

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 504

Short Title: Bank Holding Companies.

(Public)

Sponsors: Representative Abernethy.

Referred to: Commerce.

April 1, 1991

A BILL TO BE ENTITLED
AN ACT TO REGULATE BANK HOLDING COMPANIES.

The General Assembly of North Carolina enacts:

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

"§ 53-227.2. Regulation of certain bank holding companies; reporting requirements; examination authority.

(a) Notwithstanding G.S. 53-226(2), as used in this section the term 'bank holding company' refers only to those bank holding companies that own or hereafter acquire a banking subsidiary chartered under this Chapter.

(b) On and after July 1, 1991, it shall be unlawful, except with prior approval of the Commissioner, for:

(1) Any action to be taken that causes any company to become a bank holding company;

(2) Any action to be taken that causes a bank chartered under this Chapter to become a subsidiary of a bank holding company;

(3) Any bank holding company to acquire direct or indirect ownership of five percent (5%) or more of the voting shares of any bank holding company or bank chartered under this Chapter;

(4) Any bank holding company, or a nonbank subsidiary thereof, to acquire all or substantially all of the assets of a bank;

(5) Any bank holding company to merge or consolidate with any other bank holding company.

(c) The provisions of subsection (b) of this section shall not apply to:

- 1 (1) Shares acquired by a bank:
2 a. In good faith in a fiduciary capacity, except where such shares
3 are held under a trust that constitutes a company as defined in
4 G.S. 53-226(4), or
5 b. In the regular course of securing or collecting a debt previously
6 contracted in good faith, but any such shares acquired after July
7 1, 1991, shall be disposed of within a period of two years from
8 the date on which they were acquired. Provided, however, that
9 a bank may retain these shares for up to three additional periods
10 of one year each if the Commissioner determines that a
11 disposition would create undue financial difficulties for the
12 bank; or
- 13 (2) Additional shares acquired by a bank holding company in a bank in
14 which such bank holding company owned or controlled a majority of
15 the voting shares prior to such acquisition.

16 For purposes of subsection (c)(1)a. of this section, bank shares acquired after July 1,
17 1991, shall not be deemed to have been acquired in good faith in a fiduciary capacity if
18 the acquiring bank or company has sole discretionary authority to exercise voting rights
19 with respect thereto; but in such instances acquisitions may be made without prior
20 approval of the Commissioner if the Commissioner, upon application filed within 90
21 days after the shares are acquired, approves retention or, if retention is disapproved, the
22 acquiring bank disposes of the shares or its sole discretionary voting rights within two
23 years after issuance of the order of disapproval.

24 (d) The Commissioner shall not approve:

- 25 (1) Any acquisition, merger, or consolidation under this section which
26 would result in a monopoly or which would be in furtherance of any
27 combination or conspiracy to monopolize or to attempt to monopolize
28 the business of banking in this State; or
29 (2) Any other proposed acquisition or merger or consolidation under this
30 section whose effect in this State may be substantially to lessen
31 competition, or to tend to create a monopoly, or which in any other
32 manner would be in restraint of trade, unless the Commissioner finds
33 that the anticompetitive effects of the proposed transaction are clearly
34 outweighed in the public interest by the probable effect of the
35 transaction in meeting the convenience and needs of the community to
36 be served.

37 In every case, the Commissioner shall take into consideration the financial and
38 managerial resources and future prospects of the company or companies and the bank's
39 concern for the convenience and needs of the community to be served.

40 (e) Nothing in this section shall affect the obligation of any person or company to
41 comply with the provisions of any order of court or of the Commissioner entered prior
42 to July 1, 1991.

43 (f) The Commissioner shall not grant approval of any action under this section
44 until he shall first publish notice of the same. The notice shall be published in a

1 newspaper serving the communities in which the principal offices of any bank or bank
2 holding company which is a part of the proposed action are located.

3 (g) Notwithstanding any other provisions of this section, a bank holding
4 company that lawfully controls a bank or bank holding company or has received the
5 requisite approvals under this section to acquire control of a bank may, with the
6 approval of the Commissioner, either at the time such control is obtained or at any time
7 thereafter, merge or consolidate such bank with another of such bank holding company's
8 banking subsidiaries, or have another of such bank holding company's banking
9 subsidiaries acquire all or substantially all of the assets of such bank and consequently
10 operate as a branch of such other banking subsidiary. Nothing in this subsection shall be
11 deemed to supersede, rescind, or modify any provision, requirement, or condition of this
12 Chapter that would otherwise be applicable to any acquisition of a banking subsidiary
13 by a bank holding company under this Chapter, nor shall it be deemed to supersede,
14 rescind, or modify any provision, requirement, or condition imposed by G.S. 53-12, 53-
15 13, 53-14, or 53-16 that would otherwise be applicable to any merger of banks or the
16 acquisition or any sale of all or substantially all of the assets of a bank.

17 (h) The Commissioner may require reports under oath to keep him informed as to
18 whether this section and such regulations and orders issued by the Commissioner under
19 this section have been complied with. Such reports shall include, but not be limited to,
20 information with respect to the financial condition, operation, management, and
21 intercompany relationships of a bank holding company and its subsidiaries and related
22 matters as the Commissioner may deem necessary or appropriate to carry out the
23 purposes of this section.

24 (i) The Commissioner may make examinations of each bank holding company
25 and each subsidiary thereof. The Commissioner shall prescribe by regulation the cost of
26 such examinations which shall be paid by the bank holding company being examined.
27 Insofar as possible, the Commissioner shall use the reports of examination made by the
28 Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board
29 of Governors of the Federal Reserve System for the purposes of this section; provided
30 that nothing in this subsection shall authorize or permit the Commissioner to examine or
31 otherwise regulate the activity of a national bank.

32 (j) Bank holding companies and subsidiaries or affiliates thereof shall be
33 regulated, controlled, and examined by the Commissioner to the same extent that the
34 Commissioner regulates, controls, and examines State banks and other financial
35 institutions under his jurisdiction, which authority would be in addition to the authority
36 of the Federal Reserve Board as fixed by the laws of the United States. The
37 Commissioner is authorized and directed to promulgate rules and regulations and
38 investment procedures in the regulation, examination, and control of bank holding
39 companies that own or hereafter acquire banks chartered under this Chapter.

40 (k) The Commissioner may prescribe by regulation the fees for any application
41 that may be required under subsection (b) of this section; provided, however, that if any
42 bank holding company shall be required to pay a fee under the provisions of Article 17
43 of Chapter 53 of the General Statutes, it shall be given credit for such fee against any
44 costs imposed by this section."

1 Sec. 2. This act becomes effective July 1, 1991.