

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 42

Banks and Thrift Institutions Committee Substitute Adopted 3/26/91

Short Title: Banking Technical Amendments.

(Public)

Sponsors:

Referred to:

February 7, 1991

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN TECHNICAL AMENDMENTS TO THE BANKING LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-20(h) reads as rewritten:

"(h) Bond of Commissioner of Banks; Surety; Condition; Minimum Penalty. – Upon taking possession of any bank, the Commissioner of Banks, or the duly appointed agent, shall execute and file a bond payable to the State of North Carolina, with some surety company as surety thereon, with the clerk of the superior court of the county where the bank is located, conditioned upon the faithful performance of all duties imposed by reason of the liquidation of such bank by the said Commissioner of Banks, or the duly appointed agent, or any agent or assistant assisting in the liquidation of the said bank, the penal sum of said bond to be fixed by order of the Commissioner of Banks, which in no case shall be less than five thousand dollars (\$5,000). Any person interested, by motion in the pending action, shall be heard by the resident or presiding judge as to the sufficiency of the bond; the judge hearing the motion may thereupon fix the bond; provided, that where such bank under this section is taken possession of by the Commissioner of Banks, he may, in his discretion with the approval of the State Banking Commission, appoint as his agent with the powers, duties and responsibilities of such agent under this section, the Federal Deposit Insurance Corporation or any corporation or agency established under and by virtue of the laws of the United States of America which is established for the purposes for which the said Federal Deposit Insurance Corporation was created under the Banking Act of 1933, enacted by

1 Congress; and provided further that such appointment may be made when and only
2 when the liabilities of such bank to its depositors are insured by said corporation or
3 agency, either in whole or in part. In the event of such appointment such corporation or
4 agency, with the approval of the Commissioner of Banks, may serve as such agent
5 without giving the bond required under all other circumstances in this subsection. Also,
6 in the event of such appointment, the Commissioner of Banks shall thereafter be forever
7 relieved from any and all responsibility and liability in respect to the liquidation of such
8 bank.”

9 Sec. 2. G.S. 53-47 reads as rewritten:

10 **"§ 53-47. Limitations on investment in stocks.**

11 No bank shall make any investment in the capital stock of any other state or national
12 bank: Provided, that nothing herein shall be construed to prevent banks doing business
13 under this Chapter from subscribing to or purchasing, upon such terms as may be agreed
14 upon, the capital stock of clearing corporations as defined in G.S. 25-8-102(3), the
15 capital stock of banks organized under that act of Congress known as the 'Edge Act', ~~or~~
16 the capital stock of central reserve banks whose capital stock exceeds one million
17 dollars (\$1,000,000) , or the Federal Home Loan Bank. To constitute a central reserve
18 bank as contemplated by this Chapter, at least fifty percent (50%) of the capital stock of
19 such bank shall be owned by other banks. The investment of any bank in the capital
20 stock of such central reserve bank or bank organized under the act of Congress
21 commonly known as the 'Edge Act,' shall at no time exceed ten percent (10%) of the
22 paid-in capital and permanent surplus of the bank making same. No bank shall invest
23 more than seventy-five percent (75%) of its unimpaired capital fund in the stocks of
24 other corporations, firms, partnerships, or companies, unless such stock is purchased to
25 protect the bank from loss. The foregoing limitation shall not apply to stock or
26 ownership interests acquired in corporations, firms, partnerships or companies which
27 hold banking premises or which are bank operating subsidiaries of such bank. The term
28 'invest' shall be deemed to include operating a business entity acquired by the bank,
29 provided, however, that no bank shall make any such investment resulting in operations
30 which are not closely related to banking without the prior written approval of the
31 Commissioner of Banks. The Commissioner of Banks shall monitor the impact of
32 investment activities of banks under this section on the safety and soundness of such
33 banks. Any stocks owned or hereafter acquired in excess of the limitations herein
34 imposed shall be disposed of at public or private sale within six months after the date of
35 acquiring the same, and if not so disposed of they shall be charged to profit and loss
36 account, and no longer carried on the books as an asset. The limit of time in which said
37 stocks shall be disposed of or charged off the books of the bank may be extended by the
38 Commissioner of Banks if in his judgment it is for the best interest of the bank that such
39 extension be granted; provided that the limitations imposed in this section on the
40 ownership of stock in or securities of corporations is suspended to the extent (and to that
41 extent only) that any bank operating under the supervision of the Commissioner of
42 Banks may subscribe for and purchase shares of stock in or debentures, bonds or other
43 types of securities of any corporation organized under the laws of the United States of
44 America for the purpose of insuring to depositors a part or all of their funds on deposit

1 in banks where and to such extent as such stock or security ownership is required in
2 order to obtain the benefits of such deposit insurance for its depositors."

3 Sec. 3. G.S. 53-59 is repealed.

4 Sec. 4. G.S. 53-87 reads as rewritten:

5 **"§ 53-87. Directors may declare dividends.**

6 The board of directors of any bank may declare a dividend of so much of its
7 undivided profits as they may deem expedient, subject to the requirements hereinafter
8 provided. When the surplus of any bank having a capital stock of fifteen thousand
9 dollars (\$15,000) or more is less than fifty percent (50%) of its paid-in capital stock,
10 such bank shall not declare any dividend until it has transferred from undivided profits
11 to surplus twenty-five percent (25%) of said undivided profits, or any lesser percentage
12 that may be required to restore the surplus to an amount equal to fifty percent (50%) of
13 the paid-in capital stock. When the surplus of any bank having a capital stock of less
14 than fifteen thousand dollars (\$15,000) is less than one hundred percent (100%) of its
15 paid-in capital stock, such bank shall not declare any dividend until it has transferred
16 from undivided profits to surplus fifty percent (50%) of said undivided profits, or any
17 lesser percentage that may be required to restore the surplus to an amount equal to one
18 hundred percent (100%) of the paid-in capital stock. In order to ascertain the undivided
19 profits from which such dividend may be made, there shall be charged and deducted
20 from the actual profits:

- 21 (1) All ordinary and extraordinary expenses, paid or incurred, in managing
22 the affairs and transacting the business of the bank;
- 23 (2) Interest paid or then due on debts which it owes;
- 24 (3) All taxes due;
- 25 (4) All overdrafts over one thousand dollars (\$1,000) which have been
26 standing on the books of the bank for a period of 60 days or longer;
- 27 (5) All losses sustained by the bank. In computing the losses, there shall
28 be included debts owing the bank which have become due and are not
29 in process of collection, and on which interest for one year or more is
30 due and unpaid, unless said debts are well secured; and debts reduced
31 to final judgments which have been unsatisfied for more than one year
32 and on which no interest has been paid for a period of one year, unless
33 said judgments are well secured.
- 34 (6) All investments carried on its books, which are prohibited under the
35 provisions of this Chapter, or rules and regulations made by the
36 Commissioner of Banks, pursuant to the powers conferred under this
37 Chapter."

38 Sec. 5. Article 7 of Chapter 53 is amended by adding a new section to read:

39 **"§ 53-91.1. Assets to be written off.**

40 Every bank doing business under this Chapter shall be required to write off any
41 asset, or portion thereof, which, following the most recent report of examination issued
42 by the Commissioner of Banks, is classified as uncollectible. Provided, however, such
43 asset need not be written off if the same is secured by collateral acceptable to the
44 Commissioner."

1 Sec. 6. Article 8 of Chapter 53 is amended by adding two new sections to
2 read:

3 **"§ 53-107.1. Administrative orders; penalties for violation.**

4 (a) In addition to any other powers conferred by this Chapter, the Commissioner
5 shall have the power to:

6 (1) Order any bank, trust company, or subsidiary thereof, or any director,
7 officer, or employee to cease and desist violating any provision of this
8 Chapter or any lawful regulation issued thereunder; and

9 (2) Order any bank, trust company, or subsidiary thereof, or any director,
10 officer, or employee to cease and desist from a course of conduct that
11 is unsafe or unsound and which is likely to cause insolvency or
12 dissipation of assets or is likely to jeopardize or otherwise seriously
13 prejudice the interests of a depositor.

14 (b) Consistent with Article 3A of Chapter 150B of the General Statutes, notice
15 and opportunity for hearing shall be provided before any of the foregoing actions shall
16 be undertaken by the Commissioner. Provided, however, in cases involving
17 extraordinary circumstances requiring immediate action, the Commissioner may take
18 such action, but shall promptly afford a subsequent hearing upon application to rescind
19 the action taken.

20 (c) The Commissioner shall have the power to subpoena witnesses, compel their
21 attendance, require the production of evidence, administer oaths, and examine any
22 person under oath in connection with any subject related to a duty imposed or a power
23 vested in the Commissioner.

24 (d) The Commissioner may impose a civil money penalty of not more than one
25 thousand dollars (\$1,000) for each violation by any bank, trust company, or subsidiary
26 thereof, or any director, officer, or employee of an order issued pursuant to subsection
27 (a)(1) of this section. Provided further, the Commissioner may impose a civil money
28 penalty of not more than five hundred dollars (\$500.00) per day for each day that a
29 bank, trust company, or subsidiary thereof, or any director, officer, or employee violates
30 a cease and desist order issued pursuant to subsection (a)(2) of this section.

31 **"§ 53-107.2. Review by the Banking Commission; additional penalties.**

32 (a) Administrative orders issued by the Commissioner of Banks and civil money
33 penalties imposed for violation of such orders shall be subject to review by the Banking
34 Commission which shall have power to amend, modify, or disapprove the same at any
35 regular or special meeting.

36 (b) Notwithstanding any penalty imposed by the Commissioner of Banks, the
37 Banking Commission may after notice of and opportunity for hearing, impose, enter
38 judgment for, and enforce by appropriate process, a penalty of not more than ten
39 thousand dollars (\$10,000) against any bank, trust company, or subsidiary thereof, or
40 against any of its directors, officers, or employees for violating any lawful orders of the
41 Commission or Commissioner of Banks."

42 Sec. 7. G.S. 53-110 reads as rewritten:

43 **"§ 53-110. Banking Commission to prescribe books, records, etc.; retention,**
44 **reproduction and disposition of records.**

1 (a) Whenever in its judgment it may appear to be advisable, the State Banking
2 Commission may issue such rules, instructions, and regulations prescribing the manner
3 of keeping books, accounts, and records of banks as will tend to produce uniformity in
4 the books, accounts, and records of banks of the same class.

5 (b) The following provisions shall be applicable to banks and trust companies
6 operating under Chapter 53 of the General Statutes and amendments thereto, and to
7 national banking associations insofar as this section does not contravene paramount
8 federal law:

9 (1) Each bank shall retain permanently the minute books of meetings of its
10 stockholders and directors, its capital stock ledger and capital stock
11 certificate ledger or stubs, and all records which the Banking
12 Commission shall in accordance with the terms of this section require
13 to be retained permanently.

14 (2) All other bank records shall be retained for such periods as the
15 Banking Commission shall in accordance with the terms of this section
16 prescribe.

17 (3) The Banking Commission shall from time to time issue regulations
18 classifying all records kept by banks and prescribing the period for
19 which records of each class shall be retained. Such periods may be
20 permanent or for a lesser term of years. Such regulations may from
21 time to time be amended or repealed, but any amendment or repeal
22 shall not affect any action taken prior to such amendment or repeal.
23 Prior to issuing any such regulations the Commission shall consider:

- 24 a. Actions at law and administrative proceedings in which the
25 production of bank records might be necessary or desirable;
26 b. State and federal statutes of limitation applicable to such actions
27 or proceedings;
28 c. The availability of information contained in bank records from
29 other sources; and
30 d. Such other matters as the Banking Commission shall deem
31 pertinent in order that its regulation will require banks to retain
32 their records for as short a period as is commensurate with the
33 interest of bank customers and stockholders and of the people
34 of this State in having bank records available.

35 (4) Any bank may cause any or all records kept by it to be recorded,
36 copied or reproduced by any photographic, photostatic or miniature
37 photographic or reproduction process of any kind which is capable of
38 conversion into written form within a reasonable time process and
39 which correctly, accurately, and permanently copies, reproduces or
40 forms a medium for copying or reproducing the original record on a
41 film or other durable material.

42 (5) Any such photographic, photostatic or miniature photographic copy or
43 reproduction of any kind, including electronic or computer generated
44 data, which is capable of conversion into written form within a

1 reasonable time, shall be deemed to be an original record for all
2 purposes and shall be treated as an original record in all courts and
3 administrative agencies for the purpose of its admissibility in evidence.

4 A facsimile, exemplification or certified copy of any such
5 photographic copy or reproduction shall, for all purposes, be deemed a
6 facsimile, exemplification or certified copy of the original record.

- 7 (6) Any bank may dispose of any record which has been retained for the
8 period prescribed by the Banking Commission or in accordance with
9 the terms of this section for retention of records for its class.”

10 Sec. 8. G.S. 53-84 reads as rewritten:

11 **"§ 53-84. Depositories designated by directors.**

12 By resolution of the board of directors, other banks organized under the laws of this
13 State, or of another state, or ~~of the National Banking Act of the United States~~ under the laws
14 of the United States, shall be designated as depositories or reserve banks in which a part
15 of such bank's reserve shall be deposited, subject to payment on demand. A copy of
16 such resolution shall, upon its adoption, be forthwith certified to the Commissioner of
17 Banks and the depository so designated shall be subject to the approval of the
18 Commissioner of Banks. For causes which he may deem adequate, the Commissioner of
19 Banks shall have authority at any time to withdraw such approval.

20 A bank may deposit funds in a bank of a foreign country, but such deposits shall not
21 constitute any part of its reserve as defined in G.S. 53-51.”

22 Sec. 9. This act becomes effective October 1, 1991.