

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 462*
Committee Substitute Favorable 4/6/17

Short Title: Banking Law Amendments.

(Public)

Sponsors:

Referred to:

March 27, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER AMENDMENTS TO
3 PROVISIONS APPLICABLE TO COMMERCIAL BANKS, PROVISIONS
4 APPLICABLE TO BANK HOLDING COMPANIES, PROVISIONS APPLICABLE TO
5 CREDIT UNIONS, AND PROVISIONS RELATING TO MORTGAGE NOTICE
6 REQUIREMENTS.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. COMMERCIAL BANKS**

10 **SECTION 1.** G.S. 53C-1-4(25) reads as rewritten:

11 "(25) Deposit. – A "deposit" as defined in ~~Section 3(1)~~ Section 3(l) of the Federal
12 Deposit Insurance Act, ~~12 U.S.C. § 1813(1)~~ 12 U.S.C. § 1813(l)."

13 **SECTION 2.** G.S. 53C-1-4(46) reads as rewritten:

14 "(46) Non-branch bank business office. – Any staffed physical location open to the
15 ~~public in this State in which an office of a bank, out of state bank,~~
16 ~~depository institution established under the laws of another state, or federally~~
17 ~~chartered institution that is not a branch, an office of a separately organized~~
18 ~~subsidiary of such depository institution, or an office of the holding~~
19 ~~company of such depository institution, public, at which any of the~~
20 ~~following institutions offers one or more banking or banking-related~~
21 ~~products or services are offered, other than the taking of deposits. services,~~
22 ~~but does not take deposits:~~

- 23 a. Bank.
24 b. Out-of-state bank.
25 c. Depository institution established under the laws of another state.
26 d. Federally chartered institution.
27 e. Separately organized subsidiary of a bank, out-of-state bank,
28 depository institution established under the laws of another state, or
29 federally chartered institution.
30 f. Holding company of a bank, out-of-state bank, depository institution
31 established under the laws of another state, or federally chartered
32 institution.

33 The provision of remote deposit capture facilities or services by a
34 non-branch bank business office ~~shall not be deemed to be~~ does not
35 constitute a taking of deposits. Non-branch bank business offices include



1 loan production offices, mortgage loan offices, and insurance agency offices,
2 or a combination thereof."

3 **SECTION 3.** G.S. 53C-2-7(b) reads as rewritten:

4 "(b) Notwithstanding any laws to the contrary, the following records ~~of the~~
5 ~~Commissioner shall be in the custody of the OCOB~~ are confidential and shall not be disclosed
6 or be subject to discovery or public inspection:

7 (1) Records compiled during or in connection with an examination, audit, or
8 investigation of any person, including records relating to any application for
9 licensure or otherwise to the conduct of business. The OCOB may treat as
10 confidential any response to an application.

11 (2) Records containing information compiled in preparation for or anticipation
12 of or in the course of litigation, examination, audit, or
13 ~~investigation~~ investigation or containing information that was privileged
14 prior to being obtained by the Commissioner.

15 (3) Records containing ~~nonpublic~~ personal information about a ~~customer,~~
16 person, whether in paper, electronic, or other form, that is maintained by or
17 on behalf of the financial institution; provided, however, that every report
18 made by a North Carolina financial institution, with respect to a transaction
19 between it and an officer, director, or affiliate thereof, which report is
20 required to be filed with the Commissioner pursuant to this Chapter, shall be
21 filed with the Commissioner in a form prescribed by the Commissioner and
22 shall be open to inspection and copying by any person.

23 (4) Records containing information furnished in connection with an application
24 bearing on the character, competency, or experience, or information about
25 the personal finances of an existing or proposed organizer, officer, ~~or~~
26 ~~director~~ director, or employee of a depository institution, federally chartered
27 institution, trust institution, holding company, or any other person subject to
28 the Commissioner's jurisdiction.

29 ...
30 (7) Records of North Carolina financial institutions in dissolution that have
31 liquidated, that are under the Commissioner's supervisory control, or that are
32 in receivership and that contain the names or other personal information of
33 any ~~customers of the institutions.~~ person.

34 (8) ~~Records—~~ Minutes or other records that have been obtained by the
35 Commissioner and that are related to meetings of, or have been prepared by
36 a compliance review committee or other committee of the board of directors
37 of a North Carolina financial institution or established at the direction of
38 such a board of directors that have been obtained by the Commissioner by,
39 any of the following bodies of a North Carolina financial institution:

40 a. The board of directors.

41 b. A compliance review committee of the board of directors.

42 c. Any other committee of the board of directors.

43 d. A committee established at the direction of the board of directors.

44 e. A committee established at the direction of a committee of the board
45 of directors.

46 ...
47 (12a) Records that are confidential under Chapter 132 of the General Statutes or
48 protected from disclosure under other applicable law.

49 (13) Any record that would disclose any information set forth in any of the
50 confidential records referred to in this subsection."

51 **SECTION 4.** G.S. 53C-4-12 reads as rewritten:

1 **"§ 53C-4-12. Compliance review committee.**

2 (a) For purposes of this section, the following definitions apply:

3 (1) ~~"Compliance review committee" means an audit, loan review, or compliance~~
 4 ~~committee appointed by the board of directors of a bank, or (i) a bank's~~
 5 ~~board of directors, (ii) a committee authorized by the bank's board of~~
 6 ~~directors, or (iii) any other committee or person to the extent the committee~~
 7 ~~or person acts at the direction of or reports to such a committee, whose the~~
 8 ~~bank's board of directors or a committee authorized by the bank's board of~~
 9 ~~directors when any part of the functions are of the board, committee, or~~
 10 ~~person is to audit, evaluate, report, or determine compliance with any of the~~
 11 ~~following: following standards or requirements:~~

12 ...

13 e. Compliance with federal or State statutory or regulatory
 14 requirements.

15 f. Cybersecurity requirements.

16 ...

17 (b) Banks shall maintain complete records of compliance review documents, and the
 18 documents shall be available for examination by the Commissioner or any bank supervisory
 19 agency or government agency having jurisdiction. Notwithstanding Chapter 132 of the General
 20 ~~Statutes, Statutes or any other provision of the General Statutes,~~ compliance review documents
 21 in the custody of a bank, the Commissioner, a government agency, or a bank supervisory
 22 agency are confidential, are not open for public inspection, and are not discoverable or
 23 admissible in evidence in a civil action against a bank, its directors, officers, or employees,
 24 unless the court finds that the interests of justice require that the documents be discoverable or
 25 admissible in evidence."

26 **SECTION 5.** G.S. 53C-5-1(b) reads as rewritten:

27 "(b) A bank shall also have the power to ~~engage:engage~~ in any of the following
 28 activities:

29 ...

30 (4) In any activity other than as ~~principal permitted under the Federal Deposit~~
 31 ~~Insurance Act, 12 U.S.C. § 1831a-principal."~~

32 **SECTION 6.** G.S. 53C-6-7 reads as rewritten:

33 **"§ 53C-6-7. Payable on Death accounts.**

34 (a) If any ~~natural person-individual~~ establishing a deposit account ~~shall execute~~
 35 ~~executes~~ a written agreement with the bank containing a statement that it is executed pursuant
 36 to the provisions of this section and providing for the account to be held in the name of the
 37 ~~natural person-individual~~ as owner for one or more beneficiaries, the account and any balance
 38 thereof shall be held as a Payable on Death account. The account shall have the following
 39 incidents:

40 ...

41 (3) ~~Any owner may withdraw funds by writing checks or otherwise, as set forth~~
 42 ~~in the account contract, and receive payment in cash or check payable to the~~
 43 ~~owner's personal order. Unless the individual establishing the Payable on~~
 44 ~~Death account has agreed with the bank that a withdrawal requires more than~~
 45 ~~one signature, payment by the bank to, on the order of, or at the direction of~~
 46 ~~any owner is a total discharge of the bank's obligation as to the paid amount.~~

47 (4) If ~~the any~~ beneficiary is a ~~natural person, an individual,~~ there may be one or
 48 more beneficiaries, each of whom shall be an individual, and the following
 49 requirements shall apply:

50 ...

(5) If ~~the any~~ beneficiary is ~~an entity other than a natural person, not an individual~~, there shall be only one beneficiary.

...
 (8) A pledge of a Payable on Death account by any owner, unless otherwise specifically agreed between the bank and all owners in writing, is a valid pledge and transfer of the account or of the pledged amount, is binding upon all owners and beneficiaries, does not operate to sever or terminate the joint ownership of all or any part of the account, and survives the death of any owner or any beneficiary.

The ~~natural person individual~~ establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the ~~language set out below~~ following language. The following language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the ~~person individual~~ establishing the account:

"BANK (or name of institution)
 PAYABLE ON DEATH ACCOUNT
 G.S. 53C-6-7

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 53C-6-7 that:

1. During my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account.
2. By written direction to the bank (or name of institution) I (or we), individually or jointly, may change the beneficiary or beneficiaries.
3. Upon my (or our) death, the money remaining in the account will belong to the beneficiary or beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by will.

...."

SECTION 7. G.S. 53C-6-8(d) reads as rewritten:

"(d) The written contract referred to in subsection (a) of this section shall provide that the principal may elect to extend the authority of the agent set out in subsection (a) of this section to act on behalf of the principal in regard to the account, notwithstanding the subsequent incapacity or mental incompetence of the principal. If the principal is ~~a natural person~~ an individual and elects to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the agent may continue to exercise the authority, without the requirement of bond or of accounting to any court, until ~~such time as the agent shall receive~~ receives actual knowledge that the authority has been terminated. The duly qualified guardian of the estate of the incapacitated or incompetent principal, or the duly appointed attorney-in-fact for the incapacitated or incompetent principal acting pursuant to a durable power of attorney, as defined in G.S. 32A-8, which grants to the attorney-in-fact the authority in regard to the account that is granted to the agent by the written contract executed pursuant to the provisions of this section, shall have the power, upon notifying the agent and providing written notice to the bank where the personal agency account is established, to terminate the agent's authority to act on behalf of the principal with respect to the account. Upon termination of the agent's authority, the agent shall account to the guardian or attorney-in-fact for all actions of the agent in regard to the account during the incapacity or incompetence of the principal. If the principal is ~~a natural person~~ an individual and does not elect to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the authority of the agent set out in subsection (a) of this section terminates."

SECTION 8. G.S. 53C-6-18(a) reads as rewritten:

1 "(a) A bank may establish in this State or another state one or more non-branch bank
 2 business offices as defined by G.S. 53C-1-4(46):G.S. 53C-1-4(46), subject to the following
 3 requirements:

- 4 (1) If a proposed non-branch bank business office will ~~offer a product, service,~~
 5 ~~or other type of business not previously engaged in by the bank, the bank~~
 6 ~~shall provide the Commissioner with~~ be used in connection with a new
 7 activity for which an application is required under G.S. 53C-5-1(d) or an
 8 investment for which a notice is required under G.S. 53C-5-2(e), that
 9 application or notice shall include written notification of the intent to open
 10 the office. The notification shall include the proposed location of the office
 11 and a description of the business to be conducted at the office. If the
 12 Commissioner does not request additional information or object to its
 13 establishment within 10 days of the date of receipt of the notification, the
 14 non-branch bank business office shall be deemed approved. In deciding
 15 whether to object to the establishment of a non-branch bank business office,
 16 the Commissioner shall consider, without limitation, whether the business
 17 proposed to be conducted at the non-branch bank business office is
 18 permissible for a bank, the costs of its establishment and ongoing operation
 19 and the impact of the costs on the bank's capital and profitability, and the
 20 ability of the bank's management to conduct the proposed business.
- 21 (2) If a ~~proposed non-branch bank business office will offer only products,~~
 22 ~~services, or other types of business already engaged in by the bank,~~ written
 23 notification is not required under subdivision (a)(1) of this section, the bank
 24 shall provide the Commissioner with written notification of the ~~intent to~~
 25 ~~open the office.~~ location of the office and a description of the business to be
 26 conducted at the office."

27 **SECTION 9.** G.S. 53C-7-207 reads as rewritten:

28 "**§ 53C-7-207. Combination with a nonbank subsidiary.**

29 (a) Except as provided in subsection (c) of this section, a bank proposing to do any of
 30 the following combinations shall give prior written notice to the Commissioner that provides
 31 ~~such detail~~ the details of the proposed combination that ~~the Commissioner may require~~ are
 32 required by the Commissioner:

- 33 (1) Combine with a nonbank subsidiary, if the bank is the resulting entity of the
 34 combination.
- 35 (2) Combine a nonbank subsidiary with another ~~company,~~ company that is not a
 36 depository institution, if a ~~the~~ nonbank subsidiary is the resulting entity.
- 37 (3) Combine two or more nonbank subsidiaries of two or more banks under
 38 common control of the same holding company.

39 Unless the Commissioner, within 30 days of receiving the notice, notifies the bank or
 40 subsidiary that the Commissioner objects to the proposed combination, the bank or subsidiary
 41 may complete the combination. However, the Commissioner may extend the period to object to
 42 the proposed combination if the Commissioner determines that it raises issues that require
 43 additional information or additional time for analysis. While the objection period is so
 44 extended, the bank or subsidiary may not proceed with respect to the proposed combination.

45 (b) A bank may, pursuant to G.S. 53C-2-6, appeal an objection by the Commissioner.

46 (c) The prior written notice requirement of subsection (a) of this section is not required
 47 ~~for~~ (i) for a combination of a nonbank subsidiary and another company ~~when that is not a~~
 48 depository institution, provided the nonbank subsidiary is not the resulting entity, (ii) for
 49 a combination of two or more nonbank subsidiaries of the same bank, each of which shall be
 50 effected in accordance with applicable organizational law, or (iii) if all of the following apply:

- 1 (1) The bank is well-capitalized and well-managed as demonstrated by the
2 supervisory rating it received during its most recent examination.
3 (2) The nonbank subsidiary with which the combination is to be made engages
4 in either of the following activities:
5"

6 7 **PART II. BANK HOLDING COMPANIES**

8 **SECTION 10.** G.S. 53C-10-101 reads as rewritten:

9 **"§ 53C-10-101. ~~Holdings~~ Holding companies.**

10 Every holding company, as defined in G.S. 53C-1-4(39), ~~of a that directly or indirectly~~
11 controls a bank or nonbank subsidiary that has an office located in this State shall register with
12 the Commissioner and maintain that registration on an annual basis in the form prescribed by
13 the Commissioner."

14 **SECTION 11.** G.S. 53-232 is recodified as G.S. 53C-10-303 and reads as
15 rewritten:

16 **"§ 53C-10-303. Fees.**

17 ~~Each bank~~ A holding company subject to this ~~act~~ Article shall pay the following fees:

- 18 (1) An initial registration fee of ~~\$1,000~~ one thousand dollars (\$1,000).
19 (2) An annual registration fee of ~~\$750.00~~ seven hundred fifty dollars (\$750.00).
20 (3) A fee of ~~\$50.00~~ fifty dollars (\$50.00) for the issuance of any certified copies
21 of documents plus ~~\$1.00~~ one dollar (\$1.00) per page over a number of pages
22 specified by the Commissioner."

23 **SECTION 12.** Article 18 of Chapter 53 of the General Statutes is repealed.
24

25 **PART III. MORTGAGE NOTICE REQUIREMENTS**

26 **SECTION 13.** G.S. 45-91 reads as rewritten:

27 **"§ 45-91. Assessment of fees; processing of payments; publication of statements.**

28 A servicer ~~must~~ shall comply as to every home loan, regardless of whether the loan is
29 considered in default or the borrower is in bankruptcy or the borrower has been in bankruptcy,
30 with all of the following requirements:

- 31 (1) Any fee that is incurred by a servicer shall ~~be both~~ satisfy both of the
32 following requirements:
33 a. ~~Assessed~~ The fee shall be assessed within 45 days of the date on
34 which the fee was incurred. Provided, however, that attorney or
35 trustee fees and costs incurred as a result of a foreclosure action shall
36 be assessed within 45 days of the date they are charged by either the
37 attorney or trustee to the servicer.
38 b. ~~Explained~~ The fee shall be explained clearly and conspicuously in a
39 statement mailed to the borrower at the borrower's last known
40 address within 30 days after assessing the fee, provided the servicer
41 shall not be required to take any action in violation of the provisions
42 of the federal bankruptcy code. The servicer shall not be required to
43 send ~~such a statement for a fee that: (i) results from a service that is~~
44 ~~affirmatively requested by the borrower, (ii) is paid for by the~~
45 ~~borrower at the time the service is provided, and (iii) is not charged~~
46 ~~to the borrower's loan account.~~ the statement for a fee that meets any
47 of the following requirements:
48 1. The fee is included in a periodic statement sent to the
49 borrower that meets the requirements of paragraphs (b), (c),
50 and (d) of 12 C.F.R. § 1026.41.
51 2. The fee meets all of the following requirements:

- 1 I. The fee results from a service that is affirmatively
- 2 requested by the borrower.
- 3 II. The fee is paid for by the borrower at the time the
- 4 service is provided.
- 5 III. The fee is not charged to the borrower's loan account.
- 6 ...
- 7 (4) All fees charged by a servicer ~~must~~shall be otherwise permitted under
- 8 applicable law and the contracts between the parties. Nothing herein is
- 9 intended to permit the application of payments or method of charging
- 10 interest which is less protective of the borrower than the contracts between
- 11 the parties and other applicable law.
- 12 (5) The obligations of mortgage servicers set forth in G.S. 53-244.110."

PART IV. CREDIT UNIONS

SECTION 14. G.S. 54-109.57A(a) reads as rewritten:

"§ 54-109.57A. Payable on Death (POD) accounts.

(a) Shares may be issued to and deposits received from any natural person or natural persons establishing an account who shall execute a written agreement with the credit union containing a statement that it is executed pursuant to the provisions of this section and providing for the account to be held in the name of the natural person or natural persons as owner or owners for one or more beneficiaries. Such account and any balance thereof shall be held as a Payable on Death account. The account shall have the following incidents:

- ...
 - (8) A pledge of a Payable on Death account by any owner, unless otherwise specifically agreed between the credit union and all owners in writing, is a valid pledge and transfer of the account or of the pledged amount, is binding upon all owners and beneficiaries, does not operate to sever or terminate the joint ownership of all or any part of the account, and survives the death of any owner or any beneficiary.

The natural person or natural persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the language set out below; the language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person or persons establishing the account:

"CREDIT UNION (or name of institution)
 PAYABLE ON DEATH ACCOUNT
 G.S. 54-109.57A

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 54-109.57A that:

- 1. During my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account.
- 2. By written direction to the credit union (or name of institution) I (or we), individually or jointly, may change the beneficiary or beneficiaries.
- 3. Upon my (or our) death the money remaining in the account will belong to the beneficiary or beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by will.

 _____"

PART V. EFFECTIVE DATE

SECTION 15. This act is effective when it becomes law.