission shall meet in person, provided that it may, so long as consistent with applicable law regarding public meetings, meet by telephone or video conference, including attendance of one or more members by telephone or video conferencing.

(c) Except as required by State or federal law, no member of the Commission shall divulge or make use of any information designated by this Chapter or by the Commissioner as confidential, and no member shall give out any such information unless the information shall be required of the member at a hearing at which the member is duly subpoenaed or by a court of competent jurisdiction.

(d) A quorum of the Commission shall consist of a majority of its total membership. Subject to the standards of Chapter 138A of the General Statutes, a majority vote of the members qualified with respect to a matter who are present at the meeting where such matter is considered shall constitute valid action of the Commission. In accordance with G.S. 138A-38(a)(6), the State Treasurer and all disqualified members who are present at a meeting shall be counted for purposes of determining whether a quorum is present.

(e) The Commission is authorized to supervise, direct, and review the exercise by the Commissioner of all powers, duties, and functions vested in or exercised by the Commissioner under the banking laws of this State. (2012-56, s. 4; 2013-29, s. 2; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1; 2019-173, s. 3(a).)

#### **§ 53C-2-2. The Commissioner.**

(a) Effective April 1, 2011, and quadrennially thereafter, the Governor shall appoint a Commissioner, which appointment shall be subject to confirmation by the General Assembly by joint resolution. The name of the individual appointed to be Commissioner shall be submitted to the General Assembly on or before February 1 of the year in which the individual's term of office

begins. The term of office for the Commissioner shall be four years. In case of a vacancy in the office of Commissioner, the Governor shall appoint an individual to serve as Commissioner on an interim basis pending confirmation of a nominee by the General Assembly.

(b) The Commissioner has the powers enumerated in this Chapter and otherwise provided by North Carolina law and such other powers as may be necessary for the proper discharge of the Commissioner's duties, including the power to enter into contracts. The Commissioner shall act as the executive officer of the Commission.

(c) The Commissioner is authorized to subpoena witnesses and compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to any power vested or duty imposed on the Commissioner under this Chapter.

(d) The Commissioner may sue and prosecute or defend in any action or proceeding in any courts of this State or any other state and in any court of the United States for the enforcement or protection of any right or pursuit of any remedy necessary or proper in connection with the subjects committed to the Commissioner for administration or in connection with any bank or the rights, liabilities, property, or assets thereof under the Commissioner's supervision. Nothing herein shall be construed to render the Commissioner liable to be sued except as other departments and agencies of the State may be liable under the general law. The Commissioner may exercise any jurisdiction, supervise, regulate, examine, or enforce any banking law and any State consumer protection laws or federal laws with respect to which the Commissioner has enforcement jurisdiction.

(e) The Commissioner shall have a seal of office bearing the legend "State of North Carolina – Commissioner of Banks." The Commissioner may adopt other symbols or marks of office. (2012-56, s. 4; 2013-29, s. 3.)

### **§ 53C-2-3. The Office of the Commissioner of Banks.**

(a) The Commissioner shall be assisted in the performance of the duties of office by (i) one or more deputy commissioners and (ii) examiners, investigators, counsel, and other employees under the supervision of the Commissioner, all of whom, together with the Commissioner, shall comprise the "Office of the Commissioner of Banks." In addition, the work of the OCOB may be conducted by employees of other agencies of government and by agents and independent contractors of the OCOB. The Commissioner may appoint or remove at his or her discretion any deputy commissioner.

(b) The Commissioner shall appoint, with the approval of the Governor, and may remove at the Commissioner's discretion, a chief deputy commissioner. The chief deputy commissioner may perform such duties and exercise such powers of the Commissioner as the Commissioner may direct. In the event of the absence, death, resignation, disability, or disqualification of the Commissioner, or in case the office of Commissioner otherwise becomes vacant, the chief deputy commissioner shall perform the duties and exercise all the powers vested in the Commissioner until the Governor appoints an acting Commissioner.

(c) Except as otherwise provided in this Chapter, the OCOB and its employees are exempt from the classification and compensation rules established by the State Human Resources Commission pursuant to G.S. 126-4(1) through (4); G.S. 126-4(5) only as it applies to hours and days of work, vacation, and sick leave; G.S. 126-4(6) only as it applies to promotion and transfer; G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive pay programs;

and Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1. The salary of the Commissioner shall be fixed by the General Assembly.

(d) The Attorney General shall assign an attorney from the Department of Justice to work full time with the Commission. The attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Human Resources system. The Commission shall fully reimburse the Department of Justice for the compensation, secretarial support, equipment, supplies, records, and other property to support the attorney. (2012-56, s. 4; 2013-382, s. 9.1(c); 2014-115, s. 55.4(c).)

#### **§ 53C-2-4. Administration of the Office of the Commissioner of Banks.**

(a) As authorized in Chapters 54B, 54C, and this Chapter, the OCOB shall be funded by annual or periodic assessments, licensing fees and charges, and reimbursements for examination costs. This list is not exclusive. The OCOB may not levy assessments, fees, or other charges except as expressly provided in this Chapter or by rule adopted in accordance with the provisions of Chapter 150B of the General Statutes and the provisions of this section. The Commissioner is authorized, in the exercise of reasonable discretion, to establish the time, place, and method for the payment of assessments, fees, charges, and costs.

(b) Not less than 30 days prior to the commencement of each fiscal year, the OCOB shall prepare and submit to the Commission a budget for the upcoming fiscal year, including the estimated revenues and expenses for the year. The Commission shall review the budget in a meeting prior to the commencement of the fiscal year with respect to which the budget has been presented and shall approve or modify the budget at the meeting. (2012-56, s. 4.)

#### **§ 53C-2-5. Rule making.**

(a) The Commissioner, subject to review and approval by the Commission, may make all necessary rules with respect to the establishment, operation, conduct, and termination of any and all activities and businesses that are subject to licensing, regulation, supervision, or examination by the Commissioner under this Chapter.

(b) The rule-making authority conferred on the Commissioner by this section shall be in addition to and not in derogation of any specific rule-making authority by any other provision of this Chapter or otherwise provided by North Carolina law. (2012-56, s. 4.)

#### **§ 53C-2-6. Hearings and appeals.**

(a) Any administrative hearing required or permitted to be held by the Commissioner shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

(b) Upon an appeal to the Commission by any party from an order entered by the Commissioner following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, the chair of the Commission may appoint an appellate review panel of not fewer than three members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. Unless another time period for appeals is provided by this Chapter, any party to an order by the Commissioner may, within 20 days after the order and upon written notice to the Commissioner, appeal the Commissioner's order to the Commission for review. The notice of appeal shall state the grounds for the appeal and set forth in numbered order the assignments of error for review by the Commission. Failure to state the grounds for the appeal and assignments of error shall constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule provided by the Commission shall also constitute grounds to dismiss the appeal.

Upon receipt of a notice of appeal, the Commissioner shall, within 30 days of the notice, certify to the Commission the record on appeal. Any party to a proceeding before the Commission may, within 20 days after final order of the Commission, petition the Superior Court of Wake County for judicial review of a final determination of any question of law that may be involved. The petition for judicial review shall be entitled "(insert name) Petitioner v. State of North Carolina on Relation of the Commission." A copy of the petition for judicial review shall be served upon the Commissioner pursuant to G.S. 150B-46. The petition shall be placed on the civil issue docket of the court and shall have precedence over other civil actions. Within 15 days of service of the petition for judicial review, the Commissioner shall certify the record to the Clerk of Superior Court of Wake County. The standard of review of a petition for judicial review of a final order of the Commission shall be as provided in G.S. 150B-51(b).

(c) The hearing officer at administrative hearings conducted under the authority of the Commissioner may be the Commissioner, a deputy commissioner, or other suitable person designated by the Commissioner to serve as a hearing officer.

(d) The Commission may conduct public hearings on matters within its purview. (2012-56, s. 4.)

#### **§ 53C-2-7. Official record.**

(a) The Commissioner shall keep a record in the OCOB of the Commissioner's official acts, rulings, and transactions that, except as otherwise provided, shall be open to inspection and copying by any person. The Commissioner may condition the provision of copies of records upon the payment by the person requesting the documents of an amount sufficient to cover the cost of retrieving, copying, and if requested, mailing the documents.

(b) Notwithstanding any laws to the contrary, the following records in the custody of the OCOB are confidential and shall not be disclosed or be subject to discovery or public inspection:

- (1) Records compiled during or in connection with an examination, audit, or investigation of any person, including records relating to any application for licensure or otherwise to the conduct of business. The OCOB may treat as confidential any response to an application.
- (2) Records containing information compiled in preparation for or anticipation of or in the course of litigation, examination, audit, or investigation or containing information that was privileged prior to being obtained by the Commissioner.
- (3) Records containing personal information about a person, whether in paper, electronic, or other form, that is maintained by or on behalf of the financial institution; provided, however, that every report made by a North Carolina financial institution, with respect to a transaction between it and an officer, director, or affiliate thereof, which report is required to be filed with the Commissioner pursuant to this Chapter, shall be filed with the Commissioner in a form prescribed by the Commissioner and shall be open to inspection and copying by any person.
- (4) Records containing information furnished in connection with an application bearing on the character, competency, or experience, or information about the personal finances of an existing or proposed organizer, officer, director, or employee of a depository institution, federally chartered institution, trust institution, holding company, or any other person subject to the Commissioner's jurisdiction.

- (5) Records containing information about the character, competency, experience, or finances of the directors, officers, or other persons having control over a person giving notice or filing an application to engage in a control transaction pursuant to this Chapter.
- (6) Records containing information about the character, competency, or experience of the directors, executive officers, or other persons having control over any of the parties to a combination subject to the Commissioner's jurisdiction.
- (7) Records of North Carolina financial institutions in dissolution that have liquidated, that are under the Commissioner's supervisory control, or that are in receivership and that contain the names or other personal information of any person.
- (8) Minutes or other records that have been obtained by the Commissioner and that are related to meetings of, or have been prepared by, any of the following bodies of a North Carolina financial institution:
  - a. The board of directors.
  - b. A compliance review committee of the board of directors.
  - c. Any other committee of the board of directors.
  - d. A committee established at the direction of the board of directors.
  - e. A committee established at the direction of a committee of the board of directors.
- (9) Records prepared during or as a result of an examination or investigation of any person by an agency of the United States, or jointly by the agency and the Commissioner, if the records would be confidential under federal law or regulation.
- (10) Records prepared during or as a result of an examination or investigation of any person by a regulatory agency with jurisdiction of a state other than this State or of a foreign country if the records would be confidential under that jurisdiction's law or regulations.
- (11) Records of information and reports submitted to federal regulatory agencies by any depository institution or trust institution, or its affiliates, holding company or its subsidiaries, or any other person subject to the Commissioner's jurisdiction, if the records would be confidential under federal law or regulation.
- (12) Records of complaints from the public received by the OCOB.
- (12a) Records that are confidential under Chapter 132 of the General Statutes or protected from disclosure under other applicable law.
- (13) Any record that would disclose any information set forth in any of the confidential records referred to in this subsection.

(c) For purposes of this section, "any person subject to the Commissioner's jurisdiction" includes any person who is licensed or registered or should be licensed or registered under this Chapter.

(d) Notwithstanding the provisions of subsection (b) of this section, the Commissioner may, by written agreement with any state or federal law enforcement or regulatory agency, share with that agency any confidential record set out in subsection (b) of this section or any information contained therein, on the condition that such record or information shared shall be treated as confidential under the applicable laws and regulations governing the recipient agency.

(e) Notwithstanding the provisions of subsection (b) of this section which limit discovery of confidential records held by the Commissioner, such records may be produced for discovery in a criminal or enforcement proceeding if both of the following occur:

- (1) After reviewing the discovery request, the court orders the Commissioner to submit the confidential records to the court for in camera review and the court finds that the interests of justice require that the documents be discoverable or admissible in evidence.
- (2) After making the finding provided by subdivision (1) of this subsection, the court enters a protective order restricting access and public distribution or any republication of the confidential materials requested.

(f) Nothing in this section shall prohibit a bank, upon approval of the Commissioner, from disclosing to an insurance carrier, for the purpose of obtaining insurance coverage required by this Chapter, the bank's regulatory rating prepared by the OCOB; provided, however, that the insurance carrier must agree in writing to maintain the confidentiality of the information and not to disclose it in any manner whatsoever. (2012-56, s. 4; 2017-165, s. 3.)