

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2017-165
HOUSE BILL 462**

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER AMENDMENTS TO PROVISIONS APPLICABLE TO COMMERCIAL BANKS, PROVISIONS APPLICABLE TO BANK HOLDING COMPANIES, AND PROVISIONS APPLICABLE TO CREDIT UNIONS.

The General Assembly of North Carolina enacts:

PART I. COMMERCIAL BANKS

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

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

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

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

- a. Bank.
- b. Out-of-state bank.
- c. Depository institution established under the laws of another state.
- d. Federally chartered institution.
- e. Separately organized subsidiary of a bank, out-of-state bank, depository institution established under the laws of another state, or federally chartered institution.
- f. Holding company of a bank, out-of-state bank, depository institution established under the laws of another state, or federally chartered institution.

The provision of remote deposit capture facilities or services by a non-branch bank business office ~~shall not be deemed to be~~ does not constitute a taking of deposits. Non-branch bank business offices include loan production offices, mortgage loan offices, and insurance agency offices, or a combination thereof."

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

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

- (1) Records compiled during or in connection with an examination, audit, or investigation of any person, including records relating to any application for



licensure or otherwise to the conduct of business. The OCOB may treat as confidential any response to an application.

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

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

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

...

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

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

a. The board of directors.

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

c. Any other committee of the board of directors.

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

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

...

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

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

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

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

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

(1) "Compliance review committee" means ~~an audit, loan review, or compliance committee appointed by the board of directors of a bank, or (i) a bank's board of directors, (ii) a committee authorized by the bank's board of directors, or (iii) any other committee or person to the extent the committee or person acts at the direction of or reports to such a committee, whose the bank's board of directors or a committee authorized by the bank's board of~~an audit, loan review, or compliance committee appointed by the board of directors of a bank, or (i) a bank's board of directors, (ii) a committee authorized by the bank's board of directors, or (iii) any other committee or person to the extent the committee or person acts at the direction of or reports to such a committee, whose the bank's board of directors or a committee authorized by the bank's board of

directors when any part of the functions are of the board, committee, or person is to audit, evaluate, report, or determine compliance with any of the following: following standards or requirements:

...

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

f. Cybersecurity requirements.

...

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

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

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

...

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

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

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

(a) If any ~~natural person individual~~ individual establishing a deposit account ~~shall execute~~ executes a written agreement with the bank 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 individual~~ individual as owner for one or more beneficiaries, the account and any balance thereof shall be held as a Payable on Death account. The account shall have the following incidents:

...

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

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

...

(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:

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

- (1) If a proposed non-branch bank business office will ~~offer a product, service, or other type of business not previously engaged in by the bank, the bank shall provide the Commissioner with~~ be used in connection with a new activity for which an application is required under G.S. 53C-5-1(d) or an investment for which a notice is required under G.S. 53C-5-2(e), that application or notice shall include written notification of the intent to open

the office. The notification shall include the proposed location of the office and a description of the business to be conducted at the office. If the Commissioner does not request additional information or object to its establishment within 10 days of the date of receipt of the notification, the non-branch bank business office shall be deemed approved. In deciding whether to object to the establishment of a non-branch bank business office, the Commissioner shall consider, without limitation, whether the business proposed to be conducted at the non-branch bank business office is permissible for a bank, the costs of its establishment and ongoing operation and the impact of the costs on the bank's capital and profitability, and the ability of the bank's management to conduct the proposed business.

- (2) ~~If a proposed non-branch bank business office will offer only products, services, or other types of business already engaged in by the bank, written notification is not required under subdivision (a)(1) of this section, the bank shall provide the Commissioner with written notification of the intent to open the office.~~ location of the office and a description of the business to be conducted at the office."

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

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

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

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

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

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

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

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

...."

PART II. BANK HOLDING COMPANIES

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

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

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

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

"§ 53C-10-303. Fees.

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

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

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

PART III. 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 IV. EFFECTIVE DATE

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

In the General Assembly read three times and ratified this the 28th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:42 a.m. this 21st day of July, 2017