

**2015-2016**

**HOUSE  
BANKING**

**MINUTES**



# HOUSE COMMITTEE ON BANKING

<u>MEMBER</u>	<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
<b>HOWARD, Julia</b> Chair	Cody Huneycutt Committee Assistant	733-5904	302	1
<b>JETER, Charles</b> Chair	Britt Eller Committee Assistant	733-5654	2226	113
<b>BISHOP, Dan</b> Vice Chair	David Larson	715-3009	607	86
<b>FRALEY, John</b> Vice Chair	Carol Wakely	733-5741	637	112
<b>HALL, Larry</b> Vice Chair	Theresa Wright-Bryant	733-5872	506	69
<b>BELL, John</b>	Susan Horne	715-3017	419B	27
<b>BLUST, John</b>	Genie Thurlow	733-5781	2208	49
<b>BRADFORD, John</b>	Anita Spence	733-5828	2123	85
<b>BRYAN, Rob</b>	Kevin Wilkinson	733-5607	536	74
<b>BUMGARDNER, Dana</b>	Margie Penven	733-5809	2119	40
<b>CARNEY, Becky</b>	Beth LeGrande	733-5827	1221	12
<b>CUNNINGHAM, Carla</b>	Sherrie Burnette	733-5807	1109	59
<b>DOBSON, Josh</b>	Julie Ryan	733-5862	301N	114
<b>EARLE, Beverly</b>	Ann Raeford	715-2530	514	60
<b>HANES, Ed</b>	Rita Harris	733-5829	1006	94
<b>HARDISTER, Jon</b>	Jayne Nelson	733-5191	632	78
<b>JORDAN, Jonathan</b>	Kevin King	733-7727	420	42
<b>MALONE, Chris</b>	Wanda Benson	715-3010	603	64
<b>MARTIN, Grier</b>	Sylvia Hammons	733-5773	1023	96
<b>MOORE, Rodney</b>	Charmey Morgan	733-5606	1219	36
<b>PENDLETON, Gary</b>	Kathy Peters	733-5860	610	97
<b>PIERCE, Garland</b>	Janice Fenner	733-5803	1204	57
<b>ROSS, Steven</b>	Laura Spratley	733-5820	2221	37
<b>SZOKA, John</b>	Beverly Slagle	733-9892	2223	73
<b>TERRY, Evelyn</b>	Franklin Terry	733-5777	1015	92
<b>WILLINGHAM, Shelly</b>	Johnna Smith	715-3024	501	108
<b>ZACHARY, Lee</b>	Haley Kitts	715-8361	1002	110



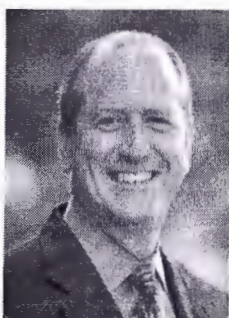
**HOUSE COMMITTEE ON BANKING**  
**2015 SESSION**



**Rep. Howard, Chair**



**Rep. Jeter, Chair**



**Rep. Bishop,  
Vice Chair**



**Rep. Fraley,  
Vice Chair**



**Rep. Hall,  
Vice Chair**



**Rep. Bell**



**Rep. Blust**



**Rep. Bradford**



**Rep. Bryan**



**Rep. Bumgardner**



**Rep. Carney**



**Rep. Cunningham**



**Rep. Dobson**



**Rep. Earle**



**Rep. Hanes**





**Rep. Hardister**



**Rep. Jordan**



**Rep. Malone**



**Rep. Martin**



**Rep. Moore**



**Rep. Pendleton**



**Rep. Pierce**



**Rep. Ross**



**Rep. Szoka**



**Rep. Terry**



**Rep. Willingham**



**Rep. Zachary**





**HOUSE COMMITTEE ON BANKING**

[illegible]



**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2015-2016 SESSION**

You are hereby notified that the **House Committee on Banking** will meet as follows:

**DAY & DATE:** Thursday, March 19, 2015

**TIME:** 12:00 PM

**LOCATION:** 1228/1327 LB

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 104	Eliminate Audited Financial Statement Req.	Representative J. Bell Representative Jordan
HB 105	Reduce Mortgage Lender Surety Bonds.	Representative J. Bell Representative Jordan
HB 106	Expand Banking Commission Membership.	Representative J. Bell Representative Jordan

Respectfully,

Representative Julia C. Howard, Co-Chair  
Representative Charles Jeter, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 10:31 AM on Wednesday, March 11, 2015.

\_\_\_\_ Principal Clerk  
\_\_\_\_ Reading Clerk – House Chamber

Brittany Eller (Committee Assistant)



**House Committee on Banking  
Thursday, March 19, 2015, 12:00 PM  
1228/1327 Legislative Building**

**AGENDA**

**Welcome and Opening Remarks**

**Introduction of Pages**

**Bills**

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 104	Eliminate Audited Financial Statement Req.	Representative J. Bell Representative Jordan
HB 105	Reduce Mortgage Lender Surety Bonds.	Representative J. Bell Representative Jordan
HB 106	Expand Banking Commission Membership.	Representative J. Bell Representative Jordan

**Adjournment**



**House Committee on Banking**  
**Thursday, March 19, 2015 at 12:00 PM**  
**Room 1228/1327 of the Legislative Building**

**MINUTES**

The House Committee on Banking met at 12:00 PM on March 19, 2015 in Room 1228/1327 of the Legislative Building. The following committee members were present: Representatives J. Bell, Bishop, Blust, Bradford, Bryan, Bumgardner, Carney, Cunningham, Earle, Fraley, L. Hall, Hanes, Hardister, Howard, Jeter, Jordan, Malone, G. Martin, R. Moore, Pendleton, Pierce, Szoka, Terry, Willingham, and Zachary. Karen Cocharan-Brown and Drupti Chauhan from the Legislative Research staff were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

Representative Charles Jeter, Chair, called the meeting to order at 12:00 pm. He introduced the page and the Sergeant of Arms staff. (Attachment II)

The following bills were considered:

**HB 106, entitled Amend Banking Commission Membership. (Representatives J. Bell, Jordan)**

Representative Jeter recognized Representative Bell, bill sponsor to explain. Representative Bell made a motion that the proposed committee substitute for HB 106 be placed before the committee for discussion. Representative Bell explained the PCS for H106. There was discussion of the bill. Representative Bishop made a motion for an unfavorable to the original bill, but favorable to the PCS. The motion passed.

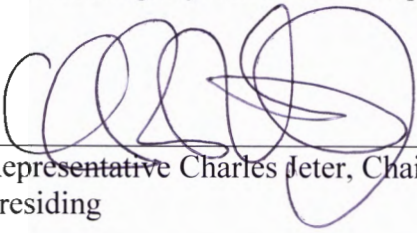
**HB 105, entitled Reduce Mortgage Lender Surety Bonds. (Representatives J. Bell, Jordan)**

Representative Jeter recognized Representative Bell, bill sponsor to explain. Representative Szoka, co-sponsor of the bill, also helped explain. There was discussion of the bill. Representative Hardister moved for a favorable report. The motion passed.

**HB 104, entitled Eliminate Audited Financial Statement Req. (Representatives J. Bell, Jordan)**

Representative Jeter recognized Representative Bell, bill sponsor to explain. Representative Jordan and Szoka, also helped explain. There was discussion of the bill. Representative Jeter announced discussion on the bill would be continued to the next meeting.

The meeting adjourned at 12:55 pm.

  
\_\_\_\_\_  
Representative Charles Jeter, Chair  
Presiding

  
\_\_\_\_\_  
Brittany Eller, Committee Clerk





## VISITOR REGISTRATION SHEET

HOUSE BANKING

Name of Committee

March 19 2015

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Janison Dillar	NCBA
Peter Gwactney	NCBA
Amanda Henaker	Troutman Sanders
Isabel Villa-Lana	NCAIC
Cathy Thomas	Focus Carolina
Marvin Johnson	STONEgate Mortgage
Anaam Hwee	MVA
Jimmy	CRL
Bele Wilson	nc Justice Center
Loi An Harris	CAUA



## VISITOR REGISTRATION SHEET

HOUSE BANKING  
Name of Committee3-19-2015  
DateVISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Rob Schofield	NC Policy Watch
Molly Sheehan	NC Commissioner of Banks
RAY GRACE	" " "
Starnes	Treasurer
Onyiah	Gov's Office
Lauren Whaley	CCUL
Elizabeth Hammond	NCCOB
Rowe Campbell	NCCOB
Tina Krasner	NCCOB
Katherine Bosken	NCCOB
Ha Nguyen	NCCOB



## Attachment I

## VISITOR REGISTRATION SHEET

HOUSE BANKING  
Name of CommitteeMarch 19 2015  
DateVISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brandon Watson	Dept. of State Treasurer 325 N. Salisbury St., Raleigh, NC 27603
Sara Weed	NCCOB 316 W. Edenton St. Raleigh, NC
G. M. Teague	NMRS
Donald Fader	Gmc Home Finance
David Tyndall	Mortgage Choice Inc
Fred Bone	Bone Assoc.
McNeil Chestnut	For RLNZ
Dave Horne	Smith Anderson
Kearny Davis	Carolina Home Mortgage
Rhian Menwald	WM
Nathan Butts	NCBA



Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Banking

DATE: 3.19.2015 Room: 1228

House Sgt-At Arms:

1. Name: Carlton Adams
2. Name: Martha Gadison
3. Name: Joe Austin
4. Name: \_\_\_\_\_
5. Name: \_\_\_\_\_

Senate Sgt-At Arms:

1. Name: \_\_\_\_\_
2. Name: \_\_\_\_\_
3. Name: \_\_\_\_\_
4. Name: \_\_\_\_\_
5. Name: \_\_\_\_\_





**Thursday, March 19**  
BANKING

**Room**  
1228/1327

**Time**  
12:00 pm

**Name**

**County**

**Sponsor**

Tabi Zorn

Union

D. Craig Horn



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H

1

HOUSE BILL 106

Short Title: Expand Banking Commission Membership.

(Public)

Sponsors: Representatives J. Bell and Jordan (Primary Sponsors).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Banking.

February 27, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE BANKING LAW OF NORTH CAROLINA TO INCREASE THE  
3 MEMBERSHIP OF THE BANKING COMMISSION, AS RECOMMENDED BY THE  
4 LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON BANKING  
5 LAW AMENDMENTS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 53C-1-4(58) reads as rewritten:

8 "(58) Public member. – A member of the Commission who is not a practical  
9 ~~banker or banker~~, a consumer finance ~~licensee~~-licensee, or a person licensed  
10 under Article 19B of Chapter 53 of the General Statutes and who is not at  
11 the time of appointment to the Commission, nor was within the five years  
12 preceding the appointment, an employee of a North Carolina financial  
13 institution."

14 **SECTION 2.** G.S. 53C-2-1(a) reads as rewritten:

15 "(a) The Commission consists of ~~15-17~~ members, including the State Treasurer, who  
16 shall serve as an ex officio member; ~~12-14~~ members appointed by the Governor; and two  
17 members appointed by the General Assembly under G.S. 120-121, one of whom shall be  
18 appointed upon the recommendation of the President Pro Tempore of the Senate and one of  
19 whom shall be appointed upon the recommendation of the Speaker of the House of  
20 Representatives. The Governor shall appoint three practical bankers, one consumer finance  
21 licensee, one person licensed under Article 19B of Chapter 53, and ~~eight-nine~~ public members  
22 to the Commission. The member appointed upon the recommendation of the President Pro  
23 Tempore of the Senate shall be a practical banker, and the member appointed upon the  
24 recommendation of the Speaker of the House shall be a practical banker. Members shall serve  
25 terms of four years. No individual shall serve more than two complete consecutive terms on the  
26 Commission. Any vacancy occurring in the membership of the Commission shall be filled by  
27 the appropriate appointing officer for the unexpired term, except that vacancies among  
28 members appointed by the General Assembly shall be filled in accordance with G.S. 120-122.  
29 The appointed members of the Commission shall receive subsistence and travel expenses at the  
30 rates set forth in G.S. 120-3.1. This compensation shall be paid from the revenues of the  
31 OCOB."

32 **SECTION 3.** This act is effective when it becomes law.





GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H

D

HOUSE BILL 106  
PROPOSED COMMITTEE SUBSTITUTE H106-PCS30125-RQ-3

Short Title: Amend Banking Commission Membership. (Public)

Sponsors:

Referred to:

February 27, 2015

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

4 **SECTION 1.** G.S. 53C-1-4(58) reads as rewritten:

5 "(58) Public member. – A member of the Commission who is not a practical  
6 ~~banker or banker~~, a consumer finance licensee-licensee, or a person licensed  
7 under Article 19B of Chapter 53 of the General Statutes and who is not at  
8 the time of appointment to the Commission, nor was within the five years  
9 preceding the appointment, an employee of a North Carolina financial  
10 institution."

11 **SECTION 2.** G.S. 53C-2-1(a) reads as rewritten:

12 "(a) The Commission consists of 15 members, including the State Treasurer, who shall  
13 serve as an ex officio member; 12 members appointed by the Governor; and two members  
14 appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon  
15 the recommendation of the President Pro Tempore of the Senate and one of whom shall be  
16 appointed upon the recommendation of the Speaker of the House of Representatives. The  
17 Governor shall appoint three practical bankers, one consumer finance licensee, one person  
18 licensed under Article 19B of Chapter 53 of the General Statutes, and ~~eight-seven~~ public  
19 members to the Commission. The member appointed upon the recommendation of the  
20 President Pro Tempore of the Senate shall be a practical banker, and the member appointed  
21 upon the recommendation of the Speaker of the House shall be a practical banker. Members  
22 shall serve terms of four years. No individual shall serve more than two complete consecutive  
23 terms on the Commission. Any vacancy occurring in the membership of the Commission shall  
24 be filled by the appropriate appointing officer for the unexpired term, except that vacancies  
25 among members appointed by the General Assembly shall be filled in accordance with  
26 G.S. 120-122. The appointed members of the Commission shall receive subsistence and travel  
27 expenses at the rates set forth in G.S. 120-3.1. This compensation shall be paid from the  
28 revenues of the OCOB."

29 **SECTION 3.** When the changes to G.S. 53C-2-1, as enacted by Section 2 of this  
30 act, become effective, the position on the Commission held by Donald E. Fader shall convert to  
31 a position assigned for a licensee under Article 19B of Chapter 53 of the General Statutes.  
32 Donald E. Fader shall continue on the Commission as the designated licensee under Article  
33 19B of Chapter 53 of the General Statutes for his remaining term, which is scheduled to expire  
34 April 1, 2017, or until he resigns or ceases to meet the definition of a licensee under Article  
35 19B of Chapter 53 of the General Statutes, whichever occurs first. The terms of the remaining



- 1 members appointed by the Governor shall expire under the current schedule, and the Governor  
2 shall make appointments to fill vacancies as they occur.  
3       **SECTION 4.** This act is effective when it becomes law.



# HOUSE BILL 106: Expand Banking Commission Membership

2015-2016 General Assembly

**Committee:** House Banking  
**Introduced by:** Reps. J. Bell, Jordan  
**Analysis of:** PCS to First Edition  
H106-CSRQ-3

**Date:** March 19, 2015  
**Prepared by:** Drupti Chauhan  
Committee Counsel

**SUMMARY:** *House Bill 106 would increase the membership of the North Carolina Banking Commission (Commission) from 15 members to 17 members. This bill is a recommendation of the Legislative Research Commission Study Committee on Banking Law Amendments.*

*The Proposed Committee Substitute would leave the total number of the membership of the Commission at 15 members but would reduce the number of public members from 8 to 7 and add 1 member who is an individual licensed under Article 19B of Chapter 53 of the General Statutes which is the S.A.F.E. Mortgage Licensing Act.*

**CURRENT LAW:** The North Carolina Banking Commission (Commission) consists of 15 members including the State Treasurer who is ex officio member. Of these, 12 members are appointed by the Governor and 2 members who are both practical bankers are appointed by the General Assembly (one is recommended by the President Pro Tempore of the Senate and one is recommended by the Speaker of the House of Representatives). Of the Governor's 12 appointments, 3 are practical bankers, one is a consumer finance licensee, and eight are public members.

**BILL ANALYSIS:** The PCS for HB 106 would leave the total number of the membership of the Commission at 15 members but would reduce the number of public members from 8 to 7 and add 1 member who is an individual licensed under Article 19B of Chapter 53 of the General Statutes which is the S.A.F.E. Mortgage Licensing Act.

The PCS also specifies that when the bill becomes effective, the position on the Commission held by Donald E. Fader would convert to a position assigned for a licensee under Article 19B of Chapter 53 for his remaining term which is scheduled to expire April 1, 2017 or until he resigns or ceases to meet the definition of a licensee under Article 19B of Chapter 53, whichever occurs first. The terms of the remaining members appointed by the Governor would expire under the current schedule with the Governor making appointments to fill vacancies as they occur.

**EFFECTIVE DATE:** The bill would become effective when it becomes law.

**BACKGROUND:** The Legislative Research Commission Study Committee on Banking Law Amendments recommendation was based on the following finding:

"The Committee finds that inasmuch as a significant portion of the revenue generated to fund the North Carolina Office of Commissioner of Banks comes from mortgage industry licensees, it is appropriate that the industry should be represented on the State Banking Commission."

O. Walker Reagan  
Director



Research Division  
(919) 733-2578





GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H

1

HOUSE BILL 105

Short Title: Reduce Mortgage Lender Surety Bonds.

(Public)

Sponsors: Representatives J. Bell and Jordan (Primary Sponsors).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Banking.

February 27, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT TO REDUCE THE SURETY BOND REQUIREMENT FOR LICENSEES UNDER  
3 THE SECURE AND FAIR ENFORCEMENT MORTGAGE LICENSING ACT (NC  
4 S.A.F.E. ACT), AS RECOMMENDED BY THE LEGISLATIVE RESEARCH  
5 COMMISSION STUDY COMMITTEE ON BANKING LAW AMENDMENTS.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 53-244.103 reads as rewritten:

8 "§ 53-244.103. Surety bond requirements.

9 (a) Each mortgage loan originator or transitional mortgage loan originator shall be  
10 covered by a surety bond through employment with a licensee in accordance with this section.  
11 The surety bond shall provide coverage for each mortgage loan originator or transitional  
12 mortgage loan originator employed by the licensee in an amount as prescribed by subsection  
13 (b) of this section and shall be in a form prescribed by the Commissioner. The Commissioner  
14 may adopt rules with respect to the requirements for the surety bonds as needed to accomplish  
15 the purposes of the Article.

16 (b) Licensees shall be required to post a surety bond with the Commissioner at  
17 application to be subsequently adjusted as follows:

18 (1) A mortgage broker shall post a minimum surety bond of ~~seventy-five~~  
19 ~~thousand dollars (\$75,000)~~ twenty-five thousand dollars (\$25,000).  
20 Provided, however, if a mortgage broker has originated mortgage loans in  
21 North Carolina in a 12-month period ending December 31 in excess of ~~ten~~  
22 ~~million dollars (\$10,000,000)~~ twenty-five million dollars (\$25,000,000) but  
23 less than ~~fifty million dollars (\$50,000,000)~~ one hundred million dollars  
24 (\$100,000,000), then the mortgage broker's minimum bond amount shall be  
25 ~~one hundred twenty-five thousand dollars (\$125,000)~~ seventy-five thousand  
26 dollars (\$75,000), and if a mortgage broker has originated mortgage loans in  
27 North Carolina in a 12-month period ending December 31 of ~~fifty million~~  
28 ~~dollars (\$50,000,000)~~ one hundred million dollars (\$100,000,000) or more,  
29 the mortgage broker's minimum bond shall be ~~two hundred fifty thousand~~  
30 ~~dollars (\$250,000)~~ one hundred fifty thousand dollars (\$150,000).

31 (2) A mortgage lender or mortgage servicer shall post a minimum surety bond  
32 of ~~one hundred fifty thousand dollars (\$150,000)~~ one hundred thousand  
33 dollars (\$100,000). Provided, however, if a mortgage lender has originated  
34 mortgage loans in North Carolina in a 12-month period ending December 31  
35 ~~in excess of ten million dollars (\$10,000,000) but less than fifty million~~



dollars (\$50,000,000), then the mortgage lender's minimum bond amount shall be ~~two hundred fifty thousand dollars (\$250,000)~~, and if a mortgage lender has originated mortgage loans in North Carolina in a 12-month period ending December 31 of fifty million dollars (\$50,000,000) or more, then the mortgage lender's minimum bond shall be ~~five hundred thousand dollars (\$500,000)~~ one hundred fifty thousand dollars (\$150,000).

- (3) Any increased surety bond required under subdivision (1) or (2) of this subsection shall be filed with the Commissioner on or before May 31 immediately following the end of the 12-month December 31 period.

(c) The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee under this Article. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Consumer claims shall be given priority in recovering from the bond. When an action is commenced on a licensee's bond, the Commissioner may require the filing of a new bond. In this case, the licensee shall file a replacement bond in the required amount within 30 days. Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

(d) In the Commissioner's discretion and upon written request of the licensee, the Commissioner may waive the requirement of the bond for any licensee, if:

- (1) The licensee has been licensed by the Commissioner for at least three years;
- (2) The licensee can demonstrate a net worth, according to the most recent ~~audited~~ financial statement, ~~of at least four times~~ the required bond amount, and the licensee certifies that its net worth will be maintained at or above this level at all times and agrees to notify the Commissioner and to secure an appropriate bond in the event the net worth falls below this level;
- (3) The Commissioner believes the licensee has a satisfactory history of resolving complaints from consumers and responding to findings of investigations or examinations by the Commissioner; and
- (4) The Commissioner has no reason to believe the licensee will be unable to resolve complaints, respond to examination or investigative findings, or fulfill financial obligations under this Article.

(e) If the Commissioner has waived the bond requirement of a licensee based on subsection (d) of this section, the Commissioner may summarily reinstate the bond requirement on any licensee if the Commissioner has reason to believe the licensee no longer meets the standards in subsection (d) of this section. In this event, the licensee shall submit a bond, as required in subsection (b) of this section, within 30 days. Failure to submit a bond as directed by the Commissioner shall be grounds for summary suspension."

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



# HOUSE BILL 105: Reduce Mortgage Lender Surety Bonds

2015-2016 General Assembly

**Committee:** House Banking  
**Introduced by:** Reps. J. Bell, Jordan  
**Analysis of:** First Edition

**Date:** March 18, 2015  
**Prepared by:** Karen Cochrane-Brown  
Committee Counsel

**SUMMARY:** *House Bill 105 amends the S.A.F.E. Mortgage Licensing Act to reduce the amount of the surety bond requirement for licensed mortgage brokers, mortgage lenders, and mortgage servicers. The bill also allows the Commissioner to waive the requirement of a bond if the licensee has a net worth of at least the required bond amount.*

*This bill was recommended by the Legislative Research Commission Study Committee on Banking Law Amendments.*

## CURRENT LAW:

In 2009, the North Carolina Safe and Fair Enforcement Mortgage Licensing Act was enacted to conform to the requirements of Title V of the federal Housing and Economic Recovery Act of 2008. This is the licensing and regulatory statute for the mortgage lending industry which is administered by the Office of Commissioner of Banks.

The law currently provides that loan originators must be covered by a surety bond through employment with a licensee. A mortgage broker must post a bond of \$75,000, but if the broker originates between \$10 million and \$50 million dollars in loans per year, the bond must be for \$125,000, and if the broker originates \$50 million or more in loans per year, the bond must be for \$250,000.

A mortgage lender or servicer must post a minimum surety bond of \$150,000. If the mortgage lender originates between \$10 million and \$50 million in loans per year, the bond must be for \$250,000, and if the mortgage lender originates \$50 million or more in loans per year, the bond must be for \$500,000.

The law also allows the Commissioner to waive the bond requirement under certain circumstances, upon written request of the licensee.

## BILL ANALYSIS:

House Bill 105 reduces the bonding amounts required for mortgage licensees. The minimum bond for a mortgage broker is reduced from \$75,000 to \$25,000. If the mortgage broker originates between \$25 million and \$100 million in loans per year, the bond would be \$75,000, and if the mortgage broker originates \$100 million or more in loans per year, the bond would be \$150,000.

The bill further provides that the minimum surety bond that a mortgage lender or servicer must post is reduced from \$150,000 to \$100,000. If the mortgage lender or servicer originates \$100 million dollars or more in loans per year, the minimum bond would be \$150,000.

The bill also amends the Commissioner's authority to waive the bond requirement. Under current law, the Commissioner can waive the requirement if the licensee can demonstrate a net worth, by an audited financial statement, of at least four times the required bond amount. The bill changes this provision to

O. Walker Reagan  
Director



Research Division  
(919) 733-2578

# House Bill 105

*Page 2*

eliminate the requirement that net worth be demonstrated by an audited financial statement and reduces the net worth requirement to the same as the bond requirement.

**EFFECTIVE DATE:** This act is effective when it becomes law.

**BACKGROUND:** This bill was recommended by the Legislative Research Commission Committee on Banking Law Amendments. The Committee found that the surety bond requirements for North Carolina mortgage brokers and lenders is among the highest in our region and exceeds the amounts of surrounding states.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H

1

HOUSE BILL 104

Short Title: Eliminate Audited Financial Statement Req. (Public)

Sponsors: Representatives J. Bell and Jordan (Primary Sponsors).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Banking.

February 27, 2015

A BILL TO BE ENTITLED  
AN ACT TO ELIMINATE THE REQUIREMENT THAT LICENSED MORTGAGE  
LENDERS OBTAIN AN AUDITED FINANCIAL STATEMENT, AS RECOMMENDED  
BY THE LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON  
BANKING LAW AMENDMENTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 53-244.104 reads as rewritten:

**"§ 53-244.104. Minimum net worth requirements.**

(a) A minimum net worth shall be continuously maintained for licensees in accordance with this section. In the event that the mortgage loan originator or transitional mortgage loan originator is an employee or exclusive agent of a person subject to this Article, the net worth of the person subject to this Article can be used in lieu of the mortgage loan originator's or transitional mortgage loan originator's minimum net worth requirement. The minimum net worth to be maintained for each license is as follows:

(1) If the licensee is a mortgage lender, it shall maintain a net worth of at least one hundred thousand dollars (\$100,000), including evidence of liquidity of one million dollars (\$1,000,000), which may include a warehouse line of credit of one million dollars (\$1,000,000) or other evidence of funding capacity to conduct mortgage originations as documented by ~~an unqualified audited statement~~ a certified public accountant's compilation of financial condition.

(2) If the licensee is a mortgage servicer, it shall maintain a net worth of at least one hundred thousand dollars (\$100,000), not including monies in any escrow accounts held for others.

(3) If the licensee is a mortgage broker, it shall maintain a net worth of at least twenty-five thousand dollars (\$25,000), including evidence of liquidity of ten thousand dollars (\$10,000), as certified by the licensee in a certified statement of financial condition.

(b) The Commissioner may adopt rules to require additional minimum net worth or otherwise amend net worth requirements as are necessary to ensure licensees maintain adequate financial responsibility and accomplish the purposes of this Article."

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







# HOUSE BILL 104: Eliminate Audited Financial Statement Req

2015-2016 General Assembly

**Committee:** House Banking  
**Introduced by:** Reps. J. Bell, Jordan  
**Analysis of:** First Edition

**Date:** March 18, 2015  
**Prepared by:** Karen Cochrane-Brown  
Committee Counsel

**SUMMARY:** *House Bill 104 amends the S.A.F.E. Mortgage Licensing Act to eliminate the requirement that a licensed mortgage lender's net worth and funding capacity be demonstrated by an unqualified audited statement of financial condition. The bill substitutes a requirement that the licensed mortgage lender need only obtain a certified public accountant's compilation of financial condition.*

*This bill was recommended by the Legislative Research Commission Study Committee on Banking Law Amendments.*

## CURRENT LAW:

Under the North Carolina Safe and Fair Enforcement Mortgage Licensing Act, a licensed mortgage lender is required to maintain a net worth of at least \$100,000, including evidence of liquidity of \$1 million dollars, which may include a warehouse line of credit of \$1 million dollars or other evidence of funding capacity to conduct mortgage originations. The net worth and evidence of funding capacity must be documented by an unqualified audited statement of financial condition which is provided to the Commissioner of Banks.

According to the American Institute of CPAs, an unqualified audited financial statement provides the highest level of assurance about whether the financial statements are free of material misstatement.

## BILL ANALYSIS:

House Bill 104 eliminates the requirement that a licensed mortgage lender obtain an unqualified audited financial statement to demonstrate net worth and funding capacity and instead only requires a certified public accountant's compilation of financial condition.

According to the American Institute of CPAs, a compilation is the most basic level of service a CPA provides with respect to financial statements. In a compilation, the accountant does not obtain or provide any assurance that there are no material modifications that should be made to the financial statements.

**EFFECTIVE DATE:** This act is effective when it becomes law.

**BACKGROUND:** This bill was recommended by the Legislative Research Commission Committee on Banking Law Amendments. The Committee found that requiring unqualified audited financial statements, which are the highest standard of evaluation given by a certified public accountant and therefore the most costly, imposes a hardship on some lenders.

O. Walker Reagan  
Director



Research Division  
(919) 733-2578

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**NORTH CAROLINA GENERAL ASSEMBLY  
HOUSE OF REPRESENTATIVES**

**BANKING COMMITTEE REPORT  
Representative Julia C. Howard, Co-Chair  
Representative Charles Jeter, Co-Chair**

**FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL**

**HB 106**

Expand Banking Commission Membership.

Draft Number:	H106-PCS30125-RQ-3
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	J. Bell

**TOTAL REPORTED: 1**



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**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2015-2016 SESSION**

You are hereby notified that the **House Committee on Banking** will meet as follows:

**DAY & DATE:** Monday, April 27, 2015

**TIME:** 4:00 PM

**LOCATION:** 1228/1327 LB

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 511	Credit Unions/Statutory Changes.	Representative Ross Representative J. Bell Representative Bradford Representative Glazier Representative Collins Representative Szoka Representative R. Moore Representative Jeter
HB 541	Proof Required for Debt/Fees.	Representative Hardister Representative Szoka Representative Meyer
HB 126	Mortgage Origination Support Registration.	Representative Ross Representative Ross Representative Jeter Representative Hardister
HB 289	NC Money Transmitters Act.-AB	Representative McNeill
HB 627	Study Financial Transaction Card Fraud.	



Respectfully,

Representative Julia C. Howard, Co-Chair  
Representative Charles Jeter, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:36 PM on Tuesday, April 28, 2015.

\_\_\_ Principal Clerk  
\_\_\_ Reading Clerk – House Chamber

Brittany Eller (Committee Assistant)



**House Committee on Banking**  
**Monday, April 27, 2015, 4:00 PM**  
**1228/1327 Legislative Building**

**AGENDA**

**Welcome and Opening Remarks**

**Introduction of Pages**

**Bills**

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 511	Credit Unions/Statutory Changes.	Representative Ross Representative J. Bell Representative Bradford Representative Glazier
HB 541	Proof Required for Debt/Fees.	Representative Collins Representative Szoka Representative R. Moore Representative Jeter
HB 126	Mortgage Origination Support Registration.	Representative Hardister Representative Szoka Representative Meyer
HB 289	NC Money Transmitters Act.-AB	Representative Ross Representative Jeter Representative Hardister
HB 627	Study Financial Transaction Card Fraud.	Representative McNeill

**Presentations**

**Other Business**

**Adjournment**





**House Committee on Banking  
Thursday, April 28, 2015 at 4:00 PM  
Room 1228/1327 of the Legislative Building**

**MINUTES**

The House Committee on Banking met at 4:00 PM on April 28, 2015 in Room 1228/1327 of the Legislative Building. The following committee members were present: Representatives Bishop, Blust, Bradford, Bryan, Bumgardner, Cunningham, Dobson, Fraley, L. Hall, Hanes, Hardister, Howard, Jeter, Jordan, Malone, Moore, Ross, Szoka, Willingham, and Zachary. Karen Cocharan-Brown and Drupti Chauhan from the Legislative Research staff were in attendance.

Representative Julia Howard, Chair, called the meeting to order at 4:04 pm. She introduced the Sergeant of Arms staff.

The following bills were considered:

**HB 289, NC Money Transmitters Act.-AB. (Representatives Ross, Jeter, and Hardister)**

Representative Howard recognized Representative Ross, bill sponsor to explain. There was no discussion on the bill. Representative Bishop made a motion for a favorable report. The motion passed.

**HB 511, Credit Unions/Statutory Changes. (Representatives Ross.)**

Representative Howard recognized Representative Ross, bill sponsor to explain. There was discussion on the bill. Representative Zachary moved for a favorable report. The motion passed.

**HB 627, Study Financial Transaction Card Fraud. (Representative McNeill)**

Representative Howard recognized Representative McNeill, bill sponsor to explain the HB 627 PCS motioned by Representative Hanes. There was discussion on the bill. Representative Fraley made motion to serial referral to the Rules Committee. The motion passed.

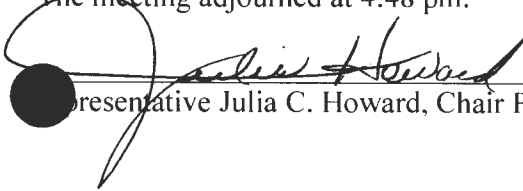
**HB 126 Mortgage Origination Support Registration( Representatives Hardister, Szoka, Meyer, and Ross)**

Representative Howard recognized Representative Hardister, bill sponsor to explain. There was no discussion on the bill. Representative Zachary moved for a favorable report. The motion passed.

**HB 541, Proof Required for Debt/Fees. (Representatives Collins, Szoka, R. Moore, and Jeter.)**

Representative Howard Recognized Representative Collins to explain the HB 541 PCS Motioned by Representative Hanes, for discussion only. There was discussion on the bill. Representative Howard announced discussion on the bill would be continued to the next meeting.

The meeting adjourned at 4:48 pm.

  
Representative Julia C. Howard, Chair Presiding

  
Cody Huneycutt, Committee Clerk



## VISITOR REGISTRATION SHEET

House Committee On Banking

4-27-2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Therese Allen	Bank
Bruce Mildner	NC SBA
Daniel Bann	T. Norman Jones
Imabel Villa-Jane	NCIR
Rochelle Sparke	CFSA
Carson Dine	MVA
Erin Robinson	NCIMA
Anteegen	NARS
Shirley Reed	IOG
Carlene McElroy	NC Justice Center
Ellen Harnick	Center for Responsible Lending



## VISITOR REGISTRATION SHEET

House Committee On Banking

Name of Committee

4-27-2015

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Janison Diller	NCBA
Nathan Batts	NCBA
Lauren Whaley	CCCL
Rose Connor	NCCUP
Jim Harned	BTH
Chris Agga	DOJ
Dave Fenton	City of Charlotte



# VISITOR REGISTRATION SHEET

House Committee On Banking

4-27-2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

DONALD REOWNS

PRA GROUP

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Andy Cel

NCRMM

Frank Gray

NCRUS





## VISITOR REGISTRATION SHEET

House Committee On Banking

4-27-2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Terry Lawler	ENCORE CAPITAL GROUP
Carr McLamb	TSS
David Rznii	N & O
RAY GRACE	COMMISSIONER OF BANKS
A. Bosken	NC OCCOB
Sara K. Weed	NCCOB
Ha Nguyen	NCCOB
Rae Campbell	NCCOB
Elizabeth Duff	NCCOB
Rich Zebri	WM
Kevin Anderson	NCPDS - Consumer Protection



Committee Sergeants at Arms

NAME OF COMMITTEE House Committee On Banking

DATE: 4-27-2015 Room: 1228

House Sgt-At Arms:

1. Name: Joe Austin
2. Name: Joe Crook
3. Name: Martha Gadison
4. Name: \_\_\_\_\_
5. Name: \_\_\_\_\_

Senate Sgt-At Arms:

1. Name: \_\_\_\_\_
2. Name: \_\_\_\_\_
3. Name: \_\_\_\_\_
4. Name: \_\_\_\_\_
5. Name: \_\_\_\_\_



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 289\*

Short Title: NC Money Transmitters Act.-AB

(Public)

Sponsors: Representatives Ross, Jeter, and Hardister (Primary Sponsors).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Banking, if favorable, Finance.

March 19, 2015

A BILL TO BE ENTITLED  
AN ACT TO ENACT THE NORTH CAROLINA MONEY TRANSMITTERS ACT AS  
REQUESTED BY THE OFFICE OF THE NORTH CAROLINA COMMISSIONER OF  
BANKS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 53 of the North Carolina General Statutes is amended by  
adding a new Article to read:

"Article 16B.

"Money Transmitters Act.

**"§ 53-208.41. Title.**

This act may be cited as the "North Carolina Money Transmitters Act."

**"§ 53-208.42. Definitions.**

For purposes of this Article, the following definitions apply:

- (1) Applicant. – A person filing an application for a license under this Article.
- (2) Authorized delegate. – An entity designated by the licensee under the provisions of this Article to engage in the business of money transmission on behalf of a licensee from a branch office in this State.
- (3) Branch office. – Any physical retail location within this State operated by the licensee or the licensee's authorized delegate at which the licensee engages in the business of money transmission. For the purposes of this Article, this includes automated kiosks.
- (4) Commissioner. – The Commissioner of Banks of the State of North Carolina.
- (5) Control. – The power, directly or indirectly, to direct the management or policy of the licensee or person subject to this Article, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner, or executive officer; (ii) directly or indirectly has ownership of or the power to vote ten percent (10%) or more of a class of outstanding voting securities; (iii) in the case of a limited liability company, is a managing member; or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, ten percent (10%) or more of the capital, is presumed to control the licensee or person subject to this Article.



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- (6) Controlling person. – Any person in control of a licensee or person subject to this Article.
- (7) Depository institution. – Any bank, savings association, mutual savings bank, savings bank, or other institution as defined in Section 3 of the Federal Deposit Insurance Act and any credit union whose share and deposit accounts are insured by the National Credit Union Administration under the Federal Credit Union Act.
- (8) Engage in the business of. – For compensation or gain, or in expectation of compensation or gain, either directly or indirectly, to make available monetary transmission services to North Carolina consumers for personal, family, or household purposes.
- (9) Executive officer. – The chief executive officer, chief operating officer, chief financial officer, chief compliance officer, chief technology officer, or any other individual the Commissioner identifies who exercises significant influence over, or participates in, major policy making decisions of the applicant or licensee without regard to title, salary, or compensation.
- (10) Licensee. – A person licensed under this Article.
- (11) Material litigation. – Any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in that entity's annual audited financial statements, report to shareholders, or similar documents.
- (12) Money transmission. – To engage in the business of any of the following:
- a. Sale or issuance of payment instruments or stored value primarily for personal, family, or household purposes; or
  - b. Receiving money or monetary value for transmission or holding funds incidental to transmission within the United States or to locations abroad by any and all means, including payment instrument, stored value, wire, facsimile, or electronic transfer, primarily for personal, family, or household purposes. This includes maintaining control of virtual currency on behalf of others.
- (13) Monetary value. – A medium of exchange, whether or not redeemable in money.
- (14) NMLS. – The Nationwide Mortgage Licensing System and Registry or its successors.
- (15) Outstanding transmission obligation. –
- a. Any payment instrument or stored value issued by the licensee which has been sold in the United States directly by the licensee, or any payment instrument or stored value issued by the licensee which has been sold by an authorized delegate of the licensee in the United States, but in either case has not yet been paid or refunded by the licensee.
  - b. Any money or monetary value received by the licensee for transmission that has not been remitted to the payee or refunded to the sender.
- To the extent that the outstanding transmission obligation was received in virtual currency, for the purposes of compliance with this Article, the obligation shall be denominated in the amount or value to be transmitted to the payee.
- (16) Payment instrument. – A check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher,

- 1 letter of credit, or any other instrument that is redeemable by the issuer  
2 exclusively in goods or services.
- 3 (17) Permissible investments. – One or more of the following, but only to the  
4 extent that they are maintained in an account located in the United States:
- 5 a. Cash.  
6 b. Certificates of deposit or other debt obligations of a depository  
7 institution, either domestic or foreign.  
8 c. Bills of exchange or time drafts drawn on and accepted by a  
9 commercial bank, otherwise known as bankers' acceptances, which  
10 are eligible for purchase by member banks of the Federal Reserve  
11 System.  
12 d. Any investment bearing a rating of one of the three highest grades as  
13 defined by a nationally recognized organization that rates securities.  
14 e. Investment securities that are obligations of the United States, its  
15 agencies, or instrumentalities or obligations that are guaranteed fully  
16 as to principal and interest of the United States or any obligations of  
17 any state, municipality, or any political subdivision thereof.  
18 f. Shares in a money market mutual fund, interest-bearing bills or notes  
19 or bonds, debentures, or preferred stock traded on any national  
20 securities exchange or on a national over-the-counter market, or  
21 mutual funds primarily composed of such securities or a fund  
22 composed of one or more permissible investments as set forth herein.  
23 g. Any demand borrowing agreement or agreements made to a  
24 corporation or a subsidiary of a corporation whose capital stock is  
25 listed on a national exchange.  
26 h. Value of receivables due to the licensee that are no more than 90  
27 days past due or otherwise doubtful of collection.  
28 i. Virtual currency owned by the licensee, but only to the extent of  
29 outstanding transmission obligations received by the licensee in  
30 like-kind virtual currency.  
31 j. Any other investments or security device approved by the  
32 Commissioner.
- 33 (18) Person. – Any individual, partnership, limited liability company, limited  
34 partnership, association, joint-stock association, trust, corporation, or other  
35 group engaged in joint business activities however organized.
- 36 (19) Stored value. – Monetary value representing a claim against the issuer that is  
37 stored on an electronic or digital medium and is evidenced by an electronic  
38 or digital record, and that is intended and accepted for use as a means of  
39 redemption for money or monetary value or payment for goods or services.  
40 The term does not include stored value that is redeemable by the issuer  
41 exclusively in goods or services; stored value that is redeemable exclusively  
42 in goods or services limited to transactions involving a defined merchant or  
43 location or set of locations, such as a specific retailer or retail chain, college  
44 campus, or subway system; or program points, miles, or other units issued in  
45 connection with a customer affinity or rewards program, even if there is a  
46 secondary market for the stored value.
- 47 (20) Virtual currency. – A digital representation of value that can be digitally  
48 traded and functions as a medium of exchange, a unit of account, or a store  
49 of value but only to the extent defined as stored value under  
50 G.S. 53-208.42(19), but does not have legal tender status as recognized by  
51 the United States Government.



**"§ 53-208.43. License requirement.**

(a) No person except those exempt pursuant to G.S. 53-208.44 shall engage in the business of money transmission in this State without a license as provided in this Article.

(b) A licensee may conduct its business in this State at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted under this Article.

(c) For the purposes of this Article, a person is considered to be engaged in the business of money transmission in this State if that person solicits or advertises money transmission services from a Web site that North Carolina citizens may access in order to enter into those transactions by electronic means.

**"§ 53-208.44. Exemptions.**

(a) This Article shall not apply to any of the following:

(1) The United States or any department, agency, or instrumentality or by a contractor thereof.

(2) The United States Postal Service.

(3) The State or any political subdivisions or by a contractor thereof.

(4) Banks, credit unions, savings and loan associations, savings banks, or mutual banks organized under the laws of any state or the United States.

(5) A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as a broker-dealer.

(6) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Regulation E, 12 C.F.R. § 1005 et seq., by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof.

(7) A person that is engaged exclusively in any of the following:

a. Delivering wages or salaries on behalf of employers to employees;

b. Facilitating the payment of payroll taxes to State and federal agencies;

c. Making payments relating to employee benefit plans;

d. Making distribution of other authorized deductions from employees' wages or salaries; or

e. Transmitting other funds on behalf of an employer in connection with transactions related to employees.

(8) A person appointed by a payee to collect and process payments as the bona fide agent of the payee, provided the person can demonstrate to the Commissioner that:

a. There exists a written agreement between the payee and agent directing the agent to collect and process payments on the payee's behalf;

b. The payee holds the agent out to the public as accepting payments on the payee's behalf; and

c. Payment is treated as received by the payee upon receipt by the agent.

This exemption would extend to those otherwise engaged in money transmission as set forth in G.S. 53-208.42(12)b., including those transactions conducted in whole or in part in virtual currency.

(b) Any person who seeks to engage in the business of money transmission in this State subject to exemption under (a)(7) or (a)(8) of this section shall submit a written request for verification of exemption to the Commissioner. Such request shall be in a form acceptable to



1 the Commissioner and shall include a copy of any written agreement and related documentation  
2 that is the basis for the specified exemption.

3 (c) Licensees may authorize delegates to engage in money transmission on their behalf  
4 subject to this Article subject to an express written agreement, which shall provide the  
5 following:

- 6 (1) The licensee appoints the person as its delegate with authority to engage in  
7 money transmission on behalf of the licensee in this State.
- 8 (2) Neither a licensee nor an authorized delegate may authorize sub-delegates  
9 without the written consent of the Commissioner.
- 10 (3) Authorized delegates, in their capacity as agents of the licensee, are subject  
11 to the supervision and regulation by the Commissioner notwithstanding  
12 exemption from licensure.
- 13 (4) The licensee shall issue a certificate of authority for each branch office at  
14 which it conducts licensed activities in this State through an authorized  
15 delegate, which shall be posted in public view and read as follows: "Money  
16 transmission on behalf of (licensee) is conducted at this location pursuant to  
17 the North Carolina Money Transmitters Act, N.C.G.S. § 53-208.41 et seq."

18 Licensees conducting money transmission subject to this Article are required to maintain  
19 full charge, control, and supervision of any authorized delegate and are responsible for ensuring  
20 any activity undertaken by an authorized delegate on behalf of the licensee is in compliance  
21 with this Article.

22 (d) The Commissioner may, by rule or by order, exempt from all or part of this Article  
23 any person, transaction, or class of persons or transactions if the Commissioner finds such  
24 action to be in the public interest and that the regulation of such persons or transactions is not  
25 necessary for the purposes of this Article.

26 **"§ 53-208.45. License application.**

27 (a) Applications under this Article shall be filed through the NMLS in a form  
28 acceptable to the Commissioner. To be considered complete, all applications shall be verified  
29 by oath or affirmation of the applicant or a designee thereof and shall contain:

- 30 (1) The legal name, along with any assumed names or trade names, principal  
31 address, contact information, and social security number or taxpayer  
32 identification number of the applicant.
- 33 (2) The applicant's form and place of organization, if applicable.
- 34 (3) A certificate of good standing from the state in which the applicant was  
35 incorporated, if applicable.
- 36 (4) A certificate of authority from the North Carolina Secretary of State to  
37 conduct business in this State, if required by the North Carolina Business  
38 Corporations Act, Chapter 55 of the General Statutes, or other evidence of  
39 applicant's registration or qualification to do business in this State.
- 40 (5) A copy of the applicant's active money service business registration with the  
41 United States Department of Treasury Financial Crimes Enforcement  
42 Network.
- 43 (6) A detailed description of the organizational structure of the applicant,  
44 including the identity of parents or subsidiaries of the applicant, and the  
45 disclosure of whether any parent or subsidiary is publicly traded on any  
46 stock exchange.
- 47 (7) A detailed business plan, including a description of the activities conducted  
48 by the applicant, including a history of any existing operations and a  
49 description of the money transmission activities in which the applicant seeks  
50 to be engaged in the State.



- 1           (8)   A copy of the applicant's policies and procedures, including the anti-money  
2           laundering compliance program.
- 3           (9)   A detailed description of the applicant's internal business controls, including  
4           controls specific to information technology and data integrity.
- 5           (10)   The history of the material civil litigation and a record of any criminal  
6           convictions for the applicant, controlling person, and key management  
7           personnel for a 10-year period prior to the date of the application, including  
8           authorization to perform a federal and State criminal background check.
- 9           (11)   The name, business and residence address, and employment history for the  
10           past five years for any controlling person and key management personnel.
- 11           (12)   A sample payment instrument, if applicable, which bears the name and  
12           address or telephone number of the issuer clearly printed on the payment  
13           instrument.
- 14           (13)   If the applicant seeks to engage in money transmission in this State through  
15           authorized delegates:
- 16               a.   A list identifying the proposed authorized delegates, including the  
17               name, mailing address, and other contact information of a  
18               representative of the authorized delegate and associated branch  
19               locations;
- 20               b.   A sample authorized delegate contract.
- 21           (14)   The name and address of the clearing bank or banks on which the applicant's  
22           payment instruments will be drawn or through which the payment  
23           instruments will be payable.
- 24           (15)   A copy of the applicant's most recent audited financial statement, including  
25           the balance sheet, statement of income or loss, statement of changes in  
26           shareholder equity, if applicable, and statement of changes in financial  
27           position and the applicant's audited financial statements for the immediately  
28           preceding two-year period. However, if the applicant is a wholly owned  
29           subsidiary of another corporation, the applicant may submit either the parent  
30           corporation's consolidated audited financial statements for the current year  
31           and for the immediately preceding two-year period or the parent  
32           corporation's Form 10K reports filed with the United States Securities and  
33           Exchange Commission for the prior three years in lieu of the applicant's  
34           financial statements. If the applicant is a wholly owned subsidiary of a  
35           corporation having its principal place of business outside the United States,  
36           similar documentation filed with the parent corporation's non-United States  
37           regulator may be submitted to satisfy this provision.
- 38           (16)   Copies of all filings, if any, made by the applicant with the United States  
39           Securities and Exchange Commission, or with a similar regulator in a  
40           country other than the United States, within the year preceding the date of  
41           filing of the application.
- 42           (a)   Upon request by the Commissioner or the Commissioner's designee, the applicant  
43           shall furnish any additional information necessary to enable the Commissioner to evaluate the  
44           application as required by G.S. 53-208.50.
- 45           (b)   The Commissioner is authorized, for good cause shown, to waive any requirements  
46           of this section with respect to any application or to permit any applicant to submit equivalent  
47           information in lieu of the information required by this section.
- 48           **"§ 53-208.46. Minimum net worth.**
- 49           (a)   An applicant shall possess and a licensee shall maintain at all times a net worth of  
50           not less than two hundred fifty thousand dollars (\$250,000) calculated in accordance with  
51           generally accepted accounting principles.



(b) The Commissioner may by order increase the amount of net worth required of an applicant or licensee if the Commissioner determines additional net worth is necessary to ensure safe and sound operation based on consideration of the following factors:

- (1) The nature and volume of the projected or established business.
- (2) The number of locations at or through which money transmission is or will be conducted.
- (3) The amount, nature, quality, and liquidity of assets.
- (4) The amount and nature of liabilities.
- (5) The history of operations and prospects for earning and retaining income.
- (6) The quality of operations and management.
- (7) The nature and quality of controlling persons.
- (8) The history of compliance with applicable State and federal law.
- (9) Any other factors the Commissioner deems relevant.

**"§ 53-208.47. Surety bond.**

(a) Applicants shall be required to post a surety bond with the Commissioner at application and licensees shall maintain a surety bond in the amount of one hundred fifty thousand dollars (\$150,000) to be subsequently adjusted as set forth in subsection (b) of this section.

(b) The surety bond amount required subsequent to initial licensure shall consist of a base amount of one hundred fifty thousand dollars (\$150,000) for money transmission volumes in this State of no more than one million dollars (\$1,000,000). However, if a licensee has transmission volume in North Carolina in a 12-month period ending December 31 in excess of one million dollars (\$1,000,000) but less than five million dollars (\$5,000,000), then the licensee's bond amount shall be one hundred seventy five thousand dollars (\$175,000); if a licensee has transmission volume in North Carolina in a 12-month period ending December 31 in excess of five million dollars (\$5,000,000) but less than ten million dollars (\$10,000,000), then the licensee's bond amount shall be two hundred thousand dollars (\$200,000); if a licensee has transmission volume in North Carolina in a 12-month period ending December 31 in excess of ten million dollars (\$10,000,000) but less than fifty million dollars (\$50,000,000), then the licensee's bond amount shall be two hundred twenty-five thousand dollars (\$225,000); and if a licensee has transmission volume in North Carolina in a 12-month period ending December 31 in excess of fifty million dollars (\$50,000,000), then the licensee's bond amount shall be two hundred fifty thousand dollars (\$250,000).

(c) Any increased surety bond required under subsection (b) shall be filed with the Commissioner on or before May 31 annually. Failure to obtain the additional surety bond required is grounds for summary suspension pursuant to G.S. 53-208.57(d)(2).

(d) The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money or monetary value in connection with the sale and issuance of payment instruments, stored value, or transmission of money. The Commissioner has the discretion to require the applicant obtain additional insurance coverage to address related cybersecurity risks inherent in the applicant's business model as it relates to virtual currency transmission and to the extent such risks are not within the scope of the required surety bond.

(e) The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Claimants against the licensee may themselves bring suit directly on the security bond, or the Commissioner may bring suit on behalf of claimants, either in one action or in successive actions.

(f) In lieu of a surety bond, the licensee may deposit with the Commissioner, or with any bank in this State designated by the licensee and approved by the Commissioner, an



aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the surety bond or portion thereof, the following:

- (1) Unencumbered cash.
- (2) Unencumbered interest-bearing bonds.
- (3) Unencumbered notes.
- (4) Unencumbered debentures.
- (5) Unencumbered obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States.
- (6) Unencumbered obligations of this State or of any political subdivision of the State, or guaranteed by this State.

The securities or cash shall be deposited as aforesaid and held to secure the same obligations as would the surety bond, but the depositor shall be entitled to receive all interest and dividends thereon, shall have the right, with the approval of the Commissioner, to substitute other securities for those deposited, and shall be required to do so on written order of the Commissioner made for good cause shown.

(g) The surety bond shall remain in effect until cancellation, which may occur only after 90 days' written notice to the Commissioner. Cancellation shall not affect any liability incurred or accrued during that period.

(h) The surety bond shall remain in place for no less than five years after the licensee ceases money transmission operations in the State. However, notwithstanding this provision, the Commissioner may permit the surety bond to be reduced or eliminated prior to that time to the extent that the amount of the licensee's outstanding payment instruments, stored value obligations, and money transmitted in this State is reduced.

(i) The surety bond proceeds and any cash or other collateral posted as security by a licensee shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments, stored value obligations, and money transmissions and to the State in the event of the bankruptcy of the licensee.

**"§ 53-208.48. Permissible investments and statutory trust.**

(a) Each licensee under this Article shall possess at all times unencumbered permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding transmission obligations. This requirement may be waived by the Commissioner if the dollar volume of a licensee's outstanding transmission obligations does not exceed the bond or other security devices posted by the licensee pursuant to G.S. 53-208.47.

(b) Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored value obligations in the event of the bankruptcy of the licensee.

**"§ 53-208.49. Application fees and annual assessment.**

(a) Application Fees. Each application for initial licensure shall be accompanied by a nonrefundable filing fee of one thousand five hundred dollars (\$1,500).

(b) Annual Assessment. For the purpose of meeting the cost of regulation under this Article, each licensee shall pay to the Commissioner an annual assessment as provided in this subsection. The annual assessment shall consist of a base amount of five thousand dollars (\$5,000) for volumes of no more than one million dollars (\$1,000,000) plus an additional sum, calculated on the transmission dollar volume reported by the licensee pursuant to G.S. 53-208.53 for the previous calendar year. The cumulative assessment shall be calculated as follows:

<u>Transmission in U.S. Dollar Volume</u>	<u>Per U.S. Dollar</u>
<u>\$1,000,001 to \$5,000,000</u>	<u>\$0.0008</u>



\$5,000,001 to \$10,000,000	\$0.0006
\$10,000,001 to \$50,000,000	\$0.00004
More Than \$50,000,000.00	\$0.0000006

The Commissioner may collect the assessment provided for in this subsection annually or in periodic installments as approved by the State Banking Commission.

**"§ 53-208.50. Issuance of license.**

(a) Upon receipt of a complete license application, as set forth under G.S. 53-208.45, the Commissioner shall investigate the financial condition and responsibility, financial and business experience, the character and general fitness of the applicant, and any other matters deemed relevant by the Commissioner. The Commissioner may require additional information and may require the amendment of the application in the course of the investigation. An applicant's failure to furnish all required information within 30 days after filing the application or within 30 days of a request by the Commissioner for additional information may be considered an abandonment of the application. In the course of the investigation, the Commissioner may conduct an on-site examination of the applicant, the reasonable cost of which shall be borne by the applicant.

(b) The Commissioner may only approve an application for licensure when the Commissioner has determined that all of the following requirements have been satisfied or are reasonably likely to be satisfied within a reasonable time period as specified by the Commissioner in the order of approval:

- (1) The applicant has satisfied the requirements imposed by this Article;
- (2) The applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community;
- (3) The applicant has demonstrated net worth necessary to satisfy the requirements in accordance with G.S. 53-208.46;
- (4) The applicant has obtained a surety bond in conformance with G.S. 53-208.47;
- (5) That neither the applicant nor any controlling person are identified on the Specially Designated Nationals and Blocked Persons List prepared by the United States Department of the Treasury or the United States Department of State subject to Presidential Executive Order No. 13224, Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism;
- (6) The controlling persons and key management personnel, as a group, have degrees of character, competence, and experience which command the confidence and trust of the community and justify the belief that the applicant will operate safely, soundly, and in compliance with the law;
- (7) The anticipated volume and nature of business projected in the application are reasonable and indicate a reasonable likelihood of safe and sound operation.

(c) Licenses issued under this Article are perpetual and not assignable. Control of a licensee shall not be acquired through a stock purchase, merger, or other device without prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension as set forth under G.S. 53-208.56 are applicable to the acquiring person.

**"§ 53-208.51. Prohibited practices.**

No person required to be licensed under this Article shall:

- (1) Fail to remit all money or monetary value received for transmission pursuant to G.S. 53-208.42(12)b., or give instructions committing equivalent money



- 1                   or monetary value to the person designated by the sender within 10 days  
2                   after receipt by the licensee unless otherwise directed by the sender;  
3           (2)       Fail to immediately notify the Commissioner in writing if the licensee  
4                   dishonors or fails to satisfy any money transmission transaction within the  
5                   10 days following receipt for any reason other than direction by the sender;  
6           (3)       Engage in the business of money transmission in the State under any name  
7                   other than that which it is organized or otherwise authorized to do business  
8                   in the State;  
9           (4)       Fail to comply with the Federal Bank Secrecy Act, 31 U.S.C. 5311 et seq.,  
10                   and 31 C.F.R. Part 1022, including maintenance of active registration with  
11                   the United States Department of Treasury Financial Crimes Enforcement  
12                   Network;  
13           (5)       Fail to comply with the Federal Electronic Funds Transfer Act, 12  
14                   U.S.C.1693 et seq., and Regulation E, 12 C.F.R. 1005 et seq.;  
15           (6)       Fail to safeguard identifying information obtained in the course of money  
16                   transmission and otherwise comply with the requirements set forth under  
17                   G.S. 75-60 et seq.;  
18           (7)       Fail to comply with applicable State and federal laws and regulations related  
19                   to the business of money transmission;  
20           (8)       Use or cause to be published or disseminated any advertising communication  
21                   which contains any false, misleading, or deceptive statement or  
22                   representation; or  
23           (9)       Engage in unfair, deceptive, or fraudulent practices.

24   **"§ 53-208.52. Maintenance of records.**

25       (a)       Each licensee shall maintain such books, accounts, and other records as the  
26       Commissioner may require for a period of no less than three years unless the Commissioner, by  
27       rule, prescribes otherwise for particular types of records. Such records shall be segregated from  
28       any other business in which the licensee is engaged and, at a minimum, include:

- 29           (1)       A record or records of each payment instrument sold.  
30           (2)       A general ledger containing all assets, liability, capital, income, and expense  
31                   accounts, which general ledger shall be posted at least monthly.  
32           (3)       Settlement sheets received from authorized delegates.  
33           (4)       Bank statements and bank reconciliation records.  
34           (5)       Records of outstanding transmissions, payment instruments, and stored  
35                   value.  
36           (6)       Records of each payment instrument paid within the three-year period.  
37           (7)       A list of the names and addresses of all of the licensee's proposed authorized  
38                   delegates, if any, and a copy of each written agreement in conformance with  
39                   G.S. 53-208.44(c)(1).

40       (a)       Maintenance of the documents required by this section in the form of any digital or  
41       electronic medium shall constitute compliance with this section provided records remain  
42       readily convertible into legible, tangible documents and shall be treated as originals for the  
43       purposes of any examination or investigation conducted pursuant to this Article.

44       (b)       All records required to be maintained shall be secured against unauthorized access  
45       and damage and may be maintained at a location outside this State so long as they are made  
46       accessible to the Commissioner on seven days' written notice.

47       (c)       All records required to be maintained under this Article shall be prepared in  
48       accordance with generally accepted accounting principles, where applicable.

49       (d)       A licensee shall notify the Commissioner of any change in the location of its records  
50       within 10 days following such change.

51   **"§ 53-208.53. Reporting.**



(a) Annual Report. No later than 90 days after the end of the calendar year, licensees shall file an annual report in a form prescribed by the Commissioner through NMLS, which shall include:

- (1) A copy of its most recent audited consolidated annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, if applicable, and statement of changes in financial position, or, in the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited financial statement;
- (2) The total amount of outstanding transmission obligations;
- (3) Any material changes to any of the information submitted by the licensee on its original application, which have not been previously reported to the Commissioner on any other report required to be filed under this Article;
- (4) Copies of bank statements and other documentation necessary to document the existence and quality of the licensee's permissible investments; and
- (5) A list of the branch offices at which business regulated by this Article is being conducted by either the licensee or its authorized delegates.

(b) Quarterly Reports. No later than 60 days after the calendar quarter has ended, licensees shall file a quarterly call report in a form prescribed by the Commissioner through NMLS, which shall at a minimum include:

- (1) The number and dollar volume of money transmission transactions in the State by activity type; and
- (2) The total amount of outstanding transmission obligations;

(c) Other Reports of Condition. A licensee shall submit to the Commissioner through the NMLS reports of condition and any other reports requested by the Commissioner in order to carry out the purposes of this Article.

(d) Failure to timely submit any reports required under this section is grounds for summary suspension pursuant to G.S. 53-208.57(d)(2).

**"§ 53-208.54. Notice of Material Event.**

(a) Within 15 days of a change or acquisition of control of a licensee, the licensee shall provide notice of the event to the Commissioner through NMLS in writing and in a form prescribed by the Commissioner. The notice shall be accompanied by any information, data, and records required by the Commissioner.

(b) Within 15 days of the occurrence of any one of the events listed below, a licensee shall file a written report with the Commissioner through NMLS describing the event and its expected impact on the licensee's activities in the State:

- (1) The filing for bankruptcy or reorganization by the licensee.
- (2) The institution of revocation or suspension proceedings against the licensee by any State or governmental authority with regard to the licensee's money transmission activities.
- (3) Any felony indictment of the licensee or any controlling person or key management personnel related to money transmission activities.
- (4) Any felony conviction of the licensee or any controlling person or key management personnel related to money transmission activities.

(c) If the information contained in any document filed with the Commissioner or the NMLS is or becomes inaccurate or incomplete in any material respect, the licensee or applicant shall within 30 days file a correcting amendment to the information contained in the document.

**"§ 53-208.55. Examination and investigation authority.**

(a) For purposes of initial licensure, suspension, conditioning, revocation, or termination, or general or specific inquiry, investigation, or examination to determine



1 compliance with this Article, the Commissioner may access, receive, and use any books,  
2 accounts, records, files, documents, information, or evidence including:

3 (1) Criminal, civil, and administrative history information;

4 (2) Personal history and experience information;

5 (3) Any other documents, information, or evidence the Commissioner deems  
6 relevant to the inquiry, investigation, or examination regardless of the  
7 location, possession, control, or custody of the documents, information, or  
8 evidence.

9 (b) For purposes of investigating violations or complaints arising under this Article, or  
10 for the purposes of examination, the Commissioner may review, investigate, or examine any  
11 licensee, individual, or person subject to this Article in order to carry out the purposes of this  
12 Article. The Commissioner may interview the controlling persons, employees, independent  
13 contractors, delegates, third-party vendors, and customers of the licensee concerning the  
14 licensee's business. The Commissioner may direct, subpoena, or order the person to produce  
15 books, accounts, records, files, and any other documents the Commissioner deems relevant to  
16 the inquiry. Any investigation or examination that, in the opinion of the Commissioner,  
17 requires extraordinary review, investigation, or special examination shall be subject to the  
18 actual costs of the additional expenses and the hourly rate for the staff's time, to be determined  
19 annually by the State Banking Commission.

20 (c) Each person subject to this Article shall make available to the Commissioner upon  
21 request the books and records relating to the operations of the licensee or person. No person  
22 subject to examination or investigation under this section may knowingly withhold, abstract,  
23 remove, mutilate, destroy, or secrete any books, records, or other information retained in any  
24 format. Each person subject to this Article shall also make available for interview by the  
25 Commissioner the controlling persons, employees, independent contractors, delegates, and  
26 third-party vendors of the person concerning money transmission subject to this Article.

27 (d) Each person subject to this Article shall make or compile such reports or prepare  
28 other information as may be directed or requested by the Commissioner in order to carry out  
29 the purposes of this section.

30 (e) In making any examination or investigation authorized by this Article, the  
31 Commissioner may control access to any documents and records of the person under  
32 examination or investigation. The Commissioner may take possession of the documents and  
33 records, or place a person in exclusive charge of the documents and records in the place where  
34 they are usually kept. During the period of control, no person shall remove or attempt to  
35 remove any of the documents and records except pursuant to a court order or with consent of  
36 the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents  
37 or records have been or are at risk of destruction, the person shall retain access as necessary to  
38 conduct its ordinary business.

39 (f) In order to carry out the purposes of this section, the Commissioner may:

40 (1) Enter into agreements or relationships with other government officials or  
41 regulatory associations in order to improve efficiencies and reduce  
42 regulatory burden by sharing resources, standardized or uniform methods or  
43 procedures, and records and related information obtained under this section;

44 (2) Use, hire, contract, or employ analytical systems, methods, or software to  
45 examine or investigate any person subject to this Article;

46 (3) Accept and rely on examination or investigation reports made by other  
47 government officials, within or without this State;

48 (4) Accept audit reports made by an independent certified public accountant or  
49 other qualified third-party auditor for any person subject to this Article and  
50 may incorporate the audit report in the report of examination or  
51 investigation.



**"§ 53-208.56. Licensure authority.**

The Commissioner may by order, deny, suspend, revoke, or refuse to issue a license under this Article, or may restrict or limit the manner in which a licensee or applicant engages in the business of money transmission, if the Commissioner finds both of the following:

(1) That the order is in the public interest; and

(2) Any of the following circumstances apply:

- a. Any fact or condition exists that, if it had existed at the time of application, would have been grounds for denial;
- b. The licensee or applicant has filed any application, report, or other document with the Commissioner containing statements that, in light of the circumstances in which they were made, were false or misleading with respect to a material fact;
- c. The licensee or applicant fails at any time to meet the requirements of G.S. 53-208.46, 53-208.47, or 53-208.48;
- d. A controlling person or key management personnel of the licensee or applicant has been convicted of:
  1. A misdemeanor in the last 10 years involving fraud, money laundering, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to commit any of these offenses or involving any financial service or financial service-related business; or
  2. Any felony in the last seven years.
- e. The licensee or applicant has violated or failed to comply with any provision of this Article, rule issued pursuant to this Article, or order of the Commissioner;
- f. The licensee has conducted its business in an unsafe or unsound manner;
- g. The licensee or applicant is insolvent, has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;
- h. The licensee fails to respond to and cooperate fully with notices from the Commissioner or the Commissioner's designee related to the scheduling and conducting of an examination or investigation pursuant to § 53-208.55;
- i. The licensee or applicant fails to respond to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed, which allege or involve violation of this Article;
- j. The licensee fails to make any report required by this Article;
- k. The licensee or applicant is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the money transmission business; or
- l. The licensee or applicant is the subject of an order entered within the past five years by the authority of any state or federal agency with jurisdiction over the business of money transmission.

**"§ 53-208.57. Disciplinary authority.**

(a) Unless otherwise provided, all administrative actions and hearings conducted pursuant to this Article shall proceed in accordance with Article 3A of Chapter 150B of the General Statutes.



(b) Upon issuance of any summary order permitted under this Article the Commissioner shall promptly notify the person subject to the order that the order has been entered and the reasons for the order. Within 20 days of receiving notice of the order, the person subject to the order may request in writing a hearing before the Commissioner. Upon receipt of such a request, the Commissioner shall calendar a hearing within 15 days. If a licensee does not request a hearing, the order will remain in effect unless it is modified or vacated by the Commissioner.

(c) The Commissioner may by order:

(1) Impose a civil money penalty upon any person required to be licensed under this Article for any violation of or failure to comply with this Article or any order of the Commissioner in an amount specified by the Commissioner, not to exceed five thousand dollars (\$5,000) for each violation or, in the case of a continuing violation, one thousand dollars (\$1,000) for each day that the violation continues. Each violation of or failure to comply with this Article shall be a separate and distinct violation. All civil money penalties collected under this Article shall be paid to the county school fund.

(2) Require that any person required to be licensed under this Article to disgorge and pay to the sender any amounts that were not remitted or refunded in violation of G.S. 53-208.51(1).

(d) In addition to the summary suspension procedures authorized by G.S. 150B-3(c), if the Commissioner has reason to believe that a licensee or person subject to this Article may have violated or failed to comply with any provision of this Article and has reason to believe that such violation or failure to comply presents an imminent threat to the public, the Commissioner may:

(1) Summarily order the licensee or person subject to this Article to cease and desist from any harmful activities or violations of this Article;

(2) Summarily suspend the license of a licensee under this Article.

(e) When a licensee is subject to disciplinary action under this Article, the licensee, with the consent and approval of the Commissioner, may surrender the license and all the rights and privileges pertaining to it. A person who surrenders a license shall not be eligible for or submit any application for licensure under this Article during any period specified by the Commissioner.

(f) If it appears to the Commissioner that any person has committed or is about to commit a violation of any provision of this Article or of any rule or order of the Commission, the Commission may apply to Wake County Superior Court for an order enjoining the person from violating or continuing to violate this Article or any rule, regulation, or order and for injunctive or such other relief as the nature of the case may require.

(g) The requirements of this Article apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever, including structuring a transaction in a manner to avoid classification of the transaction as money transmission.

(h) The Commissioner, in the exercise of reasonable judgment, may compromise, settle, and collect civil penalties with any person for violations of any provision of this Article, or of any rule, regulation, or order issued or promulgated to this Article.

**"§ 53-208.58. Criminal penalties.**

(a) Any person who knowingly and willfully violates any provision of this Article for which a penalty is not specifically provided is guilty of a Class 1 misdemeanor.

(b) Any person who knowingly and willfully makes a material, false statement in any document filed or required to be filed under this Article with the intent to deceive the recipient of the document is guilty of a Class 1 misdemeanor.

(c) Any person who knowingly and willfully engages in the business of money transmission without a license as provided herein shall be guilty of a Class 1 misdemeanor.



**"§ 53-208.59. Confidentiality.**

(a) Notwithstanding any other provision of law, all information or reports obtained by the Commissioner from an applicant, licensee, or authorized delegate, whether obtained through reports, applications, examination, audits, investigation, or otherwise, including (i) all information contained in or related to examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the Commissioner; and (ii) financial statements, balance sheets, or authorized delegate information are subject to confidential treatment as set forth under G.S. 53C-2-7.

(b) The Commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies or associations representing governmental agencies and may share otherwise confidential information pursuant to these written agreements, but only to the extent permitted by G.S. 53C-2-7(d). Information shared pursuant to the agreements authorized under this section shall retain any and all applicable privilege and related confidentiality protections provided by State or federal law.

(c) Nothing in this section shall prohibit the Commissioner from releasing to the public a list of persons licensed under this Article or aggregated financial data on those licensees.

**"§ 53-208.60. Rules.**

(a) The State Banking Commission may adopt rules necessary to implement this Article.

(b) Pursuant to G.S. 53C-2-6(b), any person aggrieved by any rule or order of the Commissioner under this Act may appeal to the State Banking Commission for review upon providing notice in writing within 20 days after the act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the State Banking Commission shall be entitled to petition for judicial review pursuant to G.S. 53C-2-6(b).

**"§ 53-208.61. Service of process.**

(a) Any person subject to this Article is deemed to have:

- (1) Consented to the jurisdiction of the courts of this State for all actions arising under this Article; and
- (2) Appointed the Secretary of State as such person's agent for the purpose of accepting service of process in any action, suit, or proceeding that may arise under this Article.

(b) For the purposes of this Article, the Commissioner shall be deemed to have complied with the requirements of law concerning service of process upon mailing by certified mail any notice required or permitted to a person subject to this Article, postage prepaid and addressed to the last known address on file with the Commissioner.

**"§ 53-208.62. Commissioner's participation in nationwide registry.**

(a) The Commissioner may require all persons subject to this Article to be licensed through the NMLS, and upon issuing such requirement, the Commissioner shall establish a reasonable transition period. In order to carry out these requirements, the Commissioner is authorized to participate in the NMLS.

(b) The Commissioner is authorized to establish relationships or contracts with the NMLS or other entities designated by the NMLS to collect and maintain records and process transaction fees or other fees related to licensees or other person subject to this Article.

(c) For the purpose of participating in the NMLS, the Commissioner is authorized to waive or modify, in whole or in part, any or all of the requirements as reasonably necessary to participate in the NMLS.

**"§ 53-208.63. Severability.**

Should any provision, sentence, clause, section, or part of this Article for any reason be held unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall

1 not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of  
2 this Article.

3 **"§ 53-208.64. Transition.**

4 Any person who holds in good standing a money transmitters license issued by the  
5 Commissioner on or after November 1, 2014, may continue to engage in such business subject  
6 to the requirements of this Article."

7 **SECTION 2.** Article 16A of Chapter 53 of the General Statutes is repealed.

8 **SECTION 3.** This act becomes effective October 1, 2015.



## HOUSE BILL 289: NC Money Transmitters Act.-AB

2015-2016 General Assembly

<b>Committee:</b>	House Banking, if favorable, Finance	<b>Date:</b>	April 7, 2015
<b>Introduced by:</b>	Reps. Ross, Jeter, Hardister	<b>Prepared by:</b>	Drupti Chauhan
<b>Analysis of:</b>	First Edition		Committee Counsel

**SUMMARY:** House Bill 289 would enact a new Money Transmitters Act (MTA) as requested by the Office of the North Carolina Commissioner of Banks.

[As introduced, this bill was identical to S680, as introduced by Sen. Gunn, which is currently in Rules and Operations of the Senate.]

**CURRENT LAW:** Article 16A of Chapter 53 of the General Statutes is the current Money Transmitters Act enacted in 2001.

**BILL ANALYSIS:** House Bill 289 would enact a new MTA as requested by the Office of the North Carolina Commissioner of Banks.

**Definitions**—Several new terms are added to the list of defined terms including "branch office"; "depository institution"; "NMLS"; and "virtual currency". Several definitions are revised including "payment instrument" and "stored value".

**License Requirement**—Clarifies that licensure is only required for those who profit from the transmission of funds and excludes those that transmit funds without compensation or gain. Also clarifies existing requirement that out of state entities must be licensed if their services are available to North Carolina consumers.

**Exemptions**—Provides that individuals acting as the agent of the recipient of transmitted funds under a written contract are exempt from the MTA. Creates a new exemption from licensure for employers who use money transmission services to pay wages. Provides for a method to seek exemption from the Office of the Commissioner of Banks.

**License Application**—Applications for licenses under the MTA would be through the Nationwide Multistate Licensing System (NMLS) which is used by over 20 other states.

**Minimum Net Worth**—Creates a uniform minimum net worth of \$250,000 for all applicants and allows the Commissioner of Banks (Commissioner) to increase the amount of net worth required of an applicant or licensee if the Commissioner determines that the additional net worth is necessary based on consideration of specific factors.

**Surety Bond**—Restructures the surety bond requirement to provide an initial bond amount of \$150,000 with the bond for subsequent years based on a tiered structure determined by volume of transmissions in the State with a maximum of \$250,000. Current law requires a minimum of \$150,000 with an additional \$5,000 required per location in the State up to a maximum of \$250,000.

**Permissible Investments and Statutory Trusts**—Makes conforming statutory reference changes.

**Application Fees and Annual Assessment**—Keeps existing application fee of \$1,500 and replaces the examination fee and annual renewal fee with an annual assessment to be paid by the licensee to cover the cost of the regulation, based on the company's North Carolina transmission volume.

**Issuance of License**—Codifies an existing administrative rule that an application for a license will be considered abandoned if the applicant fails to provide all requested information within 30 days of submission or if the applicant fails to respond to subsequent requests for information necessary to evaluate the application. Annual

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Director



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# House Bill 289

Page 2

licenses would become perpetual licenses which eliminates the current requirement that companies must renew their licenses every year and pay annual renewal fee.

**Prohibited Practices**—Creates a clear set of prohibited practices that address risks posed by money transmission such as failure to remit money received for transmission.

**Maintenance of Records**—Sets out the maintenance of records section of the current law and updates the language related to the maintenance of digital records to account for different methods of digitizing documents. Clarifies the duty of the licensee to notify the Commissioner of the change of location of stored records.

**Reporting**—Consolidates annual and quarterly reports into one statute and provides that the reporting is to be done through the NMLS. The Commissioner could accept other reporting through the NMLS to avoid duplicate reporting requirements where possible.

**Notice of Material Event**—Clarifies existing reporting requirements that are associated with material events which are referred to as "extraordinary reporting requirements" in the current law. One addition would be that within 15 days of a change or acquisition of control of a licensee, the licensee would provide notice of the event to the Commissioner.

**Examination and Investigation Authority**—Consolidates the existing authority of the Commissioner to examine and investigate both licensees and prospective licensees to ensure compliance.

**Licensure Authority**—Sets forth a 2 part test that allows the Commissioner through an order deny, suspend, revoke, or refuse to issue a license under certain listed circumstances and the order would be in the public interest.

**Disciplinary Authority**—Provides that all administrative actions and hearings under MTA are subject to the NC Administrative Procedures Act. Allows the Commissioner to issue a summary suspension of a license or cease and desist order if the Commissioner has reason to believe there has been a violation of law that poses an imminent threat to the public. This would be different than current law which only allows the Commissioner to pursue an injunction in Wake County Superior Court. The maximum civil money penalty for each violation would increase to \$5,000 from \$1,000. The Commissioner would also continue to have the authority to negotiate and settle disputed matters short of litigation.

**Criminal Penalties**—Incorporates existing criminal penalties.

**Confidentiality**—Clarifies existing confidentiality requirements to extend to information obtained in the regulation of money transmitters.

**Rules**—Keeps existing authority of the State Banking Commission to adopt rules necessary to implement the MTA as well as the method for aggrieved parties to appeal a rule or order of the Commissioner to the State Banking Commission.

**Service of Process**—Keeps existing language to service of process on licensee and adds the service of process language from other statutes administered by the Commissioner.

**Commissioner's Participation in Nationwide Registry**—Authorizes the migration to the NMLS.

**Severability**—Allows for any invalid or unconstitutional provision to be removed without affecting the MTA as a whole.

**Transition**—Provides that any licensee who holds a license in good standing on or after November 1, 2014 can continue to engage in money transmitting subject to the requirements of the MTA.

**EFFECTIVE DATE:** The bill would become effective October 1, 2015.





GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H

1

HOUSE BILL 511

Short Title: Credit Unions/Statutory Changes. (Public)

Sponsors: Representatives Ross, J. Bell, Bradford, and Glazier (Primary Sponsors).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Banking.

April 2, 2015

A BILL TO BE ENTITLED  
AN ACT TO MAKE VARIOUS STATUTORY CHANGES RELATED TO CREDIT  
UNIONS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 47C-4-110(a) reads as rewritten:

**"§ 47C-4-110. Escrow of deposits.**

(a) Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to G.S. 47C-4-102(c) shall be immediately deposited in a trust or escrow account in ~~an insured bank or savings and loan association in North Carolina~~ a federally insured depository institution lawfully doing business in this State and shall remain in such account for such period of time as a purchaser is entitled to cancel pursuant to G.S. 47C-4-108 or cancellation by the purchaser thereunder whichever occurs first. Payments held in such trust or escrow accounts shall be deemed to belong to the purchaser and not the seller."

**SECTION 2.** G.S. 42-50 reads as rewritten:

**"§ 42-50. Deposits from the tenant.**

Security deposits from the tenant in residential dwelling units shall be deposited in a trust account with a licensed and ~~insured bank or savings institution located in the State of North Carolina~~ federally insured depository institution lawfully doing business in this State or the landlord may, at his option, furnish a bond from an insurance company licensed to do business in North Carolina. The security deposits from the tenant may be held in a trust account outside of the State of North Carolina only if the landlord provides the tenant with an adequate bond in the amount of said deposits. The landlord or his agent shall notify the tenant within 30 days after the beginning of the lease term of the name and address of the bank or institution where his deposit is currently located or the name of the insurance company providing the bond."

**SECTION 3.** G.S. 42A-15 reads as rewritten:

**"§ 42A-15. Trust account uses.**

A landlord or real estate broker may require a tenant to pay all or part of any required rent, security deposit, or other fees permitted by law in advance of the commencement of a tenancy under this Chapter if these payments are expressly authorized in the vacation rental agreement. If the tenant is required to make any advance payments, other than a security deposit, whether the payment is denominated as rent or otherwise, the landlord or real estate broker shall deposit these payments in a trust account in ~~an insured bank or savings and loan association in North Carolina~~ a federally insured depository institution lawfully doing business in this State no later than three banking days after the receipt of these payments. These payments deposited in a trust



1 account shall not earn interest unless the landlord and tenant agree in the vacation rental  
2 agreement that the payments may be deposited in an interest-bearing account. The landlord and  
3 tenant shall also provide in the agreement to whom the accrued interest shall be disbursed."

4 **SECTION 4.** G.S. 54-109.82 reads as rewritten:

5 **"§ 54-109.82. Investment of funds.**

6 The capital, deposits, undivided profits and reserve fund of the corporation may be invested  
7 only in any of the following ways:

8 ...

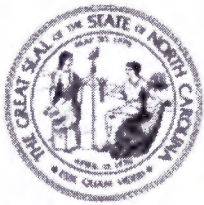
9 (13) In higher education bonds permissible under G.S. 116D-2, provided that  
10 such bonds pledge the faith, credit, and taxing power of the State for the  
11 payment of the principal of and interest on bonds and notes."

12 **SECTION 5.** G.S. 54-109.38 reads as rewritten:

13 **"§ 54-109.38. Compensation of officials.**

14 No member of the board of directors or of the credit committee or supervisory committee  
15 shall be compensated for his service in this position, but providing reasonable life, health,  
16 accident and similar insurance protection for a director or committee member shall not be  
17 considered compensation. Directors and committee members, while on official business of the  
18 credit union, may be reimbursed for necessary and reasonable expenses incidental to the  
19 performance of the business. Such reimbursement may include the payment of expenses for one  
20 guest."

21 **SECTION 6.** This act is effective when it becomes law.



# HOUSE BILL 511: Credit Unions/Statutory Changes

2015-2016 General Assembly

**Committee:** House Banking  
**Introduced by:** Reps. Ross, J. Bell, Bradford, Glazier  
**Analysis of:** First Edition

**Date:** April 23, 2015  
**Prepared by:** Drupti Chauhan  
Committee Counsel

## ***SUMMARY: House Bill 511 would:***

- *Replace the terms "insured bank or savings and loan association" with "federally insured depository institution".*
- *Provide an additional way that credit unions can invest their funds.*
- *Provide that certain officials of credit unions may also be reimbursed for "reasonable expenses".*

## **SECTIONS 1-3- ESCROW AND TRUST ACCOUNTS**

### **CURRENT LAW:**

Section 1: Deposits made in connection with the purchase or reservation of a condo unit must be deposited into a trust or escrow account in an insured bank or savings and loan association.

Section 2: Security deposits from tenants must be deposited into a trust account with a licensed and insured bank or savings institution located in the State.

Section 3: Advance payments other than security deposits for vacation rentals must be deposited into a trust account in an insured bank or savings and loan association in the State.

**BILL ANALYSIS and BACKGROUND:** Credit union and bank accounts are insured up to \$250,000 by the full faith and credit of the United States through the National Credit Union Administration and the Federal Deposit Insurance Corporation. Prior to December 2014, funds in escrow accounts at credit unions were not considered insured unless both parties were members of the credit union. Federal law was changed in December 2014 in the Credit Union Share Insurance Fund Parity Act which extended insurance coverage to escrow accounts. Sections 1-3 of House Bill 511 would make statutory changes so that credit unions were covered in the types of institutions that could offer trust and escrow accounts by using the term "federally insured depository institution".

## **SECTION 4 – INVESTMENT OF FUNDS**

**CURRENT LAW:** State chartered credit unions may invest their capital, deposits, undivided profits, and reserve funds only in ways specified in G.S. 54-109.82 and G.S. 147.69.1 (investments allowed by the State Treasurer).

**BILL ANALYSIS:** Section 4 of the bill would allow the funds to also be invested in higher education bonds under G.S. 116D-2 if those bonds pledge the faith, credit and taxing power of the State for the payment of the principal of and interest on bonds and notes. Credit unions are already listed as eligible investors under G.S. 116D-2.

## **SECTION 5 – COMPENSATION OF OFFICIALS**

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# House Bill 511

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**CURRENT LAW:** Members of the board of directors or of the credit committee or supervisory committee cannot be compensated for this service but they may be provided reasonable life, health, accident, and similar insurance protection. Directors and committee members can be reimbursed for necessary expenses incidental to the performance of official business of the credit union.

**BILL ANALYSIS:** Section 5 would clarify that reimbursement could occur for reasonable expenses incidental to the performance of official business and that reimbursement can include the payment of expenses for one guest.

**EFFECTIVE DATE:** The bill would become effective when it becomes law.





GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H

D

HOUSE BILL 627  
PROPOSED COMMITTEE SUBSTITUTE H627-CSRO-7 [v.1]

4/24/2015 11:11:41 AM

Short Title: Study Financial Transaction Card Fraud.

(Public)

Sponsors:

Referred to:

April 14, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT TO DIRECT THE LEGISLATIVE RESEARCH COMMISSION TO STUDY  
3 METHODS TO PROVIDE ADDITIONAL PROTECTIONS TO USERS OF FINANCIAL  
4 TRANSACTION CARDS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** The Legislative Research Commission shall study the problem of  
7 credit card fraud in North Carolina, including the following:

- 8 (1) The implementation of EMV Chip and PIN Technology in North Carolina.
- 9 (2) The impact of the implementation of EMV Chip and Pin Technology in  
10 North Carolina on our merchants and financial institutions.
- 11 (3) Whether the EMV Chip and PIN Technology in North Carolina will include  
12 the Chip and signature or the Chip and PIN, and if it is the Chip and  
13 signature, then when the Chip and PIN Technology will be implemented.
- 14 (4) Whether and how to deal with merchants that do not transition to the new  
15 EMV technology.
- 16 (5) Whether North Carolina needs to enact any laws governing the use of  
17 banking devices and scanning devices.
- 18 (6) Whether current North Carolina laws governing credit card fraud and  
19 identity theft are adequate and whether the current punishment levels for  
20 these crimes are appropriate considering the huge financial losses they  
21 cause.
- 22 (7) Why the conviction rate for misdemeanor and felony credit card fraud is so  
23 low.
- 24 (8) Whether the implementation of improved credit and debit card security will  
25 cause a shift in fraud to other areas such as checks and whether new laws  
26 and programs might be needed to prevent this shift.
- 27 (9) Any other areas that the Commission believes necessary to determine how to  
28 reduce credit and debit card fraud, and other fraudulent activities affecting  
29 North Carolina citizens, merchants, and financial institutions.

30 **SECTION 2.** The Legislative Research Commission may make an interim report  
31 including findings and legislative proposals to the 2015 General Assembly when it reconvenes  
32 in 2016, and shall make its final report to the 2017 General Assembly when it convenes.

33 **SECTION 3.** This act is effective when it becomes law.  
34







GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H

1

HOUSE BILL 627

Short Title: Fight Financial Transaction Card Fraud.

(Public)

Sponsors: Representative McNeill (Primary Sponsor).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Banking, if favorable, Judiciary I.

April 14, 2015

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE ADDITIONAL PROTECTIONS TO USERS OF FINANCIAL  
TRANSACTION CARDS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 2A of Chapter 75 of the General Statutes is amended by  
adding a new section to read:

**"§ 75-67. Use of financial transaction card with automated banking device and scanning  
devices.**

(a) Requirement. – A person who owns or operates a scanning device or an automated  
banking device shall ensure that the device is incapable of accepting a financial transaction card  
unless the person attempting to use the card first provides the device with the five-digit zip  
code of the cardholder's billing address.

(b) Penalty for Violation. – A person who violates this section commits an infraction as  
defined in G.S. 14-3.1 and is subject to a penalty of up to five hundred dollars (\$500.00) per  
violation, not to exceed five hundred dollars (\$500.00) in any calendar month or two thousand  
dollars (\$2,000) in any calendar year. A person who receives a citation for violation of this  
section is not subject to the penalty provided in this subsection if the person establishes in court  
that the person came into compliance with this section within 30 days of the issuance of the  
citation and the person has remained in compliance with this section.

(c) Definitions. – The terms "automated banking device", "cardholder", "financial  
transaction card", "presenting", and "scanning device" have the same meaning as in Article 19B  
of Chapter 14 of the General Statutes."

**SECTION 2.** G.S. 75-67, as enacted by Section 1 of this act, reads as rewritten:

**"§ 75-67. Use of financial transaction card with automated banking device and scanning  
devices.**

(a) Requirement. – A person who owns or operates a scanning device or an automated  
banking device shall ensure that the device is incapable of accepting a financial transaction card  
unless the person attempting to use the card first provides the device with the five-digit zip  
code of the cardholder's billing address and the cardholder's personal identification  
code.

(b) Penalty for Violation. – A person who violates this section commits an infraction as  
defined in G.S. 14-3.1 and is subject to a penalty of up to five hundred dollars (\$500.00) per  
violation, not to exceed five hundred dollars (\$500.00) in any calendar month or two thousand  
dollars (\$2,000) in any calendar year. A person who receives a citation for violation of this  
section is not subject to the penalty provided in this subsection if the person establishes in court



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1 that the person came into compliance with this section within 30 days of the issuance of the  
2 citation and the person has remained in compliance with this section.

3 (c) Definitions. – The terms "automated banking device", "cardholder", "financial  
4 transaction card", "personal identification code", "presenting", and "scanning device" have the  
5 same meaning as in Article 19B of Chapter 14 of the General Statutes."

6 **SECTION 3.** G.S. 14-113.17 reads as rewritten:

7 **"§ 14-113.17. Punishment and penalties.**

8 (a) A person who is subject to the punishment and penalties of this Article shall be  
9 guilty of a ~~Class 2 misdemeanor~~ Class I felony.

10 (b) A crime punishable under this Article is punishable as a ~~Class I~~ Class G felony."

11 **SECTION 4.** Section 1 of this act becomes effective July 1, 2015. Section 2 of this  
12 act becomes effective October 1, 2016. The remainder of this act becomes effective December  
13 1, 2015, and applies to violations committed on or after that date.



## HOUSE BILL 627: Study Financial Transaction Card Fraud

2015-2016 General Assembly

**Committee:** House Banking, if favorable, Judiciary I  
**Introduced by:** Rep. McNeill  
**Analysis of:** PCS to First Edition  
H627-CSRO-7

**Date:** April 25, 2015  
**Prepared by:** Karen Cochrane-Brown  
Committee Counsel

**SUMMARY:** *The Proposed Committee Substitute for House Bill 627 directs the Legislative Research Commission to study methods to provide additional protections to users of financial transaction cards.*

### BILL ANALYSIS:

The PCS for House Bill 627 directs the Legislative Research Commission to study the problem of credit card fraud in North Carolina, including the implementation of new technologies designed to reduce fraud and the impact of these technologies on North Carolina merchants and financial institutions. In addition, the Commission may study, among other things:

- Whether North Carolina needs to enact any laws governing the use of banking devices and scanning devices.
- Whether current North Carolina laws governing credit card fraud and identity theft are adequate and whether the current punishment levels for these crimes are appropriate.
- Why the conviction rate for misdemeanor and felony credit card fraud is so low.
- Any other areas the Commission believes necessary to determine how to reduce credit and debit card fraud.

**EFFECTIVE DATE:** This act is effective when it becomes law.

O. Walker Reagan  
Director



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GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H

1

HOUSE BILL 126

Short Title: Mortgage Origination Support Registration. (Public)

Sponsors: Representatives Hardister, Szoka, Meyer, and Ross (Primary Sponsors).  
*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Banking, if favorable, Finance.

March 3, 2015

A BILL TO BE ENTITLED  
AN ACT TO AUTHORIZE THE OFFICE OF THE COMMISSIONER OF BANKS TO  
IMPLEMENT A REGISTRATION SYSTEM FOR PERSONS ENGAGED  
EXCLUSIVELY IN THE PROCESSING OR UNDERWRITING OF RESIDENTIAL  
MORTGAGE LOANS AND NOT ENGAGED IN THE MORTGAGE BUSINESS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 19B of Chapter 53 of the General Statutes reads as rewritten:  
"Article 19B.

"The Secure and Fair Enforcement Mortgage Licensing Act.

**"§ 53-244.030. Definitions.**

For purposes of the Article, the following definitions apply:

(20) "Mortgage lender" means a person engaged in the mortgage business as defined in sub-subdivision b. of subdivision (11) of this section. However, the definition does not include a person who acts as a mortgage lender only in a tablefunding transaction.

(20a) "Mortgage origination support registrant" or "registrant" means a person engaged exclusively in the processing or underwriting of residential mortgage loans and not engaged in the mortgage business.

**"§ 53-244.040. License and registration requirements.**

(c) Each mortgage loan originator and person engaged in the mortgage business must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(c1) A registrant operating in this State must register with the Commissioner. Upon issuance of the registration, a registrant is authorized to sponsor and employ licensed mortgage loan originators or transitional mortgage loan originators to control and supervise the registrant's loan processors or underwriters in accordance with Title V of the Housing and Economic Recovery Act of 2008, P.L. 110-289, and 24 C.F.R. 3400. Nothing in this subsection shall be construed as authorizing a registrant to engage in the mortgage business.

(e) Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article, or registrant registered under this Article, shall have a qualifying individual who





operates the business under that person's full charge, control, and supervision. Each mortgage broker, mortgage lender, or mortgage servicer licensed under this ~~Article~~Article, or registrant ~~registered under this Article~~, shall file through the Nationwide Mortgage Licensing System and Registry a form acceptable to the Commissioner indicating the licensee's designation of a qualifying individual and each qualifying individual's acceptance of the responsibility. Each mortgage broker, mortgage lender, or mortgage servicer licensed under this ~~Article~~Article, or ~~registrant registered under this Article~~, shall notify the Commissioner within 15 days of any change in its designated qualifying individual. Any individual licensee who operates as a sole proprietorship shall qualify as and be considered the qualifying individual for the purposes of this subsection.

...

**"§ 53-244.050. License and registration application; claim of exemption.**

(a) Applicants for a license ~~or registration~~ shall apply through the Nationwide Mortgage Licensing System and Registry on a form acceptable to the Commissioner, including the following information:

...

(b) The eligibility requirements for an application for licensure ~~or registration~~ under this Article are as follows:

...

(2) Each applicant for licensure as a mortgage ~~broker or broker~~, mortgage ~~lender~~lender, or mortgage ~~servicer~~servicer, ~~or registration as a registrant~~, at the time of application shall comply with the following requirements:

- a. If the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.
- b. If the applicant is a corporation, limited liability company, general or limited partnership, association, or other group engaged in a joint enterprise, however organized, at least one of its principal officers, managers, or general partners shall have three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.
- c. If the applicant will be a qualifying individual or branch manager, the applicant shall have at least three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.

...

(c) In connection with an application for licensing as a mortgage loan originator, transitional mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer, ~~or registration as a registrant~~, the applicant and its owners, qualifying individual, and controlling persons shall furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

- (1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check.
- (2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain:
  - a. Independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

b. Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) The personal history may be obtained by the Commissioner at any time and the fingerprint information shall be furnished upon the Commissioner's request.

(4) An authorization for the Commissioner to obtain personal history or fingerprint information at any time.

...

(f) For purposes of this section, the Commissioner may request and the North Carolina Department of Public Safety may provide a criminal record check to the Commissioner for any person who (i) has applied for or holds a mortgage lender, mortgage broker, mortgage servicer, mortgage loan originator, or transitional mortgage loan originator license as provided by this ~~section~~ section or (ii) has applied for or holds a registration as a registrant under this section. The Commissioner shall provide the Department of Public Safety, along with the request, the fingerprints of the person, any additional information required by the Department of Public Safety, and a form signed by the 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 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 Department of Public Safety may charge a fee for each person for conducting the checks of criminal history records authorized by this section.

...

**"§ 53-244.060. Issuance of ~~license~~ license or registration.**

If an applicant satisfies the requirements of G.S. 53-244.050, the Commissioner shall issue a mortgage lender, mortgage broker, mortgage servicer, mortgage loan originator, or transitional mortgage loan originator ~~license~~ license, or a mortgage origination support registrant registration, unless the Commissioner finds any of the following:

(1) The applicant has had a mortgage loan originator or mortgage lender, mortgage broker, or mortgage servicer ~~license~~ license, or mortgage origination support registrant registration or its equivalent, revoked in any governmental jurisdiction, except that a subsequent formal vacation of the revocation shall not be deemed a revocation.

...

(4) The applicant has demonstrated a lack of financial responsibility, character, or general fitness such as to fail to command the confidence of the community and to warrant a determination that the mortgage loan originator, transitional mortgage loan originator, or other licensee or registrant will operate honestly, fairly, and efficiently within the purposes of this Article. For purposes of this subdivision, a person shows a lack of financial responsibility when the person has shown a disregard in the management of the person's own financial affairs. Evidence that a person has not shown financial responsibility may include:

- a. Current outstanding judgments, except judgments resulting solely from medical expenses;
- b. Current outstanding tax liens or other government liens and filings;
- c. Foreclosures within the past three years; or
- d. A pattern of serious delinquent accounts within the past three years.

...

(7) The mortgage lender, mortgage broker, ~~or mortgage servicer~~ servicer, or mortgage origination support registrant applicant has failed to meet the surety bond requirement described in G.S. 53-244.103.

(8) The mortgage lender, mortgage broker, ~~or mortgage servicer~~ servicer, or mortgage origination support registrant applicant fails to meet the minimum net worth requirement as described in G.S. 53-244.104.

...

**"§ 53-244.090. ~~License application~~ Application fees.**

(a) Every applicant for initial licensure shall pay a nonrefundable filing fee of one thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage broker, mortgage lender, or mortgage servicer, three hundred dollars (\$300.00) for licensure as an exclusive mortgage broker, or one hundred twenty-five dollars (\$125.00) for licensure as a mortgage loan originator or transitional mortgage loan originator.

Every applicant for initial registration as a mortgage origination support registrant shall pay a nonrefundable filing fee of (i) two hundred fifty dollars (\$250.00) for applicants who employ or contract with fewer than a total of five individuals engaged solely as loan processors or underwriters, (ii) one thousand dollars (\$1,000) for applicants who employ or contract with between a total of five and 30 individuals engaged solely as loan processors or underwriters, or (iii) two thousand dollars (\$2,000) for applicants who employ or contract with more than a total of 30 individuals engaged solely as loan processors or underwriters.

In addition, ~~an~~ every applicant for initial licensure or registration must pay the actual cost of obtaining a credit report, State and national criminal history record checks, and the processing fees required by the Nationwide Mortgage Licensing System and Registry.

...

**"§ 53-244.100. Active license or registration requirements and assignability.**

(a) It is unlawful for any person to engage in the mortgage business without first obtaining a license as a mortgage loan originator, transitional mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer issued by the Commissioner under this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a mortgage loan originator unless the person is a licensed mortgage loan originator or a transitional mortgage loan originator under this Article. Persons defined in G.S. 53-244.030(8) or G.S. 53-244.030(29) are not subject to this subsection.

(b) The license of a mortgage loan originator or transitional mortgage loan originator is not effective during any period when that person is not employed by (i) a mortgage lender, mortgage broker, or mortgage servicer licensed under this Article, or (ii) a mortgage origination support registrant registered under this Article, but only for the purpose of supervising and controlling loan processors or underwriters. When a mortgage loan originator or transitional mortgage loan originator ceases to be employed by a mortgage lender, mortgage broker, or mortgage servicer licensed under this ~~Article~~ Article, or a mortgage origination support registrant registered under this Article, the mortgage loan originator or transitional mortgage loan originator and the mortgage lender, mortgage broker, or mortgage servicer licensed under this ~~Article~~ Article, or the mortgage origination support registrant registered under this Article, by whom that person ~~is~~ was employed shall promptly notify the Commissioner in writing. The mortgage lender, mortgage broker, ~~or mortgage servicer~~ servicer, or mortgage origination support registrant shall include a statement of the specific reason for the termination of the mortgage loan originator's or transitional mortgage loan originator's employment. A mortgage loan originator or transitional mortgage loan originator shall not be employed simultaneously by more than one mortgage lender, mortgage broker, ~~or mortgage servicer~~ servicer, or mortgage support registrant licensed or registered under this Article.

(c) Each mortgage lender, mortgage broker, ~~and mortgage servicer~~ servicer, and mortgage origination support registrant licensed or registered under this Article shall maintain



on file with the Commissioner a list of all mortgage loan originators and transitional mortgage loan originators who are employed with the mortgage lender, mortgage broker, ~~or mortgage servicer~~ servicer, or mortgage origination support registrant.

(d) No person, other than an exempt person, shall hold himself or herself out as a mortgage lender, a mortgage broker, a mortgage servicer, a mortgage loan originator, ~~or a transitional mortgage loan originator~~ originator, or mortgage origination support registrant unless the person is licensed or registered in accordance with this Article.

(e) Licenses and registrations issued under this Article are not assignable. Control of a licensee or registrant shall not be acquired through a stock purchase, merger, or other device without the prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension of a license or registration are applicable to the acquiring person.

...

**"§ 53-244.101. License and registration renewal.**

(a) All licenses and registrations issued by the Commissioner under the provisions of this Article shall expire annually on the 31st day of December following issuance or on any other date that the Commissioner may determine. The license is invalid after that date and shall remain invalid unless renewed under subsection (b) of this section.

(b) A license or registration may be renewed on or after November 1 of each year by complying with the requirements of subsection (c) of this section.

A mortgage loan originator shall pay a nonrefundable renewal fee of one hundred twenty-five dollars (\$125.00) plus the actual cost of obtaining credit reports and State and national criminal history record checks and processing fees for the Nationwide Mortgage Licensing System and Registry as the Commissioner shall require.

A mortgage origination support registrant shall pay a nonrefundable renewal fee of (i) one hundred twenty-five dollars (\$125.00) for registrants who employ or contract with fewer than a total of five individuals engaged solely as loan processors or underwriters, (ii) five hundred dollars (\$500.00) for registrants who employ or contract with between a total of five and 30 individuals engaged solely as loan processors or underwriters, or (iii) one thousand dollars (\$1,000) for registrants who employ or contract with more than a total of 30 individuals engaged solely as loan processors or underwriters. In addition to the nonrefundable renewal fee, a mortgage support registrant shall pay the actual cost of obtaining credit reports and State and national criminal history record checks and processing fees for the Nationwide Mortgage Licensing System and Registry as the Commissioner shall require.

(c) Licensees may apply to renew a mortgage loan originator, mortgage lender, mortgage broker, and mortgage servicer ~~license~~ license, and registrants may apply to renew a mortgage origination support registrant registration. The application for renewal shall demonstrate ~~that~~ that all of the following applicable requirements are met:

- (1) The licensee or registrant continues to meet the initial minimum standards for licensure or registration under ~~G.S. 53-244.060~~; G.S. 53-244.060.
- (2) The mortgage loan originator has satisfied the annual continuing education requirements described in ~~G.S. 53-244.102~~; and G.S. 53-244.102.
- (3) The licensee or registrant has paid all required fees and assessments.

(d) If a mortgage lender, mortgage broker, or mortgage servicer's license is not renewed prior to the expiration date, then the licensee shall pay two hundred fifty dollars (\$250.00) as a nonrefundable late fee. If a mortgage loan originator's license is not renewed prior to the expiration date, then the licensee shall pay a nonrefundable late fee of one hundred dollars (\$100.00) in addition to the renewal fee set forth in subsection (b) of this section. In the event a licensee fails to obtain a reinstatement of the license prior to March 1, the Commissioner shall require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.



(d1) If a mortgage origination support registrant registration is not renewed prior to the expiration date, in addition to the renewal fees set forth in subsection (b) of this section, the registrant shall pay a nonrefundable late fee of (i) sixty-two dollars and fifty cents (\$62.50) for registrants who employ or contract with fewer than a total of five individuals engaged solely as loan processors or underwriters, (ii) two hundred fifty dollars (\$250.00) for persons who employ or contract with between a total of five and 30 individuals engaged solely as loan processors or underwriters, or (iii) five hundred dollars (\$500.00) for persons who employ or contract with more than a total of 30 individuals engaged solely as loan processors or underwriters.

In the event a registrant fails to obtain a reinstatement of the registration prior to March 1, the Commissioner shall require the registrant to comply with the requirements for the initial issuance of a registration under the provisions of this Article.

(e) When required by the Commissioner, each person shall furnish to the Commissioner the person's consent to a criminal history record check and a set of the person's fingerprints in a form acceptable to the Commissioner or to the Nationwide Mortgage Licensing System and Registry. Refusal to consent to a criminal history record check shall constitute grounds for the Commissioner to deny renewal of the license of the person as well as the license of any other person by whom the person is employed, over which the person has control, or as to which the person is the current or proposed qualifying individual or current or proposed branch manager.

...  
**"§ 53-244.103. Surety bond requirements.**

(a) ~~Each~~ Except as provided in subsection (a1) of this section, each mortgage loan originator or transitional mortgage loan originator shall be covered by a surety bond through employment with a licensee in accordance with this section. The surety bond shall provide coverage for each mortgage loan originator or transitional mortgage loan originator employed by the licensee in an amount as prescribed by subsection (b) of this section and shall be in a form prescribed by the Commissioner. The Commissioner may adopt rules with respect to the requirements for the surety bonds as needed to accomplish the purposes of the Article.

(a1) The requirements of subsection (a) of this section shall not apply to a mortgage loan originator or transitional mortgage loan originator employed only by a registrant for the sole purpose of supervising and controlling loan processors or underwriters.

...  
**"§ 53-244.105. Records, addresses, escrow funds, or trust accounts.**

(a) Every licensee or registrant shall make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed in rules adopted by the Commissioner. All records shall be preserved for three years unless the Commissioner, by rule, prescribes otherwise for particular types of records.

(b) No person shall make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with the Commissioner, a governmental agency, or the Nationwide Mortgage Licensing System and Registry or in connection with any oral or written communication with the Commissioner or another governmental agency. If the information contained in any document filed with the Commissioner or the Nationwide Mortgage Licensing System and Registry is or becomes inaccurate or incomplete in any material respect, the ~~licensee~~ licensee, registrant, or exempt entity shall within 30 days file a correcting amendment to the information contained in the document.

(c) ~~Each mortgage broker licensee shall maintain and transact business from a principal place of business in this State. The Commissioner may, by rule, impose terms and conditions under which the records and files of a mortgage lender or lender, mortgage broker, mortgage servicer, or mortgage originator support registrant may be maintained outside of this State. A~~ Except for a mortgage origination support registrant, a principal place of business shall



not be located at an individual's home or residence. A mortgage lender, mortgage broker, or mortgage servicer ~~licensee~~licensee, or a mortgage origination support registrant, shall maintain a record of the principal place of business with the Commissioner and report any change of address of the principal place of business or any branch office within 15 days after the change.

(d) A licensee shall maintain in a segregated escrow fund or trust account any funds which come into the licensee's possession but which are not the licensee's property and which the licensee is not entitled to retain under the circumstances. The escrow fund or trust account shall be held on deposit in a federally insured financial institution. Individual loan applicants' or borrowers' accounts may be aggregated into a common trust fund so long as (i) interests in the common fund can be individually tracked and accounted for and (ii) the common fund is kept separate from and is not commingled with the licensee's own funds.

...

**"§ 53-244.108. Reports.**

Each mortgage lender, mortgage ~~broker, or broker~~, mortgage servicer ~~licensee~~licensee, or mortgage origination support registrant, shall submit to the Commissioner and to the Nationwide Mortgage Licensing System and Registry reports of condition and any other reports requested by the Commissioner pursuant to G.S. 53-244.115(d). The reports shall be in the form and shall contain any information that the Commissioner or Nationwide Mortgage Licensing System and Registry may require.

...

**"§ 53-244.113. Regulatory authority.**

(a) Unless otherwise provided, all actions, hearings, and procedures under this Article shall be governed by Article 3A of Chapter 150B of the General Statutes.

(b) For purposes of this Article, the Commissioner shall be deemed to have complied with the requirements of law concerning service of process upon mailing by certified mail any notice required or permitted to a licensee or registrant under this Article, postage prepaid and addressed to the last known address of the licensee or registrant on file with the Commissioner pursuant to G.S. 53-244.105(c).

(c) Upon the issuance of any summary order permitted under this Article, including summary suspensions and cease and desist orders, the Commissioner shall promptly notify the person subject to the order that the order has been entered and the reasons for the order. Within 20 days of receiving notice of the order, the person subject to the order may request in writing a hearing before the Commissioner. Upon receipt of such a request, the Commissioner shall calendar a hearing within 15 days. If a licensee or registrant does not request a hearing, the order will remain in effect unless it is modified or vacated by the Commissioner.

**"§ 53-244.114. Licensure and registration authority.**

(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license or registration of a ~~licensee~~licensee, registrant, or applicant under this Article, or may restrict or limit the manner in which a licensee, registrant, applicant, ~~or~~ any person who owns an interest in or participates in the business of a licensee and engages in the mortgage ~~business, business, or any person who owns an interest in or participates in the business of a~~ registrant and engages in the business of a registrant, if the Commissioner finds both of the following:

- (1) That the order is in the public interest; and
- (2) That any of the following circumstances apply to the applicant, licensee, registrant, or any partner, member, manager, officer, director, loan originator, qualifying individual, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant ~~or licensee, licensee, or registrant~~. The person:
  - a. Has filed an application for ~~licensure, licensure or registration~~, report, or other document to the Commissioner that, as of its effective date

1 or as of any date after filing, contained any statement that, in light of  
2 the circumstances under which it was made, is false or misleading  
3 with respect to any material ~~fact~~; fact.  
4 b. Has violated or failed to comply with any provision of this Article,  
5 rule adopted by the Commissioner, or order of the  
6 ~~Commissioner~~; Commissioner.  
7 c. Is permanently or temporarily enjoined by any court of competent  
8 jurisdiction from engaging in or continuing any conduct or practice  
9 involving any aspect of the mortgage ~~business~~; business.  
10 d. Is the subject of an order of the Commissioner denying or suspending  
11 that person's (i) license as a mortgage loan originator, transitional  
12 mortgage loan originator, mortgage broker, mortgage lender, or  
13 mortgage ~~servicer~~; servicer or (ii) registration as a registrant, or its  
14 equivalent.  
15 e. Is the subject of an order entered within the past five years by the  
16 authority of any state or federal agency with jurisdiction over the  
17 mortgage brokerage, mortgage lending, or mortgage servicing  
18 ~~industry~~; industry.  
19 f. Fails at any time to meet the requirements of G.S. 53-244.060,  
20 53-244.070, 53-244.080, 53-244.090, 53-244.100, 53-244.103, or  
21 ~~53-244.104~~; 53-244.104.  
22 g. Controls or has controlled any mortgage broker, mortgage lender, ~~or~~  
23 mortgage ~~servicer~~; servicer, or registrant, or its equivalent, who has  
24 been subject to an order or injunction described in sub-subdivision c.,  
25 d., or e. of this ~~subdivision~~; subdivision.  
26 h. Has been the qualifying individual, branch manager, mortgage loan  
27 originator, or transitional mortgage loan originator of a licensee or  
28 registrant who had knowledge of or reasonably should have had  
29 knowledge of, or participated in, any activity that resulted in the  
30 entry of an order under this Article suspending or withdrawing the  
31 license of a ~~licensee~~; licensee or registration of a registrant.  
32 i. Has failed to respond to inquiries from the Commissioner or the  
33 Commissioner's designee regarding any complaints filed against the  
34 licensee or registrant which allege or appear to involve violation of  
35 this Article or any law or rule affecting the mortgage lending  
36 ~~business~~; or business.  
37 j. Has failed to respond to and cooperate fully with notices from the  
38 Commissioner or the Commissioner's designee relating to the  
39 scheduling and conducting of an examination or investigation under  
40 this Article.

41 (b) In the event the Commissioner has reason to believe that a licensee, registrant,  
42 individual, or person subject to this Article may have violated or failed to comply with any  
43 provision of this Article, the Commissioner ~~may~~; may take either of the following actions:

- 44 (1) Summarily order the licensee, registrant, individual, or person to cease and  
45 desist from any harmful activities or violations of this ~~Article~~; or Article.  
46 (2) Summarily suspend the (i) license of the licensee under this ~~Article~~; Article  
47 or (ii) the registration of a registrant under this Article.

48 These summary powers are in addition to the summary suspension procedures authorized  
49 by G.S. 150B-3(c).

50 "§ 53-244.115. Investigation and examination authority.



1 (a) For purposes of initial ~~licensing, license~~licensing or registration, renewal,  
2 suspension, conditioning, revocation, or termination, or general or specific inquiry,  
3 investigation, or examination to determine compliance with this Article, the Commissioner may  
4 access, receive, and use any books, accounts, records, files, documents, information, or  
5 evidence, ~~including~~including all of the following:

- 6 (1) Criminal, civil, and administrative history information, including  
7 nonconviction ~~data~~data.
- 8 (2) Personal history and experience information, including independent credit  
9 reports obtained from a consumer reporting agency described in section  
10 603(p) of the Fair Credit Reporting Act; ~~and Act.~~
- 11 (3) Any other documents, information, or evidence the Commissioner deems  
12 relevant to the inquiry, investigation, or examination regardless of the  
13 location, possession, control, or custody of the documents, information, or  
14 evidence.

15 (b) For purposes of investigating violations or complaints arising under this Article, or  
16 for the purposes of examination, the Commissioner may review, investigate, or examine any  
17 licensee, registrant, individual, or person subject to this Article as often as necessary in order to  
18 carry out the purposes of this Article. The Commissioner may interview the officer, principals,  
19 person with control, qualified individual, mortgage loan originators, transitional mortgage loan  
20 originators, employees, independent contractors, agents, and customers of the licensee,  
21 registrant, individual, or person concerning their business. The Commissioner may direct,  
22 subpoena, or order the attendance of and examine under oath all persons whose testimony may  
23 be required about the loans or the business or subject matter of any examination or  
24 investigation and may direct, subpoena, or order the person to produce books, accounts,  
25 records, files, and any other documents the Commissioner deems relevant to the inquiry. The  
26 assessment set forth in G.S. 53-244.100A is for the purpose of meeting the cost of regulation  
27 under this Article. Any investigation or examination that, in the opinion of the Commissioner  
28 of Banks, requires extraordinary review, investigation, or special examination shall be subject  
29 to the actual costs of additional expenses and the hourly rate for the staff's time, to be  
30 determined annually by the Banking Commission.

31 (c) Each licensee, registrant, individual, or person subject to this Article shall make  
32 available to the Commissioner upon request the books and records relating to the operations of  
33 the licensee, registrant, individual, or person. No licensee, registrant, individual, or person  
34 subject to investigation or examination under this section may knowingly withhold, abstract,  
35 remove, mutilate, destroy, or secrete any books, records, computer records, or other  
36 information. Each licensee, registrant, individual, or person subject to this Article shall also  
37 make available for interview by the Commissioner the officers, principals, persons with  
38 control, qualified individuals, mortgage loan originators, transitional mortgage loan originators,  
39 employees, independent contractors, agents, and customers of the licensee, registrant,  
40 individual, or person concerning their business.

41 (d) Each licensee, registrant, individual, or person subject to this Article shall make or  
42 compile such reports or prepare other information as may be directed or requested by the  
43 Commissioner in order to carry out the purposes of this section, ~~including~~including any of the  
44 following:

- 45 (1) Accounting ~~compilations~~compilations.
- 46 (2) Information lists and data concerning loan transactions in a format  
47 prescribed by the ~~Commissioner~~Commissioner.
- 48 (3) Periodic reports, ~~including~~including any of the following:
  - 49 a. Annual Report ~~Questionnaire~~Questionnaire.
  - 50 b. Servicer Activity ~~Report~~Report.
  - 51 c. Servicer Schedule of the Ranges of Costs and ~~Fees~~Fees.

- d. Lender/Service Audited Statements of Financial Condition.  
e. Broker Certified Statements of Financial Condition, and Condition.  
f. Quarterly Loan Origination Reports.

(4) Any other information deemed necessary to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this Article, the Commissioner may control access to any documents and records of the ~~licensee~~ licensee, registrant, or person under examination or investigation. The Commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records of the licensee or registrant have been or are at risk of being altered or destroyed for purposes of concealing a violation of this Article, the ~~licensee~~ licensee, registrant, or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business.

(f) In order to carry out the purposes of this section, the Commissioner ~~may~~ may do any of the following:

- (1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or ~~investigations~~ investigations.
- (2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, documents, records, information, or evidence obtained under this ~~section~~ section.
- (3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this ~~Article~~ Article.
- (4) Accept and rely on examination or investigation reports made by other government officials, within or without this ~~State~~ or State.
- (5) Accept audit reports made by an independent certified public accountant for the licensee, registrant, individual, or person in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the Commissioner.

(g) In addition to the authority granted by G.S. 53-244.113 and G.S. 53-244.115, the Commissioner is authorized to take action, including summary suspension of the ~~license~~ license or registration, if the licensee or registrant fails, within 20 days or a lesser time if specifically requested for good cause, ~~to do any of the following~~:

- (1) Respond to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed against the licensee or registrant that allege or appear to involve violation of this Article or any law or rule affecting the mortgage lending ~~business~~ business.
- (2) Respond to and cooperate fully with notices from the Commissioner or the Commissioner's designee relating to the scheduling and conducting of an examination or investigation under this ~~Article~~ or Article.
- (3) Consent to a criminal history record check. The refusal shall constitute grounds for the Commissioner to deny licensure to the applicant as well as to any ~~entity~~ entity that meets any of the following criteria:



- a. By whom or by which the applicant is ~~employed~~employed.
- b. Over which the applicant has ~~control~~control.
- c. As to which the applicant is the current or proposed qualifying individual or a current or proposed branch manager.

(h) The authority of this section shall remain in effect, whether a licensee, registrant, individual, or person subject to this Article acts or claims to act under any licensing or registration law of the State, or claims to act without such authority.

**"§ 53-244.116. Disciplinary authority.**

(a) The Commissioner may, by order:

- (1) Take any action authorized under G.S. 53-244.113.
- (2) Impose a civil penalty upon a licensee, registrant, individual, or person subject to this Article, or upon any partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a ~~licensee~~licensee, registrant, or other person subject to this Article for any violation of or failure to comply with this Article. The civil penalty shall not exceed twenty-five thousand dollars (\$25,000) for each violation of or failure to comply with this Article. Each violation of or failure to comply with this Article shall be a separate and distinct violation.
- (3) Impose a civil penalty upon a licensee, registrant, individual, or person subject to this Article, or upon any partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a ~~licensee~~licensee, registrant, or other person subject to this Article for any violation of or failure to comply with any directive or order of the Commissioner. The civil penalty shall not exceed twenty-five thousand dollars (\$25,000) for each violation of or failure to comply with any directive or order of the Commissioner. Each violation of or failure to comply with any directive or order of the Commissioner shall be a separate and distinct violation.
- (4) Require a licensee, registrant, individual, or person subject to this Article to disgorge and pay to a borrower or other individual any amounts received by the licensee, registrant, individual, or person subject to the Article, including any employee of the person, to the extent that the amounts were collected in violation of Chapter 24 of the General Statutes or in excess of those allowed by law.
- (5) Prohibit licensees or registrants under this Article from engaging in acts and practices in connection with residential mortgage loans that the Commissioner finds to be unfair, deceptive, designed to evade the laws of this State, or that are not in the best interest of the borrowing public.

(b) When a licensee or registrant is accused of any act, omission, or misconduct that would subject the licensee or registrant to disciplinary action, the ~~licensee~~licensee or registrant, with the consent and approval of the Commissioner, may surrender the license or registration and all the rights and privileges pertaining to it. A person who surrenders a license shall not be eligible for or submit any application for licensure under this Article during any period specified by the ~~Commissioner~~Commissioner, and a person who surrenders a registration shall not be eligible for or submit any application for registration under this Article during any period specified by the Commissioner.

(c) The requirements of this Article apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever, including structuring a loan in a manner to avoid classification of the loan as a residential mortgage loan.

...

**"§ 53-244.118. Rule-making authority; records.**



(a) The Commissioner may adopt any rules that the Commissioner deems necessary to carry out the provisions of this Article, to provide for the protection of the borrowing public, to prohibit unfair or deceptive practices, to instruct mortgage lenders, mortgage brokers, mortgage servicers, mortgage loan originators, ~~or~~ transitional mortgage loan ~~originators~~ originators, or registrants in interpreting this Article, and to implement and interpret the provisions of G.S. 24-1.1E, 24-1.1F, and 24-10.2 as they apply to licensees and registrants under this Article.

(b) The Commissioner shall keep a list of all applicants for licensure or registration under this Article or claimants of exempt status under G.S. 53-244.050(g) that includes the date of application, name, place of residence, and whether the ~~license~~ license, registration, or claim of exempt status was granted or denied.

(c) The Commissioner shall keep a current roster showing the names and places of business of all licensees and registrants that shows their respective mortgage loan originators and transitional mortgage loan originators and a roster of exempt persons required to file a notice under G.S. 53-244.050(g). The roster ~~shall~~ shall meet all of the following requirements:

(1) Be kept on file in the office of the ~~Commissioner~~ Commissioner.

(2) Contain information regarding all orders or other actions taken against the ~~licensees~~ licensees, registrants, and other ~~persons;~~ and persons.

(3) Be open to public inspection.

**"§ 53-244.119. Commissioner's participation in nationwide registry.**

(a) The Commissioner shall require mortgage loan originators and transitional mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the Commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the Commissioner may establish by rule any requirements as necessary, including:

(1) Background checks for:

a. Criminal history through fingerprint or other databases;

b. Civil or administrative records;

c. Credit history; or

d. Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.

(2) The payment of fees to apply for, renew, or amend licenses through the Nationwide Mortgage Licensing System and Registry;

(3) The setting or resetting as necessary of renewal or reporting dates; and

(4) Requirements for amending or surrendering a license or any other activities as the Commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(b) The Commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to ~~licensees~~ licensees, registrants, or other persons subject to this Article.

**"§ 53-244.120. Confidentiality of information.**

(e) The confidentiality provisions contained in subsection (c) of this section shall not apply with respect to the information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage brokers, mortgage servicers, mortgage loan originators, ~~or~~ transitional mortgage loan ~~originators~~ originators, or registrants that are included in the Nationwide Mortgage Licensing System and Registry for access by the public.

...."

1           **SECTION 2.** If any provision of this act or its application to any person or  
2 circumstance is held invalid, the remainder of the act or the application of the provision to other  
3 persons or circumstances is not affected. Any provision of this act deemed by HUD to conflict  
4 with its interpretation of the S.A.F.E. Act, Title V, shall be interpreted, applied, or amended in  
5 such a way as to comply with the S.A.F.E. Act as interpreted by HUD.

6           **SECTION 3.** The Commissioner of Banks may adopt temporary rules to  
7 administer this act.

8           **SECTION 4.** Section 3 of this act is effective when this act becomes law. The  
9 remainder of this act becomes effective July 1, 2015, and applies to all applications for  
10 registration as a mortgage origination support registrant filed on or after that date.



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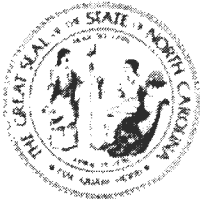
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## HOUSE BILL 126: Mortgage Origination Support Registration

2015-2016 General Assembly

<b>Committee:</b>	House Banking, if favorable, Finance	<b>Date:</b>	April 25, 2015
<b>Introduced by:</b>	Reps. Hardister, Szoka, Meyer, Ross	<b>Prepared by:</b>	Karen Cochrane-Brown
<b>Analysis of:</b>	First Edition		Committee Counsel

**SUMMARY:** *House Bill 126 amends the Secure and Fair Enforcement Mortgage Licensing Act to authorize the Commissioner of Banks to implement a registration system for persons engaged exclusively in the processing or underwriting of mortgage loans and not engaged in the mortgage business.*

### CURRENT LAW:

In 2009, the North Carolina Secure and Fair Enforcement Mortgage Licensing Act was enacted to conform to the requirements of Title V of the federal Housing and Economic Recovery Act of 2008. This act is the licensing and regulatory statute for the mortgage lending industry which is administered by the Office of Commissioner of Banks. It provides for the licensing of mortgage loan originators, and transitional mortgage loan originators, as well as mortgage brokers, lenders, and servicers through registration with the Nationwide Mortgage Licensing System and Registry.

**BILL ANALYSIS:** House Bill 126 amends the S.A.F.E. Mortgage Licensing Act by authorizing the Commissioner of Banks to establish a registration system for "mortgage origination support registrants or registrants", which are defined as persons engaged exclusively in the processing or underwriting of residential mortgage loans and not engaged in the mortgage business.

Upon issuance of the registration, a registrant can sponsor and employ licensed mortgage loan originators or transitional mortgage loan originators to control and supervise the registrant's loan processors or underwriters in accordance with federal law.

The application requirements for registration are the same as for licensure as a mortgage broker, lender, or servicer. However, the application, renewal, and late fees for registrants are graduated based on the number of employees or contractors engaged solely as loan processors or underwriters maintained by the registrant. The application fee for initial registration as a mortgage origination support registrant is; (i) \$250 for applicants who employ or contract with fewer than 5 individuals, (ii) \$1,000 for applicants who employ or contract with between 5 and 30 individuals, and (iii) \$2,000 for applicants who employ or contract with more than 30 individuals.

The annual renewal fee for mortgage origination support registrants is (i) \$125 for registrants who employ or contract with fewer than 5 individuals, (ii) \$500 for registrants who employ or contract with between 5 and 30 individuals, and (iii) \$1,000 for registrants who employ or contract with more than 30 individuals.

If the annual renewal fee is not paid by the expiration date, the registrant must pay the renewal fee plus a late fee of (i) \$62.50 for a registrant who employs or contracts with fewer than 5 individual, (ii) \$250 for

O. Walker Reagan  
Director



Research Division  
(919) 733-2578



# House Bill 126

Page 2

a registrant who employs or contracts with between 5 and 30 individuals, and (iii) \$500 for a registrant who employs or contracts with more than 30 individuals.

No bond is required for mortgage loan originators or transitional mortgage loan originators who are employed by a mortgage origination support registrant solely for the purpose of supervising and controlling loan processors or underwriters.

The Commissioner of Banks retains the same regulatory and disciplinary authority for registrants as he currently exercises over licensees.

Section 2 of the bill provides a severability clause and states that if any provision of the act is deemed by HUD to conflict with its interpretation of federal law, the provision shall be interpreted, applied, or amended in such a way as to comply with the federal law as interpreted by HUD.

Section 3 authorizes the Commissioner of Banks to use temporary rulemaking to administer the act. Under G.S. 150B-21.1(a)(2), the Commissioner already has authority to use temporary rulemaking to implement a recent act of the General Assembly.

**EFFECTIVE DATE:** Section 3 of the act is effective when it becomes law. The remainder of the act becomes effective July 1, 2015, and applies to all applications for registration as a mortgage origination support registrant filed on or after that date.





GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H

D

HOUSE BILL 541  
PROPOSED COMMITTEE SUBSTITUTE H541-CSRO-8 [v.2]

4/24/2015 3:26:54 PM

Short Title: Proof Required for Debt/Fees. (Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED  
AN ACT TO ALLOW COLLECTION ONLY WHERE ADEQUATE PROOF OF  
INDEBTEDNESS PROVIDED; TO CONFORM TO FEDERAL LAW; TO AID  
DEBTORS IN IDENTIFYING ACCOUNT OWNERS TO RESOLVE CREDIT ISSUES;  
TO SPECIFY THAT A CHARGE-OFF STATEMENT SERVES AS PROOF OF DEBT  
OWED; AND TO MAKE VARIOUS RELATED CHANGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 58-70-115 reads as rewritten:

**"§ 58-70-115. Unfair practices.**

No collection agency shall collect or attempt to collect any debt by use of any unfair practices. Such practices include, but are not limited to, the following:

- (1) Seeking or obtaining any written statement or acknowledgment in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgment of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or waiver.
- (2) Collecting or attempting to collect from the consumer all or any part of the collection agency's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge.
- (3) Communicating with a consumer whenever the collection agency has been notified by the consumer's attorney that he represents said consumer.
- (4) When the collection agency is a debt buyer or is acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor ~~or otherwise attempting to collect on a debt~~ when the collection agency knows, or reasonably should know, that such collection is barred by the applicable statute of limitations.
- (5) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor, or otherwise attempting to collect on the debt without (i) access to valid documentation that the debt buyer is the owner of the specific debt instrument or account at issue and (ii) reasonable verification of the amount of the debt allegedly owed by the debtor. For purposes of this subdivision, reasonable verification shall include documentation of the name of the original creditor, the name and address of the debtor as appearing on the



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original creditor's records, the original consumer account number, a copy of the ~~contract~~-contract, charge-off statement, or other document evidencing the consumer debt, and an itemized accounting of the amount claimed to be owed, ~~including all fees and charges owed~~. If the debt that a debt buyer is attempting to collect on has been charged off, this itemized accounting shall be comprised of (i) the charge-off balance; (ii) any post charge-off interest; (iii) any post charge-off fees; and (iv) any post charge-off payments or credits.

(6) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor to collect on a debt without first giving the debtor written notice of the intent to file a legal action at least 30 days in advance of filing. The written notice shall include the name, address, and telephone number of the debt buyer, the name of the original creditor and the debtor's original account number, a copy of the ~~contract~~-contract, charge-off statement, or other document evidencing the consumer debt, and an itemized accounting of ~~all amounts~~-the amount claimed to be owed. If the debt that a debt buyer is attempting to collect on has been charged off, this itemized accounting shall be comprised of (i) the charge-off balance; (ii) any post charge-off interest; (iii) any post charge-off fees; and (iv) any post charge-off payments or credits.

(7) Failing to comply with Part 5 of this Article.

(8) When the collection agency is a debt buyer or is acting on behalf of a debt buyer, when collecting or attempting to collect on a time-barred debt where the debt is not past the date for obsolescence provided for in section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681c) failing to conspicuously include the following notice in every written communication with the debtor:

"The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, [insert name of debt buyer] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting."

(9) When the collection agency is a debt buyer or is acting on behalf of a debt buyer, when collecting or attempting to collect on a time-barred debt where the debt is past the date for obsolescence provided for in section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681c) failing to conspicuously include the following notice in every written communication with the debtor:

"The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency."

SECTION 2. G.S. 58-70-150(1) reads as rewritten:

**"§ 58-70-150. Complaint of a debt buyer plaintiff must be accompanied by certain materials.**

In addition to the requirements of G.S. 58-70-145, in any cause of action initiated by a debt buyer, as that term is defined in G.S. 58-70-15, all of the following materials shall be attached to the complaint or claim:

(1) A copy of the ~~contract~~-contract, charge-off statement, or other writing evidencing the original debt, ~~which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then copies of documents generated when the credit card was actually used must be attached.~~debt."



SECTION 3. G.S. 58-70-155 reads as rewritten:

"§ 58-70-155. Prerequisites to entering a default or summary judgment against a debtor under this Part.

(a) Prior to entry of a default judgment or summary judgment against a debtor in a complaint initiated by a debt buyer, the plaintiff shall file evidence with the court to establish the amount and nature of the debt.

(b) The only evidence sufficient to establish the amount and nature of the debt shall be ~~properly authenticated business records that satisfy the requirements of Rule 803(6) of the North Carolina Rules of Evidence. The authenticated business records shall include documents~~ containing at least all of the following items:

- (1) The original account number.
- (2) The original creditor.
- (3) ~~The amount of the original debt.~~ total amount claimed to be owed.
- (4) ~~An itemization of charges and fees claimed to be owed.~~ post charge-off payments or credits, where applicable.
- (5) ~~The original charge-off balance, or, if the balance has not been charged off,~~ an explanation of how the balance was calculated.
- (6) ~~An itemization of post charge-off additions, fees, where applicable.~~
- (7) ~~The date of last payment.~~ payment, where applicable.
- (8) ~~The amount of post charge-off interest claimed.~~ and the basis for the interest charged."

SECTION 4. Part 3 of Article 70 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-70-117. Ceasing Communication.

(a) If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except for the following purposes:

- (1) To advise the consumer that the debt collector's further efforts are being terminated.
- (2) To notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor.
- (3) Where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt."

SECTION 5. This act becomes effective October 1, 2015.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 541

Short Title: Proof Required for Debt/Fees. (Public)

Sponsors: Representatives Collins, Szoka, R. Moore, and Jeter (Primary Sponsors).  
*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Banking.

April 6, 2015

A BILL TO BE ENTITLED  
AN ACT TO ALLOW COLLECTION ONLY WHERE ADEQUATE PROOF OF  
INDEBTEDNESS PROVIDED; TO CONFORM TO FEDERAL LAW; TO AID  
DEBTORS IN IDENTIFYING ACCOUNT OWNERS TO RESOLVE CREDIT ISSUES;  
TO SPECIFY THAT A CHARGE-OFF STATEMENT SERVES AS PROOF OF DEBT  
OWED; AND TO MAKE VARIOUS RELATED CHANGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 58-70-115 reads as rewritten:

**"§ 58-70-115. Unfair practices.**

No collection agency shall collect or attempt to collect any debt by use of any unfair practices. Such practices include, but are not limited to, the following:

- (1) Seeking or obtaining any written statement or acknowledgment in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgment of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or waiver.
- (2) Collecting or attempting to collect from the consumer all or any part of the collection agency's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge.
- (3) Communicating with a consumer whenever the collection agency has been notified by the consumer's attorney that he represents said consumer.
- (4) When the collection agency is a debt buyer or is acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor ~~or otherwise attempting to collect on a debt~~ when the collection agency knows, or reasonably should know, that such collection is barred by the applicable statute of limitations.
- (5) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor, or otherwise attempting to collect on the debt without (i) access to valid documentation that the debt buyer is the owner of the specific debt instrument or account at issue and (ii) reasonable verification of the amount of the debt allegedly owed by the debtor. For purposes of this subdivision, reasonable verification shall include documentation of the name of the





original creditor, the name and address of the debtor as appearing on the original creditor's records, the original consumer account number, a copy of the ~~contract~~ contract, charge-off statement, or other document evidencing the consumer debt, and an itemized accounting of the amount claimed to be owed, including all fees and charges owed. If the debt that a debt buyer is attempting to collect on has been charged off, this itemized accounting shall be comprised of (i) the charge-off balance; (ii) any post charge-off interest; (iii) any post charge-off fees; and (iv) any post charge-off payments or credits.

(6) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor to collect on a debt without first giving the debtor written notice of the intent to file a legal action at least 30 days in advance of filing. The written notice shall include the name, address, and telephone number of the debt buyer, the name of the original creditor and the debtor's original account number, a copy of the ~~contract~~ contract, charge-off statement, or other document evidencing the consumer debt, and an itemized accounting of all amounts the amount claimed to be owed. If the debt that a debt buyer is attempting to collect on has been charged off, this itemized accounting shall be comprised of (i) the charge-off balance; (ii) any post charge-off interest; (iii) any post charge-off fees; and (iv) any post charge-off payments or credits.

(7) Failing to comply with Part 5 of this Article.

(8) When collecting or attempting to collect on a time-barred debt where the debt is not past the date for obsolescence provided for in section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681c) failing to conspicuously include the following notice in every written communication with the debtor:

"The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, [insert name of debt buyer] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting."

(9) When collecting or attempting to collect on a time-barred debt where the debt is past the date for obsolescence provided for in section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681c) failing to conspicuously include the following notice in every written communication with the debtor:

"The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency."

SECTION 2. G.S. 58-70-150(1) reads as rewritten:

**"§ 58-70-150. Complaint of a debt buyer plaintiff must be accompanied by certain materials.**

In addition to the requirements of G.S. 58-70-145, in any cause of action initiated by a debt buyer, as that term is defined in G.S. 58-70-15, all of the following materials shall be attached to the complaint or claim:

(1) A copy of the ~~contract~~ contract, charge-off statement, or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then copies of documents generated when the credit card was actually used must be attached. debt."

SECTION 3. G.S. 58-70-155 reads as rewritten:

1 "§ 58-70-155. Prerequisites to entering a default or summary judgment against a debtor  
2 under this Part.

3 (a) Prior to entry of a default judgment or summary judgment against a debtor in a  
4 complaint initiated by a debt buyer, the plaintiff shall file evidence with the court to establish  
5 the amount and nature of the debt.

6 (b) The only evidence sufficient to establish the amount and nature of the debt shall be  
7 ~~properly authenticated business records that satisfy the requirements of Rule 803(6) of the~~  
8 ~~North Carolina Rules of Evidence. The authenticated business records shall include documents~~  
9 containing at least all of the following items:

- 10 (1) The original account number.
- 11 (2) The original creditor.
- 12 (3) ~~The amount of the original debt.~~ total amount claimed to be owed.
- 13 (4) ~~An itemization of charges and fees claimed to be owed.~~ post charge-off  
14 payments or credits, where applicable.
- 15 (5) ~~The original charge-off balance, or, if the balance has not been charged off,~~  
16 ~~an explanation of how the balance was calculated.~~
- 17 (6) ~~An itemization of post charge-off additions, fees, where applicable.~~
- 18 (7) ~~The date of last payment.~~ payment, where applicable.
- 19 (8) ~~The amount of post charge-off interest claimed.~~ and the basis for the  
20 interest charged."

21 **SECTION 4.** This act becomes effective October 1, 2015.





# HOUSE BILL 541: Proof Required for Debt/Fees

2015-2016 General Assembly

<b>Committee:</b>	House Banking	<b>Date:</b>	April 24, 2015
<b>Introduced by:</b>	Reps. Collins, Szoka, R. Moore, Jeter	<b>Prepared by:</b>	Karen Cochrane-Brown
<b>Analysis of:</b>	PCS to First Edition H541-CSRO-8		Committee Counsel

**SUMMARY:** *House Bill 541 makes various changes to the law governing the collection of debts by collection agencies that are debt buyers.*

*The PCS adds a new Section 4 to the bill related to when a debt collector must cease communication with a debtor. The PCS makes the bill identical to the PCS for Senate Bill 511, which is currently being considered in Senate Judiciary I.*

## BILL ANALYSIS:

**Section 1** amends the statute dealing with unfair practices of collection agencies.

Under current law, if a collection agency is a debt buyer or acting on their behalf, it is an unfair practice to sue or initiate a proceeding against the debtor or otherwise attempt to collect the debt when the collection agency knows that the collection is barred by the statute of limitations. This section removes "or otherwise attempting to collect on a debt."

Section 1 also makes changes to allow either a contract or a charge-off statement to be used for lawsuits when such lawsuits are allowed. If the debt a debt buyer is attempting to collect on has been charged off, the bill requires an itemized accounting of the amount claimed to be owed, which includes: (1) the charge off balance, (2) post charge-off interest, (3) post charge-off fees, and (4) post charge-off payments or credits.

Section 1 also provides that it is an unfair trade practice when a debt buyer trying to collect a time-barred debt, fails to provide notice to the debtor that the law limits how long someone can be sued on a debt. The debtor must also be notified that if the debt is not past the date of obsolescence under federal law, then the debt buyer may continue to report the debt to credit reporting agencies.

**Section 2** amends the statute which provides that the complaint of a debt buyer must be accompanied by certain materials. Current G.S. 58-70-150(a) provides that a copy of the contract or other writing evidencing the original debt must be attached to the complaint. Section 2 provides that a copy of the charge-off statement is also adequate to satisfy this requirement.

**Section 3** amends the statute dealing with prerequisites to entry of a default or summary judgment against a debtor. Under current law, only properly authenticated business records containing specified information are sufficient to establish the nature and amount of the debt. This section provides that any documents that include specific information are sufficient. Section 3 changes some of those items, including:

- The total amount claimed to be owed (was the amount of the original debt).

O. Walker Reagan  
Director



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Research Division  
(919) 733-2578





# House Bill 541

Page 2

- An itemization of post charge-off payments or credits where applicable (was itemization of charges and fees claimed to be owed).
- The date of the last payment, where applicable.
- The amount of the post charge-off interest claimed (was the amount of interest claimed).

**Section 4** provides that if a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector must not communicate further with the consumer with respect to such debt, except for the following purposes:

- To advise the consumer that the debt collector's further efforts are being terminated.
- To notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor.
- Where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If the consumer makes notification by mail, then notification shall be complete upon receipt.

**EFFECTIVE DATE:** The act becomes effective October 1, 2015.

*Brad Krehely, counsel to Senate Judiciary 1, substantially contributed to this summary.*



**NORTH CAROLINA GENERAL ASSEMBLY  
HOUSE OF REPRESENTATIVES**

**BANKING COMMITTEE REPORT  
Representative Julia C. Howard, Co-Chair  
Representative Charles Jeter, Co-Chair**

**FAVORABLE**

HB 511

Credit Unions/Statutory Changes.

Draft Number: None  
Serial Referral: None  
Recommended Referral: None  
Long Title Amended: No  
Floor Manager: Howard

**FAVORABLE AND RE-REFERRED**

HB 126

Mortgage Origination Support Registration.

Draft Number: None  
**Serial Referral: FINANCE**  
Recommended Referral: None  
Long Title Amended: No  
Floor Manager: Howard

HB 289

NC Money Transmitters Act.-AB

Draft Number: None  
**Serial Referral: FINANCE**  
Recommended Referral: None  
Long Title Amended: No  
Floor Manager: Howard

TOTAL REPORTED: 3



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**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2015-2016 SESSION**

You are hereby notified that the **House Committee on Banking** will meet as follows:

**DAY & DATE:** Wednesday, June 15, 2016  
**TIME:** 8:30 AM  
**LOCATION:** 544 LOB

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
SB 600	Appraiser Compensation/Judge Perform Marriage.	Senator Meredith Senator Rabon Senator Lowe

Respectfully,

Representative Julia C. Howard, Co-Chair  
Representative Charles Jeter, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 6:44 PM on Monday, June 13, 2016.

\_\_\_\_ Principal Clerk  
\_\_\_\_ Reading Clerk – House Chamber

Brittany Eller (Committee Assistant)





**House Committee on Banking**  
**Wednesday, June 15, 2016 at 8:30 AM**  
**Room 544 of the Legislative Office Building**

**MINUTES**

The House Committee on Banking met at 8:30 AM on June 15, 2016 in Room 544 of the Legislative Office Building. The following committee members were present: Representatives Bradford, Fraley, Howard, Hardister, Jeter, Jordan, Ross, Szoka, and Willingham. Karen Cocharan-Brown and Drupti Chauhan from the Legislative Research staff were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment I)

The following bill was considered:

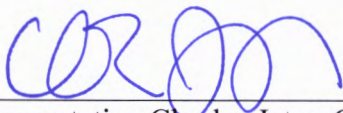
**SB 600, entitled Appraiser Compensation/Judge Perform Marriage (Senators Meredith, Rabon and Lowe**

Representative Jeter recognized Representative Szoka to explain. There was discussion of the bill. Representative Hardister made a motion for a favorable report. The motion passed.

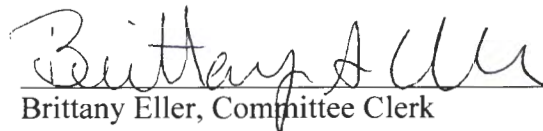
**HB 105, entitled Reduce Mortgage Lender Surety Bonds. (Representatives J. Bell, Jordan)**

Representative Jeter recognized Representative Bell, bill sponsor to explain. Representative Szoka, co-sponsor of the bill, also helped explain. There was discussion of the bill. Representative Hardister moved for a favorable report. The motion passed.

The meeting adjourned at 8:40 am.



\_\_\_\_\_  
Representative Charles Jeter, Chair  
Presiding



\_\_\_\_\_  
Brittany Eller, Committee Clerk



## VISITOR REGISTRATION SHEET

## HOUSE BANKING

Name of Committee

June 15, 2016

Date \_\_\_\_\_

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

FIRM OR AGENCY AND ADDRESS

Nathan Batts

$$N \subset BA$$

Tanya Horton

755

Cameron Nieters

VT3

Rian Mewa/2

am?





## VISITOR REGISTRATION SHEET

HOUSE BANKING

Name of Committee

June 15, 2016

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

David Gonzales

NCREAA

Seth Peter

NC REALTORS

Perry Huff

SOG

Marianne

NCREAA

Jeff Cashion

NCREAA



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE BILL 600  
Transportation Committee Substitute Adopted 4/29/15  
House Committee Substitute Favorable 6/2/16

Short Title: Appraiser Compensation/Judge Perform Marriage.

(Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE APPRAISAL MANAGEMENT COMPANIES TO COMPENSATE  
APPRAISERS IN COMPLIANCE WITH FEDERAL LAW AND TO ALLOW FEDERAL  
APPELLATE JUDGES TO PERFORM MARRIAGE CEREMONIES.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 93E-2-4 is amended by adding the following new subsection to  
read:

**"§ 93E-2-4. Qualifications for registration; duties of registrants.**

...

**(i)** For appraisal assignments of one- to four-family residential dwellings, an appraisal  
management company shall compensate appraisers in compliance with section 129E(i) of the  
federal Truth in Lending Act (15 U.S.C. § 1601 et seq.) and regulations promulgated thereunder.  
The Board shall adopt rules necessary to enforce this subsection."

**SECTION 1.(b)** G.S. 93E-2-8(a) is amended by adding the following new subdivision  
to read:

**"§ 93E-2-8. Disciplinary authority.**

**(a)** The Board may, by order, deny, suspend, revoke, or refuse to issue or renew a  
registration of an appraisal management company under this Article or may restrict or limit  
activities of a person who owns an interest in or participates in the business of an appraisal  
management company if the Board determines that an applicant, registrant, or any partner,  
member, manager, officer, director, compliance manager, or person occupying a similar status,  
performing similar functions, or directly or indirectly controlling the applicant or registrant has  
done any of the following:

...

**(9)** Failed to compensate appraisers in compliance with G.S. 93E-2-4(i)."

**SECTION 1.(c)** This section becomes effective January 1, 2017.

**SECTION 2.(a)** G.S. 51-1 reads as rewritten:

**"§ 51-1. Requisites of marriage; solemnization.**

A valid and sufficient marriage is created by the consent of a male and female person who may  
lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly  
expressed by each in the presence of the other, either:

- (1)** a. In the presence of an ordained minister of any religious denomination, a  
minister authorized by a church, a Justice of the United States Supreme  
Court or a Judge of the United States Court of Appeals, or a magistrate;  
and



1                               b.       With the consequent declaration by the ~~minister~~minister, Justice, Judge,  
2   or magistrate that the persons are husband and wife; or

3                       (2)       In accordance with any mode of solemnization recognized by any religious  
4   denomination, or federally or State recognized Indian Nation or Tribe.

5       Marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained,  
6       are validated from their consummation."

7                       **SECTION 2.(b)**   This section becomes effective July 2, 2016, and expires July 5,  
8       2016.

9                       **SECTION 3.**   Except as otherwise provided, this act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY  
HOUSE OF REPRESENTATIVES**

**BANKING COMMITTEE REPORT  
Representative Julia C. Howard, Co-Chair  
Representative Charles Jeter, Co-Chair**

**FAVORABLE**

**SB 600 (HCS#1)**

Appraiser Compensation/Judge Perform Marriage.

Draft Number: None

Serial Referral: None

Recommended Referral: None

Long Title Amended: No

Floor Manager: Szoka

TOTAL REPORTED: 1



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