

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 503

Short Title: Banking Amendments.

(Public)

Sponsors: Representative Abernethy.

Referred to: Commerce.

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE AMENDMENTS TO THE BANKING LAWS.
3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 53-1(5) reads as rewritten:

5 "(5) Practical Banker. – The term 'practical banker' means a director or an
6 officer or employee of a bank actively engaged in performing duties in
7 managing or supervising or assisting in managing or supervising the
8 conducting of a banking business, including any such banker who is in
9 a retired status from such duties."

10 Sec. 2. G.S. 53-12 reads as rewritten:

11 "**§ 53-12. Merger or consolidation of ~~banks~~. banks and savings associations.**

12 A bank may merge or consolidate with or transfer its assets and liabilities to another
13 ~~bank~~ bank or to a savings association, or a savings association may transfer its assets
14 and liabilities to a bank. Before such merger or consolidation or transfer shall become
15 effective, each bank or savings association concerned in such merger or consolidation or
16 transfer shall file, or cause to be filed, with the Commissioner of Banks, certified copies
17 of all proceedings had by its directors and stockholders, or in the case of a mutual
18 savings association, its membership, which said stockholders' or membership's
19 proceedings shall set forth that (i) holders of at least two thirds of the stock of the bank
20 voted in the affirmative on the proposition of merger or consolidation or ~~transfer~~ or, (ii)
21 in the case of a stock or mutual savings association, such percentage of the stock or of
22 the membership as the laws applicable to such institutions require. Such stockholders' or
23 membership's proceedings shall also contain a complete copy of the agreement made
24 and entered into between said ~~banks~~ banks or savings associations, with reference to

1 such merger or consolidation or transfer. Upon the filing of such stockholders' or
2 membership's and directors' proceedings as aforesaid, the Commissioner of Banks shall
3 may cause to be made an investigation of each bank or savings association, or both, to
4 determine whether the interests of the depositors, creditors, and stockholders or
5 members of each bank or savings association are protected, and find such merger or
6 consolidation is in the public interest, and that such merger or consolidation or transfer
7 is made for legitimate purposes, and his consent to or rejection of such merger or
8 consolidation or transfer shall be based upon such investigation. No such merger or
9 consolidation or transfer shall be made without the consent of the Commissioner of
10 Banks. The expense of such investigation shall be paid by ~~such banks—the banks or~~
11 savings associations, or both, involved in the proposed merger or consolidation or
12 transfer. Notice of such merger or consolidation or transfer shall be published for four
13 weeks before or after the same is to become effective, at the discretion of the
14 Commissioner of Banks, in a newspaper published in a city, town, or county in which
15 each of said banks or savings associations, or both, is located, and a certified copy
16 thereof shall be filed with the Commissioner of Banks. In case of either transfer or
17 merger or consolidation the rights of creditors shall be preserved unimpaired, and the
18 respective companies deemed to be in existence to preserve such rights for a period of
19 three years. For the purposes of this section, the term 'savings association' shall be
20 construed to include a savings and loan association or a savings bank, whether
21 organized under the laws of North Carolina or the United States."

22 Sec. 3. G.S. 53-13 reads as rewritten:

23 "**§ 53-13. Merged or consolidated banks and savings associations deemed one ~~bank~~**
24 **bank or savings association.**

25 In case of merger or consolidation when the agreement of merger or consolidation is
26 made, and a duly certified copy thereof is filed with the Secretary of State, together with
27 a certified copy of the approval of the Commissioner of Banks to such merger or
28 consolidation, the ~~banks, parties thereto, parties thereto~~ shall be held to be one company,
29 possessed of the rights, privileges, powers, and franchises of the several companies, but
30 subject to all the provisions of law under which it is created. The directors and other
31 officers named in the agreement of consolidation shall serve until the first annual
32 meeting for election of officers and directors, the date for which shall be named in the
33 agreement. On filing such agreement, all and singular, the property and rights of every
34 kind of the several companies shall thereby be transferred and vested in such surviving
35 company in the case of merger or in such new company in the case of consolidation,
36 and be as fully its property as they were of the companies parties to the agreement."

37 Sec. 4. G.S. 53-17 reads as rewritten:

38 "**§ 53-17. Fiduciary powers and liabilities of banks or trust companies merging or**
39 **transferring assets and liabilities.**

40 Whenever any ~~bank or trust company, bank, trust company, or savings association,~~
41 organized under the laws of North Carolina or the acts of Congress, and doing business
42 in this State, shall consolidate or merge with or shall sell to and transfer its assets and
43 liabilities to any other ~~bank or trust company~~ bank, trust company, or savings association
44 doing business in this State, as provided by the laws of North Carolina or the acts of

1 Congress, all the then existing fiduciary rights, powers, duties and liabilities of such
2 consolidating or merging or transferring ~~bank or banks and/or trust companies,~~ institution,
3 including the rights, powers, duties and liabilities as executor, administrator, guardian,
4 trustee, and/or any other fiduciary capacity, whether under appointment by order of
5 court, will, deed, or other instrument, shall, upon the effective date of such
6 consolidation or merger or sale and transfer, vest in, devolve upon, and thereafter be
7 performed by, the transferee ~~bank~~ institution or the consolidated or merged ~~bank or trust~~
8 ~~company,~~ institution, and such latter ~~bank or trust company~~ institution shall be deemed
9 substituted for and shall have all the rights and powers of the transferring ~~bank or trust~~
10 ~~company.~~ institution."

11 Sec. 5. G.S. 53-83 reads as rewritten:

12 **"§ 53-83. Examining committee of directors.**

13 A committee of at least three directors ~~or stockholders~~ shall be appointed annually to
14 examine, or to superintend the examination of the assets and the liabilities of the bank,
15 and to report to the board of directors the result of such examination. The committee,
16 with the approval of the board of directors, may provide for such examinations by a
17 certified public accountant or clearinghouse examiner in any city where such
18 examination is provided for by the rules of such clearinghouse association. A copy of
19 such report of examination, which is herein required to be made, attested, and verified
20 under oath by the signature of at least three members of such committee, shall forthwith
21 be filed with the Commissioner of Banks."

22 Sec. 6. G.S. 53-93.1 reads as rewritten:

23 **"§ 53-93.1. Deputy commissioner.**

24 The Commissioner of Banks shall appoint, with approval of the Governor, and may
25 remove at his discretion a deputy commissioner, who, in the event of the absence, death,
26 resignation, disability or disqualification of the Commissioner of Banks, or in case the
27 office of Commissioner shall for any reason become vacant, shall have and exercise all
28 the powers and duties vested by law in the Commissioner of Banks.

29 Irrespective of the conditions under which the deputy commissioner may exercise
30 the powers and perform the duties of the Commissioner of Banks, pursuant to the
31 preceding paragraph, such deputy commissioner, in addition thereto, is hereby
32 authorized and empowered at any and all times, at the discretion of the Commissioner
33 of Banks, to perform such duties and exercise such powers of the Commissioner of
34 Banks in the name of and on behalf of the Commissioner as the Commissioner, in his
35 discretion, may direct.

36 ~~This section is not to be construed to modify the provisions of G.S. 53-97."~~

37 Sec. 7. G.S. 53-106 reads as rewritten:

38 **"§ 53-106. Special reports.**

39 The Commissioner of Banks may call for special reports whenever in his judgment it
40 is necessary to inform him of the condition of any bank, or to obtain a full and complete
41 knowledge of its affairs. Said reports shall be in and according to the form prescribed by
42 the Commissioner of Banks, ~~and shall be verified in the manner provided in G.S. 53-105,~~
43 Banks and shall be published pursuant to G.S. 53-105, ~~as therein provided,~~ if required by

- 1 the Commissioner of Banks so to be. The Commissioner of Banks may extend the time
- 2 for filing special reports for a period not to exceed 30 days."
- 3 Sec. 8. This act is effective upon ratification.