

**PROPOSED CHANGES TO THE
NORTH CAROLINA BANKING LAWS – CHAPTER 53 OF THE GENERAL STATUTES
ARTICLE 7A ADDRESSES CONTROL TRANSACTION, COMBINATIONS, CONVERSIONS, AND INTERSTATE BANKING.**

Current Section(s)	Summary	New Section	Summary	Explanation of Change
Article 7A Control transactions; combinations; conversions; interstate banking.				
53-42.1.Change in bank control or management.	53-42.1 addresses change of control, defined as acquiring 10% or more of the voting stock of a bank, requiring the Commissioner's approval. It mandates that an application for approval be filed 60 days before the proposed acquisition of stock and directs the Commissioner to approve the application unless he finds that the competence, general fitness, experience or integrity of the acquiring person shows that it would not be in the best interest of the depositors of the bank or the public to approve the application or that the financial condition of any acquiring person might jeopardize the financial stability of the bank. It renders all information acquired about the applicant confidential. It lists those transactions that are exempt from the section. It requires the CEO of the bank to approve loans which are secured by 10% or more of a bank's stock, with certain exceptions. It also requires notification of the Commissioner of a change of the CEO or a director of a bank within 24 hours.	53-7-101	New 53-7-101. Control transactions. This section requires the approval of the Commissioner before a person may engage in a control transaction (as defined in § 53-1-4(20) and (21)) with a bank. Subsection (a) authorizes a contract for a control transaction to be executed without approval so long as consummation of the transaction is contingent on the Commissioner's approval. Subsection (b) authorizes the Commissioner to require an applicant to appoint an agent resident in North Carolina for service of process and provides for an application fee of \$5000. Subsection (c) lists six categories of transactions that are excluded from the definition of control transactions, including (i) acquiring securities in connection with a debt previously contracted as long as the person acquiring the shares notifies the Commissioner at least 10 days before the first time he or she votes the stock, (ii) acquiring additional securities in a bank over which the person has already received approval from the Commissioner for a control transaction as long as the person acquiring the shares notifies the Commissioner at least 10 days before the first time he or she votes the stock, (iii) acquiring securities by operation of law or inheritance as long as the person acquiring the shares notifies the Commissioner at least 10 days before the	The new provision and those that follow substantially restructure the current statute on change of control. New items include authority to contract for a change of control as long as consummation is contingent on the Commissioner's approval; the 10-day notice provision for certain otherwise exempt transactions; the requirement to appoint a resident agent for service of process; the \$5000 filing fee (currently in rules); some of the exempt transactions are new (i.e. proxy solicitations and transactions exempted by rules, orders or declaratory rulings of the Commissioner); the 10-day period during which the Commissioner must object to the claimed exemption or it is deemed approved; and the provision stating that acquired stock pending approval of the Commissioner is to be treated as authorized but unissued shares.

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			first time he or she votes the stock, (iv) proxy solicitations, (v) a transaction exempted by rules, orders or declaratory rulings of the Commissioner, and (vi) an acquisition of control governed by Section 3 of the Bank Holding Company Act (12 U.S.C. 1842). Subsection (d) sets forth the procedure to be followed upon receipt of a notice under subsection (c). The Commissioner has 10 days to object and in so doing may either require more information or a full control transaction application. Subsection (e) states that acquired stock in a pending control transaction shall be treated like authorized but unissued stock, and may not be voted, until the Commissioner's approval is received or it is determined that it is not needed under subsection (c).	
53-42.1. Change in bank control or management.	53-42.1 addresses change of control, defined as acquiring 10% or more of the voting stock of a bank, requiring the Commissioner's approval. It mandates that an application for approval be filed 60 days before the proposed acquisition of stock and directs the Commissioner to approve the application unless he finds that the competence, general fitness, experience or integrity of the acquiring person shows that it would not be in the best interest of the depositors of the bank or the public to approve the application or that the financial condition of any acquiring person might jeopardize the financial stability of the bank. It renders all information acquired about the applicant confidential. It lists those	53-7-102	New 53-7-102. Application regarding a control transaction. This section requires a control transaction applicant to file with the Commissioner an application, filing fees, and any additional information required by the Commissioner. If there is more than one person involved, the Commissioner may require that information be provided about each of them. Information about the individuals involved is to be treated as a confidential record under § 53-2-8. It does not address changes in bank management.	The new provision specifies that the application for approval of a control transaction must be accompanied by appropriate filing fees and such information as may be required by the Commissioner. If the applicant is a group of persons, the Commissioner may require information about each of them.

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	transactions that are exempt from the section. It requires the CEO of the bank to approve loans which are secured by 10% or more of a bank's stock, with certain exceptions. It also requires notification of the Commissioner of a change of the CEO or a director of a bank within 24 hours.			
No corresponding section.	N/A	53-7-103	New 53-7-103. Public Notice. This section requires a control transaction applicant to publish a public notice containing a statement that the application has been filed, the name of the bank and the address of its principal office and that interested parties have 14 days to submit comments to the Commissioner. It must also include the Commissioner's current address.	There is no public notice requirement under existing law.
53-42.1. Change in bank control or management.	53-42.1 addresses change of control, defined as acquiring 10% or more of the voting stock of a bank, requiring the Commissioner's approval. It mandates that an application for approval be filed 60 days before the proposed acquisition of stock and directs the Commissioner to approve the application unless he finds that the competence, general fitness, experience or integrity of the acquiring person shows that it would not be in the best interest of the depositors of the bank or the public to approve the application or that the financial condition of any acquiring person might jeopardize the financial stability of the bank. It renders all information acquired about the applicant confidential. It lists those	53-7-104	New 53-7-104. Actions on control transaction applications. This section sets forth the process for acting on control transaction applications. Upon receipt of the application, the Commissioner is directed (subsection (a)) to examine the character, competence and experience of the acquiring person and proposed management team to determine if the interests of the customers and communities served by the bank would be adversely affected by the proposed transaction. The Commissioner has 60 days to act, barring extraordinary circumstances. Subsection (b) lists criteria upon which the Commissioner may base denial of the application: (i) financial condition of the applicant; (ii) concerns about the character, competence and experience of any acquiring person or proposed management personnel; (iii) the proposed plan is not in the best interests of	The existing law does not set forth a detailed procedure for taking action on control transaction applications, but does list criteria upon which the Commissioner may decide to deny the application. The new law is more detailed in that regard, including the substance of the existing provisions and adding that the application may be denied if, upon consummation of the transaction, the bank would be undercapitalized or otherwise out of compliance with the statutes or rules; the application is incomplete; or required disclosures were not made in soliciting votes of the holders of the voting securities of the bank. The new provision adds a statement that the transaction may proceed upon receipt of the Commissioner's approval and provides that any conditions imposed by the Commissioner are enforceable against each

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	transactions that are exempt from the section. It requires the CEO of the bank to approve loans which are secured by 10% or more of a bank's stock, with certain exceptions. It also requires notification of the Commissioner of a change of the CEO or a director of a bank within 24 hours.		the bank's customers; (iv) upon consummation of the transaction, the bank would be undercapitalized or otherwise out of compliance with Chapter 53 or the rules of the Commissioner; (v) the application is incomplete; or (vi) required disclosures were not made in soliciting the votes of the holders of the voting securities of the bank. Subsection (c) authorizes the transaction to proceed upon approval by the Commissioner and states that any conditions imposed by the Commissioner are enforceable against each member of the group of persons receiving the approval.	member of the group of individuals receiving the approval.
No corresponding section.		53-7-105	New 53-7-105. Appeal. This section authorizes appeal of the Commissioner's denial of a control transaction application to the Commission pursuant to § 53-2-6.	While there is no specifically corresponding provision, § 53-95 states that all actions of the Commissioner are taken under the supervision of the Commission.
53-12. Merger or consolidation of banks and savings associations.	53-12 governs mergers and consolidations among banks and savings institutions. It requires the Commissioners approval for such actions.	53-7-201	New 53-7-201. Combination authority. This section authorizes combinations of one or more depository institutions with the approval of the Commissioner and establishes the application fee at \$5000.	The new provision adds the requirement of the application fee of \$5000 to the statute. Fee provisions are currently in the rules.
53-12(a). Merger or consolidation of banks and savings associations.	53-12(a) requires that in applying to the Commissioner for approval of a merger or consolidation, the banks involved must submit certified copies of the actions of their boards of directors and shareholders. Those proceedings must reflect (i) a two-thirds majority vote in favor of the transaction; and (ii) in the case of savings institutions, whatever voting requirements exist must have been met. The contract under which the transaction is to occur must be included in the filing. The Commissioner is directed to make an investigation into	53-7-202	New 53-7-202. Combination application and investigation. This section sets forth the process for dealing with combination applications. Subsection (a) requires the applicant to submit with the application copies of agreements under which the combination is proposed to be effectuated along with any other information required by the Commissioner or the relevant rules. Subsection (b) requires the applicant to publish a public notice setting forth (i) that an application has been filed with the Commissioner; (ii) the names of the parties to the proposed combination and the addresses of their principal officers; and (iii) that the	The new provision changes the manner and specifies the substance of the public notice of the transaction. The fee is substituted for the requirement that the parties pay for the investigation by the Commissioner. The new provision is more explicit about the substance of the Commissioner's investigation. As part of the investigation is into the character, competency and experience of the proposed directors and executive officers of the surviving party, the section renders the findings of the investigation confidential.

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	the proposed transaction. The Commissioner is to determine (i) if the interests of the customer and owners are protected; (ii) if it is in the public interest; (iii) and is it taking place for legitimate purposes. The expenses of the investigation are to be paid by the parties to the transaction. Notice must be published once a week for four consecutive weeks before the effective date of the transaction, in a newspaper of general circulation in the markets of the parties. A certified copy of the notice is to be filed with the Commissioner. Creditors rights are to be preserved unimpaired.		Commissioner will consider written comments received within 14 days of the publication. Subsection (c) directs the Commissioner to examine the proposed transaction, including the character, competency and experience of the proposed directors and executive officers of the surviving party to determine if the customers and communities served by the combining institutions would be adversely affected by the combination. Subsection (d) renders confidential information gathered by the Commissioner about the directors and executive officers pursuant to § 53-2-7(b).	
No corresponding section.	N/A	53-7-203	New 53-7-203. Decision on application. This section provides that the Commissioner shall enter a decision approving or denying a combination application within 60 days after notifying the parties that their application is complete, absent extraordinary circumstances.	The new provision is part of a more transparent procedure for dealing with these transactions.
No corresponding section.	N/A	53-7-204	New 53-7-204. Interim banks. This section authorizes the Commissioner to permit the establishment of an interim bank for use in effectuating the combination; such interim bank is not to conduct any business, except as is necessary and incidental to its formation and the combination.	It is often necessary for purposes of corporate or tax law to form an interim (or temporary) bank that exists only as long as needed to consummate the transaction.
53-13. Merged or consolidated banks and savings associations deemed one bank or savings association.	53-13 provides that when all procedural steps have been completed, the parties to the transaction are one company with the rights, privileges, powers and franchises of the original parties. It specifies that the directors and officers named in the agreement will serve until	53-7-205	New 53-7-205. Surviving depository institution. This section provides that the surviving institution succeeds to all of the rights, powers, duties, etc. of the combining institutions.	The new provision is similar in substance, but not language, to the current law. It does not address the duration of service of the officers and directors.

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	the next annual meeting.			
53-16. Consolidation, conversion or merger of State banks or trust companies with national banks.	53-16 governs mergers, consolidations, and conversions of banks or trust companies with national banks. It requires approval by a two-thirds majority of the voting securities of the state bank. It provides that the resultant national bank stands in the shoes of the merged, consolidated or converted state bank or banks. It provides for dissenting shareholders to have the right to have their stock purchased for cash, and provides the procedure for establishing the valuation of the stock. Upon the completion of the transaction, state authority to operate as a bank terminates.	53-7-206	New 53-7-206. Combination with federally chartered institution. This section provides that a merger with a federally chartered institution that is to be the surviving institution is subject both to these provisions governing combinations and to approval by the chartering authority of the federally chartered institution.	The new provision merely states that a combination with a federally chartered institution is governed by the procedures set forth in Part 2 of Article 7A and those of the rules of the relevant federal chartering agency.
No corresponding section.	N/A	53-7-207	New 53-7-207. Combination with a subsidiary. This section sets forth the rules for a combination between a bank subsidiary and the bank or another company. Subsection (a) states that either type of combination may take place with the Commissioner's approval, but if the combination is with the parent bank, the bank must be the survivor. If the combination is with another company, the bank subsidiary must be the survivor. Subsection (b) requires the applicant to submit with the application copies of agreements under which the combination is proposed to be effectuated along with any other information required by the Commissioner or the relevant rules. It sets forth the application fee of \$1000. Subsection (c) directs the Commissioner to examine the proposed combination to determine whether (i) the interests of the customers and communities served by the bank	Activities conducted in subsidiaries are sometimes brought into the bank by merging with the subsidiary. This provision fills a gap in the current law.

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			would be adversely affected; (ii) the transaction would cause the bank to be undercapitalized or otherwise in violation of the laws or regulations; or the combination presents other risks to the safe and sound operation of the bank. Subsection (d) provides that the surviving bank succeeds to all of the rights, powers, duties, etc. of the combining institutions.	
53-17. Fiduciary powers and liabilities of banks or trust companies merging or transferring assets and liabilities.	53-17 states that following merger (or transfer of assets and liabilities) between two financial institutions or trust companies, all fiduciary rights, powers, duties and liabilities are vested in the surviving or transferee institution. The surviving or transferee institution is deemed to be substituted for the merged or transferring one.	53-7-208	New 53-7-208. Fiduciary powers and liabilities of combining banks. This section states that when a bank combines with another depository institution and the other institution is the survivor of the combination, the fiduciary rights, powers and duties of the bank immediately vest in the resulting depository institution, which shall be deemed substituted for the combining bank for all fiduciary purposes.	The current and new provisions are substantively the same.
No corresponding section.		53-7-209	New 53-7-209. Appeal. This section authorizes appeal of the Commissioner's denial of a combination application to the Commission pursuant to § 53-2-6.	While there is no specifically corresponding provision, § 53-95 states that all actions of the Commissioner are taken under the supervision of the Commission.
53-14. Reorganization. 53-17.2. Conversion of savings association to a State bank.	53-14 authorizes and governs the dissolution or a national or state bank and the subsequent rechartering of the bank as a state bank. Such a procedure may be necessary or advisable for supervisory or tax purposes. <u>[IS THIS LAST STATEMENT TRUE?]</u> 53-17.2 provides the procedure for the conversion of a savings association to a state bank. The conversion requires action by the company's board of directors, submission of a plan of conversion to the Commissioner, the necessary findings that must be made by the commissioner to recommend	53-7-301	New 53-7-301. Conversion to a North Carolina bank charter. This section sets forth the process by which a financial institution may convert to a North Carolina bank charter. Subsection (a) authorizes a financial institution to apply to the Commissioner for approval to convert to a state bank and sets the fee at \$5000. Subsection (b) requires the application to be accompanied by a plan of conversion. Subsection (c) lists the findings the Commissioner must make to approve the plan: (i) the bank will commence operations in a safe, sound, prudent manner with adequate capital, etc.; (ii) the directors and officers are qualified; (iii) the interests of the customers, creditors and shareholders will not	The new provision is broader than the current sections in that it provides a standardized process for any company seeking to convert to a state bank charter. It sets forth the fee at \$5000, which is currently contained in the rules. <u>[IS THE FEE NOW \$5000 AND IS IT SET FORTH IN RULES?]</u> The fee must be accompanied by a plan of conversion. The findings that must be made for approval are similar to those prescribed in current 53-17.2 for conversion of savings associations to state banks. The new law requires the Commissioner to monitor the conversion process as it is implemented following approval. Generally, consistent with the

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	approval to the Commission, which is empowered to approve, modify or disapprove the recommendation. The section provides the process for approval by the stockholders or members of the company if the Commission authorizes the conversion to proceed. It provides for the surviving company to be deemed a continuation of the converting one.		be materially and adversely affected; (iv) the plan is not in violation of the converting institution's applicable organizational law; and (v) the appropriate disclosures have been or will be made to the converting institution's equity ownership interest holders. Subsection (d) directs the Commissioner to monitor the conversion process as it is implemented following approval. Subsection (e) directs the Commissioner to authorize the consummation of the conversion, issue a charter, and permit the filing of appropriate documents with the Secretary of State when all appropriate steps have been taken. Subsection (f) authorizes the Commissioner to provide in his order authorizing the conversion for the winding up of activities or disposal of assets or liabilities that were permitted for the converting institution but are not permissible for a state bank. The Commissioner may provide for a transition period. Subsection (g) says the converting institution will continue in existence as a bank and all rights, liabilities and obligations of the converting institution shall continue.	approach taken throughout this article, the new provision provides a clear process for accomplishing the desired conversion.
No corresponding section.		53-7-302	New 53-7-302. Appeal. This section authorizes appeal of the Commissioner's denial of a conversion application to the Commission pursuant to § 53-2-6.	While there is no specifically corresponding provision, § 53-95 states that all actions of the Commissioner are taken under the supervision of the Commission.
53-16. Consolidation, conversion or merger of State banks or trust companies with national banks.	53-16 governs mergers, consolidations, and conversions of banks or trust companies with national banks. It requires approval by a two-thirds majority of the voting securities of the state bank. It provides that the resultant national bank stands in the shoes of the merged, consolidated or	53-7-303	New 53-7-303. Conversion by North Carolina bank. This section authorizes a state bank to convert to another type of institution. Upon completion of its conversion, the depository institution is to notify the Commissioner of the conversion and file a copy of its authorization to operate as a different type of depository institution. Upon effectiveness of the	The new provision deals specifically with conversions of state banks to other types of financial institution charters. The conversion is governed by the laws and regulations of the chartering authority that will supervise the company following the conversion. The company is required to notify the Commissioner upon completion of the

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	converted state bank or banks. It provides for dissenting shareholders to have the right to have their stock purchased for cash, and provides the procedure for establishing the valuation of the stock. Upon the completion of the transaction, state authority to operate as a bank terminates.		conversion, the depository institution will cease to be a state bank. All rights, responsibilities of the bank will continue to exist in the new form of depository institution.	conversion and to file a copy of its authorization to operate as a different type of depository institution.