

**PROPOSED CHANGES TO THE
NORTH CAROLINA BANKING LAWS – CHAPTER 53 OF THE GENERAL STATUTES
ARTICLE 8A ADDRESSES BANK SUPERVISION**

Current Section(s)	Summary	New Section	Summary	Explanation of Change
Article 8A Bank Supervision.				
53-104. Commissioner of Banks shall have supervision over, etc.	53-104 places anyone conducting a banking business in North Carolina under the supervision of the Commissioner. It tasks the Commissioner with enforcement of all state laws pertaining to banking. It authorizes the Commission to promulgate rules necessary to implement the laws for the protection of the various stakeholders. Banks are required to conduct their business in accordance with all relevant laws and regulations.	53-8-1	New 53-8-1. Commissioner has authority to supervise banks. Subsection (a) states that every bank is under the supervision of the Commissioner, whose duty it is to enforce all laws relating to banks and requires banks to conduct their business in accordance with all relevant laws, regulations and orders. Subsection (b) sets forth the Commissioner’s authority to enter various types of consensual corrective arrangements with banks and holding companies. Subsection (c) authorizes the Commissioner, upon request, to issue interpretations in different forms and stipulates that such interpretations shall not have the force and effect of rules or law.	The new provision speaks more thoroughly than- current law about the Commissioner’s authority. It also clearly authorizes the Commissioner to issue interpretations and issue rulings to explain or clarify laws and regulations.
53-122. Fees and assessments.	53-122(a) provides that banks and consumer finance licensees shall pay the assessments set forth in the section within 10 days after the assessment for the purpose of operating and maintaining OCOB. Subdivision (1) sets forth the assessment brackets for banks, including a separate assessment for trust assets. Subdivision (2) places an asset-based assessment and a per office assessment on consumer finance licensees. Subdivision (3) permits special assessments when examinations require extra time of when there are	53-8-2	New 53-8-2. Assessments and fees. This section deals with bank assessments. Subdivision (1) sets forth the assessment brackets. Subdivision (2) provides the assessments applicable to trust assets. Subdivision (3) authorizes special assessments if extra work is required or if there is a conversion or consolidation transaction. The Commissioner’s determination of the amount of a special assessment is deemed reasonable in the “absence of manifest error.”	The new provision does not deal with consumer finance licensees, just banks. The general assessment provision is unchanged. The special assessment provision is substantively unchanged except for the presumption of reasonableness set forth for the Commissioner’s determination of special assessments. The new provision does not contain the authority to discount the assessment fees, which may be done under current law following presentation to the GOV OPS Committee.

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	<p>transactions that require special examinations. Subsection (b) gives the Commission authority to set fees for processing any applications required to be filed and for receiving copies of any public records. Subsection (c) provides that OCOB shall be reimbursed a fee and expenses when OCOB staff is called to testify in civil and criminal proceedings. Subsection (d) ties the cost of operating OCOB to the fees collected in that year plus any surplus on hand. Subsection (e) provides the process for collecting the assessment from banks and discounting any excess under the statutory formula. Subsection (f) permits collection of assessments annually or in periodic installments as approved by the Commission.</p>			
<p>53-105. Reports of condition. 53-106 Special reports. 53-117(c) and (d). Appointment by Commissioner of Banks; examination of banks.</p>	<p>53-105 requires banks to file reports of condition at least four times per year, within 10 days of a request or requisition for such report, which time period the Commissioner may extend by up to 30 days. The Commissioner may also order the bank to publish in a newspaper a summary of its annual report. 53-106 authorizes the Commissioner to require any special reports he deems necessary and to require their publication as in 53-105. 53-117(c) and (d) authorize the Commissioner to accept, as part of an examination, reports prepared by independent accountants or federal</p>	53-8-3	<p>New 53-8-3. Reports required of banks. This section requires banks to file annual and periodic reports of condition. It also requires banks to file copies of all federal reports and applications with the Commissioner. It stipulates that it does not limit the authority of the Commissioner to request and obtain other information that is deemed necessary to carry out his or her duties under the Chapter.</p>	<p>The new provision reorganizes the material of the current law, but is substantively quite similar. It does not contain the authority to require publication in newspapers of annual or special reports. It more broadly states the authority of the Commissioner to obtain from a bank any information needed to carry out the Commissioner's responsibilities.</p>

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	supervisory agencies.			
53-117(a) and (b). Appointment by Commissioner of Banks; examination of banks. 53-118. Duties and powers.	53-117(a) and (b) authorizes the Commissioner to appoint examiners and other agents as needed to examine every bank as often as necessary, but at least once every year, except, under emergency conditions, when that period may be extended to 18 months. The Commission is directed to adopt rules and regulations concerning examinations. 53-118 imposes on examiners the duty to verify all reports banks make to the Commissioner. Bankers are required to surrender all relevant documents to examiners who may keep them as long as necessary. If any officer refuses to comply or to be examined under oath by an examiner, the Commissioner is authorized to take possession of the bank and liquidate its affairs.	53-8-4	New 53-8-4. Examination by Commissioner. Subsection (a) is a broad grant of authority to the Commissioner to examine a bank and its holding company and to appoint examiners to do so. The examiners are to file a full report of the findings of the examination including any violation of law or any unsafe or unsound practices. Subsection (b) requires that examinations must be carried out in conformity with the rules of the bank's primary federal supervisor and published examination guidance of OCOB. Subsection (c) requires the Commissioner to provide a copy of the report to the bank or holding company and, upon request, to the primary federal supervisor and the FDIC if it is not the primary federal supervisor.	The new provision imposes similar duties on examiners, but is less specific about a schedule for examinations. It requires conformity with examination guidelines of the primary federal supervisor of the bank and published OCOB examination guidance. It directs the Commissioner to furnish a copy of the report of examination to the bank or holding company examined and authorizes the provision of one to the primary federal supervisor or FDIC, upon request.
53-104.1. Examination of nonbanking affiliates.	53-104.1 authorizes the Commissioner to examine the affiliates of a state bank to the extent it is necessary to safeguard the interest of the depositors and creditors of the bank and the general public and to enforce the provisions of Chapter 53. It defines "affiliate" and authorizes cooperation with other regulatory agencies.	53-8-5	New 53-8-5. Examination of affiliates. This section authorizes the Commissioner to examine the affiliates of a state bank to the extent it is necessary to safeguard the interest of the depositors and creditors of the bank and the general public and to enforce the provisions of Chapter 53.	The new provision carries forward the substantive provisions of current law. "Affiliate" is defined in the definition section of the new law, so there is no definition in 53-8-5.
53-120. Examiners may administer oath; summoning witnesses.	53-120 authorizes examiners to administer oaths to examine bank officers, directors, agents, employees, customers or shareholders for the purpose of making examinations as required by Chapter 53. The examiner	53-8-6	New 53-8-6. Access to books and records; right to issue subpoenas, administer oaths, and examine witnesses. Subsection (a) grants the Commissioner, examiners or agents (1) access to all books and records of the bank, its holding company or affiliates that relate to the business	The new provision clarifies that the authority to examine books and records, compel testimony, etc., extends not only to the bank but to the parent holding company and to affiliates as well. It also provides specificity as to the Commissioner's course of action when

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	is authorized to summon in writing such persons to appear before him or her.		of the bank; (2) authority to subpoena witnesses and administer oaths to officers, directors or employees of the bank, its holding company or affiliates or any other person in relation to the affairs of the bank, affiliates or holding company; (3) authority to require production of records or documents; and (4) may order the correction of improper entries in the books or records of the bank, holding company or affiliates. Subsection (b) authorizes the Commissioner to issue subpoenas <i>duces tecum</i> . Subsection (c) provides that when a person fails to comply with a subpoena so issued or a party or witness refuses to testify, a court of competent jurisdiction, upon application of the Commissioner, may compel compliance by proceedings for contempt.	a person fails to comply under the provisions of the section.
53-124. Examiner making a false report.	53-124 makes it a Class H felony for an examiner to knowingly or willfully make a false or fraudulent report of a bank after an examination with the intent to aid or abet officers, owners or agents of the bank to operate an insolvent bank, or to keep or accept any bribe given to induce a failure to file a report of examination.	53-8-7	New 53-8-7. Examiner making a false report. This section makes it a Class H felony for an examiner to knowingly or willfully make a false or fraudulent report of a bank after an examination with the intent to aid the bank or its affiliates in committing violations of any provision of Chapter 53 or to keep or accept any bribe given to induce a failure to file a report of examination.	The new provision is somewhat broader in that the intent may be to violate any provision of Chapter 53, not merely to operate an insolvent bank.
53-125. Examiner disclosing confidential information.	53-125 makes it a Class 1 misdemeanor for an examiner to divulge confidential information obtained in the course of an examination except for exchanging information with other bank regulators, or other authorities, "or others with whom a proper exchange of information is wise or necessary."	53-8-8	New 53-8-8. Examiner disclosing confidential information. This provision makes it a Class 1 misdemeanor for an examiner or other employee of OCOB fails to keep secret facts or information obtained in an examination, except as permitted or required by Chapter 53.	The new provision broadens the class of persons to whom it applies to all OCOB employees and limits permitted disclosures to those permitted or required by Chapter 53.
53-126. Loans or gratuities forbidden.	53-126 makes it a Class 1 misdemeanor for a bank or an officer, employee or director of a state bank to make any	53-8-9	New 53-8-9. Loans or gratuities forbidden. Subsection (a) of the new provision makes it a Class 1 misdemeanor for a bank or an officer,	Subsection (a) of the new provision carries forward the existing law. Subsection (b) which permits an exemption for any deputy

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	loan or give any gratuity to the Commissioner or any examiner. A fine is permitted equal to the amount of the loan or gratuity. It also makes it a misdemeanor with a similar fine for the Commissioner or examiner to accept such a loan or gratuity.		employee or director of a state bank to make any loan or give any gratuity to the Commissioner or any examiner. A fine is permitted equal to the amount of the loan or gratuity. It also makes it a misdemeanor with a similar fine for the Commissioner or examiner to accept such a loan or gratuity. Subsection (b) permits the Commissioner to exempt from the provisions of subsection (a) any deputy commissioner or examiner who has a loan from a state bank at the time of their hiring. The loan may be extended after the hiring, if it is done on such terms as would be available to the general public.	commissioner of examiner with respect to pre-existing loans, is new.
53-128. Willfully and maliciously making derogatory reports.	53-128 makes it a Class 1 misdemeanor to transmit false statements about the financial condition of a bank.	53-8-10	New 53-8-10. Willfully and maliciously making derogatory reports. This section makes it a Class 1 misdemeanor to transmit false statements about the financial condition of a bank.	The new provision makes no substantive change in the existing law.
53-129. Misapplication, embezzlement of funds, etc.	53-129 sets forth as broadly as possible the criminal acts involved in committing fraud upon or embezzling from a bank. The crime is a Class C felony if the amount of money involved is \$100,000 or more and a Class H felony if less than \$100,000.	53-8-11	New 53-8-11. Misappropriation, embezzlement of funds, etc. This section sets forth as broadly as possible the criminal acts involved in committing fraud upon or embezzling from a bank. The crime is a Class C felony if the amount of money involved is \$100,000 or more and a Class H felony if less than \$100,000.	The new provision is substantively the same as the old. It utilizes newly defined terms to improve clarity (i.e., "person" includes both an individual and a corporation).
53-130. Making false entries in banking accounts; misrepresenting assets and liabilities of banks. 53-131. False certification of a check. 53-132. Receiving deposits in insolvent	53-130, -131, and -132, all render the offenses listed in their captions felonies. False certification of a check and receiving deposits in insolvent banks are Class I felonies punishable with a fine of up to \$5000. Making false entries, etc., is a Class H felony. 53-134 covers any other offense against the banking laws and makes such crimes Class 1 misdemeanors.	53-8-12	New 53-8-12. Enforcement of the banking laws. Subsection (a) authorizes the Commissioner to order an examination or investigation if he believes that a violation of the banking laws has occurred or is occurring. Subsection (b) provides a civil penalty of \$1000 for any bank that fails to provide a report requested by the Commissioner within 10 days of the request or any additional time granted by the Commissioner. The Commissioner must notify the bank of the failure and the bank has 5 days to cure it. Failing to do	The new approach to violations of the banking laws is set forth in 53-8-12. The Commissioner is authorized to order an examination or investigation if he believes a violation of the banking laws has been or is being committed. Failure to respond can lead to a \$1000 civil penalty, and the statute sets forth the procedure for levying and appealing such a penalty. The Commissioner is authorized to issue cease and desist orders and the statute provides penalties for

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banks. 53-133. Advertising larger amount than that paid in capital stock. § 53-134. Offenses declared misdemeanors; prosecution; employment of counsel; punishment.			so subjects the bank to the fine. Subsection (c) contains authority to issue cease and desist orders with respect to violations of laws or rules or from a course of conduct that is unsafe or unsound and which likely to cause insolvency or dissipation of assets. Subsection (d) affords the right for a hearing on enforcement matters, but authorizes the Commissioner to act first and hold the hearing promptly thereafter under extraordinary circumstances. Subsection (e) authorizes the Commissioner to subpoena witnesses, compel their attendance and require the production of evidence. Subsection (f) authorizes civil fines of \$1000 for violating cease and desist orders with respect to violations of laws or rules and up to \$500 <u>per day</u> for violations of cease and desist orders involving a course of conduct that is unsafe or unsound.	violating such orders. Appropriate procedural protections are provided for those subject to the penalties authorized.
No corresponding provision.	N/A	53-8-13	New 53-8-13. Immediate action orders. This section authorizes the Commissioner to take immediate action requiring a bank to conduct its business in a safe and sound manner or any of its directors, officers or employees to cease or desist from an act or course of conduct that threatens or is reasonably probable of threatening the financial integrity of the bank. Such action may be taken if the Commissioner determines that the bank suffers capital deficiencies. Though effective upon issuance, the order may be appealed promptly to the Commission.	This new provision is designed to give the Commissioner comparable tools for dealing with an emergency situation as those authorized to federal agencies as “prompt corrective actions.” Though similar authority probably exists under current law, it is not explicit.
53-19. When Commissioner of Banks may take charge.	53-19 authorizes the Commissioner to take possession of the business and property of a state bank whenever any of the ten listed criteria are met: (i) violation of the banks charter or related	53-8-14	New 53-8-14. Supervisory control. Subsection (a) authorizes the Commissioner, when he believes a bank has insufficient capital or is being operated in an unsafe or unsound manner that threatens the financial integrity of the bank, may	The current statute sets forth the first step of what is anticipated to be a liquidation of a bank. Both the current law and the proposed law (in Article 9A) set forth a detailed process to accomplish such a resolution of a failing

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	<p>laws; (ii) the bank is operating in an unauthorized or unsafe manner; (iii) the bank is in an unsafe or unsound condition to transact its business; (iv) the bank has an impairment of its capital stock; (v) the bank has refused to honor its commitments to depositors or other investors; (vi) the bank has otherwise become insolvent; (vii) the bank has neglected or refused to comply with a lawful order of the Commissioner; (viii) the bank has refused to properly submit to an examination; (ix) the bank's officers have refused to be examined under oath concerning the bank's affairs; or (x) the bank has made a voluntary assignment of its assets to trustees.</p>		<p>serve a notice of charges on the bank requiring it to show cause why it should not be placed under supervisory control. The order must state the grounds for supervisory control and set forth the time and place for a hearing on the order, not less than 7 days nor more than 15 from the date of the order. Subsection (b) provides that after the hearing, if necessary to protect the bank's customers, creditors or the general public, the Commissioner may take supervisory control of the bank. The bank's board of directors may appeal the Commissioner's decision to the Commission no later than 10 days after the date of the order. Subsection (c) provides that during the period of supervisory control, the Commissioner may appoint an agent to guide the operations of the bank and the bank must follow the directions of the agent unless to do so would violate orders of its primary federal supervisor or the FDIC, if it is not the primary federal regulator. Subsection (d) gives the Commissioner 180 days after taking supervisory control to issue an order approving the plan of termination of supervisory control on the 30th day following issuance of the order. The plan may provide for (i) issuance by the bank of debt instruments or shares; (ii) the appointment or removal of one or more officers or directors; (iii) reorganization or combination of the bank; (iv) a control transaction with regard to the bank; or (v) the dissolution and liquidation of the bank. Subsection (e) directs the bank to cover the Commissioner's reasonable costs of taking supervisory control and provides that the determination of those costs by the Commissioner, absent manifest error, is dispositive of the issue of reasonableness.</p>	<p>institution. The new provision sets forth a detailed procedure which may lead to the rehabilitation of the bank or to liquidation. It provides a timeline for holding hearings and for taking supervisory control of the bank. The Commissioner has 180 days after taking control of a bank to issue an order approving the plan of termination of supervisory control. The plan may provide for steps to rehabilitate the bank or for the dissolution and liquidation of it. The bank is directed to cover the Commissioner's expenses incurred during the period of supervisory control.</p>

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53-119. Removal of officers and employees.	53-119 authorizes the Commissioner to require immediate removal from office of any officer, director or employee of any bank found to be dishonest, incompetent or reckless in management of the affairs of the bank or who persistently violates laws or rules.	53-8-15	New 53-8-15. Removal of directors, officers, and employees. Subsection (a) authorizes the Commissioner to issue an order temporarily removing an officer, director or employee of a bank from office if the Commissioner finds that such person has participated or consented in any violation of Chapter 53 or an order of the Commissioner or has engaged in any unsafe or unsound practice in the operation of the state, or is found to be dishonest, incompetent or reckless in management of the affairs of the bank or who persistently violates laws or rules. The temporary order of removal must state the time and place for a hearing on the order. For good cause shown, the Commissioner may extend the time of the hearing for up to 10 days. Upon the hearing, the temporary order may be dissolved or made permanent in whole or in part. Subsection (b) states that a removal under this section is as effective as if accomplished by the bank's shareholders. Subsection (c) renders any person subject to an order issued under this section ineligible to serve as an officer, director or employee of any bank without the prior written approval of the Commissioner. Subsection (d) authorizes an appeal from the order of the Commissioner to the Commission within 10 days of the issuance of the order.	The new provision is somewhat broader in its listing of causes for which an officer, director or employee of a bank may be removed by the Commissioner. It provides the procedure which must be followed to make such a removal permanent and sets forth the right of appeal, which would be deemed to exist under current law as the Commission has the right to review all actions of the Commissioner.
53-77.3. Banks suspending business during an emergency.	53-77.3 addresses the process for banks suspending business during an emergency. It authorizes the Commissioner, in his discretion, to declare emergencies warranting the closing of one or more banks or bank offices and for the suspension of banking activities. It authorizes the	53-8-16	New 53-8-16. Emergency powers. This section grants the Commissioner discretion to waive or suspend requirements for compliance by one or more banks with provisions of Chapter 53 in the event of a natural disaster, or other national, regional, state, or local emergency.	The new provision is much broader in that it authorizes the Commissioner to suspend or waive compliance with any provision of Chapter 53, while the existing law deals only with suspending operations.

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	bank to close without a declaration by the Commissioner if communication with the Commissioner is disrupted.			
No corresponding section.	N/A	53-8-17	New 53-8-17. Interstate regulatory agreements. This provision authorizes the Commissioner to enter cooperative supervisory and information-sharing agreements with bank regulatory agencies in other states with respect to out-of-state banks with branches here and North Carolina banks with branches in those other states.	This section is consistent with current practice which has grown essential with the evolution of interstate branching by banks of all sizes and charters.