PROPOSED CHANGES TO THE
NORTH CAROLINA BANKING LAWS – CHAPTER 53 OF THE GENERAL STATUTES
ARTICLE 6A ADDRESSES BANK OPERATIONS.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
Article 6A. Bank Operations.				
53-48. Limitation of loans. 53-64. Loans secured by bank's own stock or stock of parent bank holding company.	53-48 provides limitations on the amount of loans that a bank may grant to a single borrower: a maximum of 15% plus an additional 10% if secured by readily marketable securities. It directs the Commissioner to monitor lending activities of banks for undue credit concentrations and inadequate risk diversification. 53-64 authorizes a bank to accept its stock or that of its parent holding company as security for a loan, but requires the bank to dispose of any stock it acquires by virtue of a loan default within six months (which may be extended up to another six months by the Commissioner). In general, a bank is precluded from buying its stock or that of its parent holding company.	**53-6-1**	**New 53-6-1. Loans and Extensions of Credit.** This section governs numerous aspects of a bank's lending function. Subsection (a) authorizes a bank to extend credit secured by the pledge of its own stock or that of its holding company, but limits how long such shares may be held if they come into the bank's possession. It prohibits loans to finance the purchase of the bank's stock or "to carry the stock as that phrase is defined in 12 C.F.R. Part 221. Subsection (b) provides the rules for the maximum amount of loans that may be made to a single borrower. Subsection (c) restricts the Commissioner from adopting rules that would preclude a state bank from making an extension of credit that would be permitted to a federally chartered institution.	For the most part, the new section is a combination of the two old sections. It includes an important definition of "derivative transaction" necessary under the federal Dodd-Frank Act to permit state banks to continue to engage in such activities. It prohibits the Commissioner from issuing rules that would bar a state bank from making loans that would be permissible to a federally chartered institution.
53-9.1. Deposit insurance.	53-9.1 requires FDIC insurance before an entity may engage in banking. It authorizes a bank to take such actions as may be necessary to obtain such insurance.	**53-6-2**	**New 53-6-2. Deposits.** This section broadly authorizes banks to offer all types of deposit accounts and requires that the bank obtain FDIC insurance of accounts.	The new provision includes a blanket authorization to offer all types of deposit accounts. It does not detail, as unnecessary, all the steps a bank may take to obtain deposit insurance.
53-43.1. Obligations of agencies supervised by Farm Credit Administration as securities for deposits of public	53-43.1 and 53-43.2 specifically authorize banks to invest in the securities listed in their respective titles for the sole purpose of securing public deposits.	**53-6-3**	**New 53-6-3. Securing deposits.** As a general rule, subsection (a) prohibits a bank from putting a lien on assets or securing deposits except as authorized by law. Subsection (b) does permit a bank to secure the deposits of state and federal governments or an agency of the same, including Indian tribes recognized by the Secretary of the	The new law approaches collateralization differently. Rules adopted by the State Treasurer (20 NCAC 07 .0201) set forth which securities may be pledged as collateral for public deposits. To the extent those securities are permissible investments for banks, they may be pledged to secure public deposits.

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funds. 53-43.2. Obligations of agencies supervised by Federal Home Loan Bank Board as securities for public funds.			Interior. Subsection (c) allows the pledge of assets to secure repayment of money and subsection (d) voids acts, deeds, conveyances and contracts in violation of this section of law.	
53-43.5. Minors' deposits and safe-deposit agreements.	53-43.5 authorizes a bank to deal with a minor like an adult for purposes of deposit accounts (subsection (a)) or safe deposit boxes (subsection (b)). Subsection (c) authorizes rental of a safe-deposit box to a married minor and spouse, whether the spouse is a minor or not, jointly. Each subdivision states that it does not affect laws governing transactions with minors outside the scope of the section.	**53-6-4**	**New 53-6-4. Minors.** Subsection (a) authorizes a bank to deal with a minor like an adult for purposes of deposit accounts. Subsection (b) authorizes a bank to deal with a minor like an adult regarding safe deposit boxes. Subsection (c) authorizes the bank to pay money from an account of a deceased minor to that minor's parent or guardian, except joint accounts with right of survivorship or payable on death accounts, which provide by their terms for passage of the funds upon the death of the account holder. If a deceased minor is the lessee of a safe deposit box, the provisions of G.S. §28A-15-13 govern the handling of the safe deposit box. Subsection (d) states that the provisions of the Section do not affect the law governing contracts with minors beyond the scope of the Section.	The new provision provides a broader listing of the types of transactions with respect to which the bank may contract with the minor regarding deposit accounts, including: receipt of payments, acceptance of pledges of accounts, issuance of ATM and debit cards, and provision of overdraft protection. Both the deposit and safe deposit box provisions are more clearly written. In addition, the new provision includes guidance for dealing with the death of a minor depositor or safe deposit box lessee.
No corresponding section.	N/A	**53-6-5**	**New 53-6-5. Trust accounts; limited documentation required; certification of trust.** This section addresses broad issues presented by dealings with trustees. Subsection (a) authorizes the bank to establish deposit accounts or lease a safe deposit box to persons purporting to be trustees without requiring or seeing further documentation. Subsection (b) allows the bank to take deposits and lease boxes to trustees under a written trust upon provision of a trust certification pursuant to Chapter 36C of the	This new provision was drafted to address problem situations that have arisen in dealing with trustees where there has been no specific statutory guidance.

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			General Statutes as evidence of the trust. Subsection (c) permits the bank to act upon the direction of any one of multiple trustees with binding effect on the other trustees and the beneficiaries. Subsection (d) provides how to address the absence of all trustees and successor trustees and the documentation that will permit the bank to release the funds or contents of the box. Subsection (e) permits a bank to refuse to open an account or lease a box to a trustee that refuses to provide documentation.	
53-146. Deposits in two names. 53-146.1. Joint accounts.	53-146 generally authorizes the creation of joint accounts with or without right of survivorship. 53-146.1 provides the incidents of joint accounts established pursuant to its provisions. It has specific requirements for joint accounts with right of survivorship and provides a model disclosure form for such accounts. It also provides that the section is not exclusive and joint accounts that do not conform to its provisions are governed by other applicable provisions of statutory or common law, as appropriate.	**53-6-6**	**New 53-6-6. Joint accounts.** This section provides the incidents of joint accounts that are established pursuant to the provisions of the section. Joint accounts are subject to withdrawals by any joint owner. It has specific requirements for joint accounts with right of survivorship and provides a model disclosure form for such accounts. It also provides that the section is not exclusive and joint accounts that do not conform to its provisions are governed by other applicable provisions of statutory or common law, as appropriate. It authorizes any joint tenant to terminate the account. It authorizes a joint tenant to ask that they be removed from the account. It provides for the application of the new law to accounts opened under prior 53-146.1.	The new provision modifies the model disclosure form by deleting the line that says "We DO elect to create the right of survivorship in the accounts." As everything in the model disclosure form is about the right of survivorship, this language is superfluous. It also adds the provisions about one joint owner terminating the account or having his or her name removed from the account. These situations arise frequently and the previous statute was silent as to how they should be addressed.
53-146.2A. Payable on Death (POD) accounts.	G3-146.2A provides the incidents of payable on death (POD) accounts that are established pursuant to the provisions of the section. POD accounts permit the owner to use the account during his or her lifetime and the account passes to the named beneficiaries upon the death of the owner. The section provides a model	**53-6-7**	**New 53-6-7. Payable on death accounts.** This section provides the incidents of payable on death (POD) accounts that are established pursuant to the provisions of the section. POD accounts permit the owner to use the account during his or her lifetime and the account passes to the named beneficiaries upon the death of the owner. The section provides a model disclosure form for establishment of payable on death	The new provision makes no changes to existing law, which was modified in 2011 to permit charities and other entities to be beneficiaries of POD accounts. Only natural persons could be beneficiaries prior to those amendments.

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	disclosure form for establishment of POD accounts. It also provides that the section is not exclusive and POD accounts that do not conform to its provisions are governed by other applicable provisions of statutory or common law, as appropriate. The last subsection states that the section does not modify or repeal any provisions relating to estate taxes.		accounts. It also provides that the section is not exclusive and POD accounts that do not conform to its provisions are governed by other applicable provisions of statutory or common law, as appropriate. The last subsection states that the section does not modify or repeal any provisions relating to estate taxes.	
53-146.3. Personal agency accounts.	53-146.3 provides the incidents of personal agency accounts that are executed pursuant to its provisions. Personal agency accounts permit one person, an agent, to act for the owner, but confer no ownership rights on the agent. The section specifies those banking acts that a personal agent may perform on behalf of the owner. The section provides a model disclosure form for establishment of personal agency accounts. It provides how to establish a personal agency account that endures beyond a determination of incompetence or incapacity of the owner.	**53-6-8**	**New 53-6-8. Personal agency accounts.** This section provides the incidents of personal agency accounts that are executed pursuant to its provisions. Personal agency accounts permit one person, an agent, to act for the owner, but confer no ownership rights on the agent. The section specifies those banking acts that a personal agent may perform on behalf of the owner. The section provides a model disclosure form for establishment of personal agency accounts. It provides how to establish a personal agency account that endures beyond a determination of incompetence or incapacity of the owner. It provides for the continuing validity of personal agency accounts established under former § 53-146.3.	The new provision allows the establishment of a personal agency account by an entity other than a natural person, such as a partnership authorizing an employee to act as its agent. It also states that a personal agency account may have only one owner and one agent. It also provides for the continuing validity of personal agency accounts established under former § 43-146.3.
No corresponding section.	N/A	**53-6-9**	**New 53-6-9. Accounts opened by adults for minors.** This section provides the structure for a simple account that an adult may open for a minor. The custodial deposit account will be transferred to the control of the minor upon his or her reaching the age of majority if not transferred sooner by the custodian. The section states that it is not exclusive and specifically mentions the Uniform Transfer to Minors Act, G.S. Chapter 33A.	This provision is designed to address a gap in existing law by providing for a simple way to address the common desire of persons to open accounts for minors, especially very young ones. This does not replace the more formal Uniform Transfer to Minors Account.

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No corresponding section.	N/A	**53-6-10**	**New 53-6-10. Payment of balance of deceased person under disability to personal representative or guardian.** This section deals with payment of account balances for deceased persons who were under a disability. It allows the bank to discharge its responsibilities to the decedent by paying the balance to the qualified personal representative, collector or public administrator of the decedent qualified under the laws of any state. Similarly, the bank may pay the account balance of any person judicially declared incompetent to the appropriately qualified guardian or representative, qualified under the laws of any state. Presentation of documents issued or certified by the appointing court are conclusive proof of the jurisdiction of the court and sufficient authority for the bank to make payment.	Banks have traditionally struggled to identify the proper procedure for dealing with accounts of decedents who were under a disability or had been found incompetent. This section provides a safe harbor for dealing with those circumstances.
No corresponding section.	N/A	**53-6-11**	**New 53-6-11. Powers of attorney; notice of revocation; payment after notice.** This section establishes parameters within which a bank may rely upon powers of attorney without liability: until the time of receipt of actual notice of the principal's death or a written notice of revocation signed by the principal. It also allows the bank to honor items up to 10 days after receipt of notice if they were executed before receipt of notice and are otherwise valid acts of the attorney-in-fact.	Powers of attorney have long presented operational questions for banks. Though generally covered in G.S. Chapter 32A, this provision addresses some of the more commonly encountered areas of ambiguity.
53-75. Statement of account from bank to depositor deemed final adjustment if not objected to within five years; statements of	53-75 provides that a depositor is barred from objecting to matters reflected in a statement from the bank five years after the statement is rendered. It requires that statements be provided at least annually, except for time deposits, or on request. Statements are to be mailed to the last	**53-6-12**	**New 53-6-12. Account statements to be rendered annually or on request.** This section requires banks to issue statements for deposit accounts at least annually, except for time deposits, and upon requests for all accounts, including time deposits. It provides for both mail and online statements and states that it does not relieve the depositor of the duty to review	It provides for alternative methods of delivering statements, including electronically or as agreed upon with the customer.

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account to be rendered annually or on request. 53-76. Depositor not relieved from exercising diligence as to errors.	known address of the depositor. 53-76 says that § 53-75 does not relieve the depositor of his duty to exercise due diligence in the examination of account statements.		statements and to timely notify the bank of any errors.	
53-43.7. Safe-deposit boxes; unpaid rentals; procedure; escheats.	53-43.7 sets forth the procedure for dealing with safe deposit boxes that are abandoned or for which the rental payments have not been made for at least 3 months. It provides for a notice to the lessee that the box will be opened if the rent is not paid within 30 days. After 30 days, the bank may open the box in the presence of a bank officer and an unaffiliated notary. The contents are sealed with the notary writing on the outside the name of the lessee and the date of the opening of the box. If the contents are unclaimed for two years, upon sending a further notice, the bank may escheat the contents to the State Treasurer. The section sets out the steps to be taken in escheating the property. It requires that the contract for leasing the box contain an explanation of the consequences of default.	**53-6-13**	**New 53-6-13. Safe deposit boxes, unpaid rentals; procedure, escheats.** This section sets forth the procedure for dealing with safe deposit boxes that are abandoned or for which the rental payments have not been made for at least 3 months. It provides for a notice to the lessee that the box will be opened if the rent is not paid within 30 days. After 30 days, the bank may open the box in the presence of a bank officer and an unaffiliated notary. The contents are sealed with the notary writing on the outside the name of the lessee and the date of the opening of the box. If the contents are unclaimed for two years, upon sending a further notice, the bank may escheat the contents to the State Treasurer. The section sets out the steps to be taken in escheating the property. It requires that the contract for leasing the box contain an explanation of the consequences of default.	The new provision mirrors the old one with one exception. Under the existing law, all notices must be sent by either registered mail or certified mail, return receipt requested. The new provision retains those methods of delivery as permissible but also permits the bank and the lessee to agree in writing to other means of delivery of any required notices.
53-110. Banking Commission to prescribe books, records, etc.; retention, reproduction and disposition of records.	53-110 authorizes the issuance of rules regarding the keeping of books and records; it directs the issuance of rules providing a retention schedule for different types of records; it permits the conversion of records to any other medium which may in turn be used to create a tangible copy of the record; it	**53-6-14**	**New 53-6-14. Reproduction and retention of records; admissibility of copies as evidence; disposition of originals; record production generally.** This section provides the rules for maintenance of records by banks. Subsection (a) authorizes banks to convert original records to any medium "capable of accurately converting such records into tangible form within a	The new provision provides a model certificate that a bank my use to establish a document converted from an electronic form as a valid document to be introduced into evidence; and it specifies that the provisions of the section supplement and do not supersede the provisions of § 8-45.1 which is from the North Carolina rules of evidence regarding

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	provides that such tangible copy is admissible in any court of law; and it authorizes a bank to dispose of records that have been kept for the prescribed period of time.		reasonable time." Subsection (b) provides that all such converted records shall be treated like originals for all legal purposes and authorizes the bank to dispose of the original documents. It also requires the bank to keep original records or converted records for the period of time required for each record by law, rule or order of the Commissioner. Subsection (c) details the procedure for rendering converted records admissible as evidence and sets forth a model form for certifying a bank record.	admissibility of documents converted from electronic form.
53-62. Establishment of branches; limited service facilities; and off-premises customer-bank communications terminals.	53-62 addresses the establishment of branches, limited services facilities and ATM and similar terminals. It requires the Commissioner's approval and sets out the criteria upon which to base that determination. It authorizes the conversion of a limited services facility to a branch and the bank may close the limited services facility upon 30 days notice to the Commissioner, unless it had been a branch within the previous five years; in which case it must follow the branch closing provisions. It authorizes ATMs and similar equipment. It sets forth the process for closing a branch, subject to notifying the Commissioner and its customers (by posting in the branch for 30 days and mailing to each customer in a statement or otherwise). The branch closing must be approved by the Commissioner. It states that actions by the Commissioner under this section are subject to the review of the Commission.	**53-6-15**	**New 53-6-15. Establishment of branches.** This section sets forth the process for establishment of branches. The Commissioner's approval is required to open a branch in North Carolina (subsection (a)) or out of state (subsection (b)). Subsection (c) sets forth the matters that must be addressed in the public notice required before a new branch may be opened. Subsection (d) authorizes a branch of a state bank established in another state to conduct any activities that are permissible for a bank chartered by that other state except to the extent that the activities are expressly prohibited by the laws of this state or the regulation or order of the Commissioner. Subsection (e) sets forth the criteria upon which the Commissioner should base his decision including (i) the financial condition and history of the applicant, (ii) the adequacy of its capital, (iii) the applicant's future earnings prospects, (iv) quality of management, (v) impact of the branch on the condition of the applicant bank and the existing institutions in the market to be served, and (vi) the convenience and needs of the community the bank is to serve.	The new provision, and the ones that follow it, set forth more clearly all the steps required for the opening, closing, relocating and combining of branches and non-branch business offices (the new term for limited service facilities). The section makes it clear that the approval process is required for the establishment of a branch in this state or another state. It is specific about the information that must be included in the notice concerning the proposed opening of the branch. The criteria for consideration are the same as current law. The new section also authorizes a branch of a state bank established in another state to conduct any activities that are permissible for a bank chartered by that other state except to the extent that the activities are expressly prohibited by the laws of this state or the regulation or order of the Commissioner.

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No corresponding section.	N/A	**53-6-16**	**New 53-6-16. Change of location of a branch or principal office.** This section sets forth the process for seeking the Commissioner's approval to change the location of a bank office. It requires publication of a notice to the public of the intention to move the office including a statement that any interested party may send a comment to the Commissioner. It sets forth the criteria to be considered by the Commissioner in making a decision on the application.	This new provision addresses an issue of branch location not specifically covered in current law.
53-62. Establishment of branches; limited service facilities; and off-premises customer-bank communications terminals, subsection (e).	53-62(e) provides that to close a branch, the bank must notify the Commissioner at least 90 days before the proposed closing, including the reasons for the decision and statistical information in support of the decision. At least 90 days before closing, the bank must notify its customers by posting notice in the branch for 30 days and either put it in a statement or send it in a separate mailing. The branch may not be closed without the Commissioner's approval. Consolidation of two branches is not considered a closing.	**53-6-17**	**New 53-6-17. Branch closings.** This section requires 90 days notice to the Commissioner and the branch's customers of a branch closing. Consolidation of nearby branches is not considered a closing. Determination of whether consolidated banks are close enough to each other to be treated as a consolidation rather than a closing is within the discretion of the Commissioner with consideration of the distance involved and the nature of the market.	The new provision leaves the means of notifying its customers of the pending closing within the discretion of the bank. It provides additional guidance about consolidations, requiring the bank to request consolidation treatment from the Commissioner and directs the Commissioner to consider the distance between the two branches and the nature of the market in which the branches are situated.
53-62. Establishment of branches; limited service facilities; and off-premises customer-bank communications terminals.	53-62 governs the establishment of branches, limited service facilities, and ATMs and similar devices in a single section. In terms of the process for gaining the Commissioner's approval, there is no distinction drawn between branches and limited service facilities. See the discussion above of 53-62 as it relates to **new 53-6-15, establishment of branches.**	**53-6-18**	**New 53-6-18. Nonbranch bank business office.** This section sets forth the rules for banks establishing nonbranch bank business offices (NBBOs). If the NBBO will house a product, service or other offering not currently offered within the bank, notice must be sent to the Commissioner prior to opening the NBBO. If the Commissioner does not request additional information or object within 10 days, the NBBO is deemed approved. If the NBBO will house a product or service already offered within the bank, it need only notify the Commissioner of its intent to open the office. An out-of-state bank	Limited service facilities are now referred to as nonbranch bank business offices (NBBOs). The new provision sets forth the process for opening NBBOs. If the product or service to be offered in the NBBO is not currently offered with the bank, notice must be sent to the Commissioner prior to opening the office. If the Commissioner does not object or ask for more information within 10 days, the NBBO is deemed approved. If the bank is already offering the product or service, the Commissioner only needs to be notified of the opening of the NBBO. An out-of-state bank

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			may open a NBBO upon written notice to the Commissioner. Notice is not required for closing NBBOs. Deposits may not be accepted at NBBOs.	may open a NBBO upon written notice to the Commissioner. Deposits may not be accepted at NBBOs.
53-77. Governor empowered to proclaim bank holidays 53-77.1A, Days and hours of operation 53-77.3 Banks suspending business during an emergency.	53-77 authorizes the Governor to declare banking holidays and validates the banking holidays declared in 1933. 53-77.1A states that a bank, limited service facility or branch may operate on such days and during such hours and observe such holidays as its board of directors shall designate. 53-77.3 addresses the process for banks suspending business during an emergency. It authorizes the Commissioner, in his discretion, to declare emergencies warranting the closing of one or more banks or bank offices and for the suspension of banking activities. It authorizes the bank to close without a declaration by the Commissioner if communication with the Commissioner is disrupted.	**53-6-19**	**New 53-6-19. Operations; suspension.** This section places within the discretion of bank management the days and hours of the bank's operations. It empowers the Commissioner to authorize banks to suspend operations in areas where emergency conditions exist. It also authorizes a bank to suspend operations in emergency conditions without the Commissioner's approval if the emergency prevents the bank's officials from communicating with the Commissioner.	The new provision does not carry forward the governor's authority to declare a banking holiday. Otherwise, the substance of the existing law is maintained.
Article 17B. Interstate Branch Banking, §§ 53-224.9 et seq.	Article 17B was adopted at a time when substantial controversy swirled around interstate branching activities. Some states sought to encourage it; others, like South Carolina, sought to limit it. Since then, federal law has eliminated virtually all barriers to interstate branching so extensive treatment in state law is no longer required.	**53-6-20**	**New 53-6-20. Interstate Branching.** This section requires notice to the Commissioner of intent by an out-of-state bank to establish or buy a branch in North Carolina. Notice must be given no later than the date the bank makes application to its federal bank supervisory agency for approval for the branch. It also provides that out-of-state banks may conduct the activities that a North Carolina bank could conduct if not prohibited by laws, regulations or orders applicable to the out-of-state bank. Such bank may also engage in activities permitted for federally chartered institutions.	The new provision merely seeks to assure that out-of-state banks branching into North Carolina notify the Commissioner of their intention to do so. State banks branching into another state, either *de novo* or by acquisition, would follow the branching procedures set forth in 53-6-15.

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Sections Proposed to be Carried Forward from Existing Law (as noted at the end of the Summary of Article 5A)				
53-89. Overdrafts, payment by officer, etc.	53-89 renders liable to the bank any officer or employee of a bank who authorizes payment of a customer's overdraft that results in a loss, unless payment of the overdraft is authorized by the board of directors or a committee of the board.	**53-6-1(d)**	**New 53-6-1(d). Unauthorized payment of overdrafts; liability.** This section renders liable to the bank any officer or employee of a bank who authorizes payment of a customer's overdraft that results in a loss, unless the account is covered by a program of the bank under which overdrafts are to be paid.	The new provision modernizes the statute. It rewrites the title and changes the circumstances that protect the officer or employee from liability from approval of the overdraft payment by the board or one of its committees to accounts that are covered by an overdraft protection program offered by the bank.
53-91.1. Assets to be written off.	53-91.1 provides that banks are required to write off any asset that is classified as uncollectible during an examination, unless the asset is secured by collateral acceptable to the Commissioner.	**53-6-1(e)**	**New 53-6-1(e). Assets to be written off.** This section provides that banks are required to write off any asset that is classified as uncollectible during an examination, unless the asset is secured by collateral acceptable to the Commissioner.	The new provision merely carries forward the existing substance with only slightly revised language.