

2003-2004

**HOUSE
FINANCIAL
INSTITUTIONS**

**COMMITTEE
MINUTES**

NORTH CAROLINA GENERAL ASSEMBLY

FINANCIAL INSTITUTIONS

2003 – 2004 SESSION



Rep. Walter Church
Chair



Rep. Edgar Starnes
Chair



Rep. Earl Jones
Vice Chair



Rep. William McGee
Vice Chair



Rep. Drew Saunders
Vice Chair



Rep. Cary Allred



Rep. Debbie Clary



Rep. Nelson Cole



Rep. Rick Glazier



Rep. Michael Gorman



Rep. Hugh Holliman



Rep. Patrick McHenry



Rep. Paul Miller



Rep. Don Munford



Rep. Bonner Stiller



Rep. William Wainwright



Rep. Trudi Walend



Rep. Arthur Williams

NORTH CAROLINA GENERAL ASSEMBLY

FINANCIAL INSTITUTIONS

2003 – 2004 SESSION



Rep. Harold Brubaker
Ex-officio



Rep. Bill Culpepper
Ex-officio



Rep. Pete Cunningham
Ex-officio



Rep. Rick Eddins
Ex-officio

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

<u>MEMBER</u>		<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
CHURCH, Walter	Chair	Joyce Fuller	733-5805	1311	33
STARNES, Edgar	Chair	Patti Fleming	733-5931	513	30
JONES, Earl	VC	Mia Bailey	733-5825	536	93
McGEE, Bill	VC	Joyce Nelson	733-5863	531	54
SAUNDERS, Drew	VC	Ruth Fish	733-5606	2217	48
ALLRED, Cary		Jean Allred	733-5786	606	38
CLARY, Debbie		Shirley Winstead	715-2002	302B	14
COLE, Nelson		Suzanne Smith	733-5779	1218	45
GLAZIER, Rick		Carin Savel	733-5601	2215	107
GORMAN, Michael		Rachel Faison	715-3019	417A	25
HOLLIMAN, Hugh		Carol Bowers	715-0873	1213	55
McHENRY, Patrick		Brett Keeter	733-5886	1015	97
MILLER, Paul		Eryn Gee	733-5872	640	43
MUNFORD, Don		Carla Farmer	733-5809	539	41
STILLER, Bonner		Ferebee Stainback	733-5974	508	29
WAINWRIGHT, William		Blinda Edwards	733-5995	532	8
WALEND, Trudi		Ken Walend	715-4466	602	88
WILLIAMS, Arthur		Linda Uzzle	733-5906	637	22

EX-OFFICIO MEMBERS

BRUBAKER, Harold	Cindy Coley	715-4946	1229	2
CULPEPPER, Bill	Dot Crocker	715-3028	404	36
CUNNINGHAM, Pete	Valerie Rustin	733-5778	541	7
EDDINS, Rick	Dorie Monroe	733-5828	1002	26

ATTENDANCE

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

(Name of Committee)

[illegible]

ATTENDANCE

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

(Name of Committee)

[illegible]

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
APRIL 22, 2003

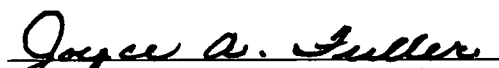
The **House Committee on Financial Institutions** met on Wednesday, April 22, 2003, at 1:00 p.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chair Walter Church. Co-Chair Church recognized the Sgt.-at-Arms and the two pages who were assigned to the meeting. The following members of the committee were present: Co-Chairman Church; Vice Chairs Jones, McGee and Saunders; Reps. Allred, Cole, Holliman, McHenry, Miller, Munford, Stiller, Walend and Ex-Officio member Brubaker.

H.B. 917 – CONFORM MORTGAGE LENDING LAWS – Co-Chair Church recognized Rep. Brubaker to present the bill. Under current law, parties to a home loan contract in which the principle amount is \$10,000 or more may determine the rate of interest by agreement. However, the law contains a separate provision for lenders who are affiliates of subsidiaries of a Consumer Finance licensee and who operate in the same office as the licensee. The interest rate on loans made by these lenders is determined monthly by the Commissioner of Banks as either the most recent rate for US Treasury bills with a six-month maturity plus 6% or 15%, whichever is greater.

Co-Chair Church moved that the Committee Substitute of H.B. 917 be adopted for discussion. Karen Cochrane-Brown, Committee Co-Counsel, explained the **PROPOSED HOUSE COMMITTEE SUBSTITUTE FOR H.B. 917**. This Proposed Committee Substitute amends the law governing permissible interest rates for home loans secured by first mortgages or first deeds of trust. The bill eliminates a provision that requires Consumer Finance licensee affiliates operating in the same office, who make home loans to charge the Commissioner's rate of interest. The bill also repeals a provision relating to interest rates for savings and loan associations. After much discussion Rep. McHenry moved that **H.B. 917 be given a favorable report for the committee substitute bill and unfavorable to the original bill. The motion was seconded and carried. H.B. 917 – WITH A FAVORABLE REPORT AS TO THE COMMITTEE SUBSTITUTE BILL, UNFAVORABLE AS TO THE ORIGINAL BILL.**

There being no further business, Co-Chair Church adjourned the meeting at approximately 1:40 p.m.


Co-Chair Walter G. Church, Sr.


Joyce A. Fuller, Committee Assistant

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **CHURCH AND STARNES** (Chairs) for the Committee on
FINANCIAL INSTITUTIONS.

☐ Committee Substitute for

H.B. 917 A BILL TO BE ENTITLED AN ACT TO CONFORM THE LAWS RELATED
TO PERMISSIBLE INTEREST RATES FOR HOME LOANS SECURED BY SECOND
AND SUBSEQUENT MORTGAGES TO THE LAWS GOVERNING PERMISSIBLE
INTEREST RATES FOR HOME LOANS SECURED BY FIRST MORTGAGES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill (#), ☒ which changes the
title, unfavorable as to (the original bill) (~~Committee Substitute Bill #~~), (and
~~recommendation that the committee substitute bill #~~) ~~be re-referred to the Committee~~
~~on~~.)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H

D

HOUSE BILL 917

PROPOSED COMMITTEE SUBSTITUTE H917-CSRU-17 [v.2]

4/21/2003 8:30:33 PM

Short Title: Conform Mortgage Lending Laws.

(Public)

Sponsors:

Referred to:

April 8, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO CONFORM THE LAWS RELATED TO PERMISSIBLE INTEREST
3 RATES FOR HOME LOANS SECURED BY FIRST MORTGAGES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 24-1.1A(a) reads as rewritten:

6 "(a) Notwithstanding any other provision of this Chapter, but subject to the
7 provisions of G.S. 24-1.1E, parties to a home loan may contract in writing as follows:

8 (1) Where the principal amount is ten thousand dollars (\$10,000) or more
9 the parties may contract for the payment of interest as agreed upon by
10 the ~~parties;~~parties.

11 (2) Where the principal amount is less than ten thousand dollars (\$10,000)
12 the parties may contract for the payment of interest as agreed upon by
13 the parties, if the lender is ~~either one of the following:~~

14 (i)~~a.~~ Approved as a mortgagee by the Secretary of Housing
15 and Urban Development, the Federal Housing Administration,
16 the Department of Veterans Affairs, a national mortgage
17 association or any federal ~~agency;~~agency.

18 (ii)~~b.~~ a ~~A~~ local or foreign bank, savings and loan association or
19 service corporation wholly owned by one or more savings and
20 loan associations and permitted by law to make home loans,
21 credit union or insurance ~~company;~~company.

22 (iii)~~c.~~ a ~~A~~ State or federal ~~agency;~~agency.

23 d. A mortgage banker who is a licensee or an exempt person as
24 those terms are defined in G.S. 53-243.01.

25 (3) Where the principal amount is less than ten thousand dollars (\$10,000)
26 and the lender is not a lender described in the preceding subdivision
27 (2) the parties may contract for the payment of interest not in excess of
28 sixteen percent (16%) per annum.

1 (4) ~~Notwithstanding any other provision of law, where the lender is an~~
2 ~~affiliate operating in the same office or subsidiary operating in the~~
3 ~~same office of a licensee under the North Carolina Consumer Finance~~
4 ~~Act, the lender may charge interest to be computed only on the~~
5 ~~following basis: monthly on the outstanding principal balance at a rate~~
6 ~~not to exceed the rate provided in this subdivision.~~

7 ~~On the fifteenth day of each month, the Commissioner of Banks~~
8 ~~shall announce and publish the maximum rate of interest permitted by~~
9 ~~this subdivision. Such rate shall be the latest published noncompetitive~~
10 ~~rate for U.S. Treasury bills with a six month maturity as of the~~
11 ~~fifteenth day of the month plus six percent (6%), rounded upward or~~
12 ~~downward, as the case may be, to the nearest one half of one percent~~
13 ~~(1/2 of 1%) or fifteen percent (15%), whichever is greater. If there is~~
14 ~~no nearest one half of one percent (1/2 of 1%), the Commissioner shall~~
15 ~~round downward to the lower one half of one percent (1/2 of 1%). The~~
16 ~~rate so announced shall be the maximum rate permitted for the term of~~
17 ~~loans made under this section during the following calendar month~~
18 ~~when the parties to such loans have agreed that the rate of interest to~~
19 ~~be charged by the lender and paid by the borrower shall not vary or be~~
20 ~~adjusted during the term of the loan. The parties to a loan made under~~
21 ~~this section may agree to a rate of interest which shall vary or be~~
22 ~~adjusted during the term of the loan in which case the maximum rate~~
23 ~~of interest permitted on such loans during a month during the term of~~
24 ~~the loan shall be the rate announced by the Commissioner in the~~
25 ~~preceding calendar month.~~

26 ~~An affiliate operating in the same office or subsidiary operating in~~
27 ~~the same office of a licensee under the North Carolina Consumer~~
28 ~~Finance Act may not make a home loan for a term in excess of six (6)~~
29 ~~months which provides for a balloon payment. For purposes of this~~
30 ~~subdivision, a balloon payment means any scheduled payment that is~~
31 ~~more than twice as large as the average of earlier scheduled payments.~~
32 ~~This subsection does not apply to equity lines of credit as defined in~~
33 ~~G.S. 45-81."~~

34 **SECTION 2.** G.S. 24-1.1A(c2) is repealed.

35 **SECTION 3.** G.S. 24-1.4 is repealed.

36 **SECTION 4.** This act becomes effective July 1, 2003, and applies to loans
37 entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

1

HOUSE BILL 917

Short Title: Conform Mortgage Lending Laws.

(Public)

Sponsors: Representatives Brubaker, Church, Hall (Primary Sponsors); Adams, Culp, Earle, Farmer-Butterfield, Fox, Gibson, Howard, LaRoque, Lewis, McAllister, McHenry, Miner, Stiller, Wainwright, Warner, and Wright.

Referred to: Financial Institutions.

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE LAWS RELATED TO PERMISSIBLE INTEREST RATES FOR HOME LOANS SECURED BY SECOND AND SUBSEQUENT MORTGAGES TO THE LAWS GOVERNING PERMISSIBLE INTEREST RATES FOR HOME LOANS SECURED BY FIRST MORTGAGES.

The General Assembly of North Carolina enacts:

SECTION 1. The catch line for G.S. 24-1.1A reads as rewritten:

"§ 24-1.1A. Contract rates on home loans secured by ~~first~~ mortgages or ~~first~~ deeds of trust."

SECTION 2. G.S. 24-1.1A(a) reads as rewritten:

"(a) Notwithstanding any other provision of this Chapter, but subject to the provisions of G.S. 24-1.1E, parties to a home loan may contract in writing as follows:

(1) Where the principal amount is ten thousand dollars (\$10,000) or more the parties may contract for the payment of interest as agreed upon by the ~~parties~~parties.

(2) Where the principal amount is less than ten thousand dollars (\$10,000) the parties may contract for the payment of interest as agreed upon by the parties, if the lender is ~~either one of the following~~:

(i)~~a.~~a. ~~approved~~Approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Department of Veterans Affairs, a national mortgage association or any federal ~~agency~~agency.

(ii)~~b.~~b. ~~a~~A local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union or insurance ~~company~~company.

(iii)~~c.~~c. ~~a~~A State or federal ~~agency~~agency.

d. A mortgage banker who is a licensee or an exempt person as those terms are defined in G.S. 53-243.01.

(3) Where the principal amount is less than ten thousand dollars (\$10,000) and the lender is not a lender described in the preceding subdivision (2) the parties may contract for the payment of interest not in excess of sixteen percent (16%) per annum.

(4) ~~Notwithstanding any other provision of law, where the lender is an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act, the lender may charge interest to be computed only on the following basis: monthly on the outstanding principal balance at a rate not to exceed the rate provided in this subdivision.~~

~~On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by this subdivision. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one half of one percent (1/2 of 1%) or fifteen percent (15%), whichever is greater. If there is no nearest one half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.~~

~~An affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act may not make a home loan for a term in excess of six (6) months which provides for a balloon payment. For purposes of this subdivision, a balloon payment means any scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection does not apply to equity lines of credit as defined in G.S. 45-81."~~

SECTION 3. G.S. 24-1.1A(c2) is repealed.

SECTION 4. G.S. 24-1.1A(e) reads as rewritten:

"(e) The term "home loan" shall mean a loan, other than an open-end credit plan, where the principal amount is less than three hundred thousand dollars (\$300,000)

1 secured by a ~~first~~-mortgage or ~~first~~-deed of trust on real estate upon which there is
2 located or there is to be located one or more single-family dwellings or dwelling units."

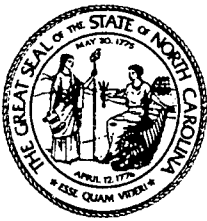
3 **SECTION 5.** G.S. 24-1.1A(g)(1) reads as rewritten:

4 "(1) A home loan will be subject to the deferral fee limitations set forth in
5 subdivision (2) of this subsection if:

- 6 a. The borrower is a natural person;
7 b. The debt is incurred by the borrower primarily for personal,
8 family, or household purposes; and
9 c. The loan is secured by a ~~first~~-mortgage or ~~first~~-deed of trust on
10 real estate upon which there is located or there is to be located a
11 structure or structures designed principally for occupancy of
12 from one to four families which is or will be occupied by the
13 borrower as the borrower's principal dwelling."

14 **SECTION 6.** G.S. 24-1.4 is repealed.

15 **SECTION 7.** This act becomes effective July 1, 2003, and applies to loans
16 entered into on or after that date.



HOUSE BILL 917: Conform Mortgage Lending Laws.

BILL ANALYSIS

Committee:	House Financial Institutions	Introduced by:	Reps. Brubaker, Church and Hall
Date:	April 22, 2003		
Version:	Proposed Committee Substitute H917-CSRU-17 [v.2]	Summary by:	Karen Cochrane Brown Committee Co-Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 917 amends the law governing permissible interest rates for home loans secured by first mortgages or first deeds of trust. The bill eliminates a provision that requires Consumer Finance licensee affiliates operating in the same office, who make home loans to charge the Commissioner's rate of interest. The bill also repeals a provision relating to interest rates for savings and loan associations.*

CURRENT LAW:

Under current law, subject to the provisions of the Predatory Lending Law, parties to a home loan contract in which the principal amount is \$10,000 or more may determine the rate of interest by agreement. This is also true for loans of \$10,000 or less, if the lender is 1.) approved by HUD, FHA, VA or any federal agency; 2.) a bank, savings and loan or its subsidiary, a credit union or an insurance company; or 3.) a State or federal agency. Other lenders who do not fit any of these categories may contract for interest not in excess of 16%.

However, the law contains a separate provision for lenders who are affiliates or subsidiaries of a Consumer Finance licensee and who operate in the same office as the licensee. The interest rate on loans made by these lenders is determined monthly by the Commissioner of Banks as either the most recent rate for US Treasury bills with a six-month maturity plus 6% or 15%, whichever is greater.

BILL ANALYSIS:

This bill amends the list of lenders who may determine the rate of interest by agreement to include licensed mortgage bankers or an exempt person under the Mortgage Lending Act. The bill also deletes the entire provision relating to Consumer Finance licensee affiliates and subsidiaries. The bill would eliminate the use of the Commissioner's rate as the maximum rate of interest for home loans made by these lenders

The bill also makes a conforming change by repealing a provision that referred to lenders subject to the Commissioner's rate, which has been deleted by this bill.

Finally, the bill repeals a provision relating to interest rates for savings and loan associations. The rate for these lenders references rates permitted by federal law.

This act would become effective July 1, 2003, and apply to loans entered into on or after that date.

H917-SMRO-001

FINANCIAL INSTITUTIONS

APRIL 22, 2003

ROOM 1425

1:00 P.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND STARNES

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN AND MR.
WALKER REAGAN

COMMITTEE ASSISTANTS –PATTIE FLEMING AND JOYCE FULLER

SGT.-AT-ARMS – BOB FOWLER AND THOMAS WILDER

PAGES - SUMNER GREEN – MECKLENBURG COUNTY
BRITTANY MATTHEWS – HARNETT COUNTY

BILL TO BE CONSIDERED:

HOUSE BILL 917 – CONFORM MORTGAGE LENDING LAWS – REPS.
BRUBAKER, CHURCH AND HALL

CLOSING REMARKS

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

APRIL 22, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Larry Heckner	Household Financial Group
Susan Valami	Nationwide
John McMillan	Infos
Mark Patton	DSS/Df.
Rob Schofield	NC Justice Center
Roney Lamm	Citigroup
Don Perini	AIG.
Maxine Evans-Armwood	Dept. of Juvenile Justice
Dick Carlton	Carlton & Alexander PLLC
Keith Corbett	CKL
Al Ripley	NC Justice Ctr

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

APRIL 22, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Lori A. Harris

L.A. Harris & Assoc. Inc.

105 Dec 16/64

Ne St. Lawrence

Rep. JOHN HALL

170 VSL

Carni McStell

Keltt

Anteign

11/11/11

Kiki Duntson

NCPTRG

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
APRIL 29, 2003

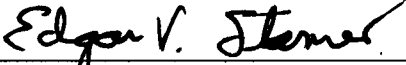
The **House Committee on Financial Institutions** met on Tuesday, April 29, 2003, at 1:00 p.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chair Edgar Starnes. Co-Chair Starnes recognized the Sgt.-at-Arms and the page who was assigned to the meeting. The following members of the committee were present: Co-Chair Starnes; Vice Chairs Jones, McGee and Saunders; Reps. Clary, Cole, Holliman, McHenry, Miller, Wainwright and Walend.

SB 658 APPELLATE PROCEDURE/STATE BANKING COMMISSION

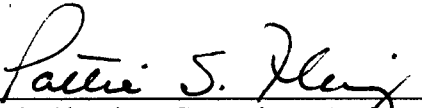
Co-Chair Starnes recognized McNeil Chestnut, Deputy Attorney General, to explain the Committee Substitute for SB 658 that amends the law relating to appellate procedure before the State Banking Commission to resolve a conflict in the statute, and to authorize the Chair of the Commission to appoint review panels to hear appeals from determinations of the Banking Commissioner and to make recommendations to the full Commission. The bill also authorizes the Commissioner of Banks to appoint a member of the Commissioner's staff to act as hearing officer.

Co-Chair Starnes opened the floor for discussion. Banking Commissioner, Joe Smith, explained that there is a great need for a hearing officer due to the tremendous number of applications that are being received. A board of appeals is also needed to hear the applicants that have been denied. There are more than 100 appeals pending at present. There being no further discussion Rep. McGee moved that the **Committee Substitute for SB 658 be given a favorable report. The motion was seconded and carried.**
COMMITTEE SUBSTITUTE FOR SB 658 - FAVORABLE REPORT.

There being no further business, Co-Chair Starnes adjourned the meeting at approximately 1:15 p.m.



Co-Chair Edgar V. Starnes



Pattie S. Fleming, Committee Assistant

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **CHURCH AND STARNES** (Chairs) for the Committee on
FINANCIAL INSTITUTIONS.

☒ Committee Substitute for

S.B. 658 A BILL TO BE ENTITLED AN ACT TO RESOLVE CONFLICTING
STATUTES; TO AMEND THE APPELLATE PROCEDURE BEFORE THE STATE
BANKING COMMISSION; AND TO AUTHORIZE THE COMMISSIONER OF BANKS
TO APPOINT A HEARING OFFICER.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the
title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and
recommendation that the committee substitute bill #) be re-referred to the Committee
on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

2

SENATE BILL 658
Commerce Committee Substitute Adopted 4/14/03

Short Title: Appellate Procedure/State Banking Commission.

(Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO RESOLVE CONFLICTING STATUTES; TO AMEND THE
APPELLATE PROCEDURE BEFORE THE STATE BANKING COMMISSION;
AND TO AUTHORIZE THE COMMISSIONER OF BANKS TO APPOINT A
HEARING OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-29(a) reads as rewritten:

"(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection (b) of this section, the Department of Health and Human Services 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, the Commissioner of Insurance under G.S. 58-2-80, or the Secretary of Environment and Natural Resources under G.S. 104E-6.2 or G.S. 130A-293, appeal as of right lies directly to the Court of Appeals."

SECTION 2. G.S. 53-92(d) reads as rewritten:

"(d) The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this ~~State; any State.~~ Upon an appeal to the Banking Commission by any party from an order entered by the Commissioner of Banks following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, the chairman of the Commission may appoint an appellate review panel of not less than five members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. Unless another time period for appeals is provided by this Chapter, any party to an order by the Commissioner of Banks may, within 20 days after the order and upon written notice to the Commissioner, appeal the Commissioner's order to the Banking Commission for

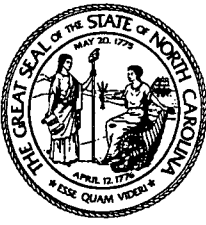
1 review. Upon notice of an appeal, the Commissioner of Banks shall, within 30 days of
2 the notice, certify to the Commission the record on appeal. Any party to a proceeding
3 before the Banking Commission may, within 20 days after final order of said
4 Commission and by written notice to the Commissioner of Banks, appeal to the
5 Superior Court of Wake County for a final determination of any question of law which
6 may be involved. The cause shall be entitled "State of North Carolina on Relation of the
7 Banking Commission against (here insert name of appellant)." It shall be placed on the
8 civil issue docket of such court and shall have precedence over other civil actions. In the
9 event of an appeal the Commissioner shall certify the record to the Clerk of Superior
10 Court of Wake County within 15 days thereafter."

11 **SECTION 3. G.S. 53-93 reads as rewritten:**

12 **"§ 53-93. Powers and duties of Commissioner.**

13 The Commissioner of Banks shall have the powers, duties and functions herein
14 given, and in addition thereto such other powers and rights as may be necessary or
15 incident to the proper discharge of ~~his~~ the Commissioner's duties. The Commissioner
16 may appoint and assign a member of the staff of the Office of the Commissioner of
17 Banks to preside at administrative hearings required by Article 3A of Chapter 150B of
18 the General Statutes, the Administrative Procedure Act, and make a recommended
19 decision to the Commissioner."

20 **SECTION 4. This act is effective when it becomes law.**



SENATE BILL 658: Appellate Procedure/State Banking Commission.

BILL ANALYSIS

Committee: House Financial Institutions
Date: April 29, 2003
Version: Second Edition

Introduced by: Sen. Soles and Clodfelter
Summary by: Karen Cochrane Brown
Committee Co-Counsel

SUMMARY: *Senate Bill 658 amends the law relating to appellate procedure before the State Banking Commission to resolve a conflict in the statute, and to authorize the Chair of the Commission to appoint review panels to hear appeals from determinations of the Banking Commissioner and to make recommendations to the full Commission. The bill also authorizes the Commissioner of Banks to appoint a member of the Commissioner's staff to act as hearing officer.*

CURRENT LAW:

The current law, relating to appeals to the Court of Appeals from certain administrative agencies, allows an appeal as of right from a decision of the Commissioner of Banks if the case involves several Articles of Chapter 53, the Banking Law. Another provision in Chapter 53 provides that any party may appeal to Superior Court of Wake County from a final order of the Banking Commission. Since the Banking Commission is authorized to review decisions of the Commissioner of Banks, these two provisions raise an apparent conflict.

BILL ANALYSIS:

This bill resolves the conflict in the laws relating to judicial review of Banking Commission orders. Section 1 of the bill removes the Commissioner of Banks from the provision authorizing appeals directly to the Court of Appeals, so that appeals from the Banking Commission will be heard in Superior Court of Wake County.

Section 2 of the bill authorizes the Chair of the Banking Commission to appoint a review panel of not less than five members to hear arguments and make a recommended decision to the full Commission. The Banking Commission is composed of 22 members and is chaired by the State Treasurer. This amendment will allow for more efficient and expeditious review of appeals. Also, appeals from orders of the Commissioner must be taken within 20 days after the order. The bill limits the 20-day requirement to cases where no other time period is provided in the Banking Law. In Articles 17 and 18 of the Banking Law, a 30-day period for appeal is authorized.

Section 3 permits the Commissioner of Banks to appoint and assign a member of his staff to preside at administrative hearings and make a recommended decision to the Commissioner.

This act is effective when it becomes law.

S658-SMRO-002

FINANCIAL INSTITUTIONS

APRIL 29, 2003

ROOM 1425

1:00 P.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND STARNES

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN AND MR.
WALKER REAGAN

COMMITTEE ASSISTANTS –PATTIE FLEMING AND JOYCE FULLER

SGT.-AT-ARMS – BOB FOWLER AND THOMAS WILDER

PAGE - BLAIR SMITH - CUMBERLAND COUNTY

BILL TO BE CONSIDERED:

S.B. 658 – APPELLATE PROCEDURE/STATE BANKING COMMISSION

CLOSING REMARKS

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

APRIL 29, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jim Kent

IDA - 21

An Ma

DA - 28

Bruce Hays

per

Paul Stahl

NC Banker

Rev. Dr. Jim Vigen

NC Synod office of Advocacy Ministry
(ELCA)

Peter Skillern

CRA-NC

Yolanda McGinn

Ctr for Resp. Lending

POPAI

NC Justice Center

ROB WILLIAMS

UHUH - CDC

Beverly Rougeaux

UHUH

~~Signature~~ ~~Signature~~

VISITOR REGISTRATION SHEET

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Leigh Holmes	NC Community Dev. Inst.
Risa Engelking	CCCS of Forsyth CO / Self
Clara James	Real Estate Broker - Housing Advocate
Ellen Schloemer	Just Money Coalition
Richard Brown	SLA-NC
Dikery Davis	Community Reinvestment Association of North Carolina
Valjeanne Estes	Creative Capital Mortgage

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
April 29, 2003

The **House Committee on Financial Institutions** met on Wednesday, April 29, 2003, at 6:45 p.m. in room 415 of the Legislative Office Building. The meeting was called to order by Co-Chair Walter Church. The following members of the committee were present: Co-Chair Church, Vice Chairs Jones, McGee and Saunders; Members: Clary, Cole, Glazier, Gorman, Holliman, McHenry, Miller, Munford, Wainwright, Walend, Williams; Ex-Officio Members Culpepper and Cunningham.

H.B. 1213 – REGULATE DEFERRED DEPOSIT – Karen Cochrane-Brown, Committee Co-Counsel, handed out the **PROPOSED COMMITTEE SUBSTITUTE FOR H.B. 1213**. Co-Chair Church recognized Rep. Culpepper to explain the Proposed Committee Substitute. This Proposed Committee Substitute would reauthorize regulation of deferred deposit transactions. Deferred or delayed deposit transactions were previously authorized under provisions of the Check Casher Act. Those provisions expired on August 31, 2001. This bill would create additional consumer protections, including mandatory repayment plans and prohibited practices for lenders who make deferred deposit loans. After much discussion, Rep. Saunders moved that **H.B. 1213 be given a favorable report for the committee substitute bill and unfavorable as to the original bill**. The motion was seconded and carried. **H.B. 1213 – WITH A FAVORABLE REPORT AS TO THE COMMITTEE SUBSTITUTE BILL, UNFAVORABLE AS TO THE ORIGINAL BILL.**

There being no further business, Co-Chair Church adjourned the meeting at approximately 8:15 p.m.



Co-Chair Walter G. Church, Sr.



Joyce A. Fuller, Committee Assistant

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **Church and Starnes** (Chairs) for the Committee on **Financial Institutions**.

☐ Committee Substitute for

H.B. 1213 A BILL TO BE ENTITLED AN ACT TO REGULATE DEFERRED DEPOSIT
TRANSACTIONS AND TO PROVIDE ADDITIONAL CONSUMER DISCLOSURES
AND PROTECTIONS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill (# _____), ☐ which changes the
~~title, unfavorable as to (the original bill) (Committee Substitute Bill # _____), (and~~
~~recommendation that the committee substitute bill # _____) be re-referred to the Committee~~
~~on _____)~~

☐ With a favorable report as to House committee substitute bill (# _____), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

D

HOUSE BILL 1213
PROPOSED COMMITTEE SUBSTITUTE H1213-CSSW-30 [v.3]

4/29/2003 4:17:34 PM

Short Title: Regulate Deferred Deposit.

(Public)

Sponsors:

Referred to:

April 10, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE DEFERRED DEPOSIT TRANSACTIONS AND TO
3 PROVIDE ADDITIONAL CONSUMER DISCLOSURES AND PROTECTIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 53-275 reads as rewritten:

6 "§ 53-275. Definitions.

7 As used in this Article, unless the context clearly requires otherwise, the term:

8 (1) "Cashing" means providing currency for payment instruments, but
9 does not include the bona fide sale or exchange of travelers checks and
10 foreign denomination payment instruments.

11 (2) "Check-cashing service" means any person or entity engaged in the
12 business of cashing checks, drafts, or money orders for a fee, service
13 charge, or other consideration.

14 (3) "Commission" means the State Banking Commission.

15 (4) "Commissioner" means the Commissioner of Banks.

16 (4a) "Deferred deposit transaction" means a check-cashing or similar loan
17 transaction in which a person pays a cash advance to a consumer in
18 return for a check dated on the date it was written and agrees to hold
19 the check for a period of days prior to deposit or presentment, or
20 accepts a postdated check and agrees to hold the check for deposit or
21 presentment at least until the date written on the check. The term shall
22 also include any such arrangement in which a person pays a cash
23 advance in return for an authorization from a consumer for a draft or
24 electronic debit rather than a check.

25 (4b) "Lender" means the following:

26 a. Any person or entity that offers or makes a deferred deposit
27 transaction, arranges a deferred deposit transaction for a third
28 party, or acts as an agent for a third party, regardless of whether

1 the third party is exempt from licensing under this Article or
2 whether approval, acceptance, or ratification by the third party
3 is necessary to create a legal obligation for the third party.

4 b. Notwithstanding the foregoing, a state or federally chartered
5 bank, savings and loan association, credit union, or supervised
6 lender shall not be considered a lender for purposes of the
7 Article and shall be specifically exempt from provisions of this
8 Article so long as all of the following are satisfied:

9 1. It initially advances the loan proceeds to the borrower;

10 2. It does not sell, assign, or transfer in the aggregate a
11 preponderant economic interest in the deferred deposit
12 transactions to an arranger, agent, or assistant, or an
13 affiliate or subsidiary of the state or federally chartered
14 bank, savings and loan association, credit union or
15 supervised lender, unless selling, assigning or
16 transferring a preponderant economic interest is
17 permitted by the primary regulator of the state or
18 federally chartered bank, savings and loan association,
19 credit union or supervised lender; and

20 3. It develops the deferred deposit transaction program on
21 its own.

22 c. If a lender offers, arranges, acts as an agent for, or assists a state
23 or federally chartered bank, savings and loan association, credit
24 union or supervised lender in any way in the making of a
25 deferred deposit transaction and the state or federally chartered
26 bank, savings and loan association, credit union or supervised
27 lender meets the standards set forth in sub-subdivision b. of this
28 subdivision, the lender shall comply with all other provisions of
29 this Article to the extent they are not preempted by other state
30 or federal laws.

31 (5) "Licensee" means a person or entity licensed to engage in a
32 check-cashing business under this Article.

33 (5a) "Loan amount" means the amount financed as defined in Regulation Z
34 of the federal Truth in Lending Act (12 C.F.R. § 226.18(b)).

35 (6) "Person" means an individual, partnership, association, or
36 corporation."

37 SECTION 2. G.S. 53-276 reads as rewritten:

38 "§ 53-276. License required.

39 No person or other entity may engage in the business of cashing checks, drafts, or
40 money orders for ~~consideration~~ consideration, nor engage in the business of making
41 deferred deposit transactions without first obtaining a license under this Article. No
42 person or other entity providing a check-cashing service may avoid the requirements of
43 this Article by providing a check or other currency equivalent instead of currency when
44 cashing payment instruments."

SECTION 3. Article 22 of Chapter 53 of the General Statutes is amended by adding the following new sections to read:

"§ 53-281.1. Deferred deposit transactions permitted.

Lenders may make deferred deposit transactions pursuant to the following requirements:

- (1) The face amount of the deferred deposit check may include a fee but the principal loan amount shall not exceed three hundred dollars (\$300.00).
- (2) Each deferred deposit check cashed by a lender shall be deemed to be a loan and shall be documented by a written agreement as provided in G.S. 53-281.2.
- (3) A lender shall not directly or indirectly charge a fee or other consideration in excess of fifteen percent (15%) of the loan amount, provided the maximum fee charged to a borrower for entering into a deferred deposit transaction shall not exceed forty dollars (\$40.00).
- (4) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same lender or any affiliate of the lender. A lender shall not, for any consideration, renew or otherwise extend any deferred deposit check or withhold the check from deposit for any period beyond the time set forth in the written agreement, except as allowed under G.S. 53-281.4.

"§ 53-281.2. Written agreement and disclosures required for deferred deposit transactions.

(a) Each deferred deposit transaction shall be documented by a written agreement signed by the borrower and the lender. A legible copy of the agreement shall be provided to the borrower.

(b) The written agreement shall contain:

- (1) The name and address of the borrower.
- (2) The name, local street address, and telephone number of the lender.
- (3) The transaction date, which shall be prominently labeled.
- (4) The loan amount as defined in G.S. 53-275(5a).
- (5) The amount of any fees charged, expressed as both a dollar amount and as an effective annual percentage rate (APR).
- (6) The maturity date, which shall be no less than 14 days nor more than 60 days after the transaction date.
- (7) The following notices immediately above the borrower's signature line in at least ten-point type: **THIS TRANSACTION IS NOT MEANT TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS. YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. ON THE NEXT BUSINESS DAY AFTER THE TRANSACTION DATE SHOWN ABOVE. TO CANCEL YOU MUST RETURN ALL OF THE CASH**

**PROCEEDS TO THE LENDER. THE LENDER WILL REFUND
TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.**

(c) The written agreement shall be accompanied by a separate paper which contains all disclosures required by the federal Truth in Lending Act (12 U.S.C. § 1601, et seq.) and the federal Reserve Board Regulation 'Z' and the consumer education information. The consumer education information shall be prepared by the Commissioner and shall inform the consumer of matters such as the complaint process through the Commissioner's office, the relative cost of short-term consumer loans, the availability of other forms of credit, the right of the customer to elect a repayment plan, and any other matters the Commissioner thinks are necessary or beneficial to consumers.

(d) The written agreement shall not contain any of the following provisions:

(1) A hold harmless clause.

(2) A confession of judgment clause.

(3) A mandatory arbitration clause that does not comply with the standards set forth in the statement of principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on the effective date of this Act.

(4) Any provision in which the borrower agrees not to assert a claim or defense arising out of the contract.

(5) Any waiver by the borrower of any provision of this Article.

"§ 53-281.3. Deferred deposit transactions limited.

(a) A lender shall not knowingly enter into a deferred deposit transaction with a borrower whom the lender knows has other transactions in the aggregate exceeding the principal amount of three hundred dollars (\$300.00) or knows would exceed three transactions regardless of value. It shall be mandatory for the lender to meet both of the following conditions:

(1) The borrower signs a certification in substantially the following form:
I UNDERSTAND THAT NORTH CAROLINA LAW PROHIBITS A PERSON FROM HAVING MORE THAN \$300.00 IN DEFERRED DEPOSIT CHECKS OUTSTANDING AT ONE TIME. I OWE THE FOLLOWING DEFERRED DEPOSIT AMOUNTS AND NO OTHERS: (Write the amount you owe and the names of the licensees or write 'NONE'). This certification shall not constitute the basis of a criminal prosecution under G.S. 14-100.

(2) The lender shall verify the accuracy of this certification by:

a. A query of all of the lender's own records, and

b. A query of a subprime credit reporting service.

(b) Within 90 days after the effective date of this Act, each lender shall subscribe to a subprime credit reporting service, designated by the Commissioner, which has the capability of verifying the number and loan amounts of outstanding deferred deposit transactions entered into by any borrower with any lender licensed under this Act. Within 30 days of the effective date of this Act, the Commissioner shall issue a "Request for Proposal" from subprime credit reporting services capable of verifying the

1 information described in this subsection and within 45 days of the effective date of this
2 Act, the Commissioner shall designate that service which is capable of providing such
3 verification and charges the lowest cost per query.

4 (c) Each lender shall report to the subprime credit reporting service the
5 information necessary for the subprime credit reporting service to verify the number and
6 loan amounts of outstanding deferred deposit transactions entered into by borrowers
7 with lenders licensed under this Article.

8 (d) A lender must pay the proceeds from a deferred deposit transaction to the
9 borrower in the form of a check from the lender. Upon the borrower's request, the lender
10 may cash the lender's check if the lender has cash available to do so. The borrower shall
11 not be charged an additional finance charge or fee for cashing the lender's check.

12 **"§ 53-281.4. Mandatory repayment plan.**

13 If the borrower elects and so informs the lender at any time prior to the maturity date
14 of the deferred deposit transaction, the borrower may declare an inability to repay and
15 the lender shall accept a mandatory repayment plan with the following terms:

- 16 (1) The borrower and the lender sign a repayment plan agreement
17 providing for four equal installments due on each of the borrower's
18 next four paydays, with at least 14 days between the installments.
- 19 (2) The borrower agrees not to enter into any additional deferred deposit
20 transactions during the term of the repayment plan.
- 21 (3) Upon completion of the plan, the lender shall report the borrower's
22 positive payment history to consumer credit reporting agencies.
- 23 (4) Upon completion of the plan, the borrower is prohibited from entering
24 into any deferred deposit transactions with any lender for at least one
25 pay period.
- 26 (5) The lender may collect a fifteen-dollar (\$15.00) processing charge for
27 each repayment plan.

28 **"§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

29 In addition to the prohibited practices under G.S. 53-283, the following are
30 prohibited regarding deferred deposit transactions:

- 31 (1) Taking or attempting to take any security other than the borrower's
32 instrument.
- 33 (2) Taking or attempting to take more than a single check or other
34 instrument from the borrower in connection with a single transaction.
- 35 (3) Selling, offering, or soliciting any application for credit insurance in
36 connection with a transaction.
- 37 (4) Tying the transaction to any other transaction, offer, or obligation of
38 the borrower.
- 39 (5) Failing to comply with the Commissioner's request for assistance in
40 resolving a complaint.
- 41 (6) Using or threatening to use criminal process to collect a dishonored
42 check, unless fraud is involved.
- 43 (7) Assigning or selling to another lender an instrument taken in
44 connection with a deferred deposit transaction unless the instrument

bears the following endorsement: THIS INSTRUMENT WAS GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT BETWEEN THE BORROWER AND THE ORIGINAL LENDER.

(8) Failing to report accurately and promptly a borrower's positive repayment activity under G.S. 53-281.4 to credit reporting agencies.

(9) Failing to collect and provide information regarding the number, total, and average transaction amounts and any other information the Commissioner may request."

SECTION 4. G. S. 53-286 reads as rewritten:

"The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties may also be imposed upon persons acting on behalf of a licensee or any other person who violates this Article. Civil penalties shall not exceed ~~one thousand dollars (\$1,000)~~ ten thousand dollars (\$10,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers. The imposition or pendency of any order or penalty by the Commissioner shall not limit the right of any customer to pursue any available civil remedies."

SECTION 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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1

HOUSE BILL 1213

Short Title: Regulate Deferred Deposit.

(Public)

Sponsors: Representatives Culpepper and Grady (Primary Sponsors).

Referred to: Financial Institutions.

April 10, 2003

A BILL TO BE ENTITLED
AN ACT TO REGULATE DEFERRED DEPOSIT TRANSACTIONS AND TO
PROVIDE ADDITIONAL CONSUMER DISCLOSURES AND PROTECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-275 reads as rewritten:

"§ 53-275. Definitions.

As used in this Article, unless the context clearly requires otherwise, the term:

- (1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.
- (2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.
- (3) "Commission" means the State Banking Commission.
- (4) "Commissioner" means the Commissioner of Banks.
- (4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a consumer in return for a check dated on the date it was written and agrees to hold the check for a period of days prior to deposit or presentment, or accepts a postdated check and agrees to hold the check for deposit or presentment at least until the date written on the check. The term shall also include any such arrangement in which a person pays a cash advance in return for an authorization from a consumer for a draft or electronic debit rather than a check.
- (4b) "Lender" means the following:
 - a. Any person or entity that offers or makes a deferred deposit transaction, arranges a deferred deposit transaction for a third party, or acts as an agent for a third party, regardless of whether the third party is exempt from licensing under this Article or

whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party.

b. Notwithstanding the foregoing, a state or federally chartered bank, savings and loan association, credit union, or supervised lender shall not be considered a lender for purposes of the Article and shall be specifically exempt from provisions of this Article so long as all of the following are satisfied:

1. It initially advances the loan proceeds to the borrower;
2. It does not sell, assign, or transfer in the aggregate a preponderant economic interest in the deferred deposit transactions to arranger, agent, or assistant, or an affiliate or subsidiary of the state or federally chartered bank, savings and loan association, credit union or supervised lender, unless selling, assigning or transferring a preponderant economic interest is permitted by the primary regulator of the state or federally chartered bank, savings and loan association, credit union or supervised lender; and
3. It develops the deferred deposit transaction program on its own.

c. If a lender offers, arranges, acts as an agent for, or assists a state or federally chartered bank, savings and loan association, credit union or supervised lender in any way in the making of a deferred deposit transaction and the state or federally chartered bank, savings and loan association, credit union or supervised lender meets the standards set forth in sub-subdivision b. of this subdivision, the lender shall comply with all other provisions of this Article to the extent they are not preempted by other state or federal laws.

(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.

(5a) "Loan amount" means the amount financed as defined in Regulation Z of the federal Truth in Lending Act (12 C.F.R. § 226.18(b)).

(6) "Person" means an individual, partnership, association, or corporation."

SECTION 2. G.S. 53-276 reads as rewritten:

"§ 53-276. License required.

No person or other entity may engage in the business of cashing checks, drafts, or money orders for ~~consideration~~ consideration, nor engage in the business of making deferred deposit transactions without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments."

SECTION 3. Article 22 of Chapter 53 of the General Statutes is amended by adding the following new sections to read:

"§ 53-281.1. Deferred deposit transactions permitted.

Lenders may make deferred deposit transactions pursuant to the following requirements:

- (1) The face amount of the deferred deposit check may include a fee but the principal loan amount shall not exceed three hundred dollars (\$300.00).
- (2) Each deferred deposit check cashed by a lender shall be deemed to be a loan and shall be documented by a written agreement as provided in G.S. 32-281.2.
- (3) A lender shall not directly or indirectly charge a fee or other consideration in excess of fifteen percent (15%) of the loan amount, provided the maximum fee charged to a borrower for entering into a deferred deposit transaction shall not exceed forty dollars (\$40.00).
- (4) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same lender or any affiliate of the lender. A lender shall not, for any consideration, renew or otherwise extend any deferred deposit check or withhold the check from deposit for any period beyond the time set forth in the written agreement, except as allowed under G.S. 53-281.4.

"§ 53-281.2. Written agreement and disclosures required for deferred deposit transactions.

(a) Each deferred deposit transaction shall be documented by a written agreement signed by the borrower and the lender. A legible copy of the agreement shall be provided to the borrower.

(b) The written agreement shall contain:

- (1) The name and address of the borrower.
- (2) The name, local street address, and telephone number of the lender.
- (3) The transaction date, which shall be prominently labeled.
- (4) The loan amount as defined in G.S. 53-275(5a).
- (5) The amount of any fees charged, expressed as both a dollar amount and as an effective annual percentage rate (APR).
- (6) The maturity date, which shall be no less than 14 days nor more than 60 days after the transaction date.
- (7) The following notices immediately above the borrower's signature line in at least ten-point type: **THIS TRANSACTION IS NOT MEANT TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS. YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. ON THE NEXT BUSINESS DAY AFTER THE TRANSACTION DATE SHOWN ABOVE. TO CANCEL YOU MUST RETURN ALL OF THE CASH**

**PROCEEDS TO THE LENDER. THE LENDER WILL REFUND
TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.**

(c) The written agreement shall be accompanied by a separate paper which contains all disclosures required by the federal Truth in Lending Act (12 U.S.C. § 1601, et seq.) and the federal Reserve Board Regulation 'Z' and the consumer education information. The consumer education information shall be prepared by the Commissioner and shall inform the consumer of matters such as the complaint process through the Commissioner's office, the relative cost of short-term consumer loans, the availability of other forms of credit, the right of the customer to elect a repayment plan, and any other matters the Commissioner thinks are necessary or beneficial to consumers.

(d) The written agreement shall not contain any of the following provisions:

(1) A hold harmless clause.

(2) A confession of judgment clause.

(3) A mandatory arbitration clause that is oppressive, unconscionable or substantially in derogation of the rights of consumers. Arbitration clauses that comply with the standards set forth in the statement of principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on the effective date of this Act shall be presumed not to violate this subsection.

(4) Any provision in which the borrower agrees not to assert a claim or defense arising out of the contract.

(5) Any waiver by the borrower of any provision of this Article.

"§ 53-281.3. Deferred deposit transactions limited.

(a) A lender shall not knowingly enter into a deferred deposit transaction with a borrower whom the lender knows has other transactions in the aggregate exceeding the principal amount of three hundred dollars (\$300.00) or knows would exceed three transactions regardless of value. It shall be mandatory for the lender to meet both of the following conditions:

(1) The borrower signs a certification in substantially the following form:
I UNDERSTAND THAT NORTH CAROLINA LAW PROHIBITS A PERSON FROM HAVING MORE THAN \$300.00 IN DEFERRED DEPOSIT CHECKS OUTSTANDING AT ONE TIME. I OWE THE FOLLOWING DEFERRED DEPOSIT AMOUNTS AND NO OTHERS: (Write the amount you owe and the names of the licensees or write 'NONE'). This certification shall not constitute the basis of a criminal prosecution under G.S. 14-100.

(2) The lender shall verify the accuracy of this certification by:

a. A query of all of the lender's own records, and

b. A query of a subprime credit reporting service.

(b) Within 90 days after the effective date of this Act, each lender shall subscribe to a subprime credit reporting service, designated by the Commissioner, which has the capability of verifying the number and loan amounts of outstanding deferred deposit transactions entered into by any borrower with any lender licensed under this Act.

1 Within 30 days of the effective date of this Act, the Commissioner shall issue a
2 "Request for Proposal" from subprime credit reporting services capable of verifying the
3 information described in this subsection and within 45 days of the effective date of this
4 Act, the Commissioner shall designate that service which is capable of providing such
5 verification and charges the lowest cost per query.

6 (c) Each lender shall report to the subprime credit reporting service the
7 information necessary for the subprime credit reporting service to verify the number and
8 loan amounts of outstanding deferred deposit transactions entered into by borrowers
9 with lenders licensed under this Article.

10 (d) A lender must pay the proceeds from a deferred deposit transaction to the
11 borrower in the form of a check from the lender. Upon the borrower's request, the lender
12 may cash the lender's check if the lender has cash available to do so. The borrower shall
13 not be charged an additional finance charge or fee for cashing the lender's check.

14 **"§ 53-281.4. Mandatory repayment plan.**

15 If the borrower elects and so informs the lender at any time prior to the maturity date
16 of the deferred deposit transaction, the borrower may declare an inability to repay and
17 the lender shall accept a mandatory repayment plan with the following terms:

- 18 (1) The borrower and the lender sign a repayment plan agreement
19 providing for four equal installments due on each of the borrower's
20 next four paydays, with at least 14 days between the installments.
- 21 (2) The borrower agrees not to enter into any additional deferred deposit
22 transactions during the term of the repayment plan.
- 23 (3) Upon completion of the plan, the lender shall report the borrower's
24 positive payment history to consumer credit reporting agencies.
- 25 (4) Upon completion of the plan, the borrower is prohibited from entering
26 into any deferred deposit transactions with any lender for at least one
27 pay period.
- 28 (5) The lender may collect a fifteen-dollar (\$15.00) processing charge for
29 each repayment plan.

30 **"§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

31 In addition to the prohibited practices under G.S. 53-283, the following are
32 prohibited regarding deferred deposit transactions:

- 33 (1) Taking or attempting to take any security other than the borrower's
34 instrument.
- 35 (2) Taking or attempting to take more than a single check or other
36 instrument from the borrower in connection with a single transaction.
- 37 (3) Selling, offering, or soliciting any application for credit insurance in
38 connection with a transaction.
- 39 (4) Tying the transaction to any other transaction, offer, or obligation of
40 the borrower.
- 41 (5) Failing to comply with the Commissioner's request for assistance in
42 resolving a complaint.
- 43 (6) Using or threatening to use criminal process to collect a dishonored
44 check, unless fraud is involved.

(7) Assigning or selling to another lender an instrument taken in connection with a deferred deposit transaction unless the instrument bears the following endorsement: THIS INSTRUMENT WAS GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT BETWEEN THE BORROWER AND THE ORIGINAL LENDER.

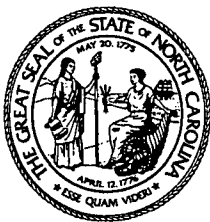
(8) Failing to report accurately and promptly a borrower's positive repayment activity under G.S. 53-281.4 to credit reporting agencies.

(9) Failing to collect and provide information regarding the number, total, and average transaction amounts and any other information the Commissioner may request."

SECTION 4. G. S. 53-286 reads as rewritten:

"The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties may also be imposed upon persons acting on behalf of a licensee or any other person who violates this Article. Civil penalties shall not exceed one thousand dollars (\$1,000) ten thousand dollars (\$10,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers. The imposition or pendency of any order or penalty by the Commissioner shall not limit the right of any customer to pursue any available civil remedies."

SECTION 5. This act becomes effective October 1, 2003, and applies to transactions made on or after that date.



HOUSE BILL 1213: Regulate Deferred Deposit.

BILL ANALYSIS

Committee: House Financial Institutions
Date: April 29, 2003
Version: Proposed Committee Substitute
H1213-CSSW-30[v.3]

Introduced by: Reps. Cullpepper and Grady
Summary by: Karen Cochrane Brown
Committee Co-Counsel

SUMMARY: *The Proposed Committee Substitute for HB 1213 would reauthorize regulation of deferred deposit transactions. Deferred or delayed deposit transactions were previously authorized under provisions of the Check Casher Act. Those provisions expired on August 31, 2001. This bill would create additional consumer protections, including mandatory repayment plans and prohibited practices for lenders who make deferred deposit loans.*

CURRENT LAW: Article 22 of Chapter 53 of the General Statutes requires that certain persons who cash checks for a fee must be licensed as a check cashing business. Prior to August 31, 2001, G.S. 53-281 allowed licensed check cashing businesses to advance cash in amounts up to \$300.00, for postdated or delayed deposit checks. The fee for this service was 15% of the face amount of the check. The deposit could be delayed for up to 31 days. G.S. 53-281 expired on August 31, 2001, and since that time North Carolina law has not permitted these so-called "payday loans". However, several businesses have continued to operate by entering into agency agreements with national banks to fund the loans. North Carolina is preempted by federal law from regulating national banks.

BILL ANALYSIS:

Section 1. – Adds several new definitions to the Check Casher Act to clarify provisions relating to the renewed authorization for deferred deposit transactions. One important addition is the term "lender" which includes any person or entity that offers or makes a deferred deposit loan or acts as an agent for a third party that makes such loans even if the third party is exempt from the licensing requirements or whether approval, acceptance or ratification by a third party is required. However, a state or federally chartered depository institution is not considered a lender if:

- It initially advances the loan to the borrower;
- It does not sell or transfer a preponderant economic interest in the transaction to an agent, affiliate, or subsidiary, unless selling, assigning or transferring a preponderant economic interest is permitted by the primary regulator of the depository institution; and
- It developed the deferred deposit transaction program on its own.

If a lender acts as agent for a depository institution in any way in making the deferred deposit transaction and the depository institution meets the three requirements for exemption, the lender must comply with all provision of this Article unless preempted by other law.

Section 2. – Adds a licensing requirement for businesses engaging in making deferred deposit transactions. The Commissioner of Banks is charged with issuing licenses and administering the Article.

HOUSE BILL 1213

Page 2

Section 3. – Adds several new sections to Article 22, which reauthorize and regulate deferred deposit transactions. These transactions are permitted subject to the following requirements:

- Principal amount of the loan may not exceed \$300.00;
- Lender may not charge a fee in excess of 15% of the loan amount or \$40.00;
- Loan may not be repaid by the proceeds of another deferred deposit loan;
- Loan must be documented by a written agreement signed by the borrower and the lender;
- The amount of the fees charged must be expressed both as a dollar amount and as an effective annual percentage rate (APR).
- The maturity date may not be less than fourteen days nor more than sixty days from the transaction date;
- A notice advising the borrower of the right to cancel the transaction must be included in 10-point type;
- The agreement must be accompanied by a Regulation 'Z' disclosure, as provided by the federal Truth in Lending Act.
- The agreement may not contain a hold harmless clause, a confession of judgment clause, a mandatory arbitration clause that does not comply with standards of the American Arbitration Association, a provision in which the borrower agrees not to assert a claim or defense, or a provision in which the borrower waives any provision of the Article;
- Lenders may not enter into transactions with borrowers who have outstanding loans in excess of \$300.00;
- Borrower must certify he has no outstanding loans and the lender must verify by use of a subprime credit reporting service.
- The Commissioner must solicit proposals and select a credit reporting service capable of providing the service and all lenders must subscribe to it.
- Borrowers who cannot repay may elect to enter into a mandatory repayment plan providing for four equal installments due on the borrower's next four paydays, with at least 14 days between installments. The lender may collect a \$15.00 processing charge for each repayment plan;
- Prohibited practices related to deferred deposit transactions include: taking security other than the borrower's check, taking more than one check in connection with a single transaction, selling or offering credit insurance, tying the transaction to any other transaction, using or threatening to use criminal process, unless fraud is involved, assigning or selling the check unless the required endorsement is attached, failing to report positive repayment activity to credit reporting agencies, failing to assist or provide information to the Commissioner of Banks.

Section 4. – Increases the maximum amount of civil penalties that may be imposed for violation of the Act from \$1,000.00 to \$10,000.00 per violation.

The act would become effective when it becomes law.

HI213-SMRO-001

FINANCIAL INSTITUTIONS
APRIL 29, 2003
ROOM 415
15 MINUTES AFTER SESSION

AGENDA

OPENING STATEMENTS BY CHURCH AND STARNES

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN AND MR.
WALKER REAGAN

COMMITTEE ASSISTANTS –PATTIE FLEMING AND JOYCE FULLER

SGT.-AT-ARMS – BOB FOWLER, JACKSON STANCIL AND THOMAS
WILDER

PAGES - NONE

BILL TO BE CONSIDERED:

H.B. 1213 REGULATE DEFERRED DEPOSIT – REPS. CULPEPPER AND
GRADY

CLOSING REMARKS

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

Name of Committee

4/29/03

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

[illegible]

MINUTES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
JUNE 3, 2003

The **House Committee on Financial Institutions** met on Wednesday, June 3, 2003, at 1:00 p.m. in room 1425 of the State Legislative Building. The meeting was called to order by Co-Chair Edgar Starnes. Co-Chair Starnes recognized the Sgt.-at Arms and the four pages who were assigned to the meeting. The following members of the committee were present: Co-Chairs Church and Starnes; Vice Chairs Jones, McGee and Saunders; Reps Cole, Glazier, Holliman, McHenry, Miller, Munford, Stiller, Wainwright and Williams.

S.B. 676 – REVISED BANKING LAWS OF NORTH CAROLINA – Co-Chair Starnes recognized Sen. Hoyle, the sponsor of the bill, to present the bill. This Finance Committee Substitute makes technical and clarifying changes to the Banking Laws of the State. Many of the changes are intended to maintain competitive equality among banks, regardless of whether they are chartered by North Carolina, another state or the federal government. The bill also makes several changes to the Mortgage Lending Act to enhance the Commissioner of Banks' enforcement authority. The bill gives the Banking Commission temporary rulemaking authority and authorizes the Legislative Research Commission to study whether more comprehensive changes to the Banking Laws are warranted. Rep. Saunders told Co-Chair Starnes that at the appropriate time he would like to make a motion on the bill. Speaking for the bill were Mr. Joe Smith, Commissioner of Banks, and Paul Stock, North Carolina Bankers Association. Speaking against the bill was Stephanie Simpson who was representing the North Carolina Association of Realtors. After discussion, Co-Chair Starnes stated that Rep. Saunders would like to make a motion that **Committee Substitute for S.B. 676 be given a favorable and that the bill be re-referred to the Committee on Finance. This motion was seconded and carried. COMMITTEE SUBSTITUTE FOR S.B. 676 BE GIVEN A FAVORABLE REPORT AND RECOMMENDATION THAT THE BILL BE RE-REFERRED TO THE COMMITTEE ON FINANCE.**

S.B. 502 – ACCESS TO DECEDENTS SAFE DEPOSIT BOX – Co-Chair Starnes recognized Rep. McGee who moved that the Committee substitute for S.B. 502 be adopted for discussion. Sen. Thomas, the sponsor of the bill, came forward to present the bill. The Proposed House Committee Substitute for Senate bill 502 amends the law governing the access to a decedent's safe-deposit box for purposes of inventorying the box after death. The bill authorizes a person named as a deputy to gain access to the safe-deposit box in addition to a lessee, cotenant or a person possessing a letter of authority. After discussion, Rep. Wainwright moved that **S.B. 502 be given a favorable report for the committee substitute bill and unfavorable to the original bill. The motion was seconded and carried. S.B. 502 – WITH A FAVORABLE REPORT AS TO THE COMMITTEE SUBSTITUTE BILL, UNFAVORABLE AS TO THE ORIGINAL BILL.**

There being no further business, Co-Chair Starnes adjourned the meeting at approximately 1:30 p.m.

Walter G. Church Sr.
Co-Chair Walter G. Church, Sr.

Edgar V. Starnes
Co-Chair Edgar V. Starnes

Joyce A. Fuller
Joyce A. Fuller, Committee Assistant

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **Church and Starnes** (Chairs) for the Committee on **Financial Institutions**.

- ☒ Committee Substitute for
S.B. 676 A BILL TO BE ENTITLED AN ACT TO AMEND THE BANKING LAWS OF
NORTH CAROLINA
- ☐ With a favorable report.
- ☒ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☒ ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the
title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and
recommendation that the committee substitute bill #) be re-referred to the Committee
on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

2

SENATE BILL 676
Finance Committee Substitute Adopted 5/13/03

Short Title: Revise the Banking Laws of North Carolina.

(Public)

Sponsors:

Referred to:

April 2, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE BANKING LAWS OF NORTH CAROLINA.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 53-1(3a) reads as rewritten:

5 "(3a) Limited Service Facility. – The term "limited service facility" means
6 ~~an office of a bank~~ a staffed physical location open to the public in
7 this State in which deposits are received, monies are paid, or other
8 duties and functions of a teller are performed. Loan applications shall
9 be taken in a limited service facility but notes may not be executed nor
10 loan proceeds disbursed in a limited service facility. a bank established
11 under the laws of this State or a bank or other depository institution
12 established under the laws of any other state conducts any activity of a
13 "branch" set forth in subdivision (1a) of this section, but which is not
14 considered a branch by virtue of the fact that the bank does not engage
15 in all activities of a branch at the location. A location is a limited
16 service facility of a bank notwithstanding that it is operated by a third
17 party if there exists an agreement between the third party and the bank
18 pursuant to which the third party (i) takes deposits or offers loans as an
19 agent of the bank or in the bank's name; or (ii) is obligated to sell or
20 otherwise transfer to the bank all or a substantial portion of the loan or
21 deposit production of that location."

22 SECTION 2. G.S. 53-17.2(e) reads as rewritten:

23 "(e) In the absence of the promulgation of rules under subsection (d), the
24 conditions to be met for approval of the application for conversion should include the
25 following:

- 26 (1) Condition. The applicant's general condition must reflect adequate
27 capital, liquidity, reserves, earnings, and asset composition necessary
28 for safe and sound operation of the resulting bank.

- (2) Management. The management and the board of directors must be capable of supervising a sound banking operation and overseeing the changes that must be accomplished in the conversion from an association or savings bank to a bank.
- (3) Public Convenience. ~~The Commission must determine that the~~ conversion will have a positive impact on the convenience of the public and will not substantially reduce the services available to the public in the market area.
- (4) Transition. Within a reasonable time after the effective date of the conversion, the resulting bank must divest itself of all assets and liabilities that do not conform to State banking law or rules. The length of this transition period shall be determined by the Commissioner and shall be specified when the application for conversion is approved.

In evaluating each of these conditions, the ~~Commission~~ Commissioner shall consider a comparison of the relevant financial ratios of the applicant with the average ratios of North Carolina banks of similar asset size. ~~The Commission may~~ Commissioner shall not approve a conversion where the applicant presents an undue supervisory concern or has not been operated in a safe and sound manner."

SECTION 3. G.S. 53-17.2(f) reads as rewritten:

"(f) If the ~~State Banking Commission~~ Commissioner approves the plan of conversion, then the association or savings bank shall submit the plan to the stockholders or members as provided in subsection (g). After approval of the plan of conversion, the Commissioner of Banks shall supervise and monitor the conversion process and shall ensure that the conversion is conducted pursuant to law and the association's or savings bank's approved plan of conversion."

SECTION 4. G.S. 53-43 reads as rewritten:

"§ 53-43. General powers. Powers.

~~In addition to the powers conferred by law upon private corporations, banks shall have the power:~~

- (1) ~~To exercise by its board of directors, or duly authorized officers and agents, subject to law, all such powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness, by receiving deposits, by buying and selling exchange, coin, and bullion, and by loaning money on personal security or real and personal property. Such corporation at the time of making loans may not take and receive interest or discounts in advance where the effective rates of interest or discounts collected shall exceed the maximum rates of interest provided under this section, G.S. 24-1.1 and 24-1.2 if such interest or discount had not been collected in advance.~~
- (2) ~~To adopt regulations for the government of the corporation not inconsistent with the Constitution and laws of this State.~~
- (3) ~~To purchase, hold, and convey real estate for the following purposes:~~

- 1 a. ~~Such as shall be necessary for the convenient transaction of its~~
2 ~~business, including furniture and fixtures, with its banking~~
3 ~~offices and other spaces to rent as a source of income, which~~
4 ~~investment shall not exceed fifty percent (50%) of its~~
5 ~~unimpaired capital fund: Provided, that this fifty percent (50%)~~
6 ~~limitation shall not apply to banking houses, furniture and~~
7 ~~fixtures leased for the purposes set forth in this subdivision.~~
8 ~~Provided, further, that if any bank shall demonstrate to the~~
9 ~~satisfaction of the Commissioner of Banks that an investment of~~
10 ~~more than fifty percent (50%) of its unimpaired capital fund in~~
11 ~~its banking houses, furniture and fixtures, would promote the~~
12 ~~convenience of the general public in transacting its banking~~
13 ~~business and would not adversely affect the financial stability of~~
14 ~~the bank, the Commissioner of Banks may, in his discretion,~~
15 ~~authorize any bank to invest more than fifty percent (50%) of its~~
16 ~~unimpaired capital fund in its banking houses, furniture and~~
17 ~~fixtures.~~
- 18 b. ~~Such as is mortgaged to it in good faith by way of security for~~
19 ~~loans made or moneys due to such banks.~~
- 20 c. ~~Such as has been purchased at sales upon foreclosures of~~
21 ~~mortgages and deeds of trust held or owned by it, or on~~
22 ~~judgments or decrees obtained and rendered for debts due to it,~~
23 ~~or in settlements affecting security of such debts. All real~~
24 ~~property referred to in this subdivision shall be sold by such~~
25 ~~bank within five years after it is acquired unless, upon~~
26 ~~application by the board of directors, the Commissioner of~~
27 ~~Banks extends the time within which such sale shall be made.~~
28 ~~Any and all powers and privileges heretofore granted and given~~
29 ~~to any person, firm, or corporation doing a banking business in~~
30 ~~connection with a fiduciary and insurance business, or the right~~
31 ~~to deal to any extent in real estate, inconsistent with this~~
32 ~~Chapter, are hereby repealed.~~
- 33 (4) ~~Nothing contained in this section shall be deemed to authorize banking~~
34 ~~corporations to engage in the business of dealing in investment~~
35 ~~securities: Provided, however, that the term "dealing in investment~~
36 ~~securities" as used herein, shall not be deemed to include the~~
37 ~~purchasing and selling of securities without recourse, solely upon~~
38 ~~order, and for the account of, customers; and provided further, that~~
39 ~~"investment securities," as used herein, shall not be deemed to include~~
40 ~~obligations of the United States, or general obligations of any state or~~
41 ~~of any political subdivision thereof, or of cities, towns, or other~~
42 ~~corporate municipalities of any state or obligations issued under~~
43 ~~authority of the Federal Farm Loan Act, as amended, or issued by the~~
44 ~~federal home loan banks or the Home Owner's Loan Corporation.~~

Any provision in conflict with this subdivision contained in the articles of incorporation heretofore issued to any banking corporation is hereby revoked.

(5) Repealed by Session Laws 1989, c. 187, s. 5.

(6) Maintain separate departments and deposit in its commercial department to the credit of its trust department all uninvested fiduciary funds of cash and secure, under rules and regulations of the State Banking Commission, all such deposits in the name of the trust department whether in consolidated deposits or for separate fiduciary accounts, by segregating and delivering to the trust department such securities as may be eligible for the investment of the sinking funds of the State of North Carolina, equal in market value to such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty five per centum (125%) of such deposits. Such securities shall be held by the trust department as security for the full payment or repayment of all such deposits, and shall be kept separate and apart from other assets of the trust department. Until all of such deposits shall have been accounted for to the trust department or to the individual fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When fiduciary funds are deposited by the trust department in the commercial department of the bank, the deposit thereof shall not be deemed to constitute a use of such funds in the general business of the bank and the bank in such instance shall not be liable for interest on such funds. To the extent and in the amount such deposits may be insured by the Federal Deposit Insurance Corporation, the amount of security required for such deposits by this section may be reduced.

The Banking Commission shall have power to make such rules and regulations as it may deem necessary for the enforcement of the provisions of the preceding paragraph, and such authority shall exist and is hereby conferred under the general authority heretofore conferred upon said Commission as well as by this paragraph.

(7) To issue, advise and confirm letters of credit authorizing the beneficiaries thereof to draw upon the institution or its correspondents.

(8) To receive money for transmission.

(9) To become a member of a clearinghouse association and to pledge assets required for its qualification.

(10) To provide for the performance of bank service corporation services, such as data processing services and bookkeeping, subject to such rules and regulations as may be adopted by the State Banking Commission.

(a) General Powers. – Except as otherwise specifically provided by this Chapter, a bank shall have the powers conferred upon corporations by the North Carolina Business Corporation Act, Chapter 55 of the General Statutes, including the power to:

- (1) Carry on the business of banking.
- (2) Make any investments authorized by G.S. 53-47 or any other section of this Chapter.
- (3) Engage in any other activities approved by rule, order, or interpretation of the Commissioner of Banks.

For the purposes of this section, the "business of banking" includes, without limitation, discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness; receiving deposits; issuing, advising, and confirming letters of credit; receiving money for transmission; and loaning money on personal security or real or personal property.

(b) Parity Powers. – A bank also has the power to engage:

- (1) As principal in any activity permissible for a national bank under any law, including the National Bank Act, 12 U.S.C. § 21, as well as activities recognized as permissible for a national bank in any regulation, official circular, bulletin, order or written interpretation issued by the Office of the Comptroller of the Currency.
- (2) As principal in any activity that is permissible, or determined by the Federal Deposit Insurance Corporation to be permissible, for a bank under the Federal Deposit Insurance Act, 12 U.S.C. § 1813, and regulations thereunder.
- (3) As principal in any activity that is permissible for a savings and loan association or savings bank organized, respectively, under Chapters 54B and 54C of the General Statutes, or that is permissible for a federally chartered savings association or federally chartered savings bank under the Home Owners' Loan Act of 1933, 12 U.S.C. § 1461 through 1468 and regulations thereunder.
- (4) In "trust business", as that term is defined by G.S. 53-301(50).
- (5) In any activity other than as principal pursuant to the Federal Deposit Insurance Act, 12 U.S.C. § 1813, and regulations thereunder.

(c) Incidental Powers. – In addition to the other powers described in this section, a bank has the power to exercise all other powers that are reasonably necessary, convenient, or complementary to the exercise of the powers authorized in subsections (a) and (b) of this section.

(d) Prior Approval Required. – Except as provided in subsection (e) of this section, a bank which proposes to engage in any new activity shall apply to the Commissioner of Banks for approval to engage in the activity before its commencement. If the activity will be conducted in a subsidiary in which the bank intends to make an investment, the bank shall apply to the Commissioner of Banks for approval to engage in the activity before entering into the investment. The bank shall not engage in the activity or make the investment unless and until the Commissioner of Banks issues a written approval of the application. For the purpose of this subsection, the terms "subsidiary" and "investment" have the same meanings as set forth in G.S. 53-47.

1 An application for approval shall contain a description of the proposed activity and
2 any other information required by the Commissioner of Banks. A copy of any notice or
3 application the bank is required to file with any federal banking regulator shall also be
4 provided to the Commissioner of Banks.

5 For the purposes of this section, a "new activity" is any business activity in which
6 the bank is not currently engaged. The extension or relocation of an existing activity
7 into a new department, division, or subsidiary of the bank shall not be considered a
8 "new activity"; provided, however, that any investment in a subsidiary shall be subject
9 to all applicable provisions of this Chapter pertaining to investments by banks,
10 including G.S. 53-47.

11 (e) Exceptions. – No application for approval to engage in a new activity shall be
12 required, provided all of the following conditions are met as of the date the activity is
13 commenced:

- 14 (1) The activity is one described in subsection (a), (b), or (c) of this
15 section.
- 16 (2) The bank has received a composite rating of 1 or 2 under the Uniform
17 Financial Institutions Rating System in connection with its most recent
18 examination.
- 19 (3) No notice or application to engage in the activity is required to be filed
20 by the bank with any federal banking regulator.

21 A bank commencing an activity without prior application and approval pursuant to
22 this subsection shall notify the Commissioner of Banks in writing of the commencement
23 of the activity no later than the 30th day after the earlier of (i) commencing the activity;
24 or (ii) if applicable, making an investment in an entity through which the activity is to
25 be conducted.

26 (f) Continuing Authority of the Commissioner of Banks. – Nothing in this
27 section shall be construed as being in derogation of the Commissioner of Banks'
28 ongoing authority under this Chapter to take corrective action regarding the activities of
29 any bank which the Commissioner deems appropriate in order to ensure the continued
30 integrity, safety, and soundness of an individual bank and the State banking system in
31 general."

32 **SECTION 5. G.S. 53-47 reads as rewritten:**

33 **"§ 53-47. Limitations on ~~investments in stocks~~.subsidiary and other investments.**

34 (a) In addition to any powers or investments authorized by any other section of
35 this Chapter, a bank may invest in the capital stock or other securities of any other state,
36 national or foreign bank or trust company, and in any other industrial bank, savings
37 bank, Morris Plan bank, savings and loan association, bankers' bank or other deposit
38 taking entity chartered or existing under any federal, state, or foreign law including, but
39 not limited to, the capital stock of clearing corporations defined in G.S. 25-8-102, the
40 capital stock or other securities of central reserve banks whose capital stock exceeds one
41 million dollars (\$1,000,000) and the capital stock of an Edge or Agreement corporation.
42 As used in this Chapter, the term "bankers' bank" means an insured depository financial
43 institution, organized and chartered to do business exclusively with other banks and
44 savings institutions, and the stock of which, or the stock of the holding company which

controls such bank, is owned exclusively (except to the extent directors' qualifying shares are required by law) by banks or savings institutions. 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 "Edge Act", (12 U.S.C. § 611 et seq.) shall at no time exceed ten percent (10%) of the paid-in capital and permanent surplus of the bank making the investment.

(b) ~~A bank may invest, without limitation, in a corporation, firm, partnership, or company:~~

(1) ~~Which is a bank operating subsidiary, or~~

(2) ~~To protect the bank from loss.~~

A bank may make an investment in a subsidiary that will be operated as a bank operating subsidiary or as a DPC subsidiary. Investments made pursuant to this subsection shall not be subject to the seventy-five percent (75%) of unimpaired capital fund limit contained in subsection (c) of this section.

(c) ~~In addition to the foregoing, upon 30 days prior written notice to the Commissioner of Banks, providing such detail as the Commissioner may require, a A bank may invest, invest up to, in the aggregate, up to seventy-five percent (75%) of its unimpaired capital fund in the stock or assets of other corporations, firms, partnerships, or companies which are: subsidiaries which are or will be primarily engaged in:~~

(1) ~~Primarily engaging in activities~~ Activities permissible for national banks or bank holding companies under applicable laws, rules, regulations or orders;

(2) ~~Primarily engaging in activities of a financial nature, Activities that are financial in nature or incidental to a financial activity, including the transmission or processing of information or data relating to such activities. For the purpose of this subsection, activities of a financial nature shall include, but not be limited to, that are financial in nature include insurance activities,~~ all forms of securities activities, including underwriting, distribution, and brokerage, ~~together with such and any other activities as the Commissioner of Banks shall determine by regulation rule or order; or~~

(3) ~~Engaging in any other activity approved by the Commissioner of Banks. Other activities determined by the Commissioner of Banks to be permissible for a bank or a bank operating subsidiary.~~

(c1) A bank operating subsidiary may make an investment of any size in a lower tier subsidiary.

(c2) A bank or bank operating subsidiary proposing to make an investment described in subsection (b), (c), or (c1) of this section shall give prior written notice to the Commissioner of Banks, providing such detail as the Commissioner may require. Unless the Commissioner of Banks, within 30 days following receipt of the notice, notifies the bank or bank operating subsidiary that the Commissioner objects to the proposed investment, the bank or bank operating subsidiary may complete the investment. However, the Commissioner of Banks may extend the period within which

1 to object to the proposed investment if the Commissioner determines that it raises issues
2 which require additional information or additional time for analysis. If the objection
3 period is so extended, the bank or bank operating subsidiary may proceed with respect
4 to the proposed investment.

5 (d) Any state or national bank subsidiary which engages in an activity subject to
6 licensure and/or regulation under other than Chapter 53 of the General Statutes shall be
7 subject to licensure and/or regulation on a basis that does not arbitrarily discriminate by
8 the appropriate regulatory agency which licenses and/or regulates nonbanks which
9 engage in the same activity.

10 ~~(e) Unless otherwise notified by the Commissioner within 30 days following~~
11 ~~receipt of the written notice, a bank may complete its investment in the stock or assets~~
12 ~~of the other corporation, firm, partnership, or company, or commence a new activity~~
13 ~~through an existing subsidiary. The Commissioner may extend the 30-day period if the~~
14 ~~Commissioner determines that the proposed investment or activity raises issues which~~
15 ~~require additional information or additional time for analysis. If the 30-day period is~~
16 ~~extended, the bank may proceed with respect to the proposed investment or activity only~~
17 ~~upon written approval of the Commissioner of Banks.~~

18 (f) The Commissioner of Banks shall monitor the impact of investment activities
19 of banks under this section on the safety and soundness of such banks. Any stocks
20 owned or hereafter acquired in excess of the limitations herein imposed shall be
21 disposed of at public or private sale within six months after the date of acquiring the
22 stocks, and if not so disposed of, they shall be charged to profit and loss account, and no
23 longer carried on the books as an asset. The limit of time in which said stocks shall be
24 disposed of or charged off the books of the bank may be extended by the Commissioner
25 of Banks if in the Commissioner's judgment it is for the best interest of the bank that
26 such extension be granted; provided that the limitations imposed in this section on the
27 ownership of stock in or securities of corporations are suspended only to the extent that
28 any bank operating under the supervision of the Commissioner of Banks may subscribe
29 for and purchase shares of stock in or debentures, bonds, or other types of securities of
30 any corporation organized under the laws of the United States for the purposes of
31 insuring to depositors a part or all of their funds on deposit in banks where and to such
32 extent as such stock or security ownership is required in order to obtain the benefits of
33 such deposit insurance for its depositors.

34 (g) The prior notice requirement of subsection (c2) of this section shall not apply
35 if:

36 (1) The bank has received a composite rating of 1 or 2 under the Uniform
37 Financial Institutions Rating System in connection with its most recent
38 examination at the time of the investment; and

39 (2) Each activity of the subsidiary in which the investment is to be made is
40 either:

41 a. One in which the bank is then engaged or has previously been
42 engaged, directly or through a different subsidiary, and for
43 which all necessary approvals of federal bank regulatory

1 agencies and of the Commissioner of Banks have previously
2 been obtained and remain in effect; or

- 3 b. One for which no prior notice or application for approval to any
4 federal banking regulator is required.

5 A bank that makes an investment pursuant to the exception created by this
6 subsection shall nevertheless notify the Commissioner of Banks in writing of the
7 investment within 30 days thereafter.

8 (h) A bank may invest through purchase, lease, or otherwise in any interest in
9 bank premises, furniture, equipment, and fixtures as may be necessary for the
10 convenient transaction of its business. The total of all investments authorized by this
11 subsection shall not exceed fifty percent (50%) of the bank's unimpaired capital fund;
12 provided, however, that the value of leased bank premises, furniture, equipment, and
13 fixtures shall be included in the bank's total investments only to the extent that the
14 related lease may be capitalized under current generally accepted accounting principles
15 consistently applied.

16 If any bank demonstrates to the satisfaction of the Commissioner of Banks that an
17 investment of more than fifty percent (50%) of its unimpaired capital fund in its bank
18 premises, furniture, equipment, and fixtures would promote the convenience of the
19 general public in transacting its banking business and would not adversely affect the
20 financial stability of the bank, the Commissioner of Banks may authorize the bank to
21 invest more than fifty percent (50%) of its unimpaired capital funds in its bank
22 premises, furniture, equipment, and fixtures.

23 (i) A bank may purchase, hold, and convey real estate other than bank premises
24 for the following purposes:

25 (1) As security for loans made or moneys due to it when that real estate
26 has been mortgaged to it in good faith.

27 (2) When the real estate has been purchased at sales upon foreclosures of
28 mortgages and deeds of trust held or owned by it, on judgments or
29 decrees obtained and rendered for debts due to it, or in settlements
30 affecting security of those debts. All real property referred to in this
31 subdivision shall be sold by the bank within five years after it is
32 acquired unless, upon application by the board of directors, the
33 Commissioner of Banks extends the time within which the sale shall
34 be made.

35 (j) Nothing in this section shall be construed as being in derogation of the
36 Commissioner of Banks' ongoing authority under this Chapter to take corrective action
37 regarding the activities of any bank which the Commissioner deems appropriate in order
38 to ensure the continued integrity, safety, and soundness of an individual bank and the
39 State banking system in general.

40 (k) The following definitions apply in this section:

41 (1) "Bank operating subsidiary" means a subsidiary which:

42 a. Is under the control of a bank; and

43 b. Engages only in activities in which a bank may engage pursuant
44 to G.S. 53-43.

- (2) "Bank premises" means any improved or unimproved real estate, whether or not open to the public, which is utilized, intended to be utilized, or has previously been utilized in connection with any activity or business in which the bank is or was engaged or intends to be engaged.
- (3) "Control" means an ownership interest in a subsidiary which:
- a. Constitutes more than fifty percent (50%) of the total ownership interests in the subsidiary; or
 - b. Constitutes fifty percent (50%) or less of the total ownership interests in the subsidiary but is required to be consolidated with the bank pursuant to generally accepted accounting principles.
- (4) "DPC subsidiary" means any subsidiary in which the bank has acquired in good faith an ownership interest through foreclosure or other realization on collateral by way of a compromise of a disputed or contested claim or to avoid a loss in connection with a debt previously contracted.
- (5) "Lower-tier subsidiary" means any bank operating subsidiary in which a bank operating subsidiary has an ownership interest.
- (6) "Ownership interest" means any beneficial equity or similar interest, whether direct or indirect, including stock, limited or general partnership interests, or shares in a limited liability company.
- (7) "Subsidiary" means any corporation, partnership, business trust, association, joint venture, pool, syndicate, limited liability company, or any other similar business organization in which a bank has an ownership interest."

SECTION 6. G.S. 53-48 reads as rewritten:

"§ 53-48. Limitation of loans.

(a) The total loans and extensions of credit, both direct and indirect, by a bank to a person, other than a municipal corporation for money borrowed, including in the liabilities of a firm the liabilities of the several members thereof, outstanding at one time and not fully secured, as determined in a manner consistent with subsection (b) of this section, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed the greater of fifteen percent (15%) of the unimpaired capital fund of the bank, bank or the percentage permitted for national banks in this State or by statute or regulation of the Comptroller of the Currency.

(b) The total loans and extensions of credit, both direct and indirect, by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the ~~funds~~ loan or extension of credit outstanding shall not exceed the greater of ten percent (10%) of the unimpaired capital fund of the bank, bank or the percentage permitted for national banks by statute or regulation of the Comptroller of the Currency. This limitation shall be separate from and in addition to the limitation contained in subsection (a) ~~above of this section.~~

(c) The discount of bills of exchange drawn in good faith against actual existing values, the discount of solvent trade acceptances or other solvent commercial or business paper actually owned by the person negotiating the same, loans or extensions of credit secured by a segregated deposit account in the lending bank, the purchase of bankers acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other banks, and the purchase of any notes and the making of any loans, secured by not less than a like face amount of bonds of the United States, or an agency of the United States, or other obligations guaranteed by the United States Government, or State of North Carolina or certificates of indebtedness of the United States, or agency thereof, or other obligations guaranteed by the United States Government, shall not be considered as money borrowed within the meaning of this section: Provided, however, that the limitations of this section shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same, made by any federal reserve bank or by the United States or any department, board, bureau, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States.

(d) For purposes of this section, the term "person" shall be deemed to include an individual, or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any other form of entity not specifically listed herein. Loans or extensions of credit to one person include loans made to other persons when the proceeds of the loans or extensions of credit are to be used for the direct benefit of the first person or the persons are engaged in a common enterprise. The Commissioner of Banks shall monitor the lending activities of banks under this section for undue credit concentrations and inadequate risk diversification which could adversely affect the safety and soundness of such banks."

SECTION 7. G.S. 53-62 reads as rewritten:

"§ 53-62. Establishment of branches; limited service facilities; and off-premises customer-bank communications terminals.

(a) The word "capital" as used in this section means capital stock and unimpaired surplus.

~~(b) A bank doing business under this Chapter may establish branches or limited service facilities within this State after having first obtained the written approval of the Commissioner of Banks, which approval may be given or withheld by the Commissioner of Banks, in his discretion. The Commissioner of Banks, in exercising such discretion, shall take into account, but not by way of limitation, such factors as the financial history and condition of the applicant bank, the adequacy of its capital structure, its future earnings prospects, and the general character of its management. Such approval shall not be given until he shall find (i) that the establishment of such branch or limited service facility will meet the needs and promote the convenience of the community to be served by the bank, and (ii) that the probable volume of business and reasonable public demand in such community are sufficient to assure and maintain the solvency of said branch or limited service facility and of the existing bank or banks in said community. A bank, with the prior written approval of the Commissioner of Banks, may:~~

(1) Establish a branch or limited service facility; or

(2) Convert an existing limited service facility to a branch.

The application for approval to establish or convert a branch or limited service facility shall be in a form prescribed by the Commissioner of Banks and shall be accompanied by the application fee established by the Banking Commission by rule. Approval may be given or withheld by the Commissioner of Banks. In determining whether to give or withhold approval, the Commissioner of Banks shall take into account factors, including the financial history and condition of the applicant association, the adequacy of its capital structure, its future earnings prospects, and the general character of its management. The Commissioner of Banks shall not give approval pursuant to this subsection unless the Commissioner finds that:

(1) The establishment or conversion of the branch or limited service facility will meet the needs and promote the convenience of the community to be served thereby; and

(2) The probable volume of business and reasonable public demand in the community are sufficient to assure and maintain the solvency of the branch office or limited service facility and of the existing depository institutions in the community.

(c) (1) A branch or limited service facility of a bank shall be operated as a branch or office of and under the name of the bank, and under the control and direction of the board of directors and executive officers of the bank, bank and under the name of the bank as set forth in its Certificate of Incorporation filed with the Office of the Secretary of State, except that the Commissioner of Banks may permit the operation of a branch or limited service facility under an assumed name under the conditions and terms imposed by the Commissioner if the Commissioner of Banks finds that the name will not result in confusion among customers of the bank or among the general public. The board of directors of the bank shall elect such officers as may be required to properly conduct the business of any branch or limited service facility.

(2) The Commissioner of Banks shall not authorize the establishment or conversion of a branch or limited service facility until he is satisfied that the applicant bank has sufficient capital to maintain a minimum capital to asset ratio as the Commissioner of Banks, in his discretion, may require. In determining such ratio the Commissioner of Banks shall give due consideration to (i) the amount of capital required to support the bank's projected growth, (ii) the bank's earnings history and projected earnings, (iii) the quality of the bank's assets, (iv) compliance with the fixed asset limitation contained in G.S. 53-43(3), subsection (f) of this section and (v) the business experience and reputation of bank management.

(3) The Commissioner of Banks may, on written application by a bank, in his discretion authorize the bank to establish a limited service facility

1 ~~after considering the criteria and making the findings required in~~
2 ~~subsection (b).~~

3 ~~(d) A limited service facility, upon written request to the Commissioner of~~
4 ~~Banks, and after meeting the requirements of subsection (e) may convert to a branch. If~~
5 ~~branch status is granted then the branch shall be subject to all of the conditions and~~
6 ~~requirements of that type of banking office.~~

7 Upon 30 days written notice to the Commissioner of Banks, a bank may discontinue
8 any limited service facility operation; ~~provided, however, if a limited service facility has~~
9 ~~within five years preceding the proposed closing date been a branch of any bank, it shall~~
10 ~~comply with the requirements of subsection (e) below before closing. operation.~~

11 (d1) Subject to such rules and regulations as may be prescribed by the State
12 Banking Commission with regard to their use, maintenance and supervision, any bank
13 may establish off the premises of any principal office, branch or limited service facility
14 a customer-bank communications terminal, point-of-sale terminal, automated teller
15 machine, automated banking facility or other direct or remote information-processing
16 device or machine, whether manned or unmanned, through or by means of which
17 information relating to any financial service or transaction rendered to the public is
18 stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank
19 terminal; and the establishment and use of such a device or machine shall not be
20 deemed a branch or limited service facility, and the capital requirements and standards
21 for approval of a branch or limited service facility, all as set forth in subsections (b) and
22 (c) of this section, shall not be applicable to the establishment of any such off-premises
23 terminal device or machine.

24 (e) A bank may, upon resolution by the board of directors, discontinue a branch
25 office subject to the following:

26 (1) The bank shall notify the Commissioner in writing of its intent to close
27 a branch not later than 90 days prior to the proposed closing date. Such
28 notice shall include a detailed statement of the reasons for the decision
29 to close a branch and statistical or other information in support of such
30 reasons.

31 (2) The bank shall provide a notice of its intent to close a branch to its
32 customers. Such notice shall be posted in a conspicuous manner on the
33 branch premises for a period of 30 days prior to the proposed closing
34 date, and shall either be included in at least one of any regular account
35 statements mailed to customers of such branch, or in a separate
36 mailing to such customers. The later notice shall be given at least 90
37 days prior to the proposed closing date.

38 No branch shall be closed until approved by the Commissioner of Banks, provided,
39 however, the consolidation of two or more branches into a single location in the same
40 vicinity shall not be considered a closure subject to the provisions of this subsection.

41 (f) Any action taken by the Commissioner of Banks pursuant to this section shall
42 be subject to review by the State Banking Commission which shall have the authority to
43 approve, modify or disapprove any action taken or recommended by the Commissioner
44 of Banks."

1 **SECTION 8.** G.S. 53-64 reads as rewritten:

2 **"§ 53-64. Loans secured by bank's own stock or stock of parent bank holding**
3 **company.**

4 (a) It shall be lawful for a bank to make a loan secured by the pledge of its own
5 shares of stock or the stock of its parent holding company; provided that whenever any
6 bank shall exercise its security interest in the shares of the bank or its parent holding
7 company upon a loan default or other transfer, it shall dispose of all of such shares of
8 stock within a period of six months. If such stock has not been disposed of within six
9 months, the same shall be charged to profit and loss and no longer carried as an asset of
10 the bank. The Commissioner may extend the six-month period not to exceed an
11 additional six months.

12 (b) A bank may not make a loan to finance the purchase of or to carry its stock or
13 the stock of its parent holding company. For purposes of this subsection, the phrase "to
14 carry" shall have the meaning set forth in 12 C.F.R. Part 221, by the Board of
15 Governors of the Federal Reserve System.

16 (c) A bank may not purchase any portion of its shares of stock, ~~nor the stock of~~
17 ~~its parent holding company, unless the same is purchased or pledged to the bank to~~
18 ~~prevent a loss upon a debt previously contracted in good faith. In the event the bank~~
19 ~~shall become the owner of its shares, or those of its parent holding company, the bank~~
20 ~~shall dispose of the same as provided in subsection (a) of this section except with the~~
21 prior approval of the Commissioner. The Commissioner shall not give approval for a
22 bank to purchase any portion of its shares of stock unless the Commissioner determines
23 the bank will remain well-capitalized following the purchase. In approving a purchase,
24 the Commissioner may impose any conditions that are prudent and necessary to protect
25 the interests of the shareholders and creditors of the bank."

26 **SECTION 9.** G.S. 53-67 reads as rewritten:

27 **"§ 53-67. Banks controlled by boards of directors.**

28 The corporate powers, business, and property of banks doing business under this
29 Chapter shall be exercised, conducted, and controlled by its board of directors, which
30 shall meet at least quarterly. Such board shall consist of not less than five directors, to
31 be chosen by the stockholders, and shall hold office for the term for which they are
32 elected, and until their successors are elected and qualified. The annual meeting of
33 stockholders for the election of directors shall be held at such time as may be designated
34 by the charter or the bylaws of the bank but shall be held not later than ~~the thirtieth day~~
35 ~~of June in each year. June 30 each year; provided, however, that any bank which has~~
36 been open for business for fewer than 12 months as of June 30 of the current year shall
37 hold its first annual meeting by not later than June 30 of the following year. In addition
38 to the foregoing powers relating to the fixing of the number and the election of
39 directors, the stockholders of a bank, at any stockholders' meeting, special or annual,
40 may authorize not more than two additional directorships which may be left unfilled and
41 to be filled in the discretion of the directors of the institution during the interval between
42 such stockholders' meetings. Aside from the specific provisions of this section, the
43 number, election, term and classification of the directors of banks doing business under

1 this Chapter shall be governed by the provisions of the North Carolina Business
2 Corporation Act."

3 **SECTION 10.** G.S. 53-99(b)(7b) reads as rewritten:

4 "(7b) Records of applications, examinations, examinations, and
5 investigations of registrants-applicants, licensees, and exempt persons
6 under the Mortgage Lending Act, Article 19A of this Chapter;".

7 **SECTION 11.** G.S. 53-115 reads as rewritten:

8 **"§ 53-115. State Banking Commission to make rules and regulations.**

9 (a) The State Banking Commission is hereby authorized, empowered and
10 directed to make all necessary rules and regulations, and to give all necessary
11 instructions with respect to such actions of banking corporations which the
12 Commissioner of Banks may authorize, permit and/or direct and require to be conducted
13 under the provisions of G.S. 53-77, 53-114, 53-115, and 53-116. And it shall be the duty
14 of all such banking corporations and their officers, agents and employees, to comply
15 fully with any and all such rules, regulations and instructions, established and
16 promulgated by the State Banking Commission with respect to such banking
17 corporations under the terms of G.S. 53-77, 53-114, 53-115, and 53-116; and such
18 orders, rules, and regulations shall have the same force and effect as rules, regulations
19 and instructions promulgated under the existing banking laws. with respect to the
20 establishment, operation, conduct, and termination of any and all activities and
21 businesses that are subject to licensing, regulation, supervision, or examination by the
22 Commissioner of Banks under this Chapter.

23 (b) The rule-making authority conferred on the State Banking Commission by
24 this section shall be in addition to and not in derogation of any specific rule-making
25 authority by any other provision of this Chapter."

26 **SECTION 12.** G.S. 53-160 reads as rewritten:

27 **"§ 53-160. License to do business.**

28 Before any such bank or trust company is authorized to act in any fiduciary capacity
29 without bond, it must be licensed by the Commissioner of Banks of the State. For such
30 license the licensee licensee, for the purpose of defraying necessary expenses of the
31 Commissioner of Banks and the Commissioner's agents in supervising and examining
32 the licensee, shall pay to the State Banking Commission an annual license fee of two
33 hundred dollars (\$200.00), which shall be remitted to the State Treasurer for the use of
34 the Commissioner of Banks in the supervision of banks and trust companies acting in a
35 fiduciary capacity, insofar as it may be necessary, and the surplus, if any, shall remain
36 in the State treasury for the use of the general fund of the State: Commissioner of Banks
37 an annual license fee not to exceed five hundred dollars (\$500.00) as required by rule of
38 the State Banking Commission. Provided, however, that a A national bank which has
39 been granted trust powers by the Comptroller of the Currency or his duly authorized
40 agent shall be annually licensed as required in this section and shall be granted a
41 certificate of solvency which will meet the provisions of G.S. 53-162 without
42 examination by the Commissioner of Banks as required in G.S. 53-161."

43 **SECTION 13.** G.S. 53-208.12 reads as rewritten:

44 **"§ 53-208.12. Quarterly reports.**

1 A licensee shall file for each calendar quarter, no later than 60 days after the quarter
2 has ended, a report which contains the total number of authorized delegates in this State.
3 In addition, a licensee shall promptly provide any additional information regarding any
4 or all of its current and prior authorized delegates requested by the Commissioner."

5 **SECTION 14.** G.S. 53-243.02(c) reads as rewritten:

6 "(c) The license of a loan officer is not effective during any period when that
7 person is not employed by a mortgage broker or mortgage banker licensed under this
8 Article. The license of an exclusive mortgage broker is not effective during any period
9 when that person is not authorized to act as a single licensee or exempt person pursuant
10 to G.S. 53-243.05(c)(1a).

11 When a loan officer ceases to be employed by a mortgage broker or mortgage
12 banker licensed under this Article, the loan officer and the mortgage broker or mortgage
13 banker licensed under this Article by whom that person is employed shall promptly
14 notify the Commissioner in writing. When the authority of an exclusive mortgage
15 broker to act on behalf of the principal licensee or exempt person identified in G.S.
16 53-243.05(c)(1a) has been terminated, the exclusive mortgage broker and the licensee or
17 exempt person for whom the exclusive mortgage broker is an agent shall promptly
18 notify the Commissioner in writing. The mortgage broker, mortgage banker, or exempt
19 person's notice shall include a statement of the specific reason or reasons for, as
20 applicable, the termination of the loan officer's employment or exclusive mortgage
21 broker's authority.

22 A loan officer shall not be employed simultaneously by more than one mortgage
23 broker or mortgage banker licensed under this Article."

24 **SECTION 15.** G.S. 53-243.05(a)(6) reads as rewritten:

25 "(6) The applicant's consent to a federal and State criminal history record
26 check and a set of the applicant's fingerprints in a form acceptable to
27 the Commissioner. In the case of an applicant that is a corporation,
28 partnership, limited liability company, association, or trust, each
29 individual who has control of the applicant or who is the managing
30 principal or a branch manager shall consent to a federal and State
31 criminal history record check and submit a set of that individual's
32 fingerprints pursuant to this subdivision. Refusal to consent to a
33 criminal history record check may constitute constitutes grounds for
34 the Commissioner to deny licensure to the applicant-applicant as well
35 as to any entity (i) by whom or by which the applicant is employed, (ii)
36 over which the applicant has control, or (iii) as to which the applicant
37 is the current or proposed managing principal or a current or proposed
38 branch manager."

39 **SECTION 16.** G.S. 53-243.06(b1) reads as rewritten:

40 "(b1) When required by the Commissioner, ~~the licensee~~ each individual described
41 in G.S. 53-245.05(a)(6) shall furnish to the Commissioner the licensee's his or her
42 consent to a criminal history record check and a set of the licensee's his or her
43 fingerprints in a form acceptable to the Commissioner. Refusal to consent to a criminal
44 history record check may constitute grounds for the Commissioner to deny renewal of

1 ~~licensure to the licensee, the license of the person as well as the license of any other~~
2 ~~person by which he or she is employed, over which he or she has control, or as to which~~
3 ~~he or she is the current or proposed managing principal or a current or proposed branch~~
4 ~~manager."~~

5 SECTION 17. G.S. 53-243.11 is amended by adding a new subdivision to
6 read:

7 "(12) To fail to comply with the mortgage loan servicing transfer, escrow
8 account administration, or borrower inquiry response requirements
9 imposed by sections 6 and 10 of the Real Estate Settlement Procedures
10 Act (RESPA), 12 U.S.C. § 2605 and § 2609, and regulations adopted
11 thereunder by the Secretary of the Department of Housing and Urban
12 Development."

13 SECTION 18. G.S. 53-243.12(a)(2) reads as rewritten:

14 "(2) That any of the following circumstances apply to the applicant,
15 licensee, or any partner, member, manager, officer, director, loan
16 officer, managing ~~broker~~, principal, or any person occupying a similar
17 status or performing similar functions or any person directly or
18 indirectly controlling the applicant or licensee. The person:

- 19 a. Has filed an application for license that, as of its effective date
20 or as of any date after filing, contained any statement that, in
21 light of the circumstances under which it was made, is false or
22 misleading with respect to any material fact.
- 23 b. Has violated or failed to comply with any provision of this
24 Article, rule adopted by the Commissioner, or order of the
25 Commissioner.
- 26 c. Has been convicted of any felony, or, within the past 10 years,
27 has been convicted of any misdemeanor involving mortgage
28 lending or any aspect of the mortgage lending business, or any
29 offense involving breach of trust, moral turpitude, or fraudulent
30 or dishonest dealing.
- 31 d. Is permanently or temporarily enjoined by any court of
32 competent jurisdiction from engaging in or continuing any
33 conduct or practice involving any aspect of the mortgage
34 lending business.
- 35 e. Is the subject of an order of the Commissioner denying,
36 suspending, or revoking that person's license as a mortgage
37 broker or mortgage banker.
- 38 f. Is the subject of an order entered within the past five years by
39 the authority of any state with jurisdiction over that state's
40 mortgage brokerage or mortgage banking industry denying or
41 revoking that person's license as a mortgage broker or mortgage
42 banking industry or denying or revoking that person's license as
43 a mortgage broker or mortgage banker.

- 1 g. Does not meet the qualifications or the financial responsibility,
2 character, or general fitness requirements under G.S. 53-243.05
3 or any bond or capital requirements under this Article.
4 h. Has been the executive officer or controlling shareholder or
5 owned a controlling interest in any mortgage broker or
6 mortgage banker who has been subject to an order or injunction
7 described in sub-subdivision d., e., or f. of this subdivision.
8 i. Has failed to pay the proper filing or renewal fee under this
9 Article. However, the Commissioner may enter only a denial
10 order under this sub-subdivision, and the Commissioner shall
11 vacate the order when the deficiency has been corrected."

12 **SECTION 19.** G.S. 53-243.12(g) reads as rewritten:

13 "(g) If the Commissioner has reasonable grounds to believe that a licensee or other
14 person has violated the provisions of this Article or that facts exist that would be the
15 basis for an order against a licensee or other person, the Commissioner may at any time,
16 either personally or by a person duly designated by the Commissioner, investigate or
17 examine the loans and business of the licensee and examine the books, accounts,
18 records, and files of any licensee or other person relating to the complaint or matter
19 under investigation. The Commissioner may require any licensee or other person to
20 submit a consent to a criminal history record check and a set of that person's fingerprints
21 in a form acceptable to the Commissioner in connection with any examination or
22 investigation. Refusal to submit the requested criminal history record check or a set of
23 fingerprints shall be grounds for disciplinary action. The reasonable cost of this
24 investigation or examination shall be charged against the licensee."

25 **SECTION 20.** G.S. 53-243.12(k) reads as rewritten:

26 "(k) If the Commissioner finds that the managing principal, branch manager, or
27 loan officer of a licensee had knowledge of or reasonably should have had knowledge
28 of, or participated in, any activity that results in the entry of an order under this section
29 suspending or withdrawing the license of a licensee, the Commissioner may prohibit the
30 branch manager, managing broker- principal, or loan officer from serving as a branch
31 manager, managing broker-principal, or loan officer for any period of time the
32 Commissioner deems necessary."

33 **SECTION 21.** G.S. 53-243.16 reads as rewritten:

34 **"§ 53-243.16. Criminal history record checks.**

35 (a) The Department of Justice may provide a criminal record check to the
36 Commissioner for ~~a~~-any person who has applied for or holds a mortgage banker,
37 mortgage broker, exclusive mortgage broker, or loan officer license through the
38 Commissioner under this Article.

39 (b) In addition, if a person described in subsection (a) of this section is a
40 corporation, partnership, limited liability company, association, or trust, the Department
41 of Justice may provide a criminal record check to the Commissioner for any person who
42 has control of that person, or who is the managing principal or a branch manager of that
43 person.

(c) The Commissioner shall provide to the Department of Justice, along with the request, the fingerprints of the ~~applicant~~, person, any additional information required by the Department of Justice, and a form signed by the ~~applicant-person~~ consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The ~~applicant's~~ person's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commissioner shall keep all information pursuant to this section privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge a fee for each ~~applicant-person~~ for conducting the checks of criminal history records authorized by this section."

SECTION 22. G.S. 53-257(6) reads as rewritten:

"(6) Reverse mortgage loan or loan. – A loan for a definite or indefinite term (i) secured by a first mortgage or first deed of trust on the principal residence of the ~~mortgager~~, mortgagor located in North Carolina, (ii) the proceeds of which are disbursed to the mortgagor in one or more lump sums, or in equal or unequal installments, either directly by the lender or the lender's agent, and (iii) that requires no repayment until a future time, upon the earliest occurrence of one or more events specified in the reverse mortgage loan contract."

SECTION 23. G.S. 53-258 reads as rewritten:

"§ 53-258. Authority and procedures governing reverse mortgage loans.

(a) ~~No~~ Except as provided in subsection (b1) of this section, ~~no~~ person, firm, or corporation shall engage in the business of making reverse mortgage loans without first being approved as an authorized lender by the Commissioner, ~~unless the lender is the North Carolina Housing Finance Agency, or is a bank, savings institution, or credit union authorized to do business under the laws of this State or authorized to do business under the laws of the United States and chartered to do business in this State.~~ Commissioner.

(b) An application for authorization to make reverse mortgage loans shall be in writing to the Commissioner and in the form prescribed by the Commissioner. The application shall contain the name and complete business address or addresses of the applicant. The application shall also include affirmation of financial solvency and all capitalization requirements that are required by the Commissioner. The application shall be accompanied by a nonrefundable fee, payable to the Commissioner, of five hundred dollars (\$500.00).

(b1) Each of the following lenders shall be considered authorized to engage in the business of making reverse mortgage loans without being required to apply pursuant to subsection (b) of this section and may represent to the public that it is so authorized:

(1) The North Carolina Housing Finance Agency.

1 (2) A bank, savings institution, or credit union formed under the laws of
2 this or any other state or of the United States.

3 (3) A wholly owned subsidiary of an entity described in subdivision (2) of
4 this subsection.

5 Each lender listed in this subsection may, upon written request to the Commissioner
6 of Banks, obtain written confirmation of its authority to engage in the business of
7 making reverse mortgage loans. In the case of lenders listed in subdivisions (2) and (3)
8 of this subsection, the request shall be accompanied by the fee set forth in subsection (d)
9 of this section.

10 ~~(c) The North Carolina Housing Finance Agency, and any bank, savings~~
11 ~~institution, or credit union that is not required to obtain authorization to make reverse~~
12 ~~mortgage loans under subsection (a) of this section, shall, prior to making any reverse~~
13 ~~mortgage loan, notify the Commissioner of its intent to make reverse mortgage loans.~~
14 ~~This notification shall be made on a form prescribed by the Commissioner and shall~~
15 ~~contain all information required by the Commissioner.~~

16 (d) The Commissioner shall, upon determination that ~~a lender an applicant~~
17 should be authorized to make reverse mortgage loans, issue notice of this authority to
18 the lender. The authority to issue reverse mortgage loans is valid for the period of time
19 specified by the Commissioner. A lender to whom a notice of authority is issued shall
20 display the notice prominently in any and all offices of the lender that make reverse
21 mortgage loans. Authorizations issued under this section are ~~nontransferable and subject~~
22 ~~to nontransferable. Except for lenders described in subsection (b1) of this section, each~~
23 lender to which an authorization is issued shall pay an annual renewal fee of two
24 hundred fifty dollars (\$250.00)."

25 SECTION 24. G.S. 54B-4(b) is amended by adding the following new
26 subdivision to read:

27 "(32b) "Limited service facility" means a staffed physical location open to the
28 public in this State in which a State association conducts any activity
29 of a "branch office" set forth in subdivision (7) of this subsection, but
30 which is not considered a branch by virtue of the fact that the State
31 association does not engage in all activities of a branch at the location.
32 A location is a limited service facility of a State association
33 notwithstanding that it is operated by a third party if there exists an
34 agreement between the third party and the State association pursuant to
35 which the third party (i) takes deposits or offers loans as an agent of
36 the State association or in the State association's name; or (ii) is
37 obligated to sell or otherwise transfer to the State association all or a
38 substantial portion of the loan or deposit production of that location."

39 SECTION 25. G.S. 54B-22 reads as rewritten:

40 "**§ 54B-22. Branch offices, offices and limited service facilities.**

41 ~~(a) Any State association may apply to the Commissioner of Banks for~~
42 ~~permission to establish a branch office. The application shall be in such form as may be~~
43 ~~prescribed by the Commissioner of Banks and shall be accompanied by the proper~~

1 ~~branch application fee. Branch applications shall be approved or denied by the~~
2 ~~Commissioner of Banks within 120 days of filing.~~

3 ~~(b) The Commissioner of Banks shall approve a branch application when all of~~
4 ~~the following criteria are met:~~

5 ~~(1) The applicant has gross assets of at least ten million dollars~~
6 ~~(\$10,000,000);~~

7 ~~(2) The applicant has evidenced financial responsibility;~~

8 ~~(3) The applicant has a net worth equal to or exceeding the amount~~
9 ~~required by the insurer of the applicant's withdrawable accounts;~~

10 ~~(4) The applicant has an acceptable internal control system. Such a system~~
11 ~~would include certain basic internal control requirements essential to~~
12 ~~the protection of assets and the promotion of operational efficiency~~
13 ~~regardless of the size of the applicant. Some of the factors which~~
14 ~~require extensive internal control requirements such as the use of the~~
15 ~~controller or internal auditor and more distinctive placement~~
16 ~~responsibilities include the applicant's size, number of personnel and~~
17 ~~history of and anticipated plans for expansion.~~

18 ~~(c) Upon receipt of a branch application, the Commissioner of Banks shall~~
19 ~~examine or cause to be examined all the relevant facts connected with the establishment~~
20 ~~of the proposed branch office. If it appears to the satisfaction of the Commissioner of~~
21 ~~Banks that the applicant has complied with all the requirements set forth in this section~~
22 ~~and the regulations for the establishment of a branch office and that the association is~~
23 ~~otherwise lawfully entitled to establish such branch office, then the administrator shall~~
24 ~~approve the branch application.~~

25 ~~(d) Not more than 10 days following the filing of the branch application with the~~
26 ~~Commissioner of Banks, the applicant shall cause a notice to be published in a~~
27 ~~newspaper of general circulation in the area to be served by the proposed branch office.~~
28 ~~Such notice shall contain:~~

29 ~~(1) A statement that the branch application has been filed with the~~
30 ~~Commissioner of Banks;~~

31 ~~(2) The proposed address of the branch office, including city or town and~~
32 ~~street; and~~

33 ~~(3) A statement that any interested or affected party may file a written~~
34 ~~statement with the Commissioner of Banks, within 30 days of the date~~
35 ~~of the publication of the notice, protesting the establishment of the~~
36 ~~proposed branch office and requesting a hearing before the~~
37 ~~Commissioner of Banks on the application.~~

38 ~~(e) Any interested or affected party may file a written statement with the~~
39 ~~Commissioner of Banks within 30 days of the date of initial publication of the branch~~
40 ~~application notice, protesting the establishment of the proposed branch office and~~
41 ~~requesting a hearing before the Commissioner of Banks on the application. If a hearing~~
42 ~~is held on the branch application, the Commissioner of Banks shall only receive~~
43 ~~information and hear testimony from the applicant and from any interested or affected~~
44 ~~party which is relevant to the branch application and the operation of the proposed~~

1 ~~branch office. The Commissioner of Banks shall issue his final decision on the branch~~
2 ~~application within 30 days following the hearing. Such final decision shall be in~~
3 ~~accordance with the applicable provisions of Chapter 150B of the General Statutes.~~

4 ~~(f) If a hearing is not held on the branch application, the Commissioner of Banks~~
5 ~~shall issue his final decision within 120 days of the filing of the application. Such final~~
6 ~~decision shall be in accordance with the applicable provisions of Chapter 150B of the~~
7 ~~General Statutes.~~

8 ~~(g) to (i) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1238, s. 3.~~

9 ~~(j) Any party to a branch application may appeal the final decision of the to the~~
10 ~~Commission at any time after final decision, but not later than 30 days after a written~~
11 ~~copy of the final decision is served upon the party and his attorney of record by personal~~
12 ~~service or by certified mail. Failure to file such appeal within the time stated shall~~
13 ~~operate as a waiver of the right of such party to review by the Commission and by a~~
14 ~~court of competent jurisdiction in accordance with Chapter 150B of the General~~
15 ~~Statutes, relating to judicial review.~~

16 (a) A State association, with the prior written approval of the Commissioner of
17 Banks, may:

18 (1) Establish a branch office or limited service facility; or

19 (2) Convert an existing limited service facility to a branch office.

20 The application for approval to establish or convert a branch office or limited service
21 facility shall be in a form prescribed by the Commissioner of Banks and shall be
22 accompanied by the application fee established by the Banking Commission by rule.
23 Approval may be given or withheld by the Commissioner of Banks. In determining
24 whether to give or withhold approval, the Commissioner of Banks shall take into
25 account factors including the financial history and condition of the applicant
26 association, the adequacy of its capital structure, its future earnings prospects, and the
27 general character of its management.

28 The Commissioner of Banks shall not give approval pursuant to this subsection
29 unless the Commissioner finds that:

30 (1) The establishment or conversion of the branch office or limited service
31 facility will meet the needs and promote the convenience of the
32 community to be served thereby; and

33 (2) The probable volume of business and reasonable public demand in the
34 community are sufficient to assure and maintain the solvency of the
35 branch office or limited service facility and of the existing depository
36 instructions in the community.

37 (b) A branch or limited service facility of a State association shall be operated
38 under the control and direction of the board of directors and executive officers of the
39 State association and under the name of the State association as set forth in its
40 Certificate of Incorporation filed with the Office of the Secretary of State, except that
41 the Commissioner of Banks may permit the operation of a branch office or limited
42 service facility under an assumed name under the conditions and terms imposed by the
43 Commissioner if the Commissioner finds that the name will not result in confusion
44 among customers of the State association or among the general public. The board of

1 directors of the State association shall elect officers required to conduct the business of
2 any branch or limited service facility.

3 The Commissioner of Banks shall not authorize the establishment or conversion of a
4 branch office or limited service facility until the Commissioner is satisfied that the
5 applicant State association has sufficient capital to maintain a minimum capital to asset
6 ratio as the Commissioner of Banks may require. In determining the ratio, the
7 Commissioner of Banks shall give due consideration to (i) the amount of capital
8 required to support the association's projected growth, (ii) the association's earnings
9 history and projected earnings, (iii) the quality of the association's assets, (iv) the
10 amount of capital then invested by the State association in fixed assets, and (v) the
11 business experience and reputation of the management.

12 (c) Subject to rules adopted by the State Banking Commission with regard to its
13 use, maintenance, and supervision, any State association may establish off the premises
14 of any principal office, branch office, or limited service facility a customer-bank
15 communications terminal, point-of-sale terminal, automated teller machine, automated
16 banking facility, or other direct or remote information-processing device or machine,
17 whether manned or unmanned, through or by means of which information relating to
18 any financial service or transaction rendered to the public is stored and transmitted,
19 instantaneously or otherwise, to or from an association or other terminal. The
20 establishment and use of the device or machine shall not be deemed a branch or limited
21 service facility, and the net worth requirements and standards for approval of a branch,
22 all as set forth in this section, shall not be applicable to the establishment of any off-
23 premises terminal device or machine."

24 **SECTION 26. G.S. 54C-4(18) reads as rewritten:**

25 ~~"(18) Loan production office. — An office of a savings bank other than the~~
26 ~~principal or branch offices whose activities are limited to the~~
27 ~~generation of loans.~~

28 Limited service facility. — A staffed physical location open to the
29 public in this State in which a State savings bank conducts any activity
30 of a "branch office" set forth in subdivision (5) of this subsection, but
31 which is not considered a branch by virtue of the fact that the State
32 savings bank does not engage in all activities of a branch at the
33 location. A location is a limited service facility of a State savings bank
34 notwithstanding that it is operated by a third party if there exists an
35 agreement between the third party and the State savings bank pursuant
36 to which the third party (i) takes deposits or offers loans as an agent of
37 the State savings bank or in the State savings bank's name; or (ii) is
38 obligated to sell or otherwise transfer to the State savings bank all or a
39 substantial portion of the loan or deposit production of that location."

40 **SECTION 27. G.S. 54C-23 reads as rewritten:**

41 **"§ 54C-23. Branch offices, offices and limited service facilities.**

42 ~~(a) A State savings bank may apply to the Commissioner of Banks for~~
43 ~~permission to establish a branch office. The application shall be in the form prescribed~~
44 ~~by the Commissioner of Banks and shall be accompanied by the proper branch~~

1 application fee. The Commissioner of Banks shall approve or deny branch applications
2 within 120 days of filing.

3 (b) The Commissioner of Banks shall approve a branch application when all of
4 the following criteria are met:

5 (1) The applicant has gross assets of at least ten million dollars
6 (\$10,000,000).

7 (2) The applicant has evidenced financial responsibility.

8 (3) The applicant has a net worth equal to or exceeding the amount
9 required by the insurer of deposit accounts.

10 (4) The applicant has an acceptable internal control system that includes
11 certain basic internal control requirements essential to the protection of
12 assets and the promotion of operational efficiency regardless of the
13 size of the applicant.

14 (c) Upon receipt of a branch application, the Commissioner of Banks shall
15 examine or cause to be examined all the relevant facts connected with the establishment
16 of the proposed branch office. If it appears to the satisfaction of the Commissioner of
17 Banks that the applicant has complied with all the requirements set forth in this section
18 and the regulations for the establishment of a branch office and that the savings bank is
19 otherwise lawfully entitled to establish the branch office, then the Commissioner of
20 Banks shall approve the branch application.

21 (d) Not more than 10 days following the filing of the branch application with the
22 Commissioner of Banks, the applicant shall cause a notice to be published in a
23 newspaper of general circulation in the area to be served by the proposed branch office.
24 The notice shall contain:

25 (1) A statement that the branch application has been filed with the
26 Commissioner of Banks;

27 (2) The proposed address of the branch office, including city or town and
28 street; and

29 (3) A statement that any interested or affected party may file a written
30 statement with the Commissioner of Banks, within 30 days of the date
31 of the publication of the notice, protesting the establishment of the
32 proposed branch office and requesting a hearing before the
33 Commissioner of Banks on the application.

34 (e) Any interested or affected party may file a written statement with the
35 Commissioner of Banks within 30 days of the date of initial publication of the branch
36 application notice, protesting the establishment of the proposed branch office and
37 requesting a hearing before the Commissioner of Banks on the application. If a hearing
38 is held on the branch application, the Commissioner of Banks shall receive information
39 and hear testimony only from the applicant and from any interested or affected party
40 that is relevant to the branch application and the operation of the proposed branch
41 office. The Commissioner of Banks shall issue the final decision on the branch
42 application within 30 days following the hearing. The final decision shall be in
43 accordance with Chapter 150B of the General Statutes.

1 (f) ~~If a hearing is not held on the branch application, the Commissioner of Banks~~
2 ~~shall issue the final decision within 120 days of the filing of the application. The final~~
3 ~~decision shall be in accordance with Chapter 150B of the General Statutes.~~

4 (g) ~~A party to a branch application may appeal the final decision of the~~
5 ~~Commissioner of Banks to the Commission at any time after the final decision, but not~~
6 ~~later than 30 days after a written copy of the final decision is served upon the party and~~
7 ~~the party's attorney of record by personal service or by certified mail. Failure to file an~~
8 ~~appeal within the time stated shall operate as a waiver of the right of the party to review~~
9 ~~by the Commission and by a court of competent jurisdiction in accordance with Chapter~~
10 ~~150B of the General Statutes, relating to judicial review.~~

11 (a) A State savings bank, with the prior written approval of the Commissioner of
12 Banks, may:

13 (1) Establish a branch office or limited service facility; or

14 (2) Convert an existing limited service facility to a branch office.

15 The application for approval to establish or convert a branch office or limited service
16 facility shall be in a form prescribed by the Commissioner of Banks and shall be
17 accompanied by the application fee established by the Banking Commission by rule.
18 Approval may be given or withheld by the Commissioner of Banks. In determining
19 whether to give or withhold approval, the Commissioner of Banks shall take into
20 account factors including the financial history and condition of the applicant State
21 savings bank, the adequacy of its capital structure, its future earnings prospects, and the
22 general character of its management.

23 The Commissioner of Banks shall not give approval pursuant to this subsection
24 unless the Commissioner finds that:

25 (1) The establishment or conversion of the branch office or limited service
26 facility will meet the needs and promote the convenience of the
27 community to be served thereby; and

28 (2) The probable volume of business and reasonable public demand in the
29 community are sufficient to assure and maintain the solvency of the
30 branch office or limited service facility and of the existing depository
31 instructions in the community.

32 (b) A branch or limited service facility of a State savings bank shall be operated
33 under the control and direction of the board of directors and executive officers of the
34 State savings bank and under the name of the State savings bank as set forth in its
35 Certificate of Incorporation filed with the Office of the Secretary of State, except that
36 the Commissioner of Banks may permit the operation of a branch office or limited
37 service facility under an assumed name under the conditions and terms imposed by the
38 Commissioner if the Commissioner finds that the name will not result in confusion
39 among customers of the State savings bank or among the general public. The board of
40 directors of the State savings bank shall elect officers required to conduct the business
41 of any branch or limited service facility.

42 The Commissioner of Banks shall not authorize the establishment or conversion of a
43 branch office or limited service facility until the Commissioner is satisfied that the
44 applicant State savings bank has sufficient capital to maintain a minimum capital to

1 asset ratio as the Commissioner of Banks may require. In determining the ratio, the
2 Commissioner of Banks shall give due consideration to (i) the amount of capital
3 required to support the State savings bank's projected growth, (ii) the State savings
4 bank's earnings history and projected earnings, (iii) the quality of the savings bank's
5 assets, (iv) the amount of capital then invested by the State association in fixed assets,
6 and (v) the business experience and reputation of the management.

7 (c) Subject to rules adopted by the State Banking Commission with regard to its
8 use, maintenance, and supervision, any State savings bank may establish off the
9 premises of any principal office, branch office, or limited service facility a
10 customer-bank communications terminal, point-of-sale terminal, automated teller
11 machine, automated banking facility, or other direct or remote information-processing
12 device or machine, whether manned or unmanned, through or by means of which
13 information relating to any financial service or transaction rendered to the public is
14 stored and transmitted, instantaneously or otherwise, to or from a savings bank or other
15 terminal. The establishment and use of the device or machine shall not be deemed a
16 branch or limited service facility, and the net worth requirements and standards for
17 approval of a branch, all as set forth in this section, shall not be applicable to the
18 establishment of any off-premises terminal device or machine."

19 **SECTION 28.** G.S. 54C-27 is repealed.

20 **SECTION 29.** G.S. 150B-21.1 is amended by adding a new subsection to
21 read:

22 "(a11) Notwithstanding the provisions of subsection (a) of this section, the State
23 Banking Commission, in accordance with the provisions of Article 8 of Chapter 53 of
24 the General Statutes, may adopt a temporary rule for one or more of the following
25 reasons:

- 26 (1) To ensure the safe and sound management of the financial institutions
27 under the Commissioner's supervision pursuant to Chapters 53, 54B,
28 and 54C of the General Statutes.
29 (2) To implement any provision of State or federal law for which the
30 Commissioner of Banks or the State Banking Commission has been
31 authorized to adopt rules.
32 (3) To preserve the operational integrity of the system of regulated
33 financial institutions serving the citizens of this State.
34 (4) To prevent catastrophic loss to the interests of depositors, creditors,
35 stockholders, or the public in their relations with the system of
36 regulated financial institutions.

37 After having the proposed temporary rule published in the North Carolina Register
38 and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the
39 Commission shall:

- 40 (1) Notify persons on its mailing list maintained pursuant to G.S.
41 150B-21.2(d) and any other interested parties of its intent to adopt a
42 temporary rule;
43 (2) Accept oral and written comments on the proposed temporary rule;
44 and

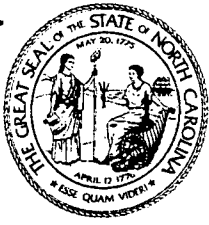
1 (3) Hold at least one public hearing on the proposed temporary rule.

2 When the State Banking Commission adopts a temporary rule pursuant to this
3 subsection, the Commission shall submit the reference to this subsection as the agency's
4 statement of need to the Codifier of Rules."

5 **SECTION 30.** The Legislative Research Commission shall undertake a
6 comprehensive study of those laws, including Chapters 53, 54B, 54C, and 24 of the
7 General Statutes, which affect the establishment and operation of banks in North
8 Carolina and shall make recommendations to the 2003 General Assembly, prior to the
9 convening of the 2004 Regular Session as to which laws (i) are obsolete, unnecessary or
10 duplicative, (ii) are unnecessarily inconsistent in the treatment of banks, savings and
11 loan associations, and savings banks, and (iii) unnecessarily restrict, impede, or prohibit
12 activities of banks, savings and loan associations, and savings banks or the ability of the
13 Commissioner of Banks to regulate banks and savings institutions in an effective,
14 efficient, and equitable manner.

15 In preparing its recommendations, the Commission shall actively solicit and
16 consider information received from representatives of banks, savings and loan
17 associations, savings banks, the State Banking Commission, the Commissioner of
18 Banks and the Commissioner's staff, and the general public.

19 **SECTION 31.** Section 30 of this act is effective when it becomes law. The
20 remainder of this act becomes effective October 1, 2003, and applies to acts occurring
21 and transactions or agreements entered into on or after that date.



SENATE BILL 676: Revise the Banking Laws of North Carolina.

BILL ANALYSIS

Committee: House Financial Institutions
Date: June 3, 2003
Version: Second Edition

Introduced by: Sen. Hoyle
Summary by: O. Walker Reagan,
Committee Co-Counsel

SUMMARY: *Senate Bill 676 makes technical and clarifying changes to the Banking Laws of the State. Many of the changes are intended to maintain competitive equality among banks, regardless of whether they are chartered by North Carolina, another state or the federal government. The bill also makes several changes to the Mortgage Lending Act to enhance the Commissioner of Banks' enforcement authority. The bill gives the Banking Commission temporary rulemaking authority and authorizes the Legislative Research Commission to study whether more comprehensive changes to the Banking Laws are warranted.*

CURRENT LAW:

The State Banking Commission and the Office of Commissioner of Banks have supervisory authority to charter and regulate banks, thrifts and trust companies in North Carolina. In addition, the Commissioner licenses Consumer Finance companies, Check Cashers, Mortgage Lenders, Money Transmitters and approves Refund Anticipation lenders. The Commissioner is charged with ensuring the safety and soundness of these businesses.

BILL ANALYSIS:

State chartered banks. –The following sections of the bill make changes to the laws governing state banks.

- **Sec. 1.** Amends the definition of a "limited service facility" to allow these locations to be operated by third parties through an agreement with a bank. A limited service facility is a staffed physical location established by a bank which provides some but not all of the services of a branch.
- **Secs. 2. and 3.** Changes the approval authority from the State Banking Commission to the Commissioner of Banks for conversions of savings associations and savings banks to commercial banks.
- **Sec. 4.** Rewrites the provision relating to the powers of a state chartered bank. This change broadens the definition of "business of banking" and authorizes a state bank to engage in any activity permissible for a national bank or other depository institution that is regulated by a federal agency. This section also provides that a bank must obtain the approval of the Commissioner prior to engaging in any "new activity", which is defined as any business in which the bank is not currently engaged. The authority of the Commissioner to take any action necessary to ensure the safety and soundness of any state bank is preserved.
- **Sec. 5.** Revises the provision relating to the investment authority of a state bank. The provision clarifies and liberalizes the ability of certain banks to invest in subsidiaries. It sets limits on the

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extent to which a bank can invest in premises, furniture, equipment and furniture. This section also describes when a bank may purchase, hold or convey real property.

- **Sec. 6.** Amends the provision that defines the limitations on loans extended by a state bank. This provision allows state banks to extend credit not to exceed the greater of the statutory limit or the percentage permitted for national banks.
- **Sec. 7.** Amends the provision relating to the establishment and conversion of branches and limited service facilities. A bank must obtain the approval of the Commissioner before making any such change. The Commissioner may also approve the operation of a branch or limited service facility under an assumed name so long as the name does not result in confusion to the public.
- **Sec. 8.** Allows a bank to purchase its own stock with the prior approval of the Commissioner. Under current law, this is not permitted unless the stock is purchased to prevent a loss.
- **Sec. 9.** Allows a newly opened bank to delay the first annual meeting until no later than June 30, of the year following the year the bank opened.
- **Sec. 12.** Amends the law relating to licenses for banks and trust companies to act as fiduciaries. Under current law, a licensee must pay an annual fee of \$200. This amount is used by the Commissioner for administrative costs and to the extent there is a surplus, these funds are available to the State general fund. This provision deletes the language relating to the reversion of surplus funds, and authorizes the Banking Commission to establish by rule an annual fee not to exceed \$500.

Money Transmitter Act. Section 13 imposes additional reporting requirements on licensees under the Money Transmitter Act.

Mortgage Lending Act.

- **Sec. 10.** Includes applications, and investigations of applicants, licensees, and exempt persons under the Mortgage Lending Act, in the list of confidential records maintained by the Commissioner of Banks.
- **Sec. 14.** Requires an exclusive mortgage broker to notify the Commissioner when his authority is terminated. The section also requires that a mortgage broker or banker cite the reason for the termination of employment of a loan officer or the authority of an exclusive mortgage broker.
- **Secs. 15, 16, 19 and 21.** Expands and clarifies the authority to obtain criminal history checks under the Mortgage Lending Act.
- **Sec. 17.** Makes failure to comply with the federal law governing real estate closings a prohibited act under the Mortgage Lending Act.
- **Sec. 18 and 20.** Makes technical corrections.

Reverse Mortgages. Sections 22 and 23 amend the law governing reverse mortgages. Clarifies which lenders are exempt from the requirement of obtaining authority from the Commissioner of Banks.

Savings Associations and Savings Banks. Since 2001, these institutions have been under the supervision of the Commissioner of Banks. Sections 24 through 28 of this bill make changes in the laws governing these thrift institutions to conform the definition of a limited service facility and the

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establishment and conversion of branches and limited service facilities to the corresponding provisions in the law governing state banks. Section 28 repeals the provision authorizing loan production offices.

Rulemaking Authority. Section 11 clarifies that the State Banking Commission has general rulemaking authority in connection with all activities regulated by the Commissioner under Article 53 of the General Statutes.

Section 29 amends the Administrative Procedure Act to authorize the Banking Commission to adopt temporary rules to implement any provision of state or federal law for which the Commissioner or the Commission has been authorized to adopt rules. This provision would allow the Commission to make rules effective almost immediately, without the delay caused by the process for adopting permanent rules. Temporary rules, however, may only stay in effect for 270 days unless the agency adopts a permanent rule to replace it that is subject to legislative disapproval.

Legislative Research Commission Study.

Section 30 authorizes the LRC to undertake a comprehensive study of the banking laws to determine whether further changes are needed to improve the ability of the Commissioner to regulate banks and savings institutions in an effective, efficient and equitable manner. The LRC may report its recommendations to 2004 Session of the General Assembly.

Effective Date.

Section 30 would become effective when the act becomes law. The remainder of the act would become effective October 1, 2003, and apply to acts occurring and transactions and agreements entered on or after that date.

This summary was substantially contributed to by Karen Cochran-Brown, Committee Co-Counsel.

S676-SMRU-001

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **CHURCH AND STARNES** (Chairs) for the Committee on
FINANCIAL INSTITUTIONS.

☐ Committee Substitute for

S.B. 502 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE A DEPUTY TO GAIN
ACCESS TO THE CONTENTS OF A DECEDENT'S SAFE-DEPOSIT BOX.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill (~~#~~ ^{HOUSE} ~~), which changes the~~
~~title, unfavorable as to (the original bill) (Committee Substitute Bill #~~ ~~), (and~~
~~recommendation that the committee substitute bill #~~ ~~) be re-referred to the Committee~~
~~on~~ ~~.)~~

☐ With a favorable report as to House committee substitute bill (# ~~), which changes~~
the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

D

SENATE BILL 502
PROPOSED HOUSE COMMITTEE SUBSTITUTE S502-CSR-45 [v.1]

6/2/2003 7:32:24 PM

Short Title: Access to Decedent's Safe-Deposit Box.

(Public)

Sponsors:

Referred to:

March 24, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE A DEPUTY TO GAIN ACCESS TO THE CONTENTS
3 OF A DECEDENT'S SAFE-DEPOSIT BOX.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 28A-15-13(a) reads as rewritten:

6 "(a) Definitions. – The following definitions apply to this section:

7 (1) Institution. – Any entity or person having supervision or possession of
8 a safe-deposit box to which a decedent had access.

9 (1a) Deputy. – A person appointed in writing by a lessee or co-tenant of a
10 safe-deposit box as having right of access to the safe-deposit box
11 without further authority or permission of the lessee or co-tenant, in a
12 manner and form designated by the institution.

13 (2) Letter of authority. – Letters of administration, letters testamentary, an
14 affidavit of collection of personal property, an order of summary
15 administration, or a letter directed to the institution designating a
16 person entitled to receive the contents of a safe-deposit box to which
17 the decedent had access. The letter of authority must be signed by the
18 clerk of superior court or by the clerk's representative.

19 (3) Qualified person. – A person possessing a letter of authority or a
20 person named as a deputy, lessee or cotenant of the safe-deposit box to
21 which the decedent had access."

22 **SECTION 2.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S

1

SENATE BILL 502

Short Title: Access to Decedent's Safe-Deposit Box.

(Public)

Sponsors: Senator Thomas.

Referred to: Judiciary II.

March 24, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A DEPUTY TO GAIN ACCESS TO THE CONTENTS
OF A DECEDENT'S SAFE-DEPOSIT BOX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-15-13(a) reads as rewritten:

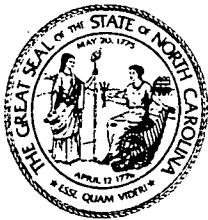
"(a) Definitions. – The following definitions apply to this section:

(1) Institution. – Any entity or person having supervision or possession of a safe-deposit box to which a decedent had access.

(2) Letter of authority. – Letters of administration, letters testamentary, an affidavit of collection of personal property, an order of summary administration, or a letter directed to the institution designating a person entitled to receive the contents of a safe-deposit box to which the decedent had access. The letter of authority must be signed by the clerk of superior court or by the clerk's representative.

(3) Qualified person. – A person possessing a letter of authority or a person named as a deputy, lessee or cotenant of the safe-deposit box to which the decedent had access."

SECTION 2. This act is effective when it becomes law.



SENATE BILL 502: Access to Decedent's Safe-Deposit Box.

BILL ANALYSIS

Committee: House Financial Institutions
Date: June 3, 2003
Version: Proposed Committee Substitute
S502-CSRU-45

Introduced by: Sen. Thomas
Summary by: O. Walker Reagan,
Committee Co-Counsel

SUMMARY: *The Proposed House Committee Substitute for Senate Bill 502 amends the law governing the access to a decedent's safe-deposit box for purposes of inventorying the box after death. The bill authorize a person named as a deputy to gain access to the safe-deposit box in addition to a lessee, cotenant or a person possessing a letter of authority.*

CURRENT LAW: In the event of the death of a person who had access to a safe-deposit box, G.S. 28A-15-13 (see copy attached) governs the opening, inventory and release of the contents of the decedent's safe-deposit box. At death, the institution having supervision or possession of the box (e.g., the bank) is required to seal the safe deposit box. To open the box, the statute requires the presence of the clerk of the superior court (or representative) of the county where the safe-deposit box is located unless a "qualified person" makes the request to open the box.

A qualified person is a person possessing a "letter of authority" entitling that person to receive the contents of the safe deposit box, or a person named as a lessee or cotenant of the safe deposit box. The qualified person performs the same functions as the clerk of court would in the absence of a qualified person. Once the safe deposit box is opened, the qualified person must make an inventory of the contents of the box and furnish the inventory to the institution or the key holder, if the key holder is a person other than the qualified person. If the safe deposit contains a will or other document of a testamentary nature, then the qualified person must file the document with the clerk of court.

BILL ANALYSIS: The Proposed House Committee Substitute for Senate Bill 502 adds a person named as a "deputy" to the list of designations that qualify a person as a "qualified person" for the purposes of G.S. 28A-15-13. The bill defines a deputy as a person designated in writing by the lessee or co-tenant of the box with the bank in a manner and form designated by the bank.

EFFECTIVE DATE: The bill is effective when it becomes law.

This summary was substantially contributed to by Linda Attarian, Counsel to the Senate Judiciary II Committee.

S502-SMRU-001

SENATE BILL 502

Page 2

§ 28A-15-13. Opening and inventory of decedent's safe-deposit box.

(a) Definitions. – The following definitions apply to this section:

- (1) Institution. – Any entity or person having supervision or possession of a safe-deposit box to which a decedent had access.
- (2) Letter of authority. – Letters of administration, letters testamentary, an affidavit of collection of personal property, an order of summary administration, or a letter directed to the institution designating a person entitled to receive the contents of a safe-deposit box to which the decedent had access. The letter of authority must be signed by the clerk of superior court or by the clerk's representative.
- (3) Qualified person. – A person possessing a letter of authority or a person named as a lessee or cotenant of the safe-deposit box to which the decedent had access.

(b) Presence of Clerk Required. – Any safe-deposit box to which a decedent had access shall be sealed by the institution having supervision or possession of the box. Except as provided in subsection (c) of this section, the presence of the clerk of superior court of the county where the safe-deposit box is located or the presence of the clerk's representative is required before the box may be opened. The clerk or the clerk's representative shall open the safe-deposit box in the presence of the person possessing a key to the box and a representative of the institution having supervision or possession of the box. The clerk shall make an inventory of the contents of the box and furnish a copy to the institution and to the person possessing a key to the box.

(c) Presence of Clerk Not Required. – The presence of the clerk of superior court or the clerk's representative is not required when the person requesting the opening of the decedent's safe-deposit box is a qualified person. In that event, the qualified person shall make an inventory of the contents of the box and furnish a copy to the institution and to the person possessing a key to the box if that person is someone other than the qualified person.

(d) Testamentary Instrument in Box. – If the safe-deposit box contains any writing that appears to be a will, codicil, or any other instrument of a testamentary nature, then the clerk of superior court or the qualified person shall file the instrument in the office of the clerk of superior court.

(e) Release of Contents. – Except as provided in subsection (d) for testamentary instruments, the institution shall not release any contents of the safe-deposit box to anyone other than a qualified person.

(f) No Tax Waiver Required. – No tax waiver is required for the release of the contents of the decedent's safe-deposit box. (1998-212, s. 16.14(a).)

FINANCIAL INSTITUTIONS

JUNE 3, 2003

ROOM 1425

1:00 P.M.

AGENDA

OPENING STATEMENTS BY CHURCH AND STARNES

INTRODUCTIONS

RECOGNIZE MEMBERS AND ANY COMMENTS

RECOGNIZE STAFF:

COMMITTEE COUNSEL – MS. KAREN COCHRANE-BROWN AND MR.
WALKER REAGAN

COMMITTEE ASSISTANT –JOYCE FULLER

SGT.-AT-ARMS – PAUL RUCHO AND BILL SULLIVAN

PAGES - ALEX BRINN – NASH COUNTY
LUCAS KELLER – CALDWELL COUNTY
AMANDA SHEARIN – WAKE COUNTY
CLINT STARNES – CALDWELL COUNTY

BILLS TO BE CONSIDERED:

S.B. 502 - ACCESS TO DECEDENT'S SAFE DEPOSIT BOX – SEN. THOMAS
S.B. 676 – REVISED BANKING LAWS OF NORTH CAROLINA – SEN. HOYLE

CLOSING REMARKS

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

JUNE 3, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Wm. Finlay	NC Commissioner of Banks
McNeil Chestnut	Spec. Dir. AG for the Comm. of Banks
Joseph A. Smith, Jr.	NC Commissioner of Banks
Amy Darden	NC Bar Assn.
Michelle Frazier	NC Bar Ass'n
John Landry	Rep. Glazer
Stephanie Simpson	NC Assn of Realtors
Mary Thorne	REBIC
Betty Turner	Bank of America
Paul Stock	NC BA
Karen Tull	Inten

VISITOR REGISTRATION SHEET

FINANCIAL INSTITUTIONS

JUNE 3, 2003

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Rob Duszablon

NC State with inc

Bill Scoggin

KCLH

Dorck Taylor

ACBFD

Don Beason

The Capital Group