

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 677
SENATE BILL 42

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

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

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

No bank shall make any investment in the capital stock of any other state or national bank: Provided, that nothing herein shall be construed to prevent banks doing business under this Chapter from subscribing to or purchasing, upon such terms as may be agreed

upon, the capital stock of clearing corporations as defined in G.S. 25-8-102(3), the capital stock of banks organized under that act of Congress known as the 'Edge Act', or the capital stock of central reserve banks whose capital stock exceeds one million dollars (~~\$1,000,000~~). (~~\$1,000,000~~), or capital stock of the Federal Home Loan Bank. To constitute a central reserve bank as contemplated by this Chapter, at least fifty percent (50%) of the capital stock of such bank shall be owned by other banks. The investment of any bank in the capital stock of such central reserve bank or bank organized under the act of Congress commonly known as the 'Edge Act,' shall at no time exceed ten percent (10%) of the paid-in capital and permanent surplus of the bank making same. No bank shall invest more than seventy-five percent (75%) of its unimpaired capital fund in the stocks of other corporations, firms, partnerships, or companies, unless such stock is purchased to protect the bank from loss. The foregoing limitation shall not apply to stock or ownership interests acquired in corporations, firms, partnerships or companies which hold banking premises or which are bank operating subsidiaries of such bank. The term 'invest' shall be deemed to include operating a business entity acquired by the bank, provided, however, that no bank shall make any such investment resulting in operations which are not closely related to banking without the prior written approval of the Commissioner of Banks. The Commissioner of Banks shall monitor the impact of investment activities of banks under this section on the safety and soundness of such banks. Any stocks owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the same, and if not so disposed of they shall be charged to profit and loss account, and no longer carried on the books as an asset. The limit of time in which said stocks shall be disposed of or charged off the books of the bank may be extended by the Commissioner of Banks if in his judgment it is for the best interest of the bank that such extension be granted; provided that the limitations imposed in this section on the ownership of stock in or securities of corporations is suspended to the extent (and to that extent only) that any bank operating under the supervision of the Commissioner of Banks may subscribe for and purchase shares of stock in or debentures, bonds or other types of securities of any corporation organized under the laws of the United States of America for the purpose of insuring to depositors a part or all of their funds on deposit in banks where and to such extent as such stock or security ownership is required in order to obtain the benefits of such deposit insurance for its depositors."

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

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

"§ 53-87. Directors may declare dividends.

The board of directors of any bank may declare a dividend of so much of its undivided profits as they may deem expedient, subject to the requirements hereinafter provided. When the surplus of any bank having a capital stock of fifteen thousand dollars (\$15,000) or more is less than fifty percent (50%) of its paid-in capital stock, such bank shall not declare any dividend until it has transferred from undivided profits to surplus twenty-five percent (25%) of said undivided profits, or any lesser percentage that may be required to restore the surplus to an amount equal to fifty percent (50%) of the paid-in capital stock. When the surplus of any bank having a capital stock of less

than fifteen thousand dollars (\$15,000) is less than one hundred percent (100%) of its paid-in capital stock, such bank shall not declare any dividend until it has transferred from undivided profits to surplus fifty percent (50%) of said undivided profits, or any lesser percentage that may be required to restore the surplus to an amount equal to one hundred percent (100%) of the paid-in capital stock. In order to ascertain the undivided profits from which such dividend may be made, there shall be charged and deducted from the actual profits:

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

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

"§ 53-91.1. Assets to be written off.

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

Sec. 6. Article 8 of Chapter 53 of the General Statutes is amended by adding two new sections to read:

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

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

- (1) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee to cease and desist violating any provision of this Chapter or any lawful regulation issued thereunder; and
- (2) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of a depositor.

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

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

(d) The Commissioner may impose a civil money penalty of not more than one thousand dollars (\$1,000) for each violation by any bank, trust company, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (1) of subsection (a) of this section. Provided further, the Commissioner may impose a civil money penalty of not more than five hundred dollars (\$500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any director, officer, or employee violates a cease and desist order issued under subdivision (2) of subsection (a) of this section. All civil money penalties collected under this section shall be deposited in the General Fund.

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

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

(b) Notwithstanding any penalty imposed by the Commissioner of Banks, the Banking Commission may after notice of and opportunity for hearing, impose, enter judgment for, and enforce by appropriate process, a penalty of not more than ten thousand dollars (\$10,000) against any bank, trust company, or subsidiary thereof, or against any of its directors, officers, or employees for violating any lawful orders of the Commission or Commissioner of Banks. All civil money penalties collected under this section shall be deposited in the General Fund."

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

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

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

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

- (1) Each bank shall retain permanently the minute books of meetings of its stockholders and directors, its capital stock ledger and capital stock

certificate ledger or stubs, and all records which the Banking Commission shall in accordance with the terms of this section require to be retained permanently.

- (2) All other bank records shall be retained for such periods as the Banking Commission shall in accordance with the terms of this section prescribe.
- (3) The Banking Commission shall from time to time issue regulations classifying all records kept by banks and prescribing the period for which records of each class shall be retained. Such periods may be permanent or for a lesser term of years. Such regulations may from time to time be amended or repealed, but any amendment or repeal shall not affect any action taken prior to such amendment or repeal. Prior to issuing any such regulations the Commission shall consider:
 - a. Actions at law and administrative proceedings in which the production of bank records might be necessary or desirable;
 - b. State and federal statutes of limitation applicable to such actions or proceedings;
 - c. The availability of information contained in bank records from other sources; and
 - d. Such other matters as the Banking Commission shall deem pertinent in order that its regulation will require banks to retain their records for as short a period as is commensurate with the interest of bank customers and stockholders and of the people of this State in having bank records available.
- (4) Any bank may cause any or all records kept by it to be recorded, copied or reproduced by any photographic, photostatic or miniature photographic or reproduction process of any kind which is capable of conversion into written form within a reasonable time ~~process~~ and which correctly, accurately, and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material.
- (5) Any such photographic, photostatic or miniature photographic copy or reproduction of any kind, including electronic or computer-generated data, which is capable of conversion into written form within a reasonable time, shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts and administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such photographic copy or reproduction shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original record.
- (6) Any bank may dispose of any record which has been retained for the period prescribed by the Banking Commission or in accordance with the terms of this section for retention of records for its class."

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

"§ 53-84. Depositories designated by directors.

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

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

Sec. 9. 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