

LEGISLATIVE RESEARCH COMMISSION

COMMITTEE ON BANKING LAW
AMENDMENTS

NORTH CAROLINA GENERAL ASSEMBLY



REPORT TO THE
2015 SESSION
of the
GENERAL ASSEMBLY
OF NORTH CAROLINA

DECEMBER 19, 2014

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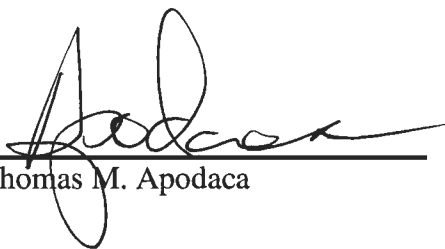
TRANSMITTAL LETTER

December, 2014

TO THE MEMBERS OF THE 2015 SESSION
OF THE GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2015 Session of the General Assembly. The report was prepared by the Legislative Research Commission's Committee on Banking Law Amendments, pursuant to G.S. 120-30.17(1).

Respectfully submitted,



Senator Thomas M. Apodaca



Representative Timothy K. Moore

Co-Chairs
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

2013 – 2014

Senator Thomas M. Apodaca
Co-Chair

Representative Timothy K. Moore
Co-Chair

Senator Phil Berger, Ex Officio
Senator Dan Blue
Senator Harry Brown
Senator Martin L. Nesbitt, Jr.

Representative Thom Tillis, Ex Officio
Representative John M. Blust
Representative Justin P. Burr
Representative Becky Carney
Representative Mike D. Hager

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, or their designees, and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Banking Law Amendments, under authority of G.S. 120-30.17(1). The Committee was chaired by Representative John Bell and Representative Jonathan Jordan, Co-Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2013-2014** biennium.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Committee on Banking Law Amendments met 4 times after the 2014 Regular Session. The Committee's Charge can be found [here](#). The Committee's proceedings are below. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

January 22, 2014

Review of Committee Charge

Overview of the North Carolina Office of the Commissioner of Banks

- Ray Grace, Commissioner of Banks

Comments on Regulation of the Mortgage Industry

- David Tyndall, President, Mortgage Choice, Inc. Cary, NC
- Don Fader, SMC Home Finance, Kinston, NC
- George Teague, NC Mortgage Bankers' Association

Committee Discussion

April 22, 2014

Report on the March 13, 2014 Stakeholders' Meeting to Discuss Issues Related to the Committee's Charge

- Ray Grace, Commissioner of Banks

An Overview of the Surety Bond Requirement Contained in the NC SAFE Act

- Robert Duke, Corporate Counsel, The Surety & Fidelity Association of America

Committee Discussion

December 10, 2014

Review of Draft Recommendations

Rep. John Bell

- *A recommendation to reduce the bonding requirement for mortgage lenders and brokers*
- *A recommendation to eliminate the audited financial statement requirement*
- *A recommendation to increase the membership of the State Banking Commission*

Committee Discussion

December 19, 2014

Draft Report

FINDINGS AND RECOMMENDATIONS

Based on information presented to the Legislative Research Commission Committee on Banking Law Amendments during its regularly scheduled meetings, the Committee reports the following findings and makes the following recommendations to the 2015 Session of the 2015 General Assembly:

1. The Committee finds that inasmuch as a significant portion of the revenue generated to fund the North Carolina Office of Commissioner of Banks comes from mortgage industry licensees, it is appropriate that the industry should be represented on the State Banking Commission.

Therefore, the Committee recommends the following legislative proposal:

AN ACT TO AMEND THE BANKING LAW OF NORTH CAROLINA TO INCREASE THE MEMBERSHIP OF THE BANKING COMMISSION AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON BANKING LAW AMENDMENTS.

2. The Committee finds that the surety bond requirement for North Carolina mortgage brokers and lenders is among the highest in our region and exceeds the amount of surrounding states.

Therefore, the Committee recommends the following legislative proposal:

AN ACT TO REDUCE THE SURETY BOND REQUIREMENT FOR LICENSEES UNDER THE SECURE AND FAIR ENFORCEMENT MORTGAGE LICENSING ACT AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON BANKING LAW AMENDMENTS.

3. The Committee finds that requiring unqualified audited financial statements, which are the highest standard of evaluation given by a certified public accountant and therefore the most costly, imposes a hardship on some lenders.

Therefore, the Committee recommends the following legislative proposal:

AN ACT TO ELIMINATE THE REQUIREMENT THAT LICENSED MORTGAGE LENDERS OBTAIN AN AUDITED FINANCIAL STATEMENT AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON BANKING LAW AMENDMENTS.

COMMITTEE MEMBERSHIP

2013-2014

Senate Members:

House of Representatives Members:

Representative John Bell, Co-Chair
Representative Jonathan Jordan, Co-Chair

Representative Rob Bryan
Representative Beverly Earle
Representative Ken Goodman
Representative Jon Hardister
Representative Rodney Moore
Representative Stephen Ross
Representative Ruth Samuelson
Representative John Szoka
Representative Roger Younts

Representative Timothy Moore, Ex Officio

COMMITTEE CHARGE

Banking Law Amendments – The LRC Study Committee on Banking Law Amendments shall study issues related to administrative changes to banking law in the State. The Committee may consider issues related to the following:

- (1) Inclusion of non-depository industry representation on the State Banking Commission.
- (2) Elimination of the requirement of an audited statement of financial condition under G.S. 53-244.104.
- (3) Adjusting the amount of the assessment fee imposed under G.S. 53-244.104A.
- (4) Adjusting the amount of the bonds required under G.S. 53-244.103.
- (5) Allowing the origination of reverse mortgages by all mortgage loan originators, mortgage brokers, mortgage lenders, and mortgage servicers, who are licensed by the Commissioner of Banks.
- (6) Revising the procedure by which the Commissioner of Banks makes rules.
- (7) Eliminating the requirement that the North Carolina Housing Finance Agency adopt rules and oversee the training of housing counselors.
- (8) Any other issues pertinent to this study.

STATUTORY AUTHORITY

NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSALS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

BILL DRAFT 2015-ROz-1 [v.5] (12/10)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

12/10/2014 1:27:17 PM

Short Title: Expand Banking Commission Membership. (Public)

Sponsors: Representative J. Bell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE BANKING LAW OF NORTH CAROLINA TO INCREASE THE MEMBERSHIP OF THE BANKING COMMISSION AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON BANKING LAW AMENDMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53C-1-4 (58) reads as rewritten:

"(58) Public member. – A member of the Commission who is not a practical ~~banker or~~ banker, a consumer finance ~~licensee~~ licensee, or a person licensed under Article 19B of Chapter 53 of the General Statutes and who is not at the time of appointment to the Commission, nor was within the five years preceding the appointment, an employee of a North Carolina financial institution."

SECTION 2. G.S. 53C-2-1(a) reads as rewritten:

(a) The Commission consists of ~~15~~ 17 members, including the State Treasurer, who shall serve as an ex officio member; ~~12~~ 14 members appointed by the Governor; and two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate and one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives. The Governor shall appoint three practical bankers, one consumer finance licensee, one person licensed under Article 19B of Chapter 53, and ~~eight~~ nine public members to the Commission. The member appointed upon the recommendation of the President Pro Tempore of the Senate shall be a practical banker, and the member appointed upon the recommendation of the Speaker of the House shall be a practical banker. Members shall serve terms of four years. No individual shall serve more than two complete consecutive terms on the Commission. Any vacancy occurring in the membership of the Commission shall be filled by the appropriate appointing officer for the unexpired term, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. The appointed members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. This compensation shall be paid from the revenues of the OCOB."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

BILL DRAFT 2015-ROz-2 [v.3] (12/10)

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12/10/2014 1:25:23 PM

Short Title: Reduce Mortgage Lender Surety Bonds.

(Public)

Sponsors: Representative J. Bell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE SURETY BOND REQUIREMENT FOR LICENSEES UNDER THE SECURE AND FAIR ENFORCEMENT MORTGAGE LICENSING ACT (NC S.A.F.E. ACT) AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON BANKING LAW AMENDMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-244.103 reads as rewritten:

"§ 53-244.103. Surety bond requirements.

(a) Each mortgage loan originator or transitional mortgage loan originator shall be covered by a surety bond through employment with a licensee in accordance with this section. The surety bond shall provide coverage for each mortgage loan originator or transitional mortgage loan originator employed by the licensee in an amount as prescribed by subsection (b) of this section and shall be in a form prescribed by the Commissioner. The Commissioner may adopt rules with respect to the requirements for the surety bonds as needed to accomplish the purposes of the Article.

(b) Licensees shall be required to post a surety bond with the Commissioner at application to be subsequently adjusted as follows:

(1) A mortgage broker shall post a minimum surety bond of ~~seventy-five thousand dollars (\$75,000)~~ twenty-five thousand dollars (\$25,000). Provided, however, if a mortgage broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 in excess of ~~ten million dollars (\$10,000,000)~~ twenty-five million dollars (\$25,000,000) but less than ~~fifty million dollars (\$50,000,000)~~ one hundred million dollars (\$100,000,000), then the mortgage broker's minimum bond amount shall be ~~one hundred twenty-five thousand dollars (\$125,000)~~ seventy-five thousand dollars (\$75,000), and if a mortgage broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 of ~~fifty million dollars (\$50,000,000)~~ one hundred million dollars (\$100,000,000) or more, the mortgage broker's minimum bond shall be ~~two hundred fifty thousand dollars (\$250,000)~~ one hundred fifty thousand dollars (\$150,000).

1 (2) A mortgage lender or mortgage servicer shall post a minimum surety
2 bond of ~~one hundred fifty thousand dollars (\$150,000)~~. one hundred
3 thousand dollars (\$100,000). Provided, however, if a mortgage lender
4 has originated mortgage loans in North Carolina in a 12-month period
5 ending December 31 ~~in excess of ten million dollars (\$10,000,000)~~ but
6 ~~less than fifty million dollars (\$50,000,000)~~, then the mortgage lender's
7 ~~minimum bond amount shall be two hundred fifty thousand dollars~~
8 ~~(\$250,000)~~, and if a mortgage lender has originated mortgage loans in
9 ~~North Carolina in a 12-month period ending December 31 of fifty~~
10 ~~million dollars (\$50,000,000)~~ of one hundred million dollars
11 (\$100,000,000) or more, then the mortgage lender's minimum bond
12 shall be ~~five hundred thousand dollars (\$500,000)~~. one hundred fifty
13 thousand dollars (\$150,000).

14 (3) Any increased surety bond required under subdivision (1) or (2) of this
15 subsection shall be filed with the Commissioner on or before May 31
16 immediately following the end of the 12-month December 31 period.

17 (c) The surety bond shall be in a form satisfactory to the Commissioner and shall
18 run to the State for the benefit of any claimants against the licensee to secure the faithful
19 performance of the obligations of the licensee under this Article. The aggregate liability
20 of the surety shall not exceed the principal sum of the bond. A party having a claim
21 against the licensee may bring suit directly on the surety bond, or the Commissioner
22 may bring suit on behalf of any claimants, either in one action or in successive actions.
23 Consumer claims shall be given priority in recovering from the bond. When an action is
24 commenced on a licensee's bond, the Commissioner may require the filing of a new
25 bond. In this case, the licensee shall file a replacement bond in the required amount
26 within 30 days. Immediately upon recovery upon any action on the bond the licensee
27 shall file a new bond.

28 (d) In the Commissioner's discretion and upon written request of the licensee, the
29 Commissioner may waive the requirement of the bond for any licensee, if:

- 30 (1) The licensee has been licensed by the Commissioner for at least three
31 years;
- 32 (2) The licensee can demonstrate a net worth, according to the most recent
33 ~~audited~~ financial statement, of at least ~~four times~~ the required bond
34 amount, and the licensee certifies that its net worth will be maintained
35 at or above this level at all times and agrees to notify the
36 Commissioner and to secure an appropriate bond in the event the net
37 worth falls below this level;
- 38 (3) The Commissioner believes the licensee has a satisfactory history of
39 resolving complaints from consumers and responding to findings of
40 investigations or examinations by the Commissioner; and
- 41 (4) The Commissioner has no reason to believe the licensee will be unable
42 to resolve complaints, respond to examination or investigative
43 findings, or fulfill financial obligations under this Article.

44 (e) If the Commissioner has waived the bond requirement of a licensee based on
45 subsection (d) of this section, the Commissioner may summarily reinstate the bond
46 requirement on any licensee if the Commissioner has reason to believe the licensee no

Appendix D

1 longer meets the standards in subsection (d) of this section. In this event, the licensee
2 shall submit a bond, as required in subsection (b) of this section, within 30 days. Failure
3 to submit a bond as directed by the Commissioner shall be grounds for summary
4 suspension."

5 **SECTION 2.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

BILL DRAFT 2015-ROz-3 [v.2] (12/10)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/10/2014 1:24:49 PM

Short Title: Eliminate Audited Financial Statement Req. (Public)

Sponsors: Representative J. Bell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT THAT LICENSED
MORTGAGE LENDERS OBTAIN AN AUDITED FINANCIAL
STATEMENT AS RECOMMENDED BY THE LEGISLATIVE RESEARCH
COMMISSION STUDY COMMITTEE ON BANKING LAW
AMENDMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-244.104 reads as rewritten:

"§ 53-244.104. Minimum net worth requirements.

(a) A minimum net worth shall be continuously maintained for licensees in accordance with this section. In the event that the mortgage loan originator or transitional mortgage loan originator is an employee or exclusive agent of a person subject to this Article, the net worth of the person subject to this Article can be used in lieu of the mortgage loan originator's or transitional mortgage loan originator's minimum net worth requirement. The minimum net worth to be maintained for each license is as follows:

(1) If the licensee is a mortgage lender, it shall maintain a net worth of at least one hundred thousand dollars (\$100,000), including evidence of liquidity of one million dollars (\$1,000,000), which may include a warehouse line of credit of one million dollars (\$1,000,000) or other evidence of funding capacity to conduct mortgage originations as documented by ~~an unqualified audited statement~~ a certified public accountant's compilation of financial condition.

(2) If the licensee is a mortgage servicer, it shall maintain a net worth of at least one hundred thousand dollars (\$100,000), not including monies in any escrow accounts held for others.

(3) If the licensee is a mortgage broker, it shall maintain a net worth of at least twenty-five thousand dollars (\$25,000), including

1 evidence of liquidity of ten thousand dollars (\$10,000), as
2 certified by the licensee in a certified statement of financial
3 condition.

4 (b) The Commissioner may adopt rules to require additional minimum net
5 worth or otherwise amend net worth requirements as are necessary to ensure
6 licensees maintain adequate financial responsibility and accomplish the purposes
7 of this Article."

8 **SECTION 2.** This act is effective when it becomes law.