

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 676
Finance Committee Substitute Adopted 5/13/03
House Committee Substitute Favorable 7/10/03

Short Title: Revise the Banking Laws of North Carolina.

(Public)

Sponsors:

Referred to:

April 2, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE BANKING LAWS OF NORTH CAROLINA.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 53-1(3a) reads as rewritten:

5 "(3a) Limited Service Facility. – The term "limited service facility" means
6 ~~an office of a bank~~ a staffed physical location open to the public in
7 this State in which deposits are received, monies are paid, or other
8 duties and functions of a teller are performed. Loan applications shall
9 be taken in a limited service facility but notes may not be executed nor
10 loan proceeds disbursed in a limited service facility. a bank established
11 under the laws of this State or a bank or other depository institution
12 established under the laws of any other state conducts any activity of a
13 "branch" set forth in subdivision (1a) of this section, but which is not
14 considered a branch by virtue of the fact that the bank does not engage
15 in all activities of a branch at the location. A location is a limited
16 service facility of a bank notwithstanding that it is operated by a third
17 party if there exists an agreement between the third party and the bank
18 pursuant to which the third party (i) takes deposits or offers loans as an
19 agent of the bank or in the bank's name; or (ii) is obligated to sell or
20 otherwise transfer to the bank all or a substantial portion of the loan or
21 deposit production of that location."

22 **SECTION 2.** G.S. 53-17.2(e) reads as rewritten:

23 "(e) In the absence of the ~~promulgation~~ adoption of rules under subsection (d),
24 the conditions to be met for approval of the application for conversion should include
25 the following:

26 (1) Condition. The applicant's general condition must reflect adequate
27 capital, liquidity, reserves, earnings, and asset composition necessary
28 for safe and sound operation of the resulting bank.

- 1 (2) Management. The management and the board of directors must be
2 capable of supervising a sound banking operation and overseeing the
3 changes that must be accomplished in the conversion from an
4 association or savings bank to a bank.
- 5 (3) Public Convenience. The ~~Commission must determine that the~~
6 conversion will have a positive impact on the convenience of the
7 public and will not substantially reduce the services available to the
8 public in the market area.
- 9 (4) Transition. Within a reasonable time after the effective date of the
10 conversion, the resulting bank must divest itself of all assets and
11 liabilities that do not conform to State banking law or rules. The length
12 of this transition period shall be determined by the Commissioner and
13 shall be specified when the application for conversion is approved.

14 In evaluating each of these conditions, the ~~Commission~~ Commissioner shall consider
15 a comparison of the relevant financial ratios of the applicant with the average ratios of
16 North Carolina banks of similar asset size. The ~~Commission may~~ Commissioner shall
17 not approve a conversion where the applicant presents an undue supervisory concern or
18 has not been operated in a safe and sound manner."

19 **SECTION 3.** G.S. 53-17.2(f) reads as rewritten:

20 "(f) If the ~~State Banking Commission~~ Commissioner approves the plan of
21 conversion, then the association or savings bank shall submit the plan to the
22 stockholders or members as provided in subsection (g). After approval of the plan of
23 conversion, the Commissioner of Banks shall supervise and monitor the conversion
24 process and shall ensure that the conversion is conducted pursuant to law and the
25 association's or savings bank's approved plan of conversion."

26 **SECTION 4.** G.S. 53-48 reads as rewritten:

27 "**§ 53-48. Limitation of loans.**

28 (a) The total loans and extensions of credit, both direct and indirect, by a bank to
29 a person, other than a municipal corporation for money borrowed, including in the
30 liabilities of a firm the liabilities of the several members thereof, outstanding at one time
31 and not fully secured, as determined in a manner consistent with subsection (b) of this
32 section, by collateral having a market value at least equal to the amount of the loan or
33 extension of credit shall not exceed the greater of fifteen percent (15%) of the
34 unimpaired capital fund of the ~~bank.~~ bank or the percentage permitted for national banks
35 in this State or by statute or regulation of the Comptroller of the Currency.

36 (b) The total loans and extensions of credit, both direct and indirect, by a bank to
37 a person outstanding at one time and fully secured by readily marketable collateral
38 having a market value, as determined by reliable and continuously available price
39 quotations, at least equal to the amount of the ~~funds~~ loan or extension of credit
40 outstanding shall not exceed the greater of ten percent (10%) of the unimpaired capital
41 fund of the ~~bank.~~ bank or the percentage permitted for national banks by statute or
42 regulation of the Comptroller of the Currency. This limitation shall be separate from and
43 in addition to the limitation contained in subsection (a) ~~above~~ of this section.

1 (c) The discount of bills of exchange drawn in good faith against actual existing
2 values, the discount of solvent trade acceptances or other solvent commercial or
3 business paper actually owned by the person negotiating the same, loans or extensions
4 of credit secured by a segregated deposit account in the lending bank, the purchase of
5 bankers acceptances of the kind described in section 13 of the Federal Reserve Act and
6 issued by other banks, and the purchase of any notes and the making of any loans,
7 secured by not less than a like face amount of bonds of the United States, or an agency
8 of the United States, or other obligations guaranteed by the United States Government,
9 or State of North Carolina or certificates of indebtedness of the United States, or agency
10 thereof, or other obligations guaranteed by the United States Government, shall not be
11 considered as money borrowed within the meaning of this section: Provided, however,
12 that the limitations of this section shall not apply to loans or obligations to the extent
13 that they are secured or covered by guarantees or by commitments or agreements to take
14 over or purchase the same, made by any federal reserve bank or by the United States or
15 any department, board, bureau, commission or establishment of the United States,
16 including any corporation wholly owned directly or indirectly by the United States.

17 (d) For purposes of this section, the term "person" shall be deemed to include an
18 individual, or a corporation, partnership, trust, association, joint venture, pool,
19 syndicate, sole proprietorship, unincorporated organization or any other form of entity
20 not specifically listed herein. Loans or extensions of credit to one person include loans
21 made to other persons when the proceeds of the loans or extensions of credit are to be
22 used for the direct benefit of the first person or the persons are engaged in a common
23 enterprise. The Commissioner of Banks shall monitor the lending activities of banks
24 under this section for undue credit concentrations and inadequate risk diversification
25 which could adversely affect the safety and soundness of such banks."

26 **SECTION 5.** G.S. 53-62 reads as rewritten:

27 **"§ 53-62. Establishment of branches; limited service facilities; and off-premises**
28 **customer-bank communications terminals.**

29 (a) The word "capital" as used in this section means capital stock and unimpaired
30 surplus.

31 ~~(b) A bank doing business under this Chapter may establish branches or limited~~
32 ~~service facilities within this State after having first obtained the written approval of the~~
33 ~~Commissioner of Banks, which approval may be given or withheld by the~~
34 ~~Commissioner of Banks, in his discretion. The Commissioner of Banks, in exercising~~
35 ~~such discretion, shall take into account, but not by way of limitation, such factors as the~~
36 ~~financial history and condition of the applicant bank, the adequacy of its capital~~
37 ~~structure, its future earnings prospects, and the general character of its management.~~
38 ~~Such approval shall not be given until he shall find (i) that the establishment of such~~
39 ~~branch or limited service facility will meet the needs and promote the convenience of~~
40 ~~the community to be served by the bank, and (ii) that the probable volume of business~~
41 ~~and reasonable public demand in such community are sufficient to assure and maintain~~
42 ~~the solvency of said branch or limited service facility and of the existing bank or banks~~
43 ~~in said community. A bank, with the prior written approval of the Commissioner of~~
44 ~~Banks, may:~~

- 1 (1) Establish a branch or limited service facility; or
2 (2) Convert an existing limited service facility to a branch.

3 The application for approval to establish or convert a branch or limited service
4 facility shall be in a form prescribed by the Commissioner of Banks and shall be
5 accompanied by the application fee established by the Banking Commission by rule.
6 Approval may be given or withheld by the Commissioner of Banks. In determining
7 whether to give or withhold approval, the Commissioner of Banks shall take into
8 account factors, including the financial history and condition of the applicant bank, the
9 adequacy of its capital structure, its future earnings prospects, and the general character
10 of its management. The Commissioner of Banks shall not give approval pursuant to this
11 subsection unless the Commissioner finds that:

- 12 (1) The establishment or conversion of the branch or limited service
13 facility will meet the needs and promote the convenience of the
14 community to be served thereby; and
15 (2) The probable volume of business and reasonable public demand in the
16 community are sufficient to assure and maintain the solvency of the
17 branch office or limited service facility and of the existing depository
18 institutions in the community.
- 19 (c) (1) ~~A branch or limited service facility of a bank shall be operated as a~~
20 ~~branch or office of and under the name of the bank, and under the~~
21 ~~control and direction of the board of directors and executive officers of~~
22 ~~the bank.~~ bank and under the name of the bank as set forth in its
23 Certificate of Incorporation filed with the Office of the Secretary of
24 State, except that the Commissioner of Banks may permit the
25 operation of a branch or limited service facility under an assumed
26 name under the conditions and terms imposed by the Commissioner if
27 the Commissioner of Banks finds that the name will not result in
28 confusion among customers of the bank or among the general public.
29 The board of directors of the bank shall elect such officers as may be
30 required to properly conduct the business of any branch or limited
31 service facility.
- 32 (2) The Commissioner of Banks shall not authorize the establishment or
33 conversion of a branch or limited service facility until he is satisfied
34 that the applicant bank has sufficient capital to maintain a minimum
35 capital to asset ratio as the Commissioner of Banks, in his discretion,
36 may require. In determining such ratio the Commissioner of Banks
37 shall give due consideration to (i) the amount of capital required to
38 support the bank's projected growth, (ii) the bank's earnings history
39 and projected earnings, (iii) the quality of the bank's assets, (iv)
40 compliance with the fixed asset limitation contained in G.S. 53-43(3),
41 subsection (f) of this section and (v) the business experience and
42 reputation of bank management.
- 43 (3) ~~The Commissioner of Banks may, on written application by a bank, in~~
44 ~~his discretion authorize the bank to establish a limited service facility~~

1 ~~after considering the criteria and making the findings required in~~
2 ~~subsection (b).~~

3 (d) ~~A limited service facility, upon written request to the Commissioner of~~
4 ~~Banks, and after meeting the requirements of subsection (c) may convert to a branch. If~~
5 ~~branch status is granted then the branch shall be subject to all of the conditions and~~
6 ~~requirements of that type of banking office.~~

7 Upon 30 days written notice to the Commissioner of Banks, a bank may discontinue
8 any limited service facility ~~operation; provided, however, if a limited service facility has~~
9 ~~within five years preceding the proposed closing date been a branch of any bank, it shall~~
10 ~~comply with the requirements of subsection (e) below before closing. operation.~~

11 (d1) Subject to such rules and regulations as may be prescribed by the State
12 Banking Commission with regard to their use, maintenance and supervision, any bank
13 may establish off the premises of any principal office, branch or limited service facility
14 a customer-bank communications terminal, point-of-sale terminal, automated teller
15 machine, automated banking facility or other direct or remote information-processing
16 device or machine, whether manned or unmanned, through or by means of which
17 information relating to any financial service or transaction rendered to the public is
18 stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank
19 terminal; and the establishment and use of such a device or machine shall not be
20 deemed a branch or limited service facility, and the capital requirements and standards
21 for approval of a branch or limited service facility, all as set forth in subsections (b) and
22 (c) of this section, shall not be applicable to the establishment of any such off-premises
23 terminal device or machine.

24 (e) A bank may, upon resolution by the board of directors, discontinue a branch
25 office subject to the following:

26 (1) The bank shall notify the Commissioner in writing of its intent to close
27 a branch not later than 90 days prior to the proposed closing date. Such
28 notice shall include a detailed statement of the reasons for the decision
29 to close a branch and statistical or other information in support of such
30 reasons.

31 (2) The bank shall provide a notice of its intent to close a branch to its
32 customers. Such notice shall be posted in a conspicuous manner on the
33 branch premises for a period of 30 days prior to the proposed closing
34 date, and shall either be included in at least one of any regular account
35 statements mailed to customers of such branch, or in a separate
36 mailing to such customers. The later notice shall be given at least 90
37 days prior to the proposed closing date.

38 No branch shall be closed until approved by the Commissioner of Banks, provided,
39 however, the consolidation of two or more branches into a single location in the same
40 vicinity shall not be considered a closure subject to the provisions of this subsection.

41 (f) Any action taken by the Commissioner of Banks pursuant to this section shall
42 be subject to review by the State Banking Commission which shall have the authority to
43 approve, modify or disapprove any action taken or recommended by the Commissioner
44 of Banks."

1 **SECTION 6.** G.S. 53-67 reads as rewritten:

2 "**§ 53-67. Banks controlled by boards of directors.**

3 The corporate powers, business, and property of banks doing business under this
4 Chapter shall be exercised, conducted, and controlled by its board of directors, which
5 shall meet at least quarterly. Such board shall consist of not less than five directors, to
6 be chosen by the stockholders, and shall hold office for the term for which they are
7 elected, and until their successors are elected and qualified. The annual meeting of
8 stockholders for the election of directors shall be held at such time as may be designated
9 by the charter or the bylaws of the bank but shall be held not later than ~~the thirtieth day~~
10 ~~of June in each year.~~ June 30 each year; provided, however, that any bank which has
11 been open for business for fewer than 12 months as of June 30 of the current year shall
12 hold its first annual meeting by not later than June 30 of the following year. In addition
13 to the foregoing powers relating to the fixing of the number and the election of
14 directors, the stockholders of a bank, at any stockholders' meeting, special or annual,
15 may authorize not more than two additional directorships which may be left unfilled and
16 to be filled in the discretion of the directors of the institution during the interval between
17 such stockholders' meetings. Aside from the specific provisions of this section, the
18 number, election, term and classification of the directors of banks doing business under
19 this Chapter shall be governed by the provisions of the North Carolina Business
20 Corporation Act."

21 **SECTION 7.** G.S. 53-99(b)(7b) reads as rewritten:

22 "(7b) Records of applications, examinations, examinations, and
23 investigations of registrants-applicants, licensees, and exempt persons
24 under the Mortgage Lending Act, Article 19A of this Chapter;".

25 **SECTION 8.** G.S. 53-115 reads as rewritten:

26 "**§ 53-115. State Banking Commission to ~~make rules and regulations.~~ adopt rules.**

27 (a) The State Banking Commission is hereby authorized, empowered and
28 directed to make all necessary rules and regulations, and to give all necessary
29 instructions with respect to such actions of banking corporations which the
30 Commissioner of Banks may authorize, permit and/or direct and require to be conducted
31 under the provisions of G.S. 53-77, 53-114, 53-115, and 53-116. And it shall be the duty
32 of all such banking corporations and their officers, agents and employees, to comply
33 fully with any and all such rules, regulations and instructions, established and
34 promulgated by the State Banking Commission with respect to such banking
35 corporations under the terms of G.S. 53-77, 53-114, 53-115, and 53-116; and such
36 orders, rules, and regulations shall have the same force and effect as rules, regulations
37 and instructions promulgated under the existing banking laws. with respect to the
38 establishment, operation, conduct, and termination of any and all activities and
39 businesses that are subject to licensing, regulation, supervision, or examination by the
40 Commissioner of Banks under this Chapter.

41 (b) The rule-making authority conferred on the State Banking Commission by
42 this section shall be in addition to and not in derogation of any specific rule-making
43 authority by any other provision of this Chapter."

44 **SECTION 9.** G.S. 53-160 reads as rewritten:

1 **"§ 53-160. License to do business.**

2 Before any such bank or trust company is authorized to act in any fiduciary capacity
3 without bond, it must be licensed by the Commissioner of Banks of the State. For such
4 license the ~~licensee~~ licensee, for the purpose of defraying necessary expenses of the
5 Commissioner of Banks and the Commissioner's agents in supervising and examining
6 the licensee, shall pay to the State Banking Commission an annual license fee of two
7 hundred dollars (\$200.00), which shall be remitted to the State Treasurer for the use of
8 the Commissioner of Banks in the supervision of banks and trust companies acting in a
9 fiduciary capacity, insofar as it may be necessary, and the surplus, if any, shall remain
10 in the State treasury for the use of the general fund of the State: Commissioner of Banks
11 an annual license fee not to exceed five hundred dollars (\$500.00) as required by rule of
12 the State Banking Commission. Provided, however, that a national bank which has
13 been granted trust powers by the Comptroller of the Currency or his duly authorized
14 agent shall be annually licensed as required in this section and shall be granted a
15 certificate of solvency which will meet the provisions of G.S. 53-162 without
16 examination by the Commissioner of Banks as required in G.S. 53-161."

17 **SECTION 10.** G.S. 53-208.12 reads as rewritten:

18 **"§ 53-208.12. Quarterly reports.**

19 A licensee shall file for each calendar quarter, no later than 60 days after the quarter
20 has ended, a report which contains the total number of authorized delegates in this State.
21 In addition, a licensee shall promptly provide any additional information regarding any
22 or all of its current and prior authorized delegates requested by the Commissioner."

23 **SECTION 11.** G.S. 53-243.02(c) reads as rewritten:

24 "(c) The license of a loan officer is not effective during any period when that
25 person is not employed by a mortgage broker or mortgage banker licensed under this
26 Article. The license of an exclusive mortgage broker is not effective during any period
27 when that person is not authorized to act as a single licensee or exempt person pursuant
28 to G.S. 53-243.05(c)(1a).

29 When a loan officer ceases to be employed by a mortgage broker or mortgage
30 banker licensed under this Article, the loan officer and the mortgage broker or mortgage
31 banker licensed under this Article by whom that person is employed shall promptly
32 notify the Commissioner in writing. When the authority of an exclusive mortgage
33 broker to act on behalf of the principal licensee or exempt person identified in G.S.
34 53-243.05(c)(1a) has been terminated, the exclusive mortgage broker and the licensee or
35 exempt person for whom the exclusive mortgage broker is an agent shall promptly
36 notify the Commissioner in writing. The mortgage broker, mortgage banker, or exempt
37 person's notice shall include a statement of the specific reason or reasons for, as
38 applicable, the termination of the loan officer's employment or exclusive mortgage
39 broker's authority.

40 A loan officer shall not be employed simultaneously by more than one mortgage
41 broker or mortgage banker licensed under this Article."

42 **SECTION 12.** G.S. 53-243.05(a)(6) reads as rewritten:

43 "(6) The applicant's consent to a federal and State criminal history record
44 check and a set of the applicant's fingerprints in a form acceptable to

1 the Commissioner. In the case of an applicant that is a corporation,
2 partnership, limited liability company, association, or trust, each
3 individual who has control of the applicant or who is the managing
4 principal or a branch manager shall consent to a federal and State
5 criminal history record check and submit a set of that individual's
6 fingerprints pursuant to this subdivision. Refusal to consent to a
7 criminal history record check ~~may constitute~~ constitutes grounds for
8 the Commissioner to deny licensure to the ~~applicant~~ applicant as well
9 as to any entity (i) by whom or by which the applicant is employed, (ii)
10 over which the applicant has control, or (iii) as to which the applicant
11 is the current or proposed managing principal or a current or proposed
12 branch manager."

13 **SECTION 13.** G.S. 53-243.06(b1) reads as rewritten:

14 "(b1) When required by the Commissioner, ~~the licensee~~ each individual described
15 in G.S. 53-245.05(a)(6) shall furnish to the Commissioner the licensee's his or her
16 consent to a criminal history record check and a set of the licensee's his or her
17 fingerprints in a form acceptable to the Commissioner. Refusal to consent to a criminal
18 history record check may constitute grounds for the Commissioner to deny renewal of
19 licensure to the licensee, the license of the person as well as the license of any other
20 person by which he or she is employed, over which he or she has control, or as to which
21 he or she is the current or proposed managing principal or a current or proposed branch
22 manager."

23 **SECTION 14.** G.S. 53-243.11 is amended by adding a new subdivision to
24 read:

25 "(12) To fail to comply with the mortgage loan servicing transfer, escrow
26 account administration, or borrower inquiry response requirements
27 imposed by sections 6 and 10 of the Real Estate Settlement Procedures
28 Act (RESPA), 12 U.S.C. § 2605 and § 2609, and regulations adopted
29 thereunder by the Secretary of the Department of Housing and Urban
30 Development."

31 **SECTION 15.** G.S. 53-243.12(a)(2) reads as rewritten:

32 "(2) That any of the following circumstances apply to the applicant,
33 licensee, or any partner, member, manager, officer, director, loan
34 officer, managing ~~broker,~~ principal, or any person occupying a similar
35 status or performing similar functions or any person directly or
36 indirectly controlling the applicant or licensee. The person:

- 37 a. Has filed an application for license that, as of its effective date
38 or as of any date after filing, contained any statement that, in
39 light of the circumstances under which it was made, is false or
40 misleading with respect to any material fact.
- 41 b. Has violated or failed to comply with any provision of this
42 Article, rule adopted by the Commissioner, or order of the
43 Commissioner.

- 1 c. Has been convicted of any felony, or, within the past 10 years,
2 has been convicted of any misdemeanor involving mortgage
3 lending or any aspect of the mortgage lending business, or any
4 offense involving breach of trust, moral turpitude, or fraudulent
5 or dishonest dealing.
- 6 d. Is permanently or temporarily enjoined by any court of
7 competent jurisdiction from engaging in or continuing any
8 conduct or practice involving any aspect of the mortgage
9 lending business.
- 10 e. Is the subject of an order of the Commissioner denying,
11 suspending, or revoking that person's license as a mortgage
12 broker or mortgage banker.
- 13 f. Is the subject of an order entered within the past five years by
14 the authority of any state with jurisdiction over that state's
15 mortgage brokerage or mortgage banking industry denying or
16 revoking that person's license as a mortgage broker or mortgage
17 banking industry or denying or revoking that person's license as
18 a mortgage broker or mortgage banker.
- 19 g. Does not meet the qualifications or the financial responsibility,
20 character, or general fitness requirements under G.S. 53-243.05
21 or any bond or capital requirements under this Article.
- 22 h. Has been the executive officer or controlling shareholder or
23 owned a controlling interest in any mortgage broker or
24 mortgage banker who has been subject to an order or injunction
25 described in sub-subdivision d., e., or f. of this subdivision.
- 26 i. Has failed to pay the proper filing or renewal fee under this
27 Article. However, the Commissioner may enter only a denial
28 order under this sub-subdivision, and the Commissioner shall
29 vacate the order when the deficiency has been corrected."

30 **SECTION 16.** G.S. 53-243.12(g) reads as rewritten:

31 "(g) If the Commissioner has reasonable grounds to believe that a licensee or other
32 person has violated the provisions of this Article or that facts exist that would be the
33 basis for an order against a licensee or other person, the Commissioner may at any time,
34 either personally or by a person duly designated by the Commissioner, investigate or
35 examine the loans and business of the licensee and examine the books, accounts,
36 records, and files of any licensee or other person relating to the complaint or matter
37 under investigation. The Commissioner may require any licensee or other person to
38 submit a consent to a criminal history record check and a set of that person's fingerprints
39 in a form acceptable to the Commissioner in connection with any examination or
40 investigation. Refusal to submit the requested criminal history record check or a set of
41 fingerprints shall be grounds for disciplinary action. The reasonable cost of this
42 investigation or examination shall be charged against the licensee."

43 **SECTION 17.** G.S. 53-243.12(k) reads as rewritten:

1 "(k) If the Commissioner finds that the managing principal, branch manager, or
2 loan officer of a licensee had knowledge of or reasonably should have had knowledge
3 of, or participated in, any activity that results in the entry of an order under this section
4 suspending or withdrawing the license of a licensee, the Commissioner may prohibit the
5 branch manager, managing broker-principal, or loan officer from serving as a branch
6 manager, managing broker-principal, or loan officer for any period of time the
7 Commissioner deems necessary."

8 **SECTION 18.** G.S. 53-243.16 reads as rewritten:

9 "**§ 53-243.16. Criminal history record checks.**

10 (a) The Department of Justice may provide a criminal record check to the
11 Commissioner for ~~a~~any person who has applied for or holds a mortgage banker,
12 mortgage broker, exclusive mortgage broker, or loan officer license through the
13 Commissioner under this Article.

14 (b) In addition, if a person described in subsection (a) of this section is a
15 corporation, partnership, limited liability company, association, or trust, the Department
16 of Justice may provide a criminal record check to the Commissioner for any person who
17 has control of that person, or who is the managing principal or a branch manager of that
18 person.

19 (c) The Commissioner shall provide to the Department of Justice, along with the
20 request, the fingerprints of the ~~applicant,~~ person, any additional information required by
21 the Department of Justice, and a form signed by the ~~applicant-person~~ consenting to the
22 check of the criminal record and to the use of the fingerprints and other identifying
23 information required by the State or national repositories. The ~~applicant's~~ person's
24 fingerprints shall be forwarded to the State Bureau of Investigation for a search of the
25 State's criminal history record file, and the State Bureau of Investigation shall forward a
26 set of the fingerprints to the Federal Bureau of Investigation for a national criminal
27 history check. The Commissioner shall keep all information pursuant to this section
28 privileged, in accordance with applicable State law and federal guidelines, and the
29 information shall be confidential and shall not be a public record under Chapter 132 of
30 the General Statutes.

31 The Department of Justice may charge a fee for each ~~applicant-person~~ for
32 conducting the checks of criminal history records authorized by this section."

33 **SECTION 19.** G.S. 53-257(6) reads as rewritten:

34 "(6) Reverse mortgage loan or loan. – A loan for a definite or indefinite
35 term (i) secured by a first mortgage or first deed of trust on the
36 principal residence of the ~~mortgagor,~~ mortgagor located in North
37 Carolina, (ii) the proceeds of which are disbursed to the mortgagor in
38 one or more lump sums, or in equal or unequal installments, either
39 directly by the lender or the lender's agent, and (iii) that requires no
40 repayment until a future time, upon the earliest occurrence of one or
41 more events specified in the reverse mortgage loan contract."

42 **SECTION 20.** G.S. 53-258 reads as rewritten:

43 "**§ 53-258. Authority and procedures governing reverse mortgage loans.**

1 (a) ~~No~~ Except as provided in subsection (b1) of this section, no person, firm, or
2 corporation shall engage in the business of making reverse mortgage loans without first
3 being approved as an authorized lender by the Commissioner, unless the lender is the
4 North Carolina Housing Finance Agency, or is a bank, savings institution, or credit
5 union authorized to do business under the laws of this State or authorized to do business
6 under the laws of the United States and chartered to do business in this
7 State. Commissioner.

8 (b) An application for authorization to make reverse mortgage loans shall be in
9 writing to the Commissioner and in the form prescribed by the Commissioner. The
10 application shall contain the name and complete business address or addresses of the
11 applicant. The application shall also include affirmation of financial solvency and all
12 capitalization requirements that are required by the Commissioner. The application shall
13 be accompanied by a nonrefundable fee, payable to the Commissioner, of five hundred
14 dollars (\$500.00).

15 (b1) Each of the following lenders shall be considered authorized to engage in the
16 business of making reverse mortgage loans without being required to apply pursuant to
17 subsection (b) of this section and may represent to the public that it is so authorized:

18 (1) The North Carolina Housing Finance Agency.

19 (2) A bank, savings institution, or credit union formed under the laws of
20 this or any other state or of the United States.

21 (3) A wholly owned subsidiary of an entity described in subdivision (2) of
22 this subsection.

23 Each lender listed in this subsection may, upon written request to the Commissioner
24 of Banks, obtain written confirmation of its authority to engage in the business of
25 making reverse mortgage loans. In the case of lenders listed in subdivisions (2) and (3)
26 of this subsection, the request shall be accompanied by the fee set forth in subsection (d)
27 of this section.

28 ~~(c) The North Carolina Housing Finance Agency, and any bank, savings~~
29 ~~institution, or credit union that is not required to obtain authorization to make reverse~~
30 ~~mortgage loans under subsection (a) of this section, shall, prior to making any reverse~~
31 ~~mortgage loan, notify the Commissioner of its intent to make reverse mortgage loans.~~
32 ~~This notification shall be made on a form prescribed by the Commissioner and shall~~
33 ~~contain all information required by the Commissioner.~~

34 (d) The Commissioner shall, upon determination that ~~a lender~~ an applicant
35 should be authorized to make reverse mortgage loans, issue notice of this authority to
36 the lender. The authority to issue reverse mortgage loans is valid for the period of time
37 specified by the Commissioner. A lender to whom a notice of authority is issued shall
38 display the notice prominently in any and all offices of the lender that make reverse
39 mortgage loans. Authorizations issued under this section are ~~nontransferable and subject~~
40 ~~to nontransferable.~~ Except for lenders described in subsection (b1) of this section, each
41 lender to which an authorization is issued shall pay an annual renewal fee of two
42 hundred fifty dollars (\$250.00)."

43 **SECTION 21.** G.S. 54B-4(b) is amended by adding the following new
44 subdivision to read:

1 "(32b) "Limited service facility" means a staffed physical location open to the
2 public in this State in which a State association conducts any activity
3 of a "branch office" set forth in subdivision (7) of this subsection, but
4 which is not considered a branch by virtue of the fact that the State
5 association does not engage in all activities of a branch at the location.
6 A location is a limited service facility of a State association
7 notwithstanding that it is operated by a third party if there exists an
8 agreement between the third party and the State association pursuant to
9 which the third party (i) takes deposits or offers loans as an agent of
10 the State association or in the State association's name; or (ii) is
11 obligated to sell or otherwise transfer to the State association all or a
12 substantial portion of the loan or deposit production of that location."

13 **SECTION 22.** G.S. 54B-22 reads as rewritten:

14 "**§ 54B-22. Branch offices, offices and limited service facilities.**

15 ~~(a) Any State association may apply to the Commissioner of Banks for~~
16 ~~permission to establish a branch office. The application shall be in such form as may be~~
17 ~~prescribed by the Commissioner of Banks and shall be accompanied by the proper~~
18 ~~branch application fee. Branch applications shall be approved or denied by the~~
19 ~~Commissioner of Banks within 120 days of filing.~~

20 ~~(b) The Commissioner of Banks shall approve a branch application when all of~~
21 ~~the following criteria are met:~~

- 22 ~~(1) The applicant has gross assets of at least ten million dollars~~
23 ~~(\$10,000,000);~~
24 ~~(2) The applicant has evidenced financial responsibility;~~
25 ~~(3) The applicant has a net worth equal to or exceeding the amount~~
26 ~~required by the insurer of the applicant's withdrawable accounts;~~
27 ~~(4) The applicant has an acceptable internal control system. Such a system~~
28 ~~would include certain basic internal control requirements essential to~~
29 ~~the protection of assets and the promotion of operational efficiency~~
30 ~~regardless of the size of the applicant. Some of the factors which~~
31 ~~require extensive internal control requirements such as the use of the~~
32 ~~controller or internal auditor and more distinctive placement~~
33 ~~responsibilities include the applicant's size, number of personnel and~~
34 ~~history of and anticipated plans for expansion.~~

35 ~~(c) Upon receipt of a branch application, the Commissioner of Banks shall~~
36 ~~examine or cause to be examined all the relevant facts connected with the establishment~~
37 ~~of the proposed branch office. If it appears to the satisfaction of the Commissioner of~~
38 ~~Banks that the applicant has complied with all the requirements set forth in this section~~
39 ~~and the regulations for the establishment of a branch office and that the association is~~
40 ~~otherwise lawfully entitled to establish such branch office, then the administrator shall~~
41 ~~approve the branch application.~~

42 ~~(d) Not more than 10 days following the filing of the branch application with the~~
43 ~~Commissioner of Banks, the applicant shall cause a notice to be published in a~~

1 newspaper of general circulation in the area to be served by the proposed branch office.
2 Such notice shall contain:

- 3 (1) ~~A statement that the branch application has been filed with the~~
4 ~~Commissioner of Banks;~~
- 5 (2) ~~The proposed address of the branch office, including city or town and~~
6 ~~street; and~~
- 7 (3) ~~A statement that any interested or affected party may file a written~~
8 ~~statement with the Commissioner of Banks, within 30 days of the date~~
9 ~~of the publication of the notice, protesting the establishment of the~~
10 ~~proposed branch office and requesting a hearing before the~~
11 ~~Commissioner of Banks on the application.~~

12 (e) ~~Any interested or affected party may file a written statement with the~~
13 ~~Commissioner of Banks within 30 days of the date of initial publication of the branch~~
14 ~~application notice, protesting the establishment of the proposed branch office and~~
15 ~~requesting a hearing before the Commissioner of Banks on the application. If a hearing~~
16 ~~is held on the branch application, the Commissioner of Banks shall only receive~~
17 ~~information and hear testimony from the applicant and from any interested or affected~~
18 ~~party which is relevant to the branch application and the operation of the proposed~~
19 ~~branch office. The Commissioner of Banks shall issue his final decision on the branch~~
20 ~~application within 30 days following the hearing. Such final decision shall be in~~
21 ~~accordance with the applicable provisions of Chapter 150B of the General Statutes.~~

22 (f) ~~If a hearing is not held on the branch application, the Commissioner of Banks~~
23 ~~shall issue his final decision within 120 days of the filing of the application. Such final~~
24 ~~decision shall be in accordance with the applicable provisions of Chapter 150B of the~~
25 ~~General Statutes.~~

26 (g) ~~to (i) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1238, s. 3.~~

27 (j) ~~Any party to a branch application may appeal the final decision of the~~
28 ~~Commission at any time after final decision, but not later than 30 days after a written~~
29 ~~copy of the final decision is served upon the party and his attorney of record by personal~~
30 ~~service or by certified mail. Failure to file such appeal within the time stated shall~~
31 ~~operate as a waiver of the right of such party to review by the Commission and by a~~
32 ~~court of competent jurisdiction in accordance with Chapter 150B of the General~~
33 ~~Statutes, relating to judicial review.~~

34 (a) A State association, with the prior written approval of the Commissioner of
35 Banks, may:

- 36 (1) Establish a branch office or limited service facility; or
- 37 (2) Convert an existing limited service facility to a branch office.

38 The application for approval to establish or convert a branch office or limited service
39 facility shall be in a form prescribed by the Commissioner of Banks and shall be
40 accompanied by the application fee established by the Banking Commission by rule.
41 Approval may be given or withheld by the Commissioner of Banks. In determining
42 whether to give or withhold approval, the Commissioner of Banks shall take into
43 account factors including the financial history and condition of the applicant

1 association, the adequacy of its capital structure, its future earnings prospects, and the
2 general character of its management.

3 The Commissioner of Banks shall not give approval pursuant to this subsection
4 unless the Commissioner finds that:

5 (1) The establishment or conversion of the branch office or limited service
6 facility will meet the needs and promote the convenience of the
7 community to be served thereby; and

8 (2) The probable volume of business and reasonable public demand in the
9 community are sufficient to assure and maintain the solvency of the
10 branch office or limited service facility and of the existing depository
11 instructions in the community.

12 (b) A branch or limited service facility of a State association shall be operated
13 under the control and direction of the board of directors and executive officers of the
14 State association and under the name of the State association as set forth in its
15 Certificate of Incorporation filed with the Office of the Secretary of State, except that
16 the Commissioner of Banks may permit the operation of a branch office or limited
17 service facility under an assumed name under the conditions and terms imposed by the
18 Commissioner if the Commissioner finds that the name will not result in confusion
19 among customers of the State association or among the general public. The board of
20 directors of the State association shall elect officers required to conduct the business of
21 any branch or limited service facility.

22 The Commissioner of Banks shall not authorize the establishment or conversion of a
23 branch office or limited service facility until the Commissioner is satisfied that the
24 applicant State association has sufficient capital to maintain a minimum capital to asset
25 ratio as the Commissioner of Banks may require. In determining the ratio, the
26 Commissioner of Banks shall give due consideration to (i) the amount of capital
27 required to support the association's projected growth, (ii) the association's earnings
28 history and projected earnings, (iii) the quality of the association's assets, (iv) the
29 amount of capital then invested by the State association in fixed assets, and (v) the
30 business experience and reputation of the management.

31 (c) Subject to rules adopted by the State Banking Commission with regard to its
32 use, maintenance, and supervision, any State association may establish off the premises
33 of any principal office, branch office, or limited service facility a customer-bank
34 communications terminal, point-of-sale terminal, automated teller machine, automated
35 banking facility, or other direct or remote information-processing device or machine,
36 whether manned or unmanned, through or by means of which information relating to
37 any financial service or transaction rendered to the public is stored and transmitted,
38 instantaneously or otherwise, to or from an association or other terminal. The
39 establishment and use of the device or machine shall not be deemed a branch or limited
40 service facility, and the net worth requirements and standards for approval of a branch,
41 all as set forth in this section, shall not be applicable to the establishment of any
42 off-premises terminal device or machine."

43 **SECTION 23.** G.S. 54C-4(18) reads as rewritten:

1 ~~"(18) Loan production office. — An office of a savings bank other than the~~
2 ~~principal or branch offices whose activities are limited to the~~
3 ~~generation of loans.~~

4 Limited service facility. — A staffed physical location open to the
5 public in this State in which a State savings bank conducts any activity
6 of a "branch office" set forth in subdivision (5) of this subsection, but
7 which is not considered a branch by virtue of the fact that the State
8 savings bank does not engage in all activities of a branch at the
9 location. A location is a limited service facility of a State savings bank
10 notwithstanding that it is operated by a third party if there exists an
11 agreement between the third party and the State savings bank pursuant
12 to which the third party (i) takes deposits or offers loans as an agent of
13 the State savings bank or in the State savings bank's name; or (ii) is
14 obligated to sell or otherwise transfer to the State savings bank all or a
15 substantial portion of the loan or deposit production of that location."

16 **SECTION 24.** G.S. 54C-23 reads as rewritten:

17 "**§ 54C-23. Branch offices, offices and limited service facilities.**

18 ~~(a) A State savings bank may apply to the Commissioner of Banks for~~
19 ~~permission to establish a branch office. The application shall be in the form prescribed~~
20 ~~by the Commissioner of Banks and shall be accompanied by the proper branch~~
21 ~~application fee. The Commissioner of Banks shall approve or deny branch applications~~
22 ~~within 120 days of filing.~~

23 ~~(b) The Commissioner of Banks shall approve a branch application when all of~~
24 ~~the following criteria are met:~~

25 ~~(1) The applicant has gross assets of at least ten million dollars~~
26 ~~(\$10,000,000).~~

27 ~~(2) The applicant has evidenced financial responsibility.~~

28 ~~(3) The applicant has a net worth equal to or exceeding the amount~~
29 ~~required by the insurer of deposit accounts.~~

30 ~~(4) The applicant has an acceptable internal control system that includes~~
31 ~~certain basic internal control requirements essential to the protection of~~
32 ~~assets and the promotion of operational efficiency regardless of the~~
33 ~~size of the applicant.~~

34 ~~(c) Upon receipt of a branch application, the Commissioner of Banks shall~~
35 ~~examine or cause to be examined all the relevant facts connected with the establishment~~
36 ~~of the proposed branch office. If it appears to the satisfaction of the Commissioner of~~
37 ~~Banks that the applicant has complied with all the requirements set forth in this section~~
38 ~~and the regulations for the establishment of a branch office and that the savings bank is~~
39 ~~otherwise lawfully entitled to establish the branch office, then the Commissioner of~~
40 ~~Banks shall approve the branch application.~~

41 ~~(d) Not more than 10 days following the filing of the branch application with the~~
42 ~~Commissioner of Banks, the applicant shall cause a notice to be published in a~~
43 ~~newspaper of general circulation in the area to be served by the proposed branch office.~~
44 ~~The notice shall contain:~~

- 1 ~~(1) A statement that the branch application has been filed with the~~
2 ~~Commissioner of Banks;~~
3 ~~(2) The proposed address of the branch office, including city or town and~~
4 ~~street; and~~
5 ~~(3) A statement that any interested or affected party may file a written~~
6 ~~statement with the Commissioner of Banks, within 30 days of the date~~
7 ~~of the publication of the notice, protesting the establishment of the~~
8 ~~proposed branch office and requesting a hearing before the~~
9 ~~Commissioner of Banks on the application.~~

10 ~~(e) Any interested or affected party may file a written statement with the~~
11 ~~Commissioner of Banks within 30 days of the date of initial publication of the branch~~
12 ~~application notice, protesting the establishment of the proposed branch office and~~
13 ~~requesting a hearing before the Commissioner of Banks on the application. If a hearing~~
14 ~~is held on the branch application, the Commissioner of Banks shall receive information~~
15 ~~and hear testimony only from the applicant and from any interested or affected party~~
16 ~~that is relevant to the branch application and the operation of the proposed branch~~
17 ~~office. The Commissioner of Banks shall issue the final decision on the branch~~
18 ~~application within 30 days following the hearing. The final decision shall be in~~
19 ~~accordance with Chapter 150B of the General Statutes.~~

20 ~~(f) If a hearing is not held on the branch application, the Commissioner of Banks~~
21 ~~shall issue the final decision within 120 days of the filing of the application. The final~~
22 ~~decision shall be in accordance with Chapter 150B of the General Statutes.~~

23 ~~(g) A party to a branch application may appeal the final decision of the~~
24 ~~Commissioner of Banks to the Commission at any time after the final decision, but not~~
25 ~~later than 30 days after a written copy of the final decision is served upon the party and~~
26 ~~the party's attorney of record by personal service or by certified mail. Failure to file an~~
27 ~~appeal within the time stated shall operate as a waiver of the right of the party to review~~
28 ~~by the Commission and by a court of competent jurisdiction in accordance with Chapter~~
29 ~~150B of the General Statutes, relating to judicial review.~~

30 ~~(a) A State savings bank, with the prior written approval of the Commissioner of~~
31 ~~Banks, may:~~

32 ~~(1) Establish a branch office or limited service facility; or~~

33 ~~(2) Convert an existing limited service facility to a branch office.~~

34 ~~The application for approval to establish or convert a branch office or limited service~~
35 ~~facility shall be in a form prescribed by the Commissioner of Banks and shall be~~
36 ~~accompanied by the application fee established by the Banking Commission by rule.~~
37 ~~Approval may be given or withheld by the Commissioner of Banks. In determining~~
38 ~~whether to give or withhold approval, the Commissioner of Banks shall take into~~
39 ~~account factors including the financial history and condition of the applicant State~~
40 ~~savings bank, the adequacy of its capital structure, its future earnings prospects, and the~~
41 ~~general character of its management.~~

42 ~~The Commissioner of Banks shall not give approval pursuant to this subsection~~
43 ~~unless the Commissioner finds that:~~

1 (1) The establishment or conversion of the branch office or limited service
2 facility will meet the needs and promote the convenience of the
3 community to be served thereby; and

4 (2) The probable volume of business and reasonable public demand in the
5 community are sufficient to assure and maintain the solvency of the
6 branch office or limited service facility and of the existing depository
7 instructions in the community.

8 (b) A branch or limited service facility of a State savings bank shall be operated
9 under the control and direction of the board of directors and executive officers of the
10 State savings bank and under the name of the State savings bank as set forth in its
11 Certificate of Incorporation filed with the Office of the Secretary of State, except that
12 the Commissioner of Banks may permit the operation of a branch office or limited
13 service facility under an assumed name under the conditions and terms imposed by the
14 Commissioner if the Commissioner finds that the name will not result in confusion
15 among customers of the State savings bank or among the general public. The board of
16 directors of the State savings bank shall elect officers required to conduct the business
17 of any branch or limited service facility.

18 The Commissioner of Banks shall not authorize the establishment or conversion of a
19 branch office or limited service facility until the Commissioner is satisfied that the
20 applicant State savings bank has sufficient capital to maintain a minimum capital to
21 asset ratio as the Commissioner of Banks may require. In determining the ratio, the
22 Commissioner of Banks shall give due consideration to (i) the amount of capital
23 required to support the State savings bank's projected growth, (ii) the State savings
24 bank's earnings history and projected earnings, (iii) the quality of the savings bank's
25 assets, (iv) the amount of capital then invested by the State association in fixed assets,
26 and (v) the business experience and reputation of the management.

27 (c) Subject to rules adopted by the State Banking Commission with regard to its
28 use, maintenance, and supervision, any State savings bank may establish off the
29 premises of any principal office, branch office, or limited service facility a
30 customer-bank communications terminal, point-of-sale terminal, automated teller
31 machine, automated banking facility, or other direct or remote information-processing
32 device or machine, whether manned or unmanned, through or by means of which
33 information relating to any financial service or transaction rendered to the public is
34 stored and transmitted, instantaneously or otherwise, to or from a savings bank or other
35 terminal. The establishment and use of the device or machine shall not be deemed a
36 branch or limited service facility, and the net worth requirements and standards for
37 approval of a branch, all as set forth in this section, shall not be applicable to the
38 establishment of any off-premises terminal device or machine."

39 **SECTION 25.** G.S. 54C-27 is repealed.

40 **SECTION 26.** The Legislative Research Commission shall undertake a
41 comprehensive study of those laws, including Chapters 53, 54B, 54C, and 24 of the
42 General Statutes, which affect the establishment and operation of banks in North
43 Carolina and shall make recommendations to the 2003 General Assembly, prior to the
44 convening of the 2004 Regular Session as to which laws (i) are obsolete, unnecessary,

1 or duplicative, (ii) are unnecessarily inconsistent in the treatment of banks, savings and
2 loan associations, and savings banks, and (iii) unnecessarily restrict, impede, or prohibit
3 activities of banks, savings and loan associations, and savings banks or the ability of the
4 Commissioner of Banks to regulate banks and savings institutions in an effective,
5 efficient, and equitable manner.

6 In preparing its recommendations, the Commission shall actively solicit and
7 consider information received from representatives of banks, savings and loan
8 associations, savings banks, the State Banking Commission, the Commissioner of
9 Banks and the Commissioner's staff, other interested parties, and the general public.

10 **SECTION 27.** Sections 26 and 27 of this act are effective when it becomes
11 law. The remainder of this act becomes effective October 1, 2003, and applies to acts
12 occurring and transactions or agreements entered into on or after that date.