

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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BILL DRAFT 2011-ROz-10 [v.2] (12/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Banking Law Modernization Act.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE THE BANKING LAWS OF NORTH CAROLINA.
3 The General Assembly of North Carolina enacts:
4 **SECTION 1.** Articles 1 through 14, 17, 17B and 18A of Chapter 53 of the General
5 Statutes are repealed.

6 **SECTION 2.** Chapter 53 is amended by adding the following new Articles to read:

7 Article 1A

8 General Provisions

9 **"§ 53-1-1. Title.**

10 This Chapter shall be known and may be cited as Regulation of Banks and Other Financial
11 Services.

12 **"§ 53-1-2. Scope and applicability of Chapter.**

13 (a) Unless the context specifies otherwise, this Chapter shall apply to:

14 (1) All existing banks organized or created under the laws of this State.

15 (2) All banks created under the provisions of Article 3 of this Chapter.

16 (3) All persons who subject themselves to the provisions of this Chapter.

17 (4) All persons who become subject to the penalties provided for in this Chapter
18 as a consequence of violating any of the provisions of this Chapter.

19 (b) Transactions validly entered into before the effective date of this Act and the rights,
20 duties, and interests flowing from them remain valid and may be terminated, completed, or
21 enforced as required or permitted by any statute amended or repealed by the law by which this
22 Act was enacted as though the amendment or repeal had not occurred.

23 (c) Except as restricted by federal law, a federally chartered depository institution that
24 has a branch in this State shall have all the rights, powers and privileges and shall be entitled to
25 the same exemptions and immunities as banks organized or created under the laws of this State.

26 (d) Except as restricted by federal law or the laws of another State in which it was
27 organized or created, an out-of-state bank that has a branch in this State shall have, with respect
28 to activities conducted through such branch, all the rights, powers and privileges and shall be
29 entitled to the same exemptions and immunities as banks organized and created under the laws
30 of this State.

31 **"§ 53-1-3. Existing banks; prohibitions, injunctions.**

32 (a) No depository institution organized or created under the laws of this State may
33 operate as a bank except in accordance with this Chapter. Banks established prior to the



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effective date of this act may continue operation under their existing organizational documents, but shall be subject to all other requirements of this Chapter.

(b) No person shall operate in this State as a "bank," "savings bank," "savings and loan association," "trust company," or otherwise as a depository institution unless established as a depository institution under the laws of this State or another State, or established under federal law. Unless so authorized, no person doing business in this State shall:

(1) Use in its name the term "bank," "savings and loan," "savings bank," "banking company," "trust company," or words of similar meaning that lead the public reasonably to believe that it conducts the business of a depository institution; or

(2) Use any sign, letterhead, circular, or website content or advertise or communicate in any manner that would lead the public reasonably to believe that it conducts the business of a depository institution.

(c) Upon application by the Commissioner, a court of competent jurisdiction may issue an injunction to restrain any person from violating or from continuing to violate this section.

"§ 53-1-4. Definitions and application of terms.

Unless the context requires otherwise, the following definitions apply in this Chapter.

(1) Acquire. – To obtain the right or power to vote or to direct the voting of voting securities of a bank or holding company:

a. through a purchase of or share exchange for shares,

b. by reason of an issuance of shares or the exercise of a right under a warrant, option or convertible security or instrument to acquire shares, or

c. pursuant to an agreement or trust or through any similar transaction, event or contractual right.

(2) Acting in concert. – Knowing participation in a joint activity or interdependent conscious parallel action towards the common goal of obtaining control of a bank or holding company, whether or not pursuant to an express agreement; including participation in a combination or pooling of voting securities of a bank holding company for such common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

(3) Affiliate. – A person that, directly or indirectly, controls, is controlled by, or is under common control with another person. Each member of a group of persons acting in concert shall be deemed an affiliate of the group.

(4) Bank. – Any corporation, other than a credit union, savings institution, or trust company, that is organized under the laws of this State and is engaged in the business of receiving deposits (other than trust funds), paying monies and making loans.

(5) Bank Operating Subsidiary. – A subsidiary which is under the control of a bank, and engages only in activities in which a bank may engage pursuant to G.S. 53-5-1.

(6) Bank Premises. – Any improved or unimproved real estate, whether or not open to the public, which is utilized or intended to be utilized by a bank.

(7) Bank Supervisory Agency. – Any of the following agencies:

a. The CFPB, FDIC, the Federal Reserve Board, OCC, and any successor to these agencies.

b. Any agency of another state with primary responsibility for chartering and supervising depository institutions organized under the laws of that state.

- c. Any agency of a sovereign nation with primary responsibility for chartering and supervising depository institutions organized under the laws of that nation.
- (8) Bankers' Bank. – As defined in Regulation D of the Federal Reserve Board, 12 U.S.C. 204.121.
- (9) Board of Directors.- A governing board of a company that is responsible for policy, oversight, and compliance.
- (10) Branch. – An office of any bank or a depository institution organized under the banking laws of the United States, another state or another sovereign nation, other than that depository institution's principal office, in which deposits are received. A branch may also engage in any of the functions or services authorized to be engaged in by the bank of which it is a branch. The term "branch" does not include a non-branch bank business office, automated teller machine, remote deposit facility, remote service unit, customer-bank communications terminal, point-of-sale terminal. Automated banking facility or other direct or remote information-processing device or machine, whether manned or unmanned, by means of which information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank terminal.
- (11) Capital. – An amount equal to the bank's "Tier 1 capital" as that term is defined in Part 325 of the Regulations of the FDIC or any successor regulation of the FDIC; provided, that if the term "Tier 1 capital" is replaced by a term including substantially the same components as "Tier 1 capital", the term "capital" as used in this Chapter shall mean an amount equal to the amount calculated by application of the definition of such replacement term.
- (12) Capital Impairment. – The reduction of a bank's capital at any time below its required capital.
- (13) Central Reserve Bank. – A depository institution of which at least fifty percent of its shares are owned by other depository institutions.
- (14) CFPB. – The Consumer Financial Protection Bureau or its successor.
- (15) Charter. – A document issued by the Commissioner in accordance with Article 3 of this Chapter permitting a bank to conduct banking business.
- (16) Combination. – A merger, share exchange or transfer or acquisition of all or substantially all assets and liabilities of a person undertaken in compliance with such federal laws and laws of this State or other states as may be applicable.
- (17) Commission. – The State Banking Commission provided for in G.S. 53-2-1.
- (18) Commissioner. – The Commissioner of Banks provided for in G.S. 53-2-2.
- (19) Company. – A corporation, limited liability company, partnership, joint venture, business trust, trust, syndicate, association, unincorporated organization, or other form of business entity.
- (20) Control. – The possession, directly or indirectly, of the power or right to direct or to cause the direction of the management or policies of a person by reason of an agreement, understanding, proxy, or power of attorney or through the ownership of or voting power over ten percent or more of the voting securities of the person.
- (21) Control Transaction. – The acquisition of control over a bank or a holding company other than pursuant to a combination.
- (22) Credit Union. – A credit union as defined in G.S. 54-109.1.

- (23) De Novo Branch. – A branch of a bank or of an out-of-state bank within this State that is established as a branch, and not by virtue of an acquisition of the existing branch of another bank or out-of-state bank, by a combination involving the bank or out-of-state bank, or by the conversion of a non-branch bank business office to a branch.
- (24) Deposit. – A "deposit" as defined in Section 3(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(1).
- (25) Deposit Insurance. – Insurance of a bank's deposit accounts where the beneficiaries are the holders of the insured accounts.
- (26) Depository Institution. – A bank, out-of-state bank, savings institution, or federally chartered institution, the deposits of which are insured by the FDIC.
- (27) Deputy Commissioner. – An individual appointed by the Commissioner to such office as provided by G.S. 53-2-3.
- (28) Distribution. – With respect to a bank, "distribution" has the same meaning as set forth in Chapter 55.
- (29) Debt Previously Contracted (DPC) Subsidiary. – A subsidiary of a bank which acquires in good faith an equity ownership interest through foreclosure or other realization on collateral, by way of a compromise of a disputed or contested claim, or to avoid a loss in connection with a debt previously contracted or to which the bank transfers an equity ownership interest so acquired by the bank.
- (30) Examination. – A supervisory inspection of a bank, proposed bank, a holding company or a branch of an out-of-state bank operating in this State that may include inspection of all relevant information, including information of or about the subsidiaries and affiliates of the bank, proposed bank holding company or branch. "Examination" also includes an investigation of any person with respect to any violation or suspected violation of any provision of this Chapter by such person, or a review of facts and circumstances relevant to the Commissioner's consideration of the issuance of an order pursuant to this Chapter.
- (31) Equity Ownership Interest. – Any beneficial equity or similar interest, whether direct or indirect, including shares, limited or general partnership interests, and membership interests in a limited liability company.
- (32) Farm Credit System Institution. – A lending institution regulated by the Farm Credit Administration.
- (33) FDIC. – The Federal Deposit Insurance Corporation or its successor.
- (34) Federal Reserve Board. – The Board of Governors of the Federal Reserve System or its successor.
- (35) Federal Savings Association. – A federal savings association or federal savings bank chartered under Section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464.
- (36) Federally Chartered Institution. – A national bank or federal savings association.
- (37) Financial Subsidiary. – A "financial subsidiary," as defined in 12 U.S.C. 24a(g).
- (38) Holding Company. – A company that controls a depository or that controls a company that directly or indirectly controls a depository institution.
- (39) Immediate Family. – An individual's spouse, father, mother, children, brothers, sisters, and grandchildren, the father, mother, brothers and sisters

- of the individual's spouse, and the spouse of the individual's child, brother, or sister.
- (40) Inadequate Capital. – An amount of capital equal to at least 75 percent but less than 100 percent of required capital.
- (41) Individual. – A human being.
- (42) Insufficient Capital. – An amount of capital less than 75 percent of required capital.
- (43) Lower-Tier Subsidiary. – Any bank operating subsidiary in which a bank operating subsidiary has an equity ownership interest.
- (44) National Bank. – A banking association organized under 12 U.S.C. 21.
- (45) Non-branch Bank Business Office. – Any staffed physical location open to the public in this State in which an office of a bank, out-of-state bank, or a depository institution established under the laws of another state that is not a branch, an office of a separately organized subsidiary of such depository institution, or an office of the holding company of such depository institution, at which one or more banking or banking related products or services are offered, other than the taking of deposits. The provision of remote deposit capture facilities or services by a non-branch bank business office shall not be deemed to be a taking of deposits. Non-branch bank business offices include loan production officers, mortgage loan offices, and insurance agency offices, or a combination thereof.
- (46) North Carolina Financial Institution. – A bank, savings institution, or trust company organized under the laws of this State.
- (47) OCOB. – The Office of the Commissioner of Banks as provided in G.S. 53-2-3.
- (48) OCC. – The Office of the Comptroller of the Currency or its successor.
- (49) Organizational Documents. – The charter, certificate of organization, articles of incorporation, articles of association, certificate of limited partnership, bylaws, operating agreement, partnership agreement, and any other similar documents required to be prepared or adopted by a company in connection with its organization, and as thereafter amended from time to time.
- (50) Organizational Law. – The laws of the jurisdiction of organization of a company applicable to the organization of the company and its governance, including approval of transactions by its board of directors, shareholders, partners, members, or beneficiaries, as applicable.
- (51) Organizers. – One or more individuals who are the organizers of a proposed bank responsible for the business of the proposed bank from the filing of the application to the Commission's final decision on the application.
- (52) Out-of-State Bank. – A bank that is organized, chartered, or created under the laws of a state other than this State and the deposits of which are insured by the FDIC.
- (53) Person. – An individual, a company, or a group of persons who are acting in concert.
- (54) Plan of Conversion. – A detailed outline of the procedure of the conversion of a depository institution from one to another charter.
- (55) Practical Banker. – An individual who at the time of appointment to the Commission, and at all times thereafter, is, or has been during the five years preceding the appointment, a president, chief executive officer, or director of a North Carolina financial institution.
- (56) Principal Office. – The office that houses the headquarters of a bank.
- (57) Public Member. – A member of the Commission who is not practical banker.

- (58) Public Notice. – Notice to the public by (i) a single publication in a newspaper of general circulation in the county in which the bank which is the subject of the publication has its principal office and (ii) a posting in the notices section of the Commissioner's website for at least 15 days, in each case of the applicable information specified for such publication or posting in this Chapter.
- (59) Record. – Information, reports, memoranda, charts, letters, messages, extracts, summaries, analyses, compilations, transaction documentation, account statements, financial statements, and other documents, including customer financial and other information, whether created, transmitted, distributed, retained or stored in tangible or digital form.
- (60) Registered Agent. – The person named in the organizational documents of a company upon whom service of legal process is deemed binding upon the company.
- (61) Required Capital. – Required capital means:
- a. In the case of a proposed bank, the amount of capital required by the Commissioner as a prerequisite to the commencement of the business of banking; and
- b. In all other cases, an amount of capital equal to at least the amount of capital required for a bank to be deemed "adequately capitalized" under applicable federal regulatory capital standards.
- (62) Savings Institution. – A savings and loan association or a savings bank organized under the laws of this State or of another state, or a federal savings association or savings bank.
- (63) Shareholder. – Any person that has an equity ownership interest in a bank or holding company and is entitled to vote such interest under the bank's or holding company's organizational documents.
- (64) Shares. – The units into which the equity ownership interests of a corporation are divided.
- (65) State. – Any state of the United States, the District of Columbia, or any territory of the United States other than this State.
- (66) Subsidiary. – A company over which a bank has control.
- (67) This State. – The State of North Carolina.
- (68) Trust Business. – Acting as a fiduciary or in other capacities permissible for a trust institution under G.S. 53-331.
- (69) Trust Company. – A company that is formed primarily for the purpose of taking, executing, and administering trusts, and which is not a depository institution.
- (70) Trust Funds. – Trust funds as defined in Section 3(p) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(p).
- (71) Voting Securities. – Voting Securities means:
- a. Any equity ownership interest in a company that entitles the holder to vote on any matter presented to holders of equity ownership interests in the company for a vote, and
- b. Any equity interest, right to acquire an equity ownership interest, debt instrument or other similar interest or instrument convertible into an equity ownership interest that entitles the holder to vote on any matter presented to holders of equity ownership interest which may be converted into a voting equity ownership interest.

"§ 53-1-5. Severability.

If any provision of this Chapter is found by any court of competent jurisdiction to be in valid as to any person or circumstance, or to be preempted by federal law, the remaining provisions of this Chapter shall not be affected and shall continue to apply to any other person or circumstance."

"Article 2A

Commission and Commissioner

"§ 53-2-1. The Commission.

(a) The Commission consists of the State Treasurer, who shall serve as an ex officio member, 19 members appointed by the Governor, two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate and one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives. The Governor shall appoint five practical bankers and 11 public members to the Commission. The member appointed upon the recommendation of the President Pro Tempore of the Senate shall be a practical banker and the member appointed on the recommendation of the Speaker of the House shall be a public member. Members shall serve for terms of four years. No individual shall serve on the Commission for more than two complete consecutive terms. Any vacancy occurring in the membership of the Commission shall be filled by the appropriate appointing officer for the unexpired term, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. The appointed members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. This compensation shall be paid from the revenues of the OCOB.

(b) The Commission shall meet at such times, but not less than once every three months, as the Commission may by resolution prescribe, and the Commission shall be convened in special session at the call of the Governor or the Commissioner. The State Treasurer shall be chair of the Commission. The Commission shall meet in person, provided that it may, so long as consistent with applicable law regarding public meetings, meet by telephone or video conference, including attendance of one or more members by telephone or video conferencing.

(c) No member of the Commission shall divulge or make use of any information designated by this Chapter or by the Commissioner as confidential, and no member shall give out any such information unless the information shall be required of the member at a hearing at which the member is duly subpoenaed or by a court of competent jurisdiction.

(d) A quorum of the Commission shall consist of a majority of its total membership. Subject to the standards of Chapter 138A of the General Statutes, a majority vote of the members qualified with respect to a matter who are present at the meeting where such matter is considered shall constitute valid action of the Commission. In accordance with G.S. 138A-38, The State Treasurer and all disqualified members who are present at a meeting shall be counted for purposes of determining whether a quorum is present.

(e) The Commission may review the exercise by the Commissioner of all powers, duties, and functions vested in or exercised by the Commissioner under the laws of this State. The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B of the General Statutes, for hearings held before the Commission upon any matter which may arise in connection with the administration of the banking laws by the Commissioner.

"§ 53-2-2. The Commissioner.

(a) Effective April, 2011, and quadrennially thereafter, the Governor shall appoint a Commissioner, which appointment shall be subject to confirmation by the General Assembly by joint resolution. The name of the individual appointed to be Commissioner shall be submitted to the General Assembly on or before February 1 of the year in which the individual's term of office begins. The term of office for the Commissioner shall be four years. In case of a vacancy in the office of Commissioner, the Governor shall appoint an individual to

1 serve as Commission on an interim basis pending confirmation of a nominee by the General
2 Assembly.

3 (b) The Commissioner has the powers enumerated in this Chapter and otherwise
4 provided by North Carolina law and such other powers as may be necessary for the proper
5 discharge of the Commissioner's duties, including the power to enter into contracts.

6 (c) The Commissioner is authorized to subpoena witnesses and compel their
7 attendance, require the production of evidence, administer oaths and examine any person under
8 oath in connection with any subject related to any power vested or duty imposed on the
9 Commissioner under this Chapter.

10 (d) The Commissioner may sue and prosecute or defend in any action or proceeding in
11 any courts of this State or any other state and in any court of the United States for the
12 enforcement or protection of any right or pursuit of any remedy necessary or proper in
13 connection with the subjects committed to him for administration or in connection with any
14 bank or the rights, liabilities, property or assets thereof, under his supervision. Nothing herein
15 shall be construed to render the Commissioner liable to be sued except as other departments
16 and agencies of the State may be liable under the general law. The Commissioner may exercise
17 any jurisdiction, supervise, regulate, examine or enforce any State consumer protection laws or
18 federal laws with respect to which the Commissioner has enforcement jurisdiction.

19 (e) The Commissioner shall have a seal of office bearing the legend "State of North
20 Carolina – Commissioner of Banks". The Commissioner may adopt other symbols or marks of
21 office.

22 **"§ 53-2-3. The Office of the Commissioner of Banks.**

23 (a) The Commissioner shall be assisted in the performance of the duties of office by (i)
24 one or more deputy commissioners, and (ii) Examiners, investigators, counsel and other
25 employees under the supervision of the Commissioner, all of whom, together with the
26 Commissioner shall comprise the "Office of the Commissioner of Banks." In addition, the work
27 of the OCOB may be conducted by employees of other agencies of government, and agents and
28 independent contractors of the OCOB. The Commissioner may remove at his or her discretion
29 any deputy commissioner.

30 (b) The Commissioner shall appoint, with the approval of the Governor, and may
31 remove at the Commissioner's discretion, a chief deputy commissioner. The chief deputy
32 commissioner may perform such duties and exercise such powers of the Commissioner as the
33 Commissioner may direct. In the event of the absence, death, resignation, disability or
34 disqualification of the Commissioner, or in case the office of Commissioner otherwise becomes
35 vacant, the chief deputy commissioner shall perform the duties and exercise all the powers
36 vested in the Commissioner until the Governor appoints an acting Commissioner.

37 (c) Except as otherwise provided in this Chapter, the OCOB and its employees are
38 exempt from the classification and compensation rules established by the State Personnel
39 Commission pursuant to G.S. 126-4(1) through (4), G.S. 126-4(5) only as it applies to hours
40 and days of work, vacation and sick leave, G.S. 126-4(6) only as it applies to promotion and
41 transfer, G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive
42 pay programs, and Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1.
43 The salary of the Commissioner shall be fixed by the General Assembly.

44 (d) The Attorney General shall assign an attorney from the Department of Justice to
45 work full time with the Commission. The attorney shall be subject to all provisions of Chapter
46 126 of the General Statutes relating to the State Personnel System. The Commission shall fully
47 reimburse the Department of Justice for the compensation, secretarial support, equipment,
48 supplies, records and other property to support the attorney.

49 **"§ 53-2-4. Administration of the Office of the Commissioner of Banks.**

50 (a) As authorized in Chapters 54B, 54C and this Chapter, the OCOB shall be funded by
51 annual or periodic assessments, licensing fees and charges, and reimbursements for

1 examination costs. This list is not exclusive. The OCOB may not levy assessments, fees or
2 other charges except as expressly provided by statute. The Commissioner is authorized, in the
3 exercise of reasonable discretion, to establish the time, place, and method for the payment of
4 assessments, fees, charges and costs.

5 (b) Not less than 30 days prior to the commencement of each fiscal year, the OCOB
6 shall prepare and submit to the Commission a budget for the upcoming fiscal year, including
7 the estimated revenues and expenses for the year. The Commission shall review the budget in a
8 meeting prior to the commencement of the fiscal year in respect of which the budget has been
9 presented and shall approve or modify the budget at the meeting.

10 **"§ 53-2-5. Rulemaking.**

11 (a) The Commissioner, subject to review and approval by the Commission, may make
12 all necessary rules with respect to the establishment, operation, conduct, and termination of any
13 and all activities and businesses that are subject to licensing, regulation, supervision, or
14 examination by the Commissioner under this Chapter.

15 (b) The rulemaking authority conferred on the Commissioner by this section shall be in
16 addition to and not in derogation of any specific rulemaking authority by any other provision of
17 this Chapter or otherwise provided by North Carolina law.

18 **"§ 53-2-6. Hearings and Appeals.**

19 (a) Any administrative hearing required or permitted to be held by the Commissioner
20 shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

21 (b) The Commission is authorized to supervise, direct and review the exercise by the
22 Commissioner of all powers, duties, and functions now vested in or exercised by the
23 Commissioner under the banking laws of this State. Upon an appeal to the Commission by any
24 party from an order entered by the Commissioner following an administrative hearing pursuant
25 to Article 3A of Chapter 150B of the General Statutes, the chair of the Commission may
26 appoint an appellate review panel of not less than five members to review the record on appeal,
27 hear oral arguments, and make a recommended decision to the Commission. Unless another
28 time period for appeals is provided by this Chapter, any party to an order by the Commissioner
29 may, within 20 days after the order and upon written notice to the Commissioner, appeal the
30 Commissioner's order to the Commission for review. The notice of appeal shall state the
31 grounds for the appeal and set forth in numbered order the assignments of error for review by
32 the Commission. Failure to state the grounds for the appeal and assignments of error shall
33 constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule provided
34 by the Commission shall also constitute grounds to dismiss the appeal. Upon receipt of a notice
35 of appeal, the Commissioner shall, within 30 days of the notice, certify to the Commission the
36 record on appeal. Any party to a proceeding before the Commission may, within 20 days after
37 final order of the Commission, petition the Superior Court of Wake County for judicial review
38 of a final determination of any question of law which may be involved. The petition for judicial
39 review shall be entitled "(insert name) Petitioner v. State of North Carolina on Relation of the
40 Commission." A copy of the petition for judicial review shall be served upon the Commissioner
41 pursuant to G.S. 150B-46. The petition shall be placed on the civil issue docket of the court and
42 shall have precedence over other civil actions. Within 15 days of service of the petition for
43 judicial review, the Commissioner shall certify the record to the Clerk of Superior Court of
44 Wake County. The standard of review of a petition for judicial review of a final order of the
45 Commission shall be as provided in G.S. 150B-51(b).

46 (c) The hearing officer at administrative hearings conducted under the authority of the
47 Commissioner may be the Commissioner, a deputy commissioner or other suitable person
48 designated by the Commissioner to serve as a hearing officer.

49 **"§ 53-2-7. Official record.**

50 (a) The Commissioner shall keep a record in the OCOB of the Commissioner's official
51 acts, rulings, and transactions which, except as otherwise provided, shall be open to inspection

and copying by any person. The Commissioner may condition the provision of copies of records upon the payment by the person requesting the documents of an amount sufficient to cover the cost of retrieving, copying and if requested, mailing the documents.

(b) Notwithstanding any laws to the contrary, the following records of the Commissioner shall be confidential and shall not be disclosed or be subject to discovery or public inspection:

- (1) Records compiled during or in connection with an examination, audit, or investigation of any person, including records relating to any application for licensure or otherwise to conduct business.
- (2) Records containing information compiled in preparation for or anticipation of or in the course of litigation, examination, audit, or investigation.
- (3) Records containing the names or other personal information of any customers of any person or revealing the collateral given by any such customers in connection with an extension of credit; provided however, that every report made by a North Carolina financial institution, with respect to a transaction between it and an officer, director or affiliate thereof, which report is required to be filed with the Commissioner pursuant to this Chapter shall be filed with the Commissioner in a form prescribed by the Commissioner and shall be open to inspection and copying by any person.
- (4) Records containing information furnished in connection with an application bearing on the character, competency, or experience, or information about the personal finances, of an existing or proposed organizer, officer or director of a depository institution, federally chartered institution, trust company, holding company, or any other person subject to the Commissioner's jurisdiction.
- (5) Records containing information about the character, competency, experience or finances of the directors, officers or other persons having control over a person giving notice or filing an application to engage in a control transaction pursuant to this Chapter.
- (6) Records containing information about the character, competency or experience of the directors, executive officers or other persons having control over any of the parties to a combination subject to the Commissioner's jurisdiction.
- (7) Records of North Carolina financial institutions in dissolution, that have liquidated, that are under the Commissioner's supervisory control or that are in receivership which contain the names or other personal information of any customers of the institutions.
- (8) Records prepared by a compliance review committee or other committee of the board of directors of a North Carolina financial institution or established at the direction of such a board of directors that have been obtained by the Commissioner.
- (9) Records prepared during or as a result of an examination or investigation of any person by an agency of the United States, or jointly by the agency and the Commissioner, if the records would be confidential under federal law or regulation.
- (10) Records prepared during or as a result of an examination or investigation of any person by a regulatory agency with jurisdiction of a state other than this State or of a foreign country if the records would be confidential under that jurisdiction's law or regulations.
- (11) Records of information and reports submitted by any depository institution or trust companies, or its affiliates, holding company or subsidiaries, or any

other person subject to the Commissioner's jurisdiction to federal regulatory agencies, if the records would be confidential under federal law or regulation.

(12) Records of complaints from the public received by the OCOB.

(13) Any record which would disclose any information set forth in any of the confidential records referred to in this subsection.

(c) For purposes of this section, "any person subject to the Commissioner's jurisdiction" includes any person who is licensed or registered or should be licensed or registered under this Chapter.

(d) Notwithstanding the provisions of subsection (b) of this section, the Commissioner may, by written agreement with any state or federal law enforcement or regulatory agency, share with that agency any confidential record set out in subsection (b) of this section or any information contained therein, on the condition that such record or information shared shall be treated as confidential under the applicable laws and regulations governing the recipient agency.

Article 3A

Organization of a Bank

"§ 53-3-1. Application to organize a bank.

(a) An applicant for permission to organize a bank and for a charter must file an application with the Commissioner. The application shall be in the form required by the Commissioner and shall contain such information as the Commissioner requires, set forth in sufficient detail to enable the Commissioner to evaluate the applicant's satisfaction of the criteria set forth in G.S. 53-3-4. The applicant shall pay a non-refundable application fee in the amount of ten thousand dollars (\$10,000) at the time of filing the application.

(b) Upon receipt of an application, the Commissioner shall conduct an examination 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 examination. An applicant's failure to furnish all required information or to pay the required fee within 30 days after filing the application may be considered an abandonment of the application.

"§ 53-3-2. Permission to organize a bank.

(a) With the approval of the Commissioner, the organizers may file articles of incorporation for the proposed bank with the Secretary of State. The Commissioner shall authorize the organization of the proposed bank if the Commissioner is satisfied that each of the following conditions is met:

(1) The application is complete.

(2) The Commissioner's examination as provided for in G.S. 53-3-1 indicates that the requirements for the issuance of a charter to the applicant are reasonably probable of satisfaction.

(3) The proposed name of the proposed bank is not likely to mislead the public as to its character or purpose and is not the same as a name already adopted by an existing depository institution or trust company operating in this State.

(b) If the Commissioner approves the organization of the proposed bank, the Commissioner shall issue a certificate to the Secretary of State. The Secretary of State shall transmit to the Commissioner a certified copy of the filed articles of incorporation of the proposed bank.

(c) Unless and until the Commissioner issues a charter to the proposed bank:

(1) The proposed bank shall not transact any business except such as is incidental and necessary to its organization and the application for a charter.

(2) All funds paid for shares of the proposed bank shall be placed in escrow under an agreement, and with an escrow agent approved by the Commissioner.

(3) All funds for shares placed into escrow, and all dividends or interest on such funds, may be removed from escrow only with the Commissioner's approval.

(d) A proposed bank is subject to the jurisdiction of the Commissioner.

"§ 53-3-3. Articles of incorporation of a proposed bank.

(a) The articles of incorporation of a proposed bank shall be signed and acknowledged by or on behalf of an organizer and shall contain the following:

(1) The information required to be set forth in articles of incorporation under Chapter 55 of the General Statutes.

(2) Any provision consistent with Chapter 55 of the General Statutes and other applicable law that the organizers elect to set forth for the regulation of the internal affairs of the proposed bank and that the Commissioner authorizes or requires.

(3) Any provision the Commissioner requires or authorizes as a substitute for a provision that otherwise would be required by Chapter 55 of the General Statutes.

(b) Before the chartering of a proposed bank, the articles of incorporation filed under the provisions of G.S. 53-3-2 shall be sufficient certification to the FDIC that the proposed bank is a legal entity.

"§ 53-3-4. Commissioner's approval of charter issuance.

(a) The Commissioner may approve a charter for a proposed bank only when the Commissioner has determined that all the following requirements have been satisfied or are reasonably probable to be satisfied within a reasonable period of time specified by the Commissioner in the order of approval:

(1) The proposed bank has solicited or will solicit subscriptions for purchases of shares sufficient to provide an amount of required capital satisfactory to the Commissioner for the commencement of the business of banking.

(2) All prior public solicitations for purchases of shares, and all future solicitations will be solicited with appropriate disclosure, taking into account all the circumstances of the public solicitation, including a prominent statement in any solicitation document to the effect that the solicitation has not been approved by the Commissioner or the Commission and that a representation to the contrary is a criminal offense.

(3) All payments for purchases of shares are made in legal tender of the United States.

(4) The proposed bank has an operational expense fund from which to organizational expenses, in an amount determined by the Commissioner to be sufficient for the safe and sound operation of the proposed bank while the charter application is pending.

(5) The proposed bank has been formed for legitimate and lawful business purposes.

(6) The character, competence and experience of the organizers, proposed, directors, proposed officers, and initial holders of more than five percent of the voting securities of the proposed bank will command the confidence of the market that the bank intends to serve.

(7) The proposed officers and directors, as a group, have degrees of character, competence and experience sufficient to justify a belief that the proposed bank will be free from improper or unlawful influence and otherwise will operate safely, soundly and in compliance with law.

(8) The anticipated volume and nature of business of the proposed bank projected in the application are reasonable and indicate a reasonable probability of safe, sound, and profitable operation of the proposed bank.

(9) If the proposed bank intends to do "trust business", as defined by G.S. 53-1-4(69), it appears that trust powers should be granted based on consideration of the various factors set forth in Article 24 of this Chapter for considering applications and setting capital for a trust company.

(b) The Commissioner's determination that the requirements described in subsection (a) are reasonably probable of satisfaction may be based on partial satisfaction of the requirements at a level set by the Commissioner as a prerequisite for approval of the charter, and also may be based on presentation of a plan for the full satisfaction of the requirements.

(c) If it appears to the Commissioner that the proposed bank has satisfied or is reasonably probable to satisfy the requirements for issuance of a charter, the Commissioner shall issue an order approving the application for a charter and such order shall be submitted to the Commission for its review at a public hearings.

(d) If it appears to the Commissioner that the proposed bank has not satisfied and is not reasonably probable of satisfying the requirements for issuance of a charter, the Commissioner shall issue an order denying approval of the application. The Applicant may, within ten days of issuance of the order, give notice of appeal of this decision to the Commission pursuant to G.S. 53-2-6.

"§ 53-3-5. Notice; public hearing.

(a) Not less than 30 days before the public hearing of the Commission to review the Commissioner's approval of an application, the applicant shall cause to be published a public notice. The public notice shall contain:

(1) A statement that the application has been filed with the Commissioner.

(2) The name of the community where the proposed bank intends to locate its principal office.

(3) A statement that a public hearing will be held to review the Commissioner's approval of the application.

(4) A statement that any interested person may file a written statement either favoring or protesting the chartering of the proposed bank. The statement shall note that, in order to be considered at the public hearing, all written statements from interested persons must be filed with the Commission within 30 days of the date of publication of the public notice.

(b) At the public hearing, the Commission shall consider the findings and order of the Commissioner and shall hear such testimony as the Commissioner may wish to give or be called upon to give. To the extent that the Commission deems the information and testimony relevant to its review of the Commissioner's order, the Commission shall receive information and hear testimony from the organizers and shall hear from any other interested persons.

"§ 53-3-6. Commission decision.

(a) The Commission shall consider the findings and order of the Commissioner, oral testimony, and any other information and evidence, either written or oral that comes before it at the public hearing to review the Commissioner's approval of an application for a charter. The Commission may adjourn and reconvene the public hearing in unusual circumstances. The Commission shall affirm or reverse the Commissioner's order. The Commission may adopt the Commissioner's recommendation with respect to conditions for issuance of a charter, or it may modify the recommended conditions. The Commission shall render its decision within 30 days after the completion of the public hearing, unless unusual circumstances require postponement of the decision. The Commission's review shall be limited to a determination of whether the criteria set forth in G.S. 53-3-4 have been met and whether the provisions of this Article have been followed.

(b) If the Commission denies an application for a charter or if the Commission approves an application with conditions not set forth in the Commissioner's approval, the applicant may appeal the denial or approval containing such conditions as provided in G.S. 53-2-6.

"§ 53-3-7. Issuance of charter.

(a) A proposed bank shall not engage in business except as allowed under G.S. 53-3-2(c)(1), until it receives a charter issued by the Commissioner. The Commissioner shall not issue the charter until the Commissioner is satisfied that the proposed bank has done each of the following:

- (1) Received cash for the purchase of shares and will have satisfactory required capital upon commencing business, in each case in at least the amount required by the Commission's order approving the application.
- (2) Elected the proposed officers and directors named in the application or other officers and directors approved by the Commissioner.
- (3) Secured deposit insurance from the FDIC.
- (4) Complied with all requirements of the Commission's order approving the application for a charter.
- (5) Appears to be ready to commence the business of banking, in the reasonable discretion of the Commissioner upon a pre-opening examination.

(b) The charter issued by the Commissioner shall set forth any trust powers of the bank which may be full or partial trust powers.

(c) If a bank does not open and engage in the business of banking within six months after the date its charter is issued or within such longer period as may be permitted by the Commissioner, the Commissioner shall revoke the charter.

(d) If the Commissioner determines that a charter should not be issued following Commission approval, the applicant may appeal that decision to the Commission as provided in G.S. 53-2-6.

(e) Following the exhaustion of all appeals, the Commissioner may dissolve and liquidate the proposed bank as provided in G.S. 53-9-301, or order the organizers to dissolve and liquidate the proposed bank pursuant to G.S. 53-9-201, if any one of the following occurs:

- (1) The Commissioner does not recommend the issuance of a charter.
- (2) The Commission denies approval of a charter.
- (3) The charter is revoked by the Commissioner pursuant to G.S. 53-3-7(c) or other applicable law."