

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 322
SENATE BILL 414

AN ACT TO "OPT-IN" FOR INTERSTATE BRANCHING AUTHORITY UNDER THE RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994, AND TO MAKE A CONFORMING CHANGE TO THE REVENUE LAWS.

Whereas, section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, provides that before June 1, 1997, states may enact legislation that expressly permits interstate branching legislation that applies equally to all banks; and

Whereas, the General Assembly of North Carolina enacted the North Carolina Interstate Branching Act as Chapter 191 of the 1993 Session Laws, in order to permit nationwide reciprocal interstate branching; and

Whereas, the General Assembly desires to conform the North Carolina Interstate Branching Act to Public Law 103-328 and to confirm that it elects to opt for immediate interstate branching authority; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 17A of Chapter 53 of the General Statutes is repealed.

Sec. 2. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 17B.
"Interstate Branch Banking.
"Part 1. Definitions.

"§ 53-224.9. Definitions.

The following definitions apply in this Article:

- (1) 'Acquisition of a branch' means the acquisition of a branch located in a host state without engaging in an 'interstate merger transaction' as defined in Part 2 of this Article.
- (2) 'Bank' has the meaning set forth in 12 U.S.C. § 1813(h); provided that the term 'bank' shall not include any 'foreign bank' as defined in 12 U.S.C. § 3101(7), except that such term shall include any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.
- (3) 'Bank holding company' has the meaning set forth in 12 U.S.C. § 1841(a)(1).

- (4) 'Bank supervisory agency' means:
- a. The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies; and
 - b. Any agency of another state with primary responsibility for chartering and supervising banks.
- (5) 'Branch' means a full service office of a bank through which it receives deposits, checks are paid, or loans are made, other than its principal office. Any of the functions or services authorized to be engaged in by a bank may be carried out in an authorized branch office.
- (6) 'Commissioner' means the Commissioner of Banks for the State of North Carolina.
- (7) 'Control' has the meaning set forth in 12 U.S.C. § 1841(a)(2).
- (8) 'De novo branch' means a branch of a bank located in a host state which (i) is originally established by the bank as a branch and (ii) does not become a branch of the bank as a result of (A) the acquisition of another bank or a branch of another bank, or (B) the merger, consolidation, or conversion involving any such bank or branch.
- (9) 'Home state' means:
- a. With respect to a national bank, the state in which the main office of the bank is located;
 - b. With respect to a state bank, the state by which the bank is chartered;
 - c. With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. § 103(c).
- (10) 'Host state' means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch.
- (11) 'Interstate merger transaction' means:
- a. The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or
 - b. The purchase of all or substantially all of the assets, including all or substantially all of the branches, of a bank whose home state is different from the home state of the acquiring bank.
- (12) 'North Carolina bank' means a bank whose home state is North Carolina.
- (13) 'North Carolina State bank' means a bank chartered under the laws of North Carolina.
- (14) 'Out-of-state bank' means a bank whose home state is a state other than North Carolina.
- (15) 'Out-of-state state bank' means a bank chartered under the laws of any state other than North Carolina.

- (16) 'Resulting bank' means a bank that has resulted from an interstate merger transaction under this Article.
- (17) 'State' means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

"Part 2. Interstate de novo Branching and Acquisition of Branches.

"§ 53-224.10. Purpose.

It is the express intent of this Part to permit interstate branching under sections 102 and 103 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, in accordance with the provisions in this Part.

"§ 53-224.11. Interstate branching by North Carolina State banks.

(a) With the prior approval of the Commissioner, any North Carolina State bank may establish and maintain a de novo branch or acquire a branch in a state other than North Carolina.

(b) A North Carolina State bank desiring to establish and maintain a branch in another state under this section shall file an application on a form prescribed by the Commissioner and pay the branch application fee prescribed by regulation pursuant to G.S. 53-122. If the Commissioner finds that the applicant has the financial resources sufficient to undertake the proposed expansion without adversely affecting its safety or soundness and that the establishment of the proposed branch is in the public interest, the Commissioner may approve the application. In acting on the application, the Commissioner shall consider the views of the appropriate bank supervisory agencies. The applicant bank may establish the branch when it has received the written approval of the Commissioner.

"§ 53-224.12. Interstate branching by de novo entry.

An out-of-state bank that does not have a branch in North Carolina and that meets the requirements of this Article may establish and maintain a de novo branch in this State.

"§ 53-224.13. Interstate branching through the acquisition of a branch.

An out-of-state bank that does not have a branch in North Carolina and that meets the requirements of this Article may establish and maintain a branch in this State through the acquisition of a branch.

"§ 53-224.14. Requirement of notice and other conditions.

(a) An out-of-state bank desiring to establish and maintain a de novo branch or to acquire a branch in this State shall provide written notice of the proposed transaction to the Commissioner not later than the date on which the bank applies to the responsible federal bank supervisory agency for approval to establish or acquire the branch. The filing of such notice shall be accompanied by the filing fee prescribed by the Commissioner by regulation.

(b) The out-of-state bank shall comply with the applicable requirements of Article 15 of Chapter 55 of the North Carolina General Statutes.

(c) Prior to June 1, 1997, an out-of-state bank may establish and maintain a de novo branch or may establish and maintain a branch through acquisition of a branch if:

- (1) In the case of a de novo branch, the laws of the home state of the out-of-state bank permit North Carolina banks to establish and maintain de novo branches in that state under substantially the same terms and conditions as herein set forth; and
- (2) In the case of a branch established through the acquisition of a branch, the laws of the home state of the out-of-state bank permit North Carolina banks to establish and maintain branches in that state through the acquisition of branches under substantially the same terms and conditions as herein set forth.

"§ 53-224.15. Conditions for approval.

In the case of notice under G.S. 53-224.14 by an out-of-state state bank, the notice shall be subject to approval by the Commissioner, which approval shall be effective only if:

- (1) The bank confirms in writing to the Commissioner that as long as it maintains a branch in North Carolina, it will comply with all applicable laws of this State.
- (2) The Commissioner, acting within 60 days after receiving notice of an application under G.S. 53-224.14, certifies to the responsible federal bank supervisory agency that the requirements of this Part have been met by the bank.

"§ 53-224.16. Powers.

(a) An out-of-state state bank which establishes and maintains one or more branches in North Carolina under this Article may conduct any activities at such branch or branches that are authorized under the laws of this State for North Carolina State banks, except to the extent such activities may be prohibited by other laws, regulations, or orders applicable to the out-of-state state bank.

(b) A North Carolina State bank may conduct any activities at a branch outside of North Carolina that are permissible for a bank chartered by the host state where the branch is located, except to the extent such activities are expressly prohibited by the laws of this State or by any regulation or order of the Commissioner applicable to the North Carolina State bank.

"Part 3. Interstate Bank Mergers.

"§ 53-224.17. Purpose.

It is the express intent of this Part to permit interstate branching by merger under section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, in accordance with the provisions of this Part.

"§ 53-224.18. Authority of State banks to establish interstate branches by merger.

With the prior approval of the Commissioner, a North Carolina State bank may establish, maintain, and operate one or more branches in a state other than North Carolina pursuant to an interstate merger transaction in which the North Carolina State bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant North Carolina State bank shall file an application on a form prescribed by the Commissioner and pay the fee prescribed by regulation pursuant to

G.S. 53-122. The applicant shall also comply with the applicable provisions of G.S. 53-12. If the Commissioner finds that (i) the proposed transaction will not be detrimental to the safety and soundness of the applicant or the resulting bank, (ii) any new officers and directors of the resulting bank are qualified by character, experience, and financial responsibility to direct and manage the resulting bank, and (iii) the proposed merger is consistent with the convenience and needs of the communities to be served by the resulting bank in this State and is otherwise in the public interest, it shall approve the interstate merger transaction and the operation of branches outside of North Carolina by the North Carolina State bank. Such an interstate merger transaction may be consummated only after the applicant has received the Commissioner's written approval.

"§ 53-224.19. Interstate merger transactions and branching permitted.

One or more North Carolina banks may enter into an interstate merger transaction with one or more out-of-state banks under this Article, and an out-of-state bank resulting from such an interstate merger transaction may maintain and operate the branches in North Carolina of a merged North Carolina bank provided that the conditions and filing requirements of this Article are met.

"§ 53-224.20. Notice and filing requirements.

Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a North Carolina bank shall notify the Commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the Commissioner and pay the filing fee required by the Commissioner. All banks which are parties to such interstate merger transaction involving a North Carolina State bank shall comply with G.S. 53-12 and with other applicable state and federal laws. Any out-of-state bank which shall be the resulting bank in such an interstate merger transaction shall comply with Article 15 of Chapter 55 of the North Carolina General Statutes.

"§ 53-224.21. Conditions for interstate merger prior to June 1, 1997.

An interstate merger transaction prior to June 1, 1997, involving a North Carolina bank shall not be consummated, and any out-of-state bank resulting from such a merger shall not operate any branch in North Carolina, unless the laws of the home state of each out-of-state bank involved in the interstate merger transaction permits North Carolina banks under substantially the same terms and conditions as are set forth in Part 3 to acquire banks and establish and maintain branches in that state by means of interstate merger transactions.

"§ 53-224.22. Powers.

(a) An out-of-state state bank which establishes and maintains one or more branches in North Carolina under this Article may conduct any activities at such branch or branches that are authorized under the laws of this State for North Carolina State banks, except to the extent such activities may be prohibited by other laws, regulations, or orders applicable to the out-of-state state bank.

(b) A North Carolina State bank may conduct any activities at a branch outside of North Carolina that are permissible for a bank chartered by the host state where the

branch is located, except to the extent such activities are expressly prohibited by the laws of this State or by any regulation or order of the Commissioner applicable to the North Carolina State bank.

"Part 4. Supervisory Authority.

"§ 53-224.23. Applicability of supervisory authority.

The supervisory powers and other provisions set forth in G.S. 53-224.24 through G.S. 53-224.31 shall apply to Parts 2 and 3 of this Article.

"§ 53-224.24. Examinations; periodic reports; cooperative agreements; assessment of fees.

(a) The Commissioner may make such examinations of any branch of an out-of-state state bank established under this Article and located in this State as the Commissioner may deem necessary to determine whether the branch is operating in compliance with the laws of this State and to ensure that the branch is being operated in a safe and sound manner. The provisions of G.S. 53-117 apply to such examinations.

(b) The Commissioner may require periodic reports regarding any branch in North Carolina of an out-of-state bank to the extent that comparable reports are required from North Carolina State banks. Such reports shall be filed under oath with such frequency and in such scope and detail as may be appropriate for the purpose of assuring continuing compliance with the provisions of this Article.

(c) The Commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in North Carolina of an out-of-state state bank, or any branch of a North Carolina State bank in a host state, and the Commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting an additional examination or investigation. The Commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in North Carolina of an out-of-state state bank or any branch of a North Carolina State bank in any host state; provided, however, that the Commissioner may at any time take such actions independently if the Commissioner deems such actions to be necessary or appropriate to carry out the Commissioner's responsibilities under this Article and to ensure compliance with the laws of this State.

(d) Each out-of-state state bank that maintains one or more branches in this State may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this State and regulations of the Commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the Commissioner.

"§ 53-224.25. Enforcement.

If the Commissioner determines that a branch maintained by an out-of-state state bank in this State is being operated in violation of any provision of the laws of this State, or that such branch is being operated in an unsafe and unsound manner, the Commissioner shall have the authority to take all such enforcement actions as the

Commissioner would be empowered to take if the branch were a North Carolina State bank.

"§ 53-224.26. Rules.

The Commissioner, subject to review and approval of the North Carolina State Banking Commission, may adopt rules needed to implement this Article. Chapter 150B of the General Statutes governs the adoption of rules by the Commissioner.

"§ 53-224.27. Additional branches.

An out-of-state bank that has a branch in North Carolina may establish and acquire additional branches in this State to the same extent as a North Carolina State bank or to the same extent otherwise permitted by federal law.

"§ 53-224.28. Notice of subsequent merger or other change in control.

An out-of-state bank that maintains a branch in this State established pursuant to this Article shall give 30 days' prior written notice to the Commissioner of any merger, consolidation, or other transaction that would cause a change of control with respect to such out-of-state bank or any bank holding company that controls such bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. § 1817(j) or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or any successor statutes thereto.

"§ 53-224.29. Branch closings.

An out-of-state state bank that is subject to an order or written agreement revoking its authority to establish or maintain a branch in North Carolina and any North Carolina State bank that is subject to an order or written agreement revoking its authority to establish or maintain a branch in another state shall wind up the business of that branch in an orderly manner that protects the depositors, customers, and creditors of the branch and that complies with all North Carolina laws and all other applicable laws regarding the closing of the branch.

"§ 53-224.30. Appeal of Commissioner's decision.

Any aggrieved party in a proceeding under this Article may, within 30 days after final decision of the Commissioner, appeal such decision to the North Carolina State Banking Commission. The State Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the State Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the State Banking Commission approving the decision of the Commissioner. Notwithstanding any other provision of law, any aggrieved party to a decision of the Commission shall be entitled to an appeal pursuant to G.S. 53-92.

"§ 53-224.31. Severability.

If any provision of this Article or the application of such provision is found invalid as to any bank, branch, bank holding company, person, or circumstances, or shall otherwise be deemed superseded by federal law, the remaining provisions of this Article shall not be affected and shall remain valid and in effect as to any bank, branch, bank holding company, person, or circumstance."

Sec. 2. G.S. 105-102.3 reads as rewritten:

"§ 105-102.3. Banks.

There is hereby imposed upon every bank or banking association, including each national banking association, that is operating in this State as a commercial bank, an industrial bank, a savings bank created other than under Chapter 54B of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), a trust company, or any combination of such facilities or services, and whether such bank or banking association, hereinafter to be referred to as a bank or banks, be organized, under the laws of the United States or the laws of North Carolina, in the corporate form or in some other form of business organization, an annual privilege tax in the amount of thirty dollars (\$30.00) for each one million dollars (\$1,000,000) or fractional part thereof of total assets held as hereinafter provided. The assets upon which the tax is levied shall be determined by averaging the total assets shown in the four quarterly call reports of condition (consolidating domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities; provided, however, where a new bank commences operations within the State there shall be levied and paid an annual privilege tax of one hundred dollars (\$100.00) until such bank shall have made four quarterly call reports of condition (consolidating domestic subsidiaries) for a single calendar year; provided further, however, where a bank operates an international banking facility, as defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States, as computed pursuant to G.S. 105-130.5(b)(13)c. For an out-of-state bank with one or more branches in this State, or for an in-state bank with one or more branches outside this State, the assets of the out-of-state bank or of the in-state bank upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the out-of-state bank or of the in-state bank which are employed outside this State. The tax imposed hereunder shall be for the privilege of carrying on the businesses herein defined on a statewide basis regardless of the number of places or locations of business within the State. Counties, cities and towns shall not levy a license or privilege tax on the businesses taxed under this section, nor on the business of an international banking facility as defined in subsection (b)(13) of G.S. 105-130.5."

Sec. 3. Section 2 of this act is effective July 1, 1995. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives