

Article 8.

Bank Supervision.

**§ 53C-8-1. Commissioner has authority to supervise banks.**

(a) Every bank shall be under the supervision of the Commissioner. It shall be the Commissioner's duty to enforce the banking laws through the employees and agents of the OCOB. All banks shall conduct their business in a manner consistent with the banking laws.

(b) The Commissioner may enter into written agreements, cease and desist order stipulations, cease and desist orders, consent orders, and similar arrangements with banks and their holding companies, or either of them; may request resolutions be approved by boards of directors of banks and their holding companies, or either of them; and may take other similar corrective actions.

(c) Upon written request, the Commissioner may, notwithstanding any other provision of law to the contrary, issue letters of interpretation, advisory opinions, or written guidance on any laws under the Commissioner's jurisdiction, provided that the interpretations, opinions, and guidance shall not have the force and effect of rules of law. (2012-56, s. 4.)

**§ 53C-8-2. Assessments and fees.**

Banks shall pay the following assessments and fees into the OCOB within 10 days after receipt of an invoice:

- (1) Annual assessments. – Each bank shall pay a cumulative assessment based on its total assets as shown on its report of condition made to the Commissioner as of December 31 each year or the date most nearly approximating the same, not to exceed the amount determined by applying the following schedule:
  - a. On the first fifty million dollars (\$50,000,000) of assets, or fraction thereof, ten thousand dollars (\$10,000).
  - b. On assets greater than fifty million dollars (\$50,000,000) but not more than two hundred fifty million dollars (\$250,000,000), fourteen dollars (\$14.00) per hundred thousand dollars (\$100,000), or fraction thereof.
  - c. On assets greater than two hundred fifty million dollars (\$250,000,000), but not more than five hundred million dollars (\$500,000,000), eleven dollars (\$11.00) per hundred thousand dollars (\$100,000), or fraction thereof.
  - d. On assets greater than five hundred million dollars (\$500,000,000), but not more than one billion dollars (\$1,000,000,000), seven dollars (\$7.00) per hundred thousand dollars (\$100,000), or fraction thereof.
  - e. On assets greater than one billion dollars (\$1,000,000,000), but not more than ten billion dollars (\$10,000,000,000), four dollars (\$4.00) per hundred thousand dollars (\$100,000), or fraction thereof.
  - f. On assets greater than ten billion dollars (\$10,000,000,000), two dollars (\$2.00) per hundred thousand dollars (\$100,000), or fraction thereof.
- (2) Assessments on trust assets. – Each bank shall pay an assessment on trust assets held by it in the amount of one dollar (\$1.00) per hundred thousand dollars (\$100,000) of trust assets, or fraction thereof, except that banks are not required to pay assessments on real estate held as trust assets.
- (3) Special assessments. – If the Commissioner determines that the financial condition or manner of operation of a bank warrants further examination or an

increased level of supervision, or in the event of a combination or conversion, the Commissioner may charge, and the institutions shall pay, an assessment equal to the reasonable cost of further examination, increased level of supervision, or supervision with regard to the combination or conversion. The Commissioner's determination of the cost of further examination shall be, in the absence of manifest error, dispositive of the issue of reasonableness.

- (4) In the first half of each calendar year, the Commission shall review the estimated cost of maintaining each division of the OCOB for the next fiscal year. If the estimated assessments provided for under this Chapter for any division shall exceed the estimated cost of maintaining that division for the next fiscal year, then the Commission may reduce by a uniform percentage any assessments provided for in this Chapter for that division. If the estimated assessments provided for in this Chapter for any division shall be less than the estimated cost of maintaining that division for the next fiscal year, then the Commission may increase by a uniform percentage any assessments provided for in this Chapter for that division to an amount that will increase the amount of assessments to be collected to an amount at least equal to the estimated cost of maintaining that division of the OCOB for the next fiscal year. (2012-56, s. 4.)

#### **§ 53C-8-3. Reports required of banks.**

(a) Each bank shall file the following with the Commissioner, at such times, on such forms, and in such formats as the Commissioner may require:

- (1) Annual reports of conditions.
- (2) Periodic reports for interim periods within a year, not less than monthly in any case.

(b) In addition to the reports filed pursuant to subsection (a) of this section, each bank shall provide to the Commissioner copies of all applications and reports of condition filed by it under applicable federal law contemporaneously with the filing of such application and reports by the bank with its primary federal regulator.

(c) Nothing in this section shall be interpreted to limit the authority of the Commissioner to request and obtain other information that the Commissioner may deem necessary to discharge the duties of the Commissioner under this Chapter. (2012-56, s. 4.)

#### **§ 53C-8-4. Examination by Commissioner.**

(a) The Commissioner may examine everything relating to the business of a bank or its holding company, and may appoint examiners to make such examination. The examiners shall file with the Commissioner a full report of the findings resulting from the examination, including any violation of law or any unauthorized or unsafe practices of the bank or the holding company disclosed by the examination.

(b) Examinations under subsection (a) of this section shall be conducted pursuant to practices and procedures established by the OCOB, provided the Commissioner may take into consideration the guidelines and requirements for such activity of the primary federal supervisor of the bank or holding company.

(c) The Commissioner shall furnish a copy of the report of examination to the bank or the holding company examined and may, upon request, furnish a copy of the report to the primary

federal regulator of the bank or its holding company and to the FDIC if not the bank's primary federal regulator. (2012-56, s. 4.)

**§ 53C-8-5. Examination of affiliates.**

The Commissioner, at his or her discretion, may examine the affiliates of a bank to the extent it is necessary to safeguard the interest of depositors and creditors of the bank and of the general public, and to enforce the provisions of this Chapter. The Commissioner may conduct the examination in conjunction with any examination of the bank or an affiliate thereof conducted by any other state or federal regulatory authority. (2012-56, s. 4.)

**§ 53C-8-6. Access to books and records; right to issue subpoenas, administer oaths, and examine witnesses.**

- (a) The Commissioner and the Commissioner's examiners and agents:
  - (1) Shall have free access to all books and records of a bank, its holding company, and their affiliates that relate to the business of the bank or the holding company, and the books and records kept by an officer, agent, or employee of the bank or holding company relating to or upon which any record is kept.
  - (2) May subpoena witnesses and administer oaths or affirmations in the examination of any director, officer, agent, or employee of the bank, its holding company, or their affiliates or of any other person in relation to affairs, transactions, and conditions of the bank, its holding company, or their affiliates.
  - (3) May require the production of the records, books, papers, contracts, and other documents of a bank, its holding company, and their affiliates.
  - (4) May order that improper entries be corrected on the books and records of a bank, its holding company, and the bank's affiliates.
- (b) The Commissioner may issue subpoenas duces tecum.
- (c) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, a court of competent jurisdiction, on the application of the Commissioner, may compel compliance by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court. (2012-56, s. 4.)

**§ 53C-8-7. Examiner making false report.**

If any bank examiner shall knowingly and willfully make any false or fraudulent report of the condition of any bank that the examiner has examined with the intent to aid or abet the bank or its affiliates in committing violations of any provision of this Chapter, or if any examiner shall keep or accept any bribe or gratuity given for the purpose of inducing the examiner not to file any report of examination of any bank, or if any examiner shall neglect to make an examination of any bank by reason of having received or accepted any bribe or gratuity, the examiner shall be guilty of a Class H felony. (2012-56, s. 4.)

**§ 53C-8-8. Examiner disclosing confidential information.**

If any examiner or other employee of the OCOB fails to keep secret the facts and information obtained in the course of an examination of a bank except as permitted or required by this Chapter, the examiner shall be guilty of a Class 1 misdemeanor. (2012-56, s. 4.)

**§ 53C-8-9. Loans or gratuities forbidden.**

(a) No bank, or any officer, director, employee, or affiliate thereof, shall make an extension of credit or grant any gratuity to the Commissioner, any deputy commissioner, or any bank examiner. Any person violating this provision shall be guilty of a Class 1 misdemeanor and may be fined a sum equal to the amount of the extension made or the gratuity given. If the Commissioner, any deputy commissioner, or any bank examiner accepts an extension of credit or gratuity from any bank, or from any officer, director, employee, or affiliate thereof, that individual shall be guilty of a Class 1 misdemeanor and may be fined a sum equal to the extension of credit made or the gratuity given.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commissioner may exempt from the application of subsection (a) any deputy commissioner or any bank examiner with respect to any extension of credit existing upon the hiring of the deputy commissioner or bank examiner by the OCOB and any extension of the term or renewal of such extension of credit made thereafter, so long as the extension of term or renewal has terms and conditions generally available to customers of the applicable bank having generally the same creditworthiness as the deputy commissioner or bank examiner. (2012-56, s. 4.)

**§ 53C-8-10. Willfully and maliciously making derogatory reports.**

Any person who shall willfully and maliciously make, circulate, transmit, or otherwise communicate any statement, rumor, or suggestion to one or more other persons that is directly or by inference false and derogatory to the financial condition, or affects the solvency or financial standing, of any bank, or who shall counsel, aid, procure, or induce another to make, circulate, transmit, or otherwise communicate any such statement or rumor, shall be guilty of a Class 1 misdemeanor. (2012-56, s. 4.)

**§ 53C-8-11. Misapplication, embezzlement of funds.**

(a) Any person who, with intent to defraud or injure a bank or any other person or with intent to deceive an officer of the bank or an employee of the OCOB appointed to examine the affairs of the bank, commits any of the following acts shall be guilty of a felony:

- (1) Embezzles, converts, or misapplies any of the money, funds, credit, or property of the bank, whether owned by it or held in trust.
- (2) Issues or puts forth a certificate of deposit; draws an order or bill of exchange; makes an acceptance; assigns a note, bond, draft, bill of exchange, mortgage, judgment, or decree; or fictitiously borrows or solicits, obtains, or receives money for a bank not in good faith.
- (3) Makes or permits to be made a false entry in a record of a bank, or conceals or permits to be concealed, by any means or manner, the true and correct entries in a record of a bank.
- (4) Knowingly makes an extension of credit, or permits an extension of credit, by a bank to any insolvent person or to a person who has ceased to exist, or that never had any existence, or upon collateral consisting of stocks or bonds of an insolvent or nonexistent person.
- (5) Makes or publishes, or knowingly permits to be made or published, a false report, statement, or certificate as to the true financial condition of a bank.

(b) If an offense committed under this section involves money, funds, credit, or property with a value of one hundred thousand dollars (\$100,000) or more, it is a Class C felony. If an

offense committed under this section involves money, funds, credit, or property with a value of less than one hundred thousand dollars (\$100,000), it is a Class H felony. (2012-56, s. 4.)

**§ 53C-8-12. Enforcement of the banking laws.**

(a) When the Commissioner believes that a violation of the banking laws has occurred or is continuing, the Commissioner may order an examination or investigation of the facts and circumstances relating to the suspected violation.

(b) Every bank failing to make and transmit any report that the Commissioner is authorized to require by this Chapter, and in and according to the form prescribed by the Commissioner, within 10 business days after the receipt of a request or requisition therefor, or within the extension of time granted by the Commissioner, shall be notified by the Commissioner, and if the failure continues for five business days after the receipt of the notice, the delinquent bank shall be subject to a penalty of up to one thousand dollars (\$1,000). The penalty provided by this section shall be recovered in a civil action in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions.

(c) In addition to any other powers conferred by this Chapter, the Commissioner shall have the power to do the following:

- (1) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, to cease and desist violating any provision of this Chapter or any lawful rule issued thereunder.
- (2) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, to cease and desist from a course of conduct that is unsafe or unsound and that is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of a depositor.

(d) Consistent with Article 3A of Chapter 150B of the General Statutes, notice and opportunity for hearing shall be provided before any of the actions authorized by this section shall be undertaken by the Commissioner. In cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action but shall promptly afford a subsequent hearing upon application to rescind the action taken.

(e) The Commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the Commissioner.

(f) The Commissioner may impose a civil money penalty of not more than one thousand dollars (\$1,000) for each violation by any bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, of an order issued under subdivision (1) of subsection (c) of this section. The Commissioner may impose a civil money penalty of not more than five hundred dollars (\$500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, violates a cease and desist order issued under subdivision (2) of subsection (c) of this section. The proceeds of civil money penalties imposed pursuant to this subsection, net of documented expenses of examination and enforcement, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(g) Administrative orders issued by the Commissioner and civil money penalties imposed for violation of such orders shall be subject to review by the Commission, which shall have power to amend, modify, or disapprove the same at any regular or special meeting.

(h) Notwithstanding any penalty imposed by the Commissioner, the Commission may, after notice of and opportunity for hearing, impose, enter judgment for, and enforce, by appropriate process, a penalty of not more than ten thousand dollars (\$10,000) against any bank, trust company, or subsidiary thereof, or against any of its directors, officers, or employees, or any other person the Commissioner is authorized to regulate, for violating any lawful order of the Commission or Commissioner. The proceeds of civil money penalties imposed pursuant to this subsection, net of documented expenses of examination and enforcement, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) If the Commissioner believes that a violation of a criminal statute has occurred, the Commissioner may refer the matter to the appropriate prosecutorial agency. (2012-56, s. 4.)

#### **§ 53C-8-13. Immediate action orders.**

(a) In the event that the Commissioner determines that a bank has inadequate capital or insufficient capital or determines that immediate action is necessary to cause a bank to conduct its business in a safe and sound manner or to cause a bank or any of its directors, officers, or employees to cease from an act or course of conduct that threatens, or is reasonably probable of threatening, the financial integrity of the bank, the commissioner may order, as applicable, the bank to take such corrective action as the Commissioner deems necessary or may order the bank, director, officer, or employee to immediately cease such conduct, act, or course of conduct and to refrain therefrom in the future.

(b) Any order made under this section shall be effective upon issuance, provided, however, that the Commissioner shall promptly afford a subsequent hearing upon the order as provided in G.S. 53C-2-6. (2012-56, s. 4.)

#### **§ 53C-8-14. Supervisory control.**

(a) Whenever the Commissioner determines that a bank has insufficient capital and is conducting its business in an unsafe or unsound manner or in any fashion that threatens the financial integrity of the bank, the Commissioner may serve a notice of charges on the bank, requiring it to show cause why it should not be placed under supervisory control. The notice of charges shall specify the grounds for supervisory control and set the time and place for a hearing. A hearing before the Commissioner shall be held no earlier than seven days and no later than 15 days after issuance of the notice of charges.

(b) If, after the hearing provided in subsection (a) of this section, the Commissioner determines that supervisory control of the bank is necessary to protect the bank's customers, creditors, or the general public, the Commissioner shall issue an order taking supervisory control of the bank. The board of directors of the bank in office on the date of the issuance of the order may appeal the order of the Commissioner to the Commission pursuant to G.S. 53C-2-6 no later than 10 days after the date of the issuance of the order.

(c) The Commissioner may appoint an agent to supervise and monitor the operations of the bank during the period of supervisory control. During the period of supervisory control, the bank shall act in accordance with any instructions and directions as may be given by the Commissioner, directly or through the agent, and shall not act or fail to act except when to do so

would violate an outstanding order of its federal bank supervisory agent or the FDIC if the FDIC is not its primary federal regulator.

(d) Within 180 days of the date of the order taking supervisory control, the Commissioner shall issue an order approving a plan for the termination of supervisory control on the 30th day following the issuance of the order. The plan may provide for the following:

- (1) The issuance by the bank of debt instruments or shares.
- (2) The appointment or removal of one or more officers and/or one or more directors.
- (3) The reorganization or combination of the bank.
- (4) A control transaction with respect to the bank.
- (5) The dissolution and liquidation of the bank.

(e) The reasonable costs of the Commissioner under this section shall be paid by the bank. The Commissioner's determination of the costs shall be, in the absence of manifest error, dispositive of the issue of reasonableness. (2012-56, s. 4.)

#### **§ 53C-8-15. Removal of directors, officers, and employees.**

(a) If the Commissioner determines that a director, officer, or employee of a bank has participated in or consented to any violation of this Chapter or an order of the Commissioner, or has engaged in any unsafe or unsound business practice in the operation of the bank, or has been dishonest, incompetent, or reckless in the management of the affairs of the bank, or has persistently violated the laws of this State, or repeatedly violated or failed to comply with any of the bank's organizational documents, and that as a result, a situation exists requiring prompt corrective action in order to protect the bank, its customers, or the public, the Commissioner may issue an order temporarily removing the director, officer, or employee pending a hearing that shall occur not less than 10 days after removal. The order shall state that it is a "Temporary Order of Removal" and shall further state the grounds upon which it was issued together with the date, time, and location of a hearing on the matter. For good cause shown, the Commissioner may grant the director, officer, or employee subject to the order a 10-day extension of the hearing date, but the temporary removal order shall remain in full force and effect. Upon a hearing before the Commissioner within the prescribed time, the temporary removal order may be dissolved or made permanent in whole or in part.

(b) Any removal under this section is effective in all respects as if the removal had been made by the shareholders of the bank in question.

(c) Without the prior written approval of the Commissioner, no director, officer, or employee subject to an order under this section shall be eligible to be elected, reelected, or appointed any position as a director, officer, or employee of that bank or any other North Carolina financial institution during the period of the order's effect.

(d) An individual who is the subject of an order of the Commissioner under this section may appeal the order to the Commission pursuant to G.S. 53C-2-6 no later than 10 days after the date of issuance of the order. (2012-56, s. 4.)

#### **§ 53C-8-16. Emergency powers.**

In the event of a natural disaster or other national, regional, state, or local emergency, the Commissioner may temporarily waive or suspend requirements for compliance by one or more banks with any provisions of this Chapter. (2012-56, s. 4.)

**§ 53C-8-17. Interstate regulatory agreements.**

The Commissioner may enter into cooperative, coordinating, and information sharing agreements with (i) any bank supervisory agency having jurisdiction over an out-of-state bank that operates one or more branches in this State and (ii) any bank supervisory agency of another state in which a bank operates one or more branches with respect to the periodic examination or other supervision of the branches of the out-of-state bank operating in this State or the branches of the bank operating in such other state. (2012-56, s. 4.)