

JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS

OCOB Proposed Substantive Corrections to Articles 6A February 14, 2012

The recommendations set forth below for substantive changes to Article 6A of the proposed rewrite are derived from OCOB staff analysis and input from and discussions with various stakeholders. These recommendations for changes to Article 6A will be included in the Commissioner's explanation of those sections:

- § 53-6-1(d): This subsection is designed to ensure competitive equality between state banks and their federally chartered peers. However, it has been pointed out that there may be circumstances in which the state regulator is able to more quickly identify a program or product with negative impacts than federal regulators. Subsection (c) should be rewritten to enable the Commissioner to act appropriately in such a situation. The Commissioner recommends that 53-6-1(d) be rewritten to read:
 - "(d) A bank may make any extension of credit that is a permitted extension of credit for a federally chartered institution, unless the Commissioner, by rule or order, identifies a type of extension of credit as inconsistent with sound lending practices or in conflict with the purposes of this Chapter."
- § 53-6-1: In his review of Articles 4A and 5A during the January 20 meeting of the Commission, the Commissioner pointed out that two sections of current law, §§ 53-89 and 53-91.1, would be carried forward and added to Article 6A. The appropriate place for those two items is at the end of § 53-6-1. The Commissioner makes the following recommendations:
 - § 53-89 should be revised and inserted as a new subsection (e) of § 53-6-1 to read:
 - ❖ "(e) Any officer ~~(other than a director)~~, or employee of a bank, who ~~shall~~ permits ~~any~~ customer or other person to overdraw his account, or who ~~shall~~ pays ~~any~~ check or draft, ~~the paying of which shall overdraw any account~~ that causes an account to be

overdrawn, unless the ~~same shall be authorized by the board of directors or by a committee of such board authorized to act,~~ account is covered by an overdraft protection program of the bank, shall be personally and individually liable to ~~such the~~ bank for ~~the amounts of such~~ any losses incurred by the bank from the overdrafts."

- § 53-91.1 should be revised and inserted as a new subsection (f) of § 53-6-1 to read:

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