

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 679
SENATE BILL 70

AN ACT TO AUTHORIZE FOREIGN BANKING OFFICES IN NORTH
CAROLINA.

The General Assembly of North Carolina enacts:

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

"ARTICLE 18A.

"North Carolina International Banking Act.

"§ 53-232.1. Title and scope.

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

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

"§ 53-232.2. Definitions.

(a) The following definitions apply in this Article:

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

(2) Federal international bank institution. A branch, agency, or representative office of an international banking corporation established and operating under the federal International Banking Act of 1978, 12 U.S.C. §§ 3101 et seq., as amended, and its regulations.

(3) Foreign country. A country other than the United States, but including a territory or possession of the United States.

(4) International bank agency. A business or any part of a banking business conducted in this State or through an office located in this State, other than a federal international bank institution, which exercises powers as set forth in G.S. 53-232.9(f) on behalf of an international banking corporation.

(5) International bank branch. A business or any part of a banking business conducted in this State or through an office located in this State, other than a federal international bank institution, which exercises powers as set forth in G.S. 53-232.9(e) on behalf of an international banking corporation.

(6) International banking corporation. A banking corporation organized and licensed under the laws of a foreign country or a political subdivision of a foreign country.

(7) International representative office. A business location of a representative of an international banking corporation, other than a federal international bank institution, established to act in a liaison capacity with existing and potential customers of the international banking corporation and to generate new loans and other activities for the international banking corporation that is operating outside the State.

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

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

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

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

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

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

(e) For the purposes of this section, the home state of an international banking corporation that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination of branches, agencies, subsidiary commercial lending companies, or subsidiary banks in more than one state is whichever of the states is so elected by the international banking corporation. If the international banking corporation does not elect a home state, the Board of Governors of the Federal Reserve System or the Commissioner, as applicable, shall elect the home state.

"§ 53-232.4. Application of this Chapter.

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

(b) Nothing in this Article is construed as granting any authority, directly or indirectly, for a domestic bank or domestic bank holding company, the operations of which are conducted principally outside this State, to operate a branch in this State or to

acquire, directly or indirectly, any voting shares of, or interest in, or all or substantially all of the assets of a bank in this State.

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

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

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

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

- (1) Is authorized by its Articles to carry on a banking business and has complied with the laws of the country under which it is chartered;
- (2) Has furnished to the Commissioner any proof as to the nature and character of its business and as to its financial condition as the Commissioner may require;
- (3) Has filed with the Commissioner:
 - a. A duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the Commissioner its true and lawful attorney upon whom all process in any action against it may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the State;
 - b. A written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person to whom the Commissioner shall forward the process; and
 - c. A certified copy of that information required to be supplied by foreign corporations to the Secretary of State by Article 15 of Chapter 55 of the General Statutes.
- (4) Has paid to the Commissioner the fee established by regulation to defray the cost of investigation and supervision; and
- (5) Has received a license duly issued to it by the Commissioner.

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

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

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

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

- (1) Where the action is brought to recover damages for the breach of a contract made or to be performed within this State or relating to property situated within this State at the time of the making of the contract;
- (2) Where the subject matter of the litigation is situated within this State;
- (3) Where the cause of action arose within this State, except where the object of the action is to affect the title of real property situated outside this State; or
- (4) Where the action is based on a liability for acts done within this State by an international banking corporation or its international bank agency, international bank branch, or international representative office.

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

"§ 53-232.8. Application for license.

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

- (1) The name of the international banking corporation;
- (2) The location by street and post office address and county where its business is to be transacted in this State and the name of the person who is in charge of the business and affairs of the office;
- (3) The location where its initial registered office will be located in this State;
- (4) The amount of its capital actually paid in and the amount subscribed for and unpaid; and
- (5) The actual value of the assets of the international banking corporation, which must be at least fifty million dollars (\$50,000,000) in excess of its liabilities, and a complete and detailed statement of its financial condition as of a date within 60 days before the date of the application; except that the Commissioner may, when necessary or expedient, accept the statement of financial condition as of a date within 120 days before the date of the application.

(b) When the application is submitted to the Commissioner, the corporation shall also submit a duly authenticated copy of its Articles of Incorporation, or equivalent corporate document, and an authenticated copy of its bylaws, or an equivalent of the bylaws that is satisfactory to the Commissioner, and pay an investigation and

supervision fee to be established by regulation. The international banking corporation shall also submit to the Commissioner a certificate issued by the banking or supervisory authority of the country in which the international banking corporation is organized and licensed stating that the international banking corporation is duly organized and licensed and lawfully existing in good standing, and is empowered to conduct a general banking business.

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

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

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

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

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

(b) The international banking corporation may renew the license annually upon application to the Commissioner upon forms to be supplied by the Commissioner for that purpose. The application for renewal shall be submitted to the Commissioner no later than 60 days before the expiration of the license. The license may be renewed by the Commissioner upon a determination, with or without examination, that the international banking corporation is in a safe and satisfactory condition, that it has complied with applicable requirements of law, and that the renewal of the license is proper and has been duly authorized by proper corporate action. Each application for

renewal of an international banking corporation license shall be accompanied by an annual renewal fee to be determined by the Commissioner by regulation.

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

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

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

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

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

(a) An international banking corporation licensed under this Article shall hold, at its office in this State, currency, bonds, notes, debentures, drafts, bills of exchange, or other evidence of indebtedness or other obligations payable in the United States or in United States funds or, with the prior approval of the Commissioner, in funds freely convertible into United States funds in an amount that is not less than one hundred eight percent (108%) of the aggregate amount of liabilities of the international banking corporation payable at or through its office in this State or as a result of the operations of the international bank branch or international bank agency, including acceptances, but excluding:

- (1) Accrued expenses; and
- (2) Amounts due and other liabilities to other offices, agencies, or branches of and wholly owned, except for a nominal number of directors' shares, subsidiaries of the international banking corporation.

(b) For the purpose of this Article, the Commissioner shall value marketable securities at principal amount or market value, whichever is lower, and may determine the value of any nonmarketable bond, note, debenture, draft, bill of exchange, or other evidence of indebtedness or of any other obligation held by or owed to the international banking corporation in this State. In determining the amount of assets for the purpose

of computing the above ratio of assets, the Commissioner may exclude any particular assets, but may give credit, subject to any rules adopted by the Commissioner, to deposits and credit balances with unaffiliated banking institutions outside this State if the deposits or credit balances are payable in United States funds or in currencies freely convertible into United States funds. In no case shall credit given for the deposits and credit balances exceed in aggregate amounts any percentage, but not less than eight percent (8%), as the Commissioner may from time to time prescribe, of the aggregate amount of liabilities of the international banking corporations.

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

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

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

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

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

"§ 53-232.12. Reports.

(a) An international banking corporation licensed under this Article shall, at the times and in the form prescribed by the Commissioner, make written reports in the English language to the Commissioner, under the oath of one of its officers, managers, or agents transacting business in this State, showing the amount of its assets and liabilities and containing any other matters required by the Commissioner. If an

international banking corporation fails to make a report, as directed by the Commissioner, or if a report contains a false statement knowingly made, this is grounds for revocation of the license of the international banking corporation.

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

"§ 53-232.13. Dissolution.

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

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

(c) The Commissioner shall continue as agent of the international banking corporation upon whom process against it may be served in any action based upon any liability or obligation incurred by the international banking corporation within this State before the filing of the certificate, order, or decree; and the Commissioner shall promptly cause a copy of the process to be mailed by registered or certified mail, return receipt requested, to the international banking corporation at the post office address specified for this purpose on file with the Commissioner's office.

"§ 53-232.14. International representative offices.

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

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

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

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

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

"§ 53-232.15. Rules.

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

"§ 53-232.16. Cease and desist.

Upon a finding that any action of an international banking corporation or its international banking agency, international banking branch, or international representative office subject to this Article may be in violation of any North Carolina banking law, the Commissioner, after a reasonable notice to the international banking corporation, international bank agency, international bank branch, or international representative office and an opportunity for it to be heard, may order it to cease and desist from the action. If the international banking corporation, international bank agency, international bank branch, or international representative office fails to appeal the decision in accordance with G.S. 53-232.17 and continues to engage in the action in violation of the Commissioner's order to cease and desist the action, it is subject to a penalty of one thousand dollars (\$1,000), to be recovered with costs by the Commissioner in any court of competent jurisdiction in a civil action prosecuted by the Commissioner. This penalty is in addition to and not in lieu of any other law applicable to the failure of an international banking corporation, international bank agency, international bank branch, or international representative office to comply with an order of the Commissioner. All civil money penalties collected under this section shall be deposited in the General Fund.

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

Notwithstanding any other law, an aggrieved party may, within 30 days after final decision of the Commissioner and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days thereafter. The record shall include all memoranda, briefs, and any other documents, data, information, or evidence submitted by any party to the proceeding, except for material such as trade secrets normally not available through commercial publication of which the party has made a claim of confidentiality and requested exclusion from the record which the Commissioner deems confidential. All factual information contained in any report of examination or investigation submitted to

or obtained by the Commissioner's staff is also made a part of the record unless deemed confidential by the Commissioner."

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

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

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

In the General Assembly read three times and ratified this the 13th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives