

Summary of Proposed Changes to N.C. Banking Law Articles 1A-3A

Proposed Section	Current Section	New Title	Change(s)
Article 1A			
§ 53-1-1	No corresponding §	"Title"	The new Chapter title is "Regulation of Banks and Other Financial Services."
§ 53-1-2	No corresponding §	"Scope and applicability of Chapter"	§ 53-1-2 states that the Chapter applies to existing and new state banks, all persons who subject themselves to its provisions and persons subject to the penalties in the Chapter by virtue of violations they commit. It clarifies that the Chapter does not invalidate acts taken that were valid under prior law. It also provides that national banks and out of state banks operating in NC have the same exemptions and immunities as banks created under state law.
§ 53-1-3	§ 53-127	"Existing banks; prohibitions, injunctions"	§ 53-1-3 provides that banks, whenever chartered, are subject to the new Chapter. The Commissioner may seek an injunction against improper use of the words "bank," "savings bank," "savings and loan association," or trust company in a corporate name; under existing law, the limitations are enforced by any "banking entity" and violations are currently Class 3 misdemeanors. The new law requires a risk of confusion to the public to be a violation and is enforceable only by injunction. The new Section addresses the use of the specified terms in a more concise manner than § 53-127, which it replaces.
§ 53-1-4	§ 53-1	"Definitions and application of terms"	This section replaces the current definitions that reflect accounting and supervisory capital restrictions with definitions relating to capital adequacy consistent with the "prompt corrective action" categories that are the real and effective measures under current law. There are many more defined terms under the proposed law, consistent with modern statutory drafting best practices. The new definitions will be discussed as appropriate in connection with the sections of the new Chapter where they are applied.
§ 53-1-5	No corresponding §	"Severability."	A court's declaration of the invalidity of any provision of the Chapter will not affect the validity of the remaining provisions.

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Article 2A			
§ 53-2-1	§ 53-92	"The Commission."	This section would drop the current requirement that the Commission include two CEOs of state savings institutions and replaces language in the current law that deals with conflicts of interest with incorporation of the provisions of the State Ethics Act. New definitions of "practical banker" and "public member" are meaningful in the context of this section.
§ 53-2-2	§§ 53-92, -93, -94, -98, -104, -107.1	"The Commissioner."	§ 53-2-2 reorganizes numerous provisions; it clarifies the Commissioner's authority to enforce those state or federal consumer protections laws with respect to which the Commissioner has enforcement jurisdiction.
§ 53-2-3	§§53-93.1, -96, -96.1, -101	"The Office of the Commissioner of Banks."	This section reorganizes provisions only.
§ 53-2-4	§53-122	"Administration of the Office of the Commissioner of Banks."	§ 53-2-4 contains a general statement of the Office's authority to assess categories of licensees under various chapters; although the specific assessment provisions are moved to Article 8 of the new Chapter. It maintains the current timetable for developing the annual budget.
§ 53-2-5	§§ 53-115	"Rulemaking."	This section restates current law to provide that the Commissioner, subject to review and approval by the Commission, issues rules. Current law states that the Commission makes rules. The proposed change conforms to actual current practice while retaining the authority of the Commission with regard to rules.
§ 53-2-6	§ 53-92	"Hearings and Appeals."	Uniform provisions for hearings and appeals for all statutes administered by the Commission and the Commissioner, not just those applicable to banks.

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§ 53-2-7	§ 53-99	"Official records."	This provision revises and expands current § 53-99 to apply to all of the entities regulated by the Commissioner, rather than just to banks, and to extend the legally required confidentiality to legal discovery as well as other requests. The proposal carries forward the provision of current law allowing sharing with other governmental agencies, including law enforcement agencies.
Article 3A			
§ 53-3-1	§§ 53-2, -4	"Application to organize a bank."	This section authorizes an application to organize a bank by an "applicant," rather than five individual organizers as under current law. The applicant may be a "person" (as that term is defined in §53-1-4(52) other than an individual or group (a LLC for example) if the Commissioner approves its application. The Commissioner will review the application to determine whether the organizational process will continue. The applicant is required to pay a non-refundable \$10,000 application fee. The current application fee is \$8000, but is set forth by rule, not in the statutes.
§ 53-3-2	§ 53-4	"Permission to organize a bank."	With the Commissioner's permission, the "organizers" may file articles of incorporation with the Secretary of State. The term "organizers" is defined in §53-1-4(50) to be "one or more individuals who are ... responsible for the business of the proposed bank from the filing of the application to the Commission's final decision." If requirements set forth in proposed §53-3-2 are met, the Commission authorizes continuation of the organizational process. Upon receipt of the Commissioner's certification of this authorization, the Secretary of State returns a copy of the articles of incorporation to the Commissioner. After completion of this process, the bank's organization can be done through the corporation with funds held in an escrow account approved by the Commissioner.

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§ 53-3-3	§ 53-3	"Articles of incorporation of a proposed bank."	This section provides that the proposed bank's articles of incorporation shall contain information required by Chapter 55 of the North Carolina General Statutes (the Business Corporation Act) and such other provisions as the Commissioner may require. The articles are stated to be authority enough for the bank to apply for federal deposit insurance.
§ 53-3-4	§§ 53-2, -4, -5	"Commissioner's approval of charter issuance."	Upon the filing of its articles of incorporation, the proposed bank begins its corporate existence; however, it is only upon the issuance of a charter that this corporation can begin the business of banking. This section sets out the conditions for the Commissioner's approval of the issuance of a charter. It carries forward many of the provisions of current law with several changes. The tests of character and fitness and of likelihood of success are now based on an assessment of the "market that the bank intends to serve" rather than "the community." In addition, the provisions relating to required capital have been updated to conform to modern corporate and regulatory practice. If the Commissioner approves issuance of a charter, the Commissioner submits his order approving issuance to the Commission for its review; if not, the Commissioner issues an order of denial, subject to review by the Commission and the courts.
§ 53-3-5	§ 53-4	"Notice; public hearing."	Current law merely states that the decision of the Commissioner of Banks is subject to the review of the Banking Commission which has the authority to approve, modify or disapprove of any action taken by the Commissioner. The approach adopted in the new Chapter is to set out the procedure that is currently followed in more detail. The proposal also adds a definition of "public notice" that includes both traditional publication and posting on the OCOB web site.

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§ 53-3-6	§ 53-4	"Commission decision."	This Section sets forth the procedure used by the Commission to review the recommendation of the Commissioner. It codifies current practice, including the applicant's right to appeal adverse decisions of the Commission.
§ 53-3-7	§ 53-6, -7, -8, -9, -9.1	"Issuance of charter."	§ 53-3-7 sets forth the final requirements for issuance of the charter and provides that the Commissioner may dissolve and liquidate the proposed bank or order the organizers to do so if (1) the Commissioner does not recommend issuance of a charter; (2) the Commission denies approval of a charter; or (3) if the charter is revoked because the bank does not open within 6 months or for other reasons.