

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 1113
SENATE BILL 706

AN ACT TO PERMIT INTERSTATE BANKING IN NORTH CAROLINA ON A RECIPROCAL BASIS AND TO PROVIDE FOR THE REGISTRATION OF BANK HOLDING COMPANIES.

Whereas, banking organizations play a vital role in the development and growth of a viable local and regional economy; and

Whereas, it is anticipated that banking services in North Carolina will be improved and competition enhanced by the development in the southeastern region of the United States of bank holding companies that are sufficient in size to compete effectively with the largest banking organizations in the United States in all areas of banking; and

Whereas, it is also anticipated that economic growth in North Carolina will be stimulated and aided by the development of such bank holding companies in the southeastern region of the United States; and

Whereas, it is desirable, at the same time, to place certain limitations on the development of bank holding companies serving North Carolina in order to prevent undue concentrations of economic resources and a lessening of competition as a result thereof; and

Whereas, a number of the United States, including states located in the southeastern region of the United States and contiguous to North Carolina, have already authorized some form of interstate banking; and

Whereas, it is desirable to encourage other states located in the southeastern region of the United States to permit the acquisition of their banks and bank holding companies by bank holding companies principally located in North Carolina in order to further the development of bank holding companies in the southeastern region of the United States; and

Whereas, federal law permits each of the United States to determine the extent to which bank holding companies may engage in interstate banking within its borders; and

Whereas, it is in the best interest of North Carolina and its citizens to establish legislation to permit acquisition, on a reciprocal basis, of North Carolina banks and bank holding companies by bank holding companies principally located in other states in the southeastern region of the United States, subject to the supervision and regulation of the North Carolina Commissioner of Banks; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 53 of the General Statutes of North Carolina is amended to add two new Articles as follows:

"ARTICLE 17.

"North Carolina Regional Reciprocal Banking Act.

"**§ 53-209. Title.** – This Article shall be known and may be cited as the North Carolina Regional Reciprocal Banking Act.

"**§ 53-210. Definitions.** – Notwithstanding any other section of this Chapter, for the purposes of this Article:

- (1) 'Acquire' means:
 - a. the merger or consolidation of one bank holding company with another bank holding company;
 - b. the acquisition by a bank holding company of direct or indirect ownership or control of voting shares of another bank holding company or a bank, if, after such acquisition, the bank holding company making the acquisition will directly or indirectly own or control more than five percent (5%) of any class of voting shares of the other bank holding company or the bank;
 - c. the direct or indirect acquisition by a bank holding company of all or substantially all of the assets of another bank holding company or of a bank; or
 - d. any other action that would result in direct or indirect control by a bank holding company of another bank holding company or a bank.
- (2) 'Bank' means any 'insured bank' as such term is defined in Section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or any institution eligible to become an 'insured bank' as such term is defined therein, which, in either event,
 - a. accepts deposits that the depositor has a legal right to withdraw on demand; and
 - b. engages in the business of making commercial loans.
- (3) 'Banking office' means the principal office of a bank, any branch of a bank, any teller's window of a bank or any other office at which a bank accepts deposits:

Provided, however, that 'banking office' shall not mean:

 - a. unmanned automatic teller machines, point of sale terminals or other similar unmanned electronic banking facilities at which deposits may be accepted;
 - b. offices located outside the United States; or
 - c. loan production offices, representative offices or other offices at which deposits are not accepted.
- (4) 'Bank holding company' has the meaning set forth in Section 2(a)(1) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. 1841(a)(1)).
- (5) 'Commissioner' means the Commissioner of Banks of this State.

(6) 'Control' has the meaning set forth in Section 2(a)(2) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. 1841(a)(2)).

(7) 'Deposits' means all demand, time, and savings deposits, without regard to the location of the depositor:
Provided, however, that 'deposits' shall not include any deposits by banks. For purposes of this Article, determination of deposits shall be made with reference to regulatory reports of condition or similar reports made by or to state and federal regulatory authorities.

(8) 'North Carolina bank' means a bank that:

- is organized under the laws of this State or of the United States; and
- has banking offices located only in this State.

(9) 'North Carolina bank holding company' means a bank holding company:

- that has its principal place of business in this State;
- the North Carolina bank and regional bank subsidiaries of which hold more than eighty percent (80%) of the total deposits held by all of its bank subsidiaries, other than bank subsidiaries controlled by it in accordance with G.S. 53-212 of this Article; and
- that is not controlled by a bank holding company other than a North Carolina bank holding company.

(10) 'Principal place of business' of a bank holding company means the state in which the total deposits held by the banking offices of the bank holding company's bank subsidiaries are the largest.

(11) 'Region' means the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, and the District of Columbia.

(12) 'Regional bank' means a bank that:

- is organized under the laws of the United States or of one of the states in the region other than North Carolina; and
- has banking offices located only in states within the region.

(13) 'Regional bank holding company' means a bank holding company:

- that has its principal place of business in a state within the region other than North Carolina;
- the regional bank and North Carolina bank subsidiaries of which hold more than eighty percent (80%) of the total deposits held by all of its bank subsidiaries, other than bank subsidiaries controlled by it in accordance with G.S. 53-212 of this Article;
- that is not controlled by a bank holding company other than a regional bank holding company; and
- that neither is controlled by nor is a foreign bank as defined in the International Banking Act of 1978 (12 U.S.C. 3101(7)).

- (14) 'State' means any state of the United States or the District of Columbia.
- (15) 'Subsidiary' has the meaning set forth in Section 2(d) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. 1841(d)).

"§ 53-211. Acquisitions by regional bank holding companies. – (a) A regional bank holding company that does not have a North Carolina bank subsidiary (other than a North Carolina bank subsidiary that was acquired either pursuant to Section 116 or Section 123 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1730a(m), 1823(f)) or in the regular course of securing or collecting a debt previously contracted in good faith, as provided in Section 3(a) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. 1842(a)))) may acquire a North Carolina bank holding company or a North Carolina bank with the approval of the Commissioner. The regional bank holding company shall submit to the Commissioner an application for approval of such acquisition, which application shall be approved only if:

- (1) The Commissioner determines that the laws of the state in which the regional bank holding company making the acquisition has its principal place of business permit all North Carolina bank holding companies to acquire banks and bank holding companies in that state;
- (2) The Commissioner determines that the laws of the state in which the regional bank holding company making the acquisition has its principal place of business permit such regional bank holding company to be acquired by the North Carolina bank holding company or North Carolina bank sought to be acquired. For the purposes of this subsection, a North Carolina bank shall be treated as if it were a North Carolina bank holding company;
- (3) The Commissioner determines either that the North Carolina bank sought to be acquired has been in existence and continuously operating for more than five years or that all of the bank subsidiaries of the North Carolina bank holding company sought to be acquired have been in existence and continuously operating for more than five years: Provided, that the Commissioner may approve the acquisition by a regional bank holding company of all or substantially all of the shares of a bank organized solely for the purpose of facilitating the acquisition of a bank that has been in existence and continuously operating as a bank for more than five years; and
- (4) The Commissioner makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a North Carolina bank holding company of a bank or bank holding company in the state where the regional bank holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a bank or bank holding company in such state by a bank holding company all the bank subsidiaries of which are located in that state.

(b) A regional bank holding company that has a North Carolina bank subsidiary (other than a North Carolina bank subsidiary that was acquired either pursuant to

Section 116 or Section 123 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1730a(m), 1823(f)) or in the regular course of securing or collecting a debt previously contracted in good faith, as provided in Section 3(a) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. 1842(a))) may acquire any North Carolina bank or North Carolina bank holding company with the approval of the Commissioner. The regional bank holding company shall submit to the Commissioner an application for approval of such acquisition, which application shall be approved only if:

- (1) The Commissioner determines either that the North Carolina bank sought to be acquired has been in existence and continuously operating for more than five years or that all of the bank subsidiaries of the North Carolina bank holding company sought to be acquired have been in existence and continuously operating for more than five years: Provided, that the Commissioner may approve the acquisition by a regional bank holding company of all or substantially all of the shares of a bank organized solely for the purpose of facilitating the acquisition of a bank that has been in existence and continuously operating as a bank for more than five years; and
- (2) The Commissioner makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a North Carolina bank holding company of a bank or bank holding company in the state where the regional bank holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a bank or bank holding company in such state by a bank holding company all the bank subsidiaries of which are located in that state.

(c) The Commissioner shall rule on any application submitted under this section not later than 90 days following the date of submission of a complete application. If the Commissioner fails to rule on the application within the requisite 90-day period, the failure to rule shall be deemed a final decision of the Commissioner approving the application.

"§ 53-212. Exceptions. – A North Carolina bank holding company, a North Carolina bank, a regional bank holding company, or a regional bank may acquire or control, and shall not cease to be a North Carolina bank holding company, a North Carolina bank, a regional bank holding company, or a regional bank, as the case may be, by virtue of its acquisition or control of:

- (1) a bank having banking offices in a state not within the region, if such bank has been acquired pursuant to the provisions of Section 116 or Section 123 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1730a(m), 1823(f));
- (2) a bank having banking offices in a state not within the region, if such bank has been acquired in the regular course of securing or collecting a debt previously contracted in good faith, as provided in Section 3(a) of the Bank Holding Company Act of 1956 as amended (12 U.S.C.

1842(a)), and if the bank or bank holding company divests the securities or assets acquired within two years of the date of acquisition. A North Carolina bank, a North Carolina bank holding company, a regional bank holding company, or a regional bank may retain these interests for up to three additional periods of one year each if the Commissioner determines that the required divestiture would create undue financial difficulties for that bank or bank holding company; or

(3) a bank or corporation organized under the laws of the United States or of any state and operating under Section 25 or Section 25(a) of the Federal Reserve Act as amended (12 U.S.C. 601 or 611-31) or a bank or bank holding company organized under the laws of a foreign country that is principally engaged in business outside the United States and that either has no banking office in the United States or has banking offices in the United States that are engaged only in business activities permissible for a corporation operating under Section 25 or Section 25(a) of the Federal Reserve Act as amended.

"§ 53-213. Prohibitions. – (a) Except as expressly permitted by federal law, no bank holding company that is not either a North Carolina bank holding company or a regional bank holding company shall acquire a North Carolina bank holding company or a North Carolina bank.

(b) Except as required by federal law, a North Carolina bank holding company or a regional bank holding company that ceases to be a North Carolina bank holding company or a regional bank holding company shall as soon as practicable and, in all events, within one year after such event divest itself of control of all North Carolina bank holding companies and all North Carolina banks: Provided, however, that such divestiture shall not be required if the North Carolina bank holding company or the regional bank holding company ceases to be a North Carolina bank holding company or a regional bank holding company, as the case may be, because of an increase in the deposits held by bank subsidiaries not located within the region and if such increase is not the result of the acquisition of a bank or bank holding company.

"§ 53-214. Applicable laws, rules and regulations. – (a) Any North Carolina bank that is controlled by a bank holding company that is not a North Carolina bank holding company shall be subject to all laws of this State and all rules and regulations under such laws that are applicable to North Carolina banks that are controlled by North Carolina bank holding companies.

(b) Notwithstanding the provisions of G.S. 53-95, the Commissioner may promulgate rules, including the imposition of a reasonable application and administration fee, to implement and effectuate the provisions of this Article.

"§ 53-215. Appeal of commissioner's decision. – Notwithstanding any other provision of law, any aggrieved party in a proceeding under G.S. 53-211 or G.S. 53-212(2) may, within 30 days after final decision of the Commissioner and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days after filing of the appeal.

"§ 53-216. Periodic reports; interstate agreements. – The Commissioner may from time to time require reports under oath in such scope and detail as he may reasonably determine of each regional bank holding company subject to this Article for the purpose of assuring continuing compliance with the provisions of this Article.

The Commissioner may enter into cooperative agreements with other bank regulatory authorities for the periodic examination of any regional bank holding company that has a North Carolina bank subsidiary and may accept reports of examination and other records from such authorities in lieu of conducting its own examinations. The Commissioner may enter into joint actions with other bank regulatory authorities having concurrent jurisdiction over any regional bank holding company that has a North Carolina bank subsidiary or may take such actions independently to carry out its responsibilities under this Article and assure compliance with the provisions of this Article and the applicable banking laws of this State.

"§ 53-217. Enforcement. – The Commissioner shall have the power to enforce the provisions of this Article, including the divestiture requirement of G.S. 53-213(b), through an action in any court of this State or any other state or in any court of the United States, as provided in G.S. 53-94 and G.S. 53-134, for the purpose of obtaining an appropriate remedy for violation of any provision of this Article, including such criminal penalties as are contemplated by G.S. 53-134.

"§ 53-218. Nonseverability. – It is the purpose of this Article 17 to facilitate orderly development of banking organizations that have banking offices in more than one state within the region. It is not the purpose of this Article to authorize acquisitions of North Carolina bank holding companies or North Carolina banks by bank holding companies that do not have their principal place of business in this State on any basis other than as expressly provided in this Article. Therefore, if any portion of this Article pertaining to the terms and conditions for and limitations upon acquisition of North Carolina bank holding companies and North Carolina banks by bank holding companies that do not have their principal place of business in this State is determined to be invalid for any reason by a final nonappealable order of any North Carolina or federal court of competent jurisdiction, then this entire Article shall be null and void in its entirety and shall be of no further force or effect from the effective date of such order: Provided, however, that any transaction that has been lawfully consummated pursuant to this Article prior to a determination of invalidity shall be unaffected by such determination.

"ARTICLE 18.

"Bank Holding Company Act of 1984.

"§ 53-225. Title and scope. – (a) This Article shall be known and may be cited as the North Carolina Bank Holding Company Act of 1984.

(b) This Article provides for the registration of bank holding companies in North Carolina. Nothing contained in this Article shall be deemed to apply to the registration, examination or supervision of banks or trust companies.

(c) Actions by the Commissioner under this Article shall not be subject to review by the State Banking Commission but shall be reviewable pursuant to G.S. 53-231.

"§ 53-226. Definitions. – For the purposes of this Article:

(a) 'Bank' means any insured bank as the term is defined in Section 3(h) of the Federal Deposit Insurance Act, (12 U.S.C. Section 1813(h)), or any institution eligible to become an insured bank as the term is defined therein, which, in either event:

- (1) Accepts deposits that the depositor has a legal right to withdraw on demand; and
- (2) Engages in the business of making commercial loans.

(b) 'Bank holding company' means any company which has control over any bank.

(c) 'Commissioner' means the Commissioner of Banks of this State.

(d) 'Company' means a corporation, joint stock company, business trust, partnership, voting trust, association, and any similar organized group of persons, whether incorporated or not, and whether or not organized under the laws of this State or any other state or any territory or possession of the United States or under the laws of the foreign country, territory, colony or possession thereof, other than a corporation all the capital of which is owned by the United States or a corporation which is chartered by the Congress of the United States; 'company' includes subsidiary and parent companies.

(e) 'Control' means that:

- (1) Any company directly or indirectly or acting through one or more persons owns, controls, or has power to vote twenty-five per centum (25%) or more of the voting securities of the bank;
- (2) The company controls in any manner the election of a majority of the directors, managers or trustees of the bank or company; or
- (3) The Commissioner determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(f) 'Subsidiary', with respect to a bank holding company, means:

- (1) Any company twenty-five per centum (25%) or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is held by it with power to vote;
- (2) Any company the election of a majority of whose directors is controlled in any manner by a bank holding company; or
- (3) Any company with respect to the management or policies of which a bank holding company has the power, directly or indirectly, to exercise control, as determined by the Commissioner.

(g) For the purposes of any proceeding under subdivisions (e)(3) and (f)(3) of this section, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 percent (5%) of any class of voting securities of a given bank or company does not have control over that bank or company.

"§ 53-227. Registration of bank holding companies. – Every bank holding company, not later than July 1, 1985, or within 180 days after becoming a bank holding company controlling a North Carolina federally or State-chartered bank or banks, or within 180 days after acquiring control over a nonbank subsidiary or subsidiaries having offices

located in this State shall register with the Commissioner on forms approved by the Commissioner.

"§ 53-228. Cease and desist. – Upon a finding that any action of a bank holding company or nonbank subsidiary subject to this Article may be in violation of any North Carolina banking law, the Commissioner, after a reasonable notice to the bank holding company or its nonbank subsidiary and an opportunity for it to be heard, shall have the authority to order it to cease and desist from such action. If the bank holding company or nonbank subsidiary fails to appeal such decision in accordance with G.S. 53-231 hereof and continues to engage in such action in violation of the Commissioner's order to cease and desist such action, it shall be subject to a penalty of one thousand dollars (\$1,000), to be recovered with costs by the Commissioner in any court of competent jurisdiction in a civil action prosecuted by the Commissioner. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a bank holding company's or its nonbank subsidiary's failure to comply with an order of the Commissioner.

"§ 53-229. Acquisition and control of certain nonbank banking institutions. – Notwithstanding any other provision of this Article or any other provision of the General Statutes of this State, no bank holding company or any other company may acquire or control any banking institution that:

- (1) has offices located in this State; and
- (2) is not a bank as defined in G.S. 53-226(a) of this Article. For purposes of this section, 'company' means any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and 'banking institution' means any institution organized under Article 2 of Chapter 53 (G.S. 53-2, et seq.) or Article 11 of Chapter 53 (G.S. 53-136, et seq.) of the General Statutes of this State or under Chapter 2 of Title 12 of the United States Code (12 U.S.C. § 21, et seq.). Provided, the provisions of G.S. 53-229 shall not apply to applications by any company which is chartered by the Congress of the United States and which application is pending before the Commissioner on the effective date of this section.

"§ 53-230. Rules. – Notwithstanding the provision of G.S. 53- 95, the Commissioner may promulgate such reasonable rules as may be necessary to effectuate the purposes of this Article.

"§ 53-231. Appeal of commissioner's decision. – Notwithstanding any other provision of law, any aggrieved party may, within 30 days after final decision of the Commissioner and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days thereafter. Such record shall include all memoranda, briefs and any other documents, data, information or evidence submitted by any party to such proceeding except for material such as trade secrets normally not available through commercial

publication for which such party has made a claim of confidentiality and requested exclusion from the record which the Commissioner deems confidential. All factual information contained in any report of examination or investigation submitted to or obtained by the Commissioner's staff shall also be made a part of the record unless deemed confidential by the Commissioner.

"§ 53-232. Fees. – Each bank holding company subject to this act shall pay the following fees:

- (a) An initial registration fee of \$1,000.
- (b) An annual registration fee of \$750.00.
- (c) A fee of \$50.00 for the issuance of any certified copies of documents plus \$1.00 per page over a number of pages specified by the Commissioner."

Sec. 2. G.S. 7A-29(a) is amended by inserting the words "the Commissioner of Banks pursuant to Articles 17 and 18 of Chapter 53 of the General Statutes," after the words "the North Carolina Utilities Commission".

Sec. 3. The question of the extent of authority beyond that conferred by Article 17 upon the Commissioner of Banks with regard to the acquisition of a North Carolina bank or bank holding company by an out-of-State regional bank holding company is referred to the Committee on Taxation and Regulation of Banks, Savings and Loan Associations, and Credit Unions of the Legislative Research Commission for study and report to the 1985 Session of the General Assembly.

Sec. 4. Article 17 of Chapter 53 of the General Statutes contained in Section 1 of this act shall become effective January 1, 1985. The rest of this act is effective upon ratification.

In the General Assembly read three times and ratified, this the 7th day of July, 1984.