

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 671
HOUSE BILL 331

AN ACT TO AMEND CERTAIN SECTIONS OF CHAPTER 53 AND OTHER CHAPTERS
OF THE GENERAL STATUTES RELATING TO BANKS AND THE COMMISSIONER
OF BANKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-12 is rewritten in its entirety to read as follows:

"§ 53-12. Merger or consolidation of banks. — A bank may merge or consolidate with or transfer its assets and liabilities to another bank. Before such merger or consolidation or transfer shall become effective, each bank concerned in such merger or consolidation or transfer shall file, or cause to be filed, with the Commissioner of Banks, certified copies of all proceedings had by its directors and stockholders, which said stockholders' proceedings shall set forth that holders of at least two thirds of the stock voted in the affirmative on the proposition of merger or consolidation or transfer. Such stockholders' proceedings shall also contain a complete copy of the agreement made and entered into between said banks, with reference to such merger or consolidation or transfer. Upon the filing of such stockholders' and directors' proceedings as aforesaid, the Commissioner of Banks shall cause to be made an investigation of each bank to determine whether the interests of the depositors, creditors, and stockholders of each bank are protected, and find such merger or consolidation is in the public interest, and that such merger or consolidation or transfer is made for legitimate purposes, and his consent to or rejection of such merger or consolidation or transfer shall be based upon such investigation. No such merger or consolidation or transfer shall be made without the consent of the Commissioner of Banks. The expense of such investigation shall be paid by such banks. Notice of such merger or consolidation or transfer shall be published for four weeks before or after the same is to become effective, at the discretion of the Commissioner of Banks, in a newspaper published in a city, town, or county in which each of said banks is located, and a certified copy thereof shall be filed with the Commissioner of Banks. In case of either transfer or merger or consolidation the rights of creditors shall be preserved unimpaired, and the respective companies deemed to be in existence to preserve such rights for a period of three years."

Sec. 2. G.S. 53-13 is rewritten in its entirety to read as follows:

"§ 53-13. Merged or consolidated banks deemed one bank. — In case of merger or consolidation when the agreement of merger or consolidation is made, and a duly certified copy thereof is filed with the Secretary of State, together with a certified copy of the approval of the Commissioner of Banks to such merger or consolidation, the banks, parties thereto, shall be held to be one company, possessed of the rights, privileges, powers, and franchises of the several companies, but subject to all the provisions of law under which it is created. The directors and other officers named in the agreement of consolidation shall serve until the first annual meeting for election of officers and directors, the date for which shall be named in the agreement. On filing such agreement, all and singular, the property and rights of every kind of the several companies shall thereby be transferred and vested in such surviving company in the case of merger or in such new company in the case of consolidation, and be as fully its property as they were of the companies parties to the agreement."

Sec. 3. G.S. 53-42.1 is amended in the caption thereof by deleting the words "Report of changes in ownership" and inserting in lieu thereof the words "Change in bank control."

Sec. 4. G.S. 53-42.1(a) is rewritten in its entirety to read as follows:

"(a) (1) No person shall acquire voting stock of any bank or bank holding company, as defined in Section 2 of the Bank Holding Company Act of 1956 as amended, which will result in a change in the control of the bank or bank holding company unless the Commissioner of Banks shall have approved the proposed acquisition.

(2) Written application for the proposed change in control of a bank or bank holding company must be filed with the Commissioner of Banks in such form as he may prescribe and contain such information as he may require at least 60 days prior to effective date of the proposed acquisition. The Commissioner of Banks shall approve the proposed change of control, unless upon examination and investigation he finds that

- (i) the character, competence, general fitness, experience or integrity of any acquiring person or of any of the proposed management personnel shows that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank or bank holding company; or
- (ii) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or bank holding company or prejudice the interests of the depositors of the bank.

All information contained in any application or report filed under this section and all information produced by examination and investigation of any application or report by the Commissioner of Banks shall be confidential and not available for public inspection.

(3) The provisions of this subsection shall not apply to the following transactions:

- (i) the acquisition of bank shares or assets which is subject to approval under Section 3 of the Bank Holding Company Act as amended (12 U.S.C. 1842);
- (ii) the acquisition of shares of a bank holding company as defined by Section 2 of the Bank Holding Company Act as amended (12 U.S.C. 1841) which bank holding company has a National bank as its principal banking subsidiary;
- (iii) the acquisition of shares in connection with securing, collecting, or satisfying a debt previously contracted in good faith;
- (iv) the acquisition of shares by will or through intestate succession; and
- (v) the acquisition of shares by gift, unless such gift is made for the purpose of circumventing this section.

In the event of an acquisition of shares which is exempted by (iii), (iv), or (v) above, the person acquiring the shares shall report the transaction to the Commissioner of Banks within 30 days after the acquisition. The report shall contain such information and be in such form as the Commissioner shall request and prescribe.

(4) As used in this section the following terms shall have the following meanings:

- (i) 'control' means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of the bank or bank holding company, or ownership of as much as ten

percent (10%) of the outstanding voting stock in a bank or bank holding company; and

(ii) 'person' means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any other form of entity not specifically listed herein."

Sec. 5. G.S. 53-42.1(b) is amended by adding in line 7 thereof after the word "opening." a new sentence to read as follows:

"The report shall show the identity of borrower, the name of the bank issuing the stock securing the loan, the number of shares securing the loan and the amount of the loan or loans, and this report shall be in addition to any report that may be required pursuant to other provisions of law."

Sec. 6. G.S. 53-42.1(c) is repealed and G.S. 53-42.1(d) is redesignated as G.S. 53-42.1(c).

Sec. 7. G.S. 53-43(3) is rewritten in its entirety to read as follows:

"(3) To purchase, hold, and convey real estate for the following purposes:

- a. Such as shall be necessary for the convenient transaction of its business, including furniture and fixtures, with its banking offices and other spaces to rent as a source of income, which investment shall not exceed fifty percent (50%) of its unimpaired capital fund: Provided, that this fifty percent (50%) limitation shall not apply to banking houses, furniture and fixtures leased for the purposes set forth in this subdivision. Provided, further, that if any bank shall demonstrate to the satisfaction of the Commissioner of Banks that an investment of more than fifty percent (50%) of its unimpaired capital fund in its banking houses, furniture and fixtures, would promote the convenience of the general public in transacting its banking business and would not adversely affect the financial stability of the bank, the Commissioner of Banks may, in his discretion, authorize any bank to invest more than fifty percent (50%) of its unimpaired capital fund in its banking houses, furniture and fixtures.
- b. Such as is mortgaged to it in good faith by way of security for loans made or moneys due to such banks.
- c. Such as has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or in settlements affecting security of such debts. All real property referred to in this subdivision shall be sold by such bank within one year after it is acquired unless, upon application by the board of directors, the Commissioner of Banks extends the time within which such sale shall be made. Any and all powers and privileges heretofore granted and given to any person, firm, or corporation doing a banking business in connection with a fiduciary and insurance business, or the right to deal to any extent in real estate, inconsistent with this Chapter, are hereby repealed."

Sec. 8. G.S. 53-43.3 is amended by deleting the word "qualified" after the words "officer-employee" in line 7 thereof; and by deleting the last sentence of the section.

Sec. 9. G.S. 53-50(a) is rewritten in its entirety to read as follows:

"(a) A bank which is not a member of the Federal Reserve System shall maintain at all times a reserve fund in such amounts and/or ratios as shall be fixed by regulation of the Banking Commission. In fixing the amounts and/or ratios of the reserve fund the Banking

Commission shall take into consideration the level of liquidity necessary to assure the safety and soundness of the State banking system."

Sec. 10. G.S. 53-51(a) is amended by adding after line 16 and before Subsection (b) a new subdivision to read as follows:

"(4) Balances maintained at a Federal Reserve Bank either directly or on a pass-through basis to meet the reserve requirements of the Federal Reserve System."

Sec. 11. G.S. 53-75 is amended by adding in line 11 after the word "cause." a new sentence to read as follows:

"Every bank operating under this Chapter shall render a statement of account for each deposit account, including NOW or similar accounts, at least annually to the last known address of the depositor; provided, however, such statements are not required for time deposits, or for savings deposits evidenced by passbooks. Every bank operating under this Chapter shall render a statement of account for each deposit account, including demand, time, savings, NOW, and other similar accounts upon receipt of an appropriate request reasonably made by a depositor."

Sec. 12. G.S. 53-106 is amended by adding in line 7 after the word "be." a new sentence to read as follows:

"The Commissioner of Banks may extend the time for filing special reports for a period not to exceed 30 days."

Sec. 13. G.S. 53-122(3) is rewritten in its entirety to read as follows:

"(3) The Commissioner of Banks may require reimbursement for all costs and expenses incurred in providing services other than examination for any bank or any licensee under Article 15 of this Chapter."

Sec. 14. G.S. 53-145 is amended by inserting after the numbers 53-42 and before the numbers 53-47 in line 3 thereof the numbers "53-42.1."

Sec. 15. G.S. 53-168(b) is amended in line 11 thereof by deleting the words and figure "one hundred dollars (\$100.00)" and inserting in lieu thereof the words and figure "two hundred fifty dollars (\$250.00)."

Sec. 16. G.S. 65-36.5(b) is rewritten in its entirety to read as follows:

"(b) Each application for a license shall be accompanied by a nonrefundable investigation fee of twenty-five dollars (\$25.00). If the license is granted, the investigation fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the investigation fee, the Department shall issue a renewable license unless it determines that the applicant has made false statements or representations in the application, or is insolvent, or has conducted, or is about to conduct, his business in a fraudulent manner, or is not duly authorized to transact business in this State. Each licensee under this Article shall pay annually to the Department on or before June 30 of each year, a license fee of twenty-five dollars (\$25.00)."

Sec. 17. G.S. 65-36.5(c) is amended in line 2 thereof by deleting the words and figure "two dollars (\$2.00)" and inserting in lieu thereof the words and figure "ten dollars (\$10.00)."

Sec. 18. G.S. 116B-39(b) is amended by adding in line 6 thereof after the word "State." a new sentence to read as follows:

"All costs resulting from examination by the Commissioner of Banks of the records of financial institutions other than banks organized under Chapter 53 of the General Statutes shall become an obligation of the Escheat Fund and payable on demand of the State Treasurer upon receipt of proof of cost from the Commissioner of Banks."

Sec. 19. This act is effective on July 1, 1981.

In the General Assembly read three times and ratified, this the 24th day of June, 1981.