

NORTH CAROLINA GENERAL ASSEMBLY



JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS (2011)

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

APRIL, 2012

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TRANSMITTAL LETTER

April 26, 2012

TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The JOINT LEGISLATIVE STUDY COMMISSION ON THE
MODERNIZATION OF NORTH CAROLINA BANKING LAWS (2011),
respectfully submits the following report to the 2012 Regular Session of the 2011
General Assembly.

Sen. Harry Brown (Chair)

Rep. Harold Brubaker (Chair)

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COMMITTEE PROCEEDINGS

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws (2011) met 8 times after the 2011 Regular Session. The following is an outline of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

November 21, 2011

Review of Committee Charge

Karen Cochrane-Brown, Committee Co-Counsel

Remarks from Joseph A. Smith, Jr., North Carolina Commissioner of Banks

Background

A Brief Review of the History of North Carolina Banking

A Proposed Revision of the North Carolina Banking Law

Unfinished Business

Summary

Committee Discussion

December 19, 2011

Review of Draft Legislative Proposal

Joseph A. Smith, Jr., North Carolina Commissioner of Banks

- Article 1A – General Provisions
- Article 2A – Commission and Commissioner
- Article 3A – Organization of a Bank

Committee Discussion

January 20, 2012

Review of Proposed Substantive Corrections to Articles 1A – 3A

Joseph A. Smith, Jr. North Carolina Commissioner of Banks

Review of Draft Legislative Proposal

Joseph A. Smith, Jr., North Carolina Commissioner of Banks Article

- 4A – Governance of Banks Article
- 5A – Powers of Banks

Committee Discussion

February 14, 2012

Review of Follow-Up Items from the January 20, 2012 Meeting

Joseph A. Smith, Jr. North Carolina Commissioner of Banks

Review of Draft Legislative Proposal and OCOB Proposed Substantive Corrections

Joseph A. Smith, Jr., North Carolina Commissioner of Banks

- Article 6A – Bank Operations'

Committee Discussion

March 6, 2012

Review of Follow-Up Items from the February 14, 2012 Meeting

Ray Grace, Acting North Carolina Commissioner of Banks

Review of Draft Legislative Proposal and OCOB Proposed Substantive Corrections

Ray Grace, Acting North Carolina Commissioner of Banks

- Article 7A – Control Transactions, Combinations, Conversions
- Article 8A – Bank Supervision

Committee Discussion

March 27, 2012

Recommendation from the State Banking Commission & Presentation of Mortgage Assessment Proposal

L. McNeil Chestnut, Special Deputy Attorney General and Senior Counsel to the Commissioner of Banks

Review of Follow-Up Items from the March 6, 2012 Meeting

Paul Stock, Legal Specialist, Office of North Carolina Commissioner of Banks

Review of Draft Legislative Proposal and OCOB Proposed Substantive Corrections

Ray Grace, Acting North Carolina Commissioner of Banks

- Article 9A – Supervisory Liquidation; Voluntary Dissolution and Liquidation
- Article 10A – Bank Holding Companies

Committee Discussion

April 12, 2012

A Comparison of the Provisions of Current G.S. 53-19 and Proposed G.S. 53-9-301

Paul Stock, Legal Specialist, Office of North Carolina Commissioner of Banks

Review of Proposed Revisions to G.S. 53-5-2

Paul Stock, Legal Specialist, Office of North Carolina Commissioner of Banks

Review of Recommendations Received from the NC Bar Association Task Force

Paul Stock, Legal Specialist, Office of North Carolina Commissioner of Banks

Committee Discussion and Directions to Staff for Final Report

April 26, 2012

FINDINGS AND RECOMMENDATIONS

Based on information presented to the Joint Legislative Commission on the Modernization of North Carolina Banking Laws during their regularly scheduled meetings, the Committee makes the following findings and recommendations to the 2012 Regular Session of the 2011 General Assembly:

FINDINGS:

The Commission finds that:

1. North Carolina has long been a leader in the banking industry. A substantial portion of the law that currently applies to North Carolina banks was first enacted in 1931, when the General Assembly enacted legislation creating the Office of Commissioner of Banks. Modernization of our banking laws is necessary to ensure that banking organizations have all the tools necessary to compete effectively in a financial services marketplace that is now global in scope and driven by technology.
2. As a result of significant changes in federal law, including the Dodd-Frank Act of 2010, North Carolina banking law is out of date. Modernization is also necessary to avoid duplication with federal law and to maintain North Carolina's reputation among the most progressive banking states in the nation.
3. The banking law is much more restrictive than the North Carolina Business Corporation Act, which has led banks to avoid the burden of the banking law by forming holding companies under the more liberal corporation's law.
4. Access to capital markets and the amounts/types of capital a bank must maintain have changed substantially over the years. Reform of our banking law would reduce the burden of regulatory compliance for these banks and facilitate their raising of capital in a way that is consistent with the public interest.
5. The fees generated by the S.A.F.E. Mortgage Licensing Act are insufficient to support the cost of regulating the mortgage lending industry. Since 2002, bank assessments have subsidized mortgage regulation. The funding mechanism for mortgage regulation should be changed to replace the current licensing fees with an assessment structure similar to that currently applicable to banks.

RECOMMENDATIONS:

The Commission recommends the following legislative proposals:

AN ACT TO REWRITE THE BANKING LAWS OF NORTH CAROLINA AS RECOMMENDED BY THE JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.

AN ACT TO MAKE CHANGES TO THE LAW DEALING WITH THE ANNUAL ASSESSMENTS OF MORTGAGE BANKERS, MORTGAGE BROKERS, AND MORTGAGE SERVICERS AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.

COMMITTEE MEMBERSHIP

2011-2012

President Pro Tempore of the Senate
Appointments:

Sen. Harry Brown (Chair)

Sen. Thomas Apodaca
Sen. Harris Blake
Sen. Daniel Blue
Sen. Thom Goolsby
Mr. Gray Reed
Ms. Andrea Young

Speaker of the House of Representatives
Appointments:

Rep. Harold Brubaker (Chair)

Rep. Namon Daughtry
Rep. Beverly Earle
Rep. Jonathan Jordan
Rep. Daniel McComas
Mr. Christopher Kukla
Mr. Charles Whitehead

COMMITTEE CHARGE/STATUTORY AUTHORITY

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2011

SESSION LAW 2011-353 SENATE BILL 555

AN ACT TO ESTABLISH THE JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. There is created the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws. The purpose of the Commission is to determine whether and to what extent the North Carolina Banking Laws need to be updated.

SECTION 2. The Commission shall consist of 14 members as follows:

- (1) Five members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (2) Five members of the Senate appointed by the President Pro Tempore of the Senate.
- (3) One member representing a State-chartered bank and one member of a consumer advocacy organization, each appointed by the Speaker of the House of Representatives.
- (4) One member representing a State-chartered bank and one member of a consumer advocacy organization, each appointed by the President Pro Tempore of the Senate.

SECTION 3. The Commission shall have two cochaIRS, one designated by the Speaker of the House of Representatives and one designated by the President Pro Tempore of the Senate from among their respective appointees. The Commission shall meet upon the call of the cochaIRS. Any vacancy on the Commission shall be filled by the original appointing authority. A quorum of the Commission shall be a majority of its members.

SECTION 4. The Commission shall study any issue related to the Banking Laws of North Carolina that the Commission deems appropriate.

SECTION 6. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet in the Legislative Building or the Legislative Office Building.

With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall

be borne by the Commission. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. If the Commission hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services.

All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

SECTION 7. The Commissioner of Banks shall use up to twenty-five thousand dollars (\$25,000) of the funds available to the State Banking Commission for the 2011-2012 fiscal year to fund the study authorized by this act.

SECTION 8. The Commission shall report the results of its study and its recommendations, including any proposed legislative changes, to the 2012 Regular Session of the 2011 General Assembly. The Commission shall terminate on May 1, 2012, or upon the filing of its final report, whichever occurs first.

SECTION 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2011.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 12:13 p.m. this 27th day of June, 2011

LEGISLATIVE PROPOSALS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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BILL DRAFT 2011-ROz-10 [v.34] (12/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/23/2012 1:25:02 PM

Short Title: Banking Law Modernization Act.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE THE BANKING LAWS OF NORTH CAROLINA AS
3 RECOMMENDED BY THE JOINT LEGISLATIVE STUDY COMMISSION ON
4 THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Articles 1 through 10, 12 and 13 of Chapter 53 of the General
7 Statutes are repealed.

8 **SECTION 2.** Chapter 53 of the General Statutes reads as rewritten:

9 "CHAPTER 53.

10 **BANKS. REGULATION OF BANKS AND OTHER FINANCIAL SERVICES.**"

11 **SECTION 3.** Chapter 53 of the General Statutes is amended by adding the
12 following new Articles to read:

13 Article 1A

14 General Provisions

15 "**§ 53-1-1. Title.**

16 This Chapter shall be known and may be cited as Regulation of Banks and Other
17 Financial Services.

18 "**§ 53-1-2. Scope and applicability of Chapter.**

19 (a) Unless the context specifies otherwise, this Chapter shall apply to:

20 (1) All existing banks organized or created under the laws of this State.

21 (2) All banks created under the provisions of Article 3A of this Chapter.

22 (3) All persons who subject themselves to the provisions of this Chapter.

23 (4) All persons who become subject to the penalties provided for in this
24 Chapter as a consequence of violating any of the provisions of this
25 Chapter.

26 (b) Transactions validly entered into before the effective date of this act and the
27 rights, duties, and interests flowing from them remain valid and may be terminated,
28 completed, or enforced as required or permitted by any statute amended or repealed by
29 the law by which this act was enacted as though the amendment or repeal had not
30 occurred.

1 (c) Except as restricted by federal law, a federally chartered depository
2 institution that has a branch in this State shall have all the rights, powers and privileges
3 and shall be entitled to the same exemptions and immunities as banks organized or
4 created under the laws of this State.

5 (d) Except as restricted by federal law or the laws of another state in which it was
6 organized or created, an out-of-state bank that has a branch in this State shall have, with
7 respect to activities conducted through such branch, all the rights, powers and privileges
8 and shall be entitled to the same exemptions and immunities as banks organized and
9 created under the laws of this State.

10 (e) Any reference in this Chapter to a state or federal law, regulation, or agency
11 shall be deemed to refer to any replacement law or regulation or any successor agency,
12 whether or not this Chapter explicitly provides for that reference.

13 **"§ 53-1-3. Existing banks; prohibitions, injunctions.**

14 (a) No depository institution organized or created under the laws of this State
15 may operate as a bank except in accordance with this Chapter. Banks established prior
16 to the effective date of this act may continue operation under their existing
17 organizational documents, but shall be subject to all other requirements of this Chapter.

18 (b) No person shall operate in this State as a "bank," "savings bank," "savings
19 and loan association," "trust company," or otherwise as a depository institution or trust
20 institution unless established as a depository institution or trust institution under the
21 laws of this State or another state, or established under federal law. Unless so
22 authorized, no person doing business in this State shall:

23 (1) Use in its name the term "bank," "savings and loan," "savings bank,"
24 "banking company," "trust company," or words of similar meaning
25 that lead the public reasonably to believe that it conducts the business
26 of a depository institution or trust institution; or

27 (2) Use any sign, letterhead, circular, or website content or advertise or
28 communicate in any manner that would lead the public reasonably to
29 believe that it conducts the business of a depository institution or trust
30 institution.

31 (c) Upon application by the Commissioner, a court of competent jurisdiction may
32 issue an injunction to restrain any person from violating or from continuing to violate
33 this section.

34 **"§ 53-1-4. Definitions and application of terms.**

35 Unless the context requires otherwise, the following definitions apply in this
36 Chapter.

37 (1) Acquire. – To obtain the right or power to vote or to direct the voting
38 of voting securities of a bank or holding company:

39 a. through a purchase of or share exchange for shares,

40 b. by reason of an issuance of shares or the exercise of a right
41 under a warrant, option or convertible security or instrument to
42 acquire shares, or

43 c. pursuant to an agreement or trust or through any similar
44 transaction, event or contractual right.

- 1 (2) Acting in concert. – Knowing participation in a joint activity or
2 interdependent conscious parallel action towards the common goal of
3 obtaining control of a bank or holding company, whether or not
4 pursuant to an express agreement; including participation in a
5 combination or pooling of voting securities of a bank holding company
6 for such common purpose pursuant to any contract, understanding,
7 relationship, agreement or other arrangement, whether written or
8 otherwise.
- 9 (3) Affiliate. – A person that, directly or indirectly, controls, is controlled
10 by, or is under common control with another person. Each member of
11 a group of persons acting in concert shall be deemed an affiliate of the
12 group.
- 13 (4) Bank. – Any corporation, other than a credit union, savings institution,
14 or trust institution, that is organized under the laws of this State and is
15 engaged in the business of receiving deposits (other than trust funds),
16 paying monies and making loans.
- 17 (4a) Banking Laws. – All laws which the Commissioner or the OCOB is
18 authorized to enforce under any applicable statute.
- 19 (5) Bank Operating Subsidiary. – A subsidiary which is under the control
20 of a bank, and engages only in activities in which a bank may engage
21 pursuant to G.S. 53-5-1.
- 22 (6) Bank Premises. – Any improved or unimproved real estate, whether or
23 not open to the public, which is utilized or intended to be utilized by a
24 bank, including additional space to rent as a source of income.
- 25 (7) Bank Supervisory Agency. – Any of the following agencies:
26 a. The CFPB, FDIC, the Federal Reserve Board, OCC, and any
27 successor to these agencies.
28 b. Any agency of another state with primary responsibility for
29 chartering and supervising depository institutions organized
30 under the laws of that state.
31 c. Any agency of a sovereign nation with primary responsibility
32 for chartering and supervising depository institutions organized
33 under the laws of that nation.
- 34 (8) Bankers' Bank. – As defined in Regulation D of the Federal Reserve
35 Board, 12 U.S.C. 204.121.
- 36 (9) Board of Directors.- A governing board of a company that is
37 responsible for policy, oversight, and compliance.
- 38 (10) Branch. – An office of any bank or a depository institution organized
39 under the banking laws of the United States, another state or another
40 sovereign nation, other than that depository institution's principal
41 office, in which deposits are received. A branch may also engage in
42 any of the functions or services authorized to be engaged in by the
43 bank of which it is a branch. The term "branch" does not include a
44 non-branch bank business office, automated teller machine, remote
45 deposit facility, remote service unit, customer-bank communications

1 terminal, point-of-sale terminal. Automated banking facility or other
2 direct or remote information-processing device or machine, whether
3 manned or unmanned, by means of which information relating to any
4 financial service or transaction rendered to the public is stored and
5 transmitted, instantaneously or otherwise, to or from a bank or other
6 nonbank terminal.

7 (11) Capital. – An amount equal to the bank's "total capital" as that term is
8 used by the FDIC in 12 CFR Part 325; provided, that if the term "total
9 capital" is replaced by a term including substantially the same
10 elements as "total capital", the term "capital" as used in this Chapter
11 shall mean an amount equal to the amount calculated by application of
12 the definition of such replacement term.

13 (12) Capital Impairment. – The reduction of a bank's capital at any time
14 below its required capital.

15 (13) Central Reserve Bank. – A depository institution of which at least fifty
16 percent of its shares are owned by other depository institutions.

17 (14) CFPB. – The Consumer Financial Protection Bureau or its successor.

18 (15) Charter. – A document issued by the Commissioner in accordance with
19 Article 3A of this Chapter permitting a bank to conduct banking
20 business.

21 (16) Combination. – A merger, share exchange or transfer or acquisition of
22 all or substantially all assets and liabilities of a person undertaken in
23 compliance with such federal laws and laws of this State or other states
24 as may be applicable.

25 (17) Commission. – The State Banking Commission provided for in
26 G.S. 53-2-1.

27 (18) Commissioner. – The Commissioner of Banks provided for in
28 G.S. 53-2-2.

29 (19) Company. – A corporation, limited liability company, partnership,
30 joint venture, business trust, trust, syndicate, association,
31 unincorporated organization, or other form of business entity.

32 (20) Control. – The possession, directly or indirectly, of the power or right
33 to direct or to cause the direction of the management or policies of a
34 person by reason of an agreement, understanding, proxy, or power of
35 attorney or through the ownership of or voting power over ten percent
36 or more of the voting securities of the person.

37 (21) Control Transaction. – The acquisition of control over a bank or a
38 holding company other than pursuant to a combination.

39 (22) Credit Union. – A credit union as defined in G.S. 54-109.1.

40 (23) De Novo Branch. – A branch of a bank or of an out-of-state bank
41 within this State that is established as a branch, and not by virtue of an
42 acquisition of the existing branch of another bank or out-of-state bank,
43 by a combination involving the bank or out-of-state bank, or by the
44 conversion of a non-branch bank business office to a branch.

- 1 (24) Deposit. – A "deposit" as defined in Section 3(1) of the Federal
2 Deposit Insurance Act, 12 U.S.C. 1813(1).
- 3 (25) Deposit Insurance. – Insurance of a bank's deposit accounts where the
4 beneficiaries are the holders of the insured accounts.
- 5 (26) Depository Institution. – A bank, out-of-state bank, savings institution,
6 or federally chartered institution, the deposits of which are insured by
7 the FDIC.
- 8 (27) Deputy Commissioner. – An individual appointed by the
9 Commissioner to such office as provided by G.S. 53-2-3.
- 10 (28) Distribution. – With respect to a bank, "distribution" has the same
11 meaning as set forth in Chapter 55.
- 12 (29) Debt Previously Contracted (DPC) Subsidiary. – A subsidiary of a
13 bank which acquires in good faith an equity ownership interest through
14 foreclosure or other realization on collateral, by way of a compromise
15 of a disputed or contested claim, or to avoid a loss in connection with a
16 debt previously contracted or to which the bank transfers an equity
17 ownership interest so acquired by the bank.
- 18 (30) Examination. – A supervisory inspection of a bank, proposed bank, a
19 holding company or a branch of an out-of-state bank operating in this
20 State that may include inspection of all relevant information, including
21 information of or about the subsidiaries and affiliates of the bank,
22 proposed bank holding company or branch. "Examination" also
23 includes an investigation of any person with respect to any violation or
24 suspected violation of any provision of this Chapter by such person, or
25 a review of facts and circumstances relevant to the Commissioner's
26 consideration of the issuance of an order pursuant to this Chapter.
- 27 (31) Equity Ownership Interest. – Any beneficial equity or similar interest,
28 whether direct or indirect, including shares, limited or general
29 partnership interests, and membership interests in a limited liability
30 company.
- 31 (32) Farm Credit System Institution. – A lending institution regulated by
32 the Farm Credit Administration.
- 33 (33) FDIC. – The Federal Deposit Insurance Corporation or its successor.
- 34 (34) Federal Reserve Board. – The Board of Governors of the Federal
35 Reserve System or its successor.
- 36 (35) Federal Savings Association. – A federal savings association or federal
37 savings bank chartered under Section 5 of the Home Owners' Loan
38 Act, 12 U.S.C. 1464.
- 39 (36) Federally Chartered Institution. – A national bank or federal savings
40 association.
- 41 (37) Financial Subsidiary. – A "financial subsidiary," as defined in 12
42 U.S.C. 24a(g).
- 43 (38) Holding Company. – A company that controls a depository institution
44 or that controls a company that directly or indirectly controls a
45 depository institution.

- 1 (39) Immediate Family. – An individual's spouse, father, mother, children,
2 brothers, sisters, and grandchildren, the father, mother, brothers and
3 sisters of the individual's spouse, and the spouse of the individual's
4 child, brother, or sister.
- 5 (40) Inadequate Capital. – An amount of capital equal to at least 75 percent
6 but less than 100 percent of required capital.
- 7 (41) Individual. – A human being.
- 8 (42) Insufficient Capital. – An amount of capital less than 75 percent of
9 required capital.
- 10 (43) Lower-Tier Subsidiary. – Any bank operating subsidiary in which a
11 bank subsidiary has an equity ownership interest.
- 12 (44) National Bank. – A banking association organized under 12 U.S.C. 21.
- 13 (45) Non-branch Bank Business Office. – Any staffed physical location
14 open to the public in this State in which an office of a bank,
15 out-of-state bank, a depository institution established under the laws of
16 another state, or a federally chartered institution that is not a branch, an
17 office of a separately organized subsidiary of such depository
18 institution, or an office of the holding company of such depository
19 institution, at which one or more banking or banking related products
20 or services are offered, other than the taking of deposits. The provision
21 of remote deposit capture facilities or services by a non-branch bank
22 business office shall not be deemed to be a taking of deposits.
23 Non-branch bank business offices include loan production officers,
24 mortgage loan offices, and insurance agency offices, or a combination
25 thereof.
- 26 (46) North Carolina Financial Institution. – A bank, savings institution, or
27 trust company organized under the laws of this State. For purposes of
28 the Securities Act of 1933 and the Securities Exchange Act of 1934,
29 any North Carolina financial institution is a banking institution.
- 30 (47) OCOB. – The Office of the Commissioner of Banks as provided in
31 G.S. 53-2-3.
- 32 (48) OCC. – The Office of the Comptroller of the Currency or its successor.
- 33 (49) Organizational Documents. – The charter, certificate of organization,
34 articles of incorporation, articles of association, certificate of limited
35 partnership, bylaws, operating agreement, partnership agreement, and
36 any other similar documents required to be prepared or adopted by a
37 company in connection with its organization, and as thereafter
38 amended from time to time.
- 39 (50) Organizational Law. – The laws of the jurisdiction of organization of a
40 company applicable to the organization of the company and its
41 governance, including approval of transactions by its board of
42 directors, shareholders, partners, members, or beneficiaries, as
43 applicable.
- 44 (51) Organizers. – One or more individuals who are the organizers of a
45 proposed bank responsible for the business of the proposed bank from

- 1 the filing of the application to the Commission's final decision on the
2 application.
- 3 (52) Out-of-State Bank. – A bank that is organized, chartered, or created
4 under the laws of a state other than this State and the deposits of which
5 are insured by the FDIC.
- 6 (53) Person. – An individual, a company, or a group of persons who are
7 acting in concert.
- 8 (54) Plan of Conversion. – A detailed outline of the procedure of the
9 conversion of a depository institution from one to another charter.
- 10 (55) Practical Banker. – An individual who at the time of appointment to
11 the Commission is, or has been during the five years preceding the
12 appointment, a president, chief executive officer, director, or holder of
13 five percent (5%) or more of any class of voting securities of a North
14 Carolina financial institution.
- 15 (56) Principal Office. – The office that houses the headquarters of a bank.
- 16 (57) Public Member. – A member of the Commission who is not a practical
17 banker and who is not at the time of appointment to the Commission,
18 nor was within the five years preceding the appointment, an employee
19 of a North Carolina financial institution.
- 20 (58) Public Notice. – Notice to the public by (i) a single publication in a
21 newspaper of general circulation in the county in which the bank
22 which is the subject of the publication has its principal office or in
23 such other county as may be directed by the Commissioner to best
24 meet the purposes for which the notice is required and (ii) a posting in
25 the notices section of the Commissioner's website for at least 15 days,
26 in each case of the applicable information specified for such
27 publication or posting in this Chapter.
- 28 (59) Record. – Information, reports, memoranda, charts, letters, messages,
29 extracts, summaries, analyses, compilations, transaction
30 documentation, account statements, financial statements, and other
31 documents, including customer financial and other information,
32 whether created, transmitted, distributed, retained or stored in tangible
33 or digital form.
- 34 (60) Registered Agent. – The person named in the organizational
35 documents of a company upon whom service of legal process is
36 deemed binding upon the company.
- 37 (61) Required Capital. – Required capital means:
- 38 a. In the case of a proposed bank, the amount of capital required
39 by the Commissioner as a prerequisite to the commencement of
40 the business of banking; and
- 41 b. In all other cases, an amount of capital equal to at least the
42 amount of capital required for a bank to be deemed "adequately
43 capitalized" under applicable federal regulatory capital
44 standards.

- 1 (62) Savings Institution. – A savings and loan association or a savings bank
2 organized under the laws of this State or of another state, or a federal
3 savings association or savings bank.
- 4 (63) Shareholder. – Any person in whose name shares are registered in the
5 records of a corporation or the beneficial owner of shares to the extent
6 of the rights granted by a nominee certificate on file with a
7 corporation.
- 8 (64) Shares. – The units into which the equity ownership interests of a
9 corporation are divided.
- 10 (65) State. – Any state of the United States, the District of Columbia, or any
11 territory of the United States other than this State.
- 12 (66) State Trust Company. – A company organized under the provisions of
13 Article 24 of this Chapter and a trust company previously organized
14 under other provisions of this Chapter to operate only as a trust
15 company and not as a commercial bank.
- 16 (67) Subsidiary. – A company over which a bank has control.
- 17 (68) This State. – The State of North Carolina.
- 18 (69) Trust Business. – Acting as a fiduciary or in other capacities
19 permissible for a trust institution under G.S. 53-331.
- 20 (70) Trust Company. – A trust institution that is neither a depository
21 institution nor a foreign bank, as defined in 12 U.S.C. §1813(s)(1), but
22 not including a bank organized under the laws of a territory of the
23 United States.
- 24 (71) Trust Funds. – Trust funds as defined in Section 3(p) of the Federal
25 Deposit Insurance Act, 12 U.S.C. 1813(p).
- 26 (72) Trust Institution. – Any company lawfully acting as a fiduciary in a
27 state or in a foreign country.
- 28 (73) Voting Securities. – A security that (i) confers upon the holder the
29 right to vote for the election of members of the board of directors or
30 similar governing body of the company or (ii) is convertible into, or
31 entitles the holder to receive upon its exercise, a security that confers
32 such a right to vote.
- 33 (74) Well capitalized. – The term "well capitalized" has the same meaning
34 as defined in Regulation Y of the Federal Reserve Board, 12 C.F.R.
35 225.2(r).
- 36 (75) Well managed. – Except as otherwise provided in this Chapter, a
37 company or depository institution is well managed if:
- 38 a. At its most recent examination, the company or institution
39 received at least a satisfactory composite rating and at least a
40 satisfactory rating for management, if such rating is given.
- 41 b. In the case of a company or depository institution that has not
42 received an inspection or examination rating, a company or
43 depository institution is well managed if the Commissioner has
44 determined, after a review of the managerial and other
45 resources of the company or depository institution and after

1 consulting with any other appropriate bank supervisory agency
2 for the company or institution, that the company or institution is
3 well managed.

4 A depository institution that results from the merger of two or more
5 depository institutions that are well managed shall be considered to be
6 well managed unless the Commissioner determines otherwise after
7 consulting with any other appropriate bank supervisory agency for
8 each depository institution involved in the merger. A depository
9 institution that results from the merger of a depository institution that
10 is well managed with one or more depository institutions that are not
11 well managed or have not been examined shall be considered to be
12 well managed if the Commissioner determines, after a review of the
13 managerial and other resources of the resulting depository institution
14 and after consulting with any other appropriate bank supervisory
15 agency for the institutions involved in the merger, as applicable, that
16 the resulting institution is well managed.

17 **"§ 53-1-5. Severability.**

18 If any provision of this Chapter is found by any court of competent jurisdiction to be
19 invalid as to any person or circumstance, or to be preempted by federal law, the
20 remaining provisions of this Chapter shall not be affected and shall continue to apply to
21 any other person or circumstance."

22 "Article 2A

23 Commission and Commissioner

24 **"§ 53-2-1. The Commission.**

25 (a) The Commission consists of 15 members including the State Treasurer, who
26 shall serve as an ex officio member, 12 members appointed by the Governor, and two
27 members appointed by the General Assembly under G.S. 120-121, one of whom shall
28 be appointed upon the recommendation of the President Pro Tempore of the Senate and
29 one of whom shall be appointed upon the recommendation of the Speaker of the House
30 of Representatives. The Governor shall appoint three practical bankers, one consumer
31 finance licensee, and eight public members to the Commission. The member appointed
32 upon the recommendation of the President Pro Tempore of the Senate shall be a
33 practical banker and the member appointed on the recommendation of the Speaker of
34 the House shall be a practical banker. Members shall serve for terms of four years. No
35 individual shall serve on the Commission for more than two complete consecutive
36 terms. Any vacancy occurring in the membership of the Commission shall be filled by
37 the appropriate appointing officer for the unexpired term, except that vacancies among
38 members appointed by the General Assembly shall be filled in accordance with
39 G.S. 120-122. The appointed members of the Commission shall receive subsistence and
40 travel expenses at the rates set forth in G.S. 120-3.1. This compensation shall be paid
41 from the revenues of the OCOB.

42 (b) The Commission shall meet at such times, but not less than once every three
43 months, as the Commission may by resolution prescribe, and the Commission shall be
44 convened in special session at the call of the Governor or the Commissioner. The State
45 Treasurer shall be chair of the Commission. The Commission shall meet in person,

1 provided that it may, so long as consistent with applicable law regarding public
2 meetings, meet by telephone or video conference, including attendance of one or more
3 members by telephone or video conferencing.

4 (c) Except as required by state or federal law, no member of the Commission
5 shall divulge or make use of any information designated by this Chapter or by the
6 Commissioner as confidential, and no member shall give out any such information
7 unless the information shall be required of the member at a hearing at which the
8 member is duly subpoenaed or by a court of competent jurisdiction.

9 (d) A quorum of the Commission shall consist of a majority of its total
10 membership. Subject to the standards of Chapter 138A of the General Statutes, a
11 majority vote of the members qualified with respect to a matter who are present at the
12 meeting where such matter is considered shall constitute valid action of the
13 Commission. In accordance with G.S. 138A-38, The State Treasurer and all disqualified
14 members who are present at a meeting shall be counted for purposes of determining
15 whether a quorum is present.

16 (e) The Commission is authorized to supervise, direct and review the exercise by
17 the Commissioner of all powers, duties, and functions vested in or exercised by the
18 Commissioner under the banking laws of this State.

19 **"§ 53-2-2. The Commissioner.**

20 (a) Effective April 1, 2011, and quadrennially thereafter, the Governor shall
21 appoint a Commissioner, which appointment shall be subject to confirmation by the
22 General Assembly by joint resolution. The name of the individual appointed to be
23 Commissioner shall be submitted to the General Assembly on or before February 1 of
24 the year in which the individual's term of office begins. The term of office for the
25 Commissioner shall be four years. In case of a vacancy in the office of Commissioner,
26 the Governor shall appoint an individual to serve as Commissioner on an interim basis
27 pending confirmation of a nominee by the General Assembly.

28 (b) The Commissioner has the powers enumerated in this Chapter and otherwise
29 provided by North Carolina law and such other powers as may be necessary for the
30 proper discharge of the Commissioner's duties, including the power to enter into
31 contracts. The Commissioner shall act as the executive officer of the Commission.

32 (c) The Commissioner is authorized to subpoena witnesses and compel their
33 attendance, require the production of evidence, administer oaths and examine any
34 person under oath in connection with any subject related to any power vested or duty
35 imposed on the Commissioner under this Chapter.

36 (d) The Commissioner may sue and prosecute or defend in any action or
37 proceeding in any courts of this State or any other state and in any court of the United
38 States for the enforcement or protection of any right or pursuit of any remedy necessary
39 or proper in connection with the subjects committed to the Commissioner for
40 administration or in connection with any bank or the rights, liabilities, property or assets
41 thereof, under the Commissioner's supervision. Nothing herein shall be construed to
42 render the Commissioner liable to be sued except as other departments and agencies of
43 the State may be liable under the general law. The Commissioner may exercise any
44 jurisdiction, supervise, regulate, examine or enforce any State consumer protection laws
45 or federal laws with respect to which the Commissioner has enforcement jurisdiction.

1 (e) The Commissioner shall have a seal of office bearing the legend "State of
2 North Carolina – Commissioner of Banks". The Commissioner may adopt other
3 symbols or marks of office.

4 **"§ 53-2-3. The Office of the Commissioner of Banks.**

5 (a) The Commissioner shall be assisted in the performance of the duties of office
6 by (i) one or more deputy commissioners, and (ii) examiners, investigators, counsel and
7 other employees under the supervision of the Commissioner, all of whom, together with
8 the Commissioner shall comprise the "Office of the Commissioner of Banks." In
9 addition, the work of the OCOB may be conducted by employees of other agencies of
10 government, and agents and independent contractors of the OCOB. The Commissioner
11 may appoint or remove at his or her discretion any deputy commissioner.

12 (b) The Commissioner shall appoint, with the approval of the Governor, and may
13 remove at the Commissioner's discretion, a chief deputy commissioner. The chief
14 deputy commissioner may perform such duties and exercise such powers of the
15 Commissioner as the Commissioner may direct. In the event of the absence, death,
16 resignation, disability or disqualification of the Commissioner, or in case the office of
17 Commissioner otherwise becomes vacant, the chief deputy commissioner shall perform
18 the duties and exercise all the powers vested in the Commissioner until the Governor
19 appoints an acting Commissioner.

20 (c) Except as otherwise provided in this Chapter, the OCOB and its employees
21 are exempt from the classification and compensation rules established by the State
22 Personnel Commission pursuant to G.S. 126-4(1) through (4), G.S. 126-4(5) only as it
23 applies to hours and days of work, vacation and sick leave, G.S. 126-4(6) only as it
24 applies to promotion and transfer, G.S. 126-4(10) only as it applies to the prohibition of
25 the establishment of incentive pay programs, and Article 2 of Chapter 126 of the
26 General Statutes, except for G.S. 126-7.1. The salary of the Commissioner shall be fixed
27 by the General Assembly.

28 (d) The Attorney General shall assign an attorney from the Department of Justice
29 to work full time with the Commission. The attorney shall be subject to all provisions of
30 Chapter 126 of the General Statutes relating to the State Personnel System. The
31 Commission shall fully reimburse the Department of Justice for the compensation,
32 secretarial support, equipment, supplies, records and other property to support the
33 attorney.

34 **"§ 53-2-4. Administration of the Office of the Commissioner of Banks.**

35 (a) As authorized in Chapters 54B, 54C and this Chapter, the OCOB shall be
36 funded by annual or periodic assessments, licensing fees and charges, and
37 reimbursements for examination costs. This list is not exclusive. The OCOB may not
38 levy assessments, fees or other charges except as expressly provided in this Chapter or
39 by rule adopted in accordance with the provisions of Chapter 150B of the General
40 Statutes and the provisions of this section. The Commissioner is authorized, in the
41 exercise of reasonable discretion, to establish the time, place, and method for the
42 payment of assessments, fees, charges and costs.

43 (b) Not less than 30 days prior to the commencement of each fiscal year, the
44 OCOB shall prepare and submit to the Commission a budget for the upcoming fiscal
45 year, including the estimated revenues and expenses for the year. The Commission shall

1 review the budget in a meeting prior to the commencement of the fiscal year in respect
2 of which the budget has been presented and shall approve or modify the budget at the
3 meeting.

4 **"§ 53-2-5. Rulemaking.**

5 (a) The Commissioner, subject to review and approval by the Commission, may
6 make all necessary rules with respect to the establishment, operation, conduct, and
7 termination of any and all activities and businesses that are subject to licensing,
8 regulation, supervision, or examination by the Commissioner under this Chapter.

9 (b) The rulemaking authority conferred on the Commissioner by this section shall
10 be in addition to and not in derogation of any specific rulemaking authority by any other
11 provision of this Chapter or otherwise provided by North Carolina law.

12 **"§ 53-2-6. Hearings and Appeals.**

13 (a) Any administrative hearing required or permitted to be held by the
14 Commissioner shall be conducted in accordance with Article 3A of Chapter 150B of the
15 General Statutes.

16 (b) Upon an appeal to the Commission by any party from an order entered by the
17 Commissioner following an administrative hearing pursuant to Article 3A of Chapter
18 150B of the General Statutes, the chair of the Commission may appoint an appellate
19 review panel of not less than three members to review the record on appeal, hear oral
20 arguments, and make a recommended decision to the Commission. Unless another time
21 period for appeals is provided by this Chapter, any party to an order by the
22 Commissioner may, within 20 days after the order and upon written notice to the
23 Commissioner, appeal the Commissioner's order to the Commission for review. The
24 notice of appeal shall state the grounds for the appeal and set forth in numbered order
25 the assignments of error for review by the Commission. Failure to state the grounds for
26 the appeal and assignments of error shall constitute grounds to dismiss the appeal.
27 Failure to comply with the briefing schedule provided by the Commission shall also
28 constitute grounds to dismiss the appeal. Upon receipt of a notice of appeal, the
29 Commissioner shall, within 30 days of the notice, certify to the Commission the record
30 on appeal. Any party to a proceeding before the Commission may, within 20 days after
31 final order of the Commission, petition the Superior Court of Wake County for judicial
32 review of a final determination of any question of law which may be involved. The
33 petition for judicial review shall be entitled "(insert name) Petitioner v. State of North
34 Carolina on Relation of the Commission." A copy of the petition for judicial review
35 shall be served upon the Commissioner pursuant to G.S. 150B-46. The petition shall be
36 placed on the civil issue docket of the court and shall have precedence over other civil
37 actions. Within 15 days of service of the petition for judicial review, the Commissioner
38 shall certify the record to the Clerk of Superior Court of Wake County. The standard of
39 review of a petition for judicial review of a final order of the Commission shall be as
40 provided in G.S. 150B-51(b).

41 (c) The hearing officer at administrative hearings conducted under the authority
42 of the Commissioner may be the Commissioner, a deputy commissioner or other
43 suitable person designated by the Commissioner to serve as a hearing officer.

44 (d) The Commission may conduct public hearings on matters within its purview.

45 **"§ 53-2-7. Official record.**

1 (a) The Commissioner shall keep a record in the OCOB of the Commissioner's
2 official acts, rulings, and transactions which, except as otherwise provided, shall be
3 open to inspection and copying by any person. The Commissioner may condition the
4 provision of copies of records upon the payment by the person requesting the
5 documents of an amount sufficient to cover the cost of retrieving, copying and if
6 requested, mailing the documents.

7 (b) Notwithstanding any laws to the contrary, the following records of the
8 Commissioner shall be confidential and shall not be disclosed or be subject to discovery
9 or public inspection:

10 (1) Records compiled during or in connection with an examination, audit,
11 or investigation of any person, including records relating to any
12 application for licensure or otherwise to conduct business.

13 (2) Records containing information compiled in preparation for or
14 anticipation of or in the course of litigation, examination, audit, or
15 investigation.

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

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

31 (5) Records containing information about the character, competency,
32 experience or finances of the directors, officers or other persons having
33 control over a person giving notice or filing an application to engage in
34 a control transaction pursuant to this Chapter.

35 (6) Records containing information about the character, competency or
36 experience of the directors, executive officers or other persons having
37 control over any of the parties to a combination subject to the
38 Commissioner's jurisdiction.

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

43 (8) Records prepared by a compliance review committee or other
44 committee of the board of directors of a North Carolina financial

1 institution or established at the direction of such a board of directors
2 that have been obtained by the Commissioner.

3 (9) Records prepared during or as a result of an examination or
4 investigation of any person by an agency of the United States, or
5 jointly by the agency and the Commissioner, if the records would be
6 confidential under federal law or regulation.

7 (10) Records prepared during or as a result of an examination or
8 investigation of any person by a regulatory agency with jurisdiction of
9 a state other than this State or of a foreign country if the records would
10 be confidential under that jurisdiction's law or regulations.

11 (11) Records of information and reports submitted by any depository
12 institution or trust institution, or its affiliates, holding company or
13 subsidiaries, or any other person subject to the Commissioner's
14 jurisdiction to federal regulatory agencies, if the records would be
15 confidential under federal law or regulation.

16 (12) Records of complaints from the public received by the OCOB.

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

19 (c) For purposes of this section, "any person subject to the Commissioner's
20 jurisdiction" includes any person who is licensed or registered or should be licensed or
21 registered under this Chapter.

22 (d) Notwithstanding the provisions of subsection (b) of this section, the
23 Commissioner may, by written agreement with any state or federal law enforcement or
24 regulatory agency, share with that agency any confidential record set out in subsection
25 (b) of this section or any information contained therein, on the condition that such
26 record or information shared shall be treated as confidential under the applicable laws
27 and regulations governing the recipient agency.

28 (e) Nothing in this section shall prohibit a bank, upon approval of the
29 Commissioner, from disclosing to an insurance carrier, for the purpose of obtaining
30 insurance coverage required by this Chapter, the bank's regulatory rating prepared by
31 the OCOB; provided however, that the insurance carrier must agree in writing to
32 maintain the confidentiality of the information and not to disclose it in any manner
33 whatsoever.

34 Article 3A

35 Organization of a Bank

36 **"§ 53-3-1. Application to organize a bank.**

37 (a) An applicant for permission to organize a bank and for a charter must file an
38 application with the Commissioner. The application shall be in the form required by the
39 Commissioner and shall contain such information as the Commissioner requires, set
40 forth in sufficient detail to enable the Commissioner to evaluate the applicant's
41 satisfaction of the criteria set forth in G.S. 53-3-4. The applicant shall pay a
42 non-refundable application fee as provided by rule at the time of filing the application.

43 (b) Upon receipt of an application, the Commissioner shall conduct an
44 examination of the applicant and any other matters deemed relevant by the
45 Commissioner. The Commissioner may require additional information and may require

1 the amendment of the application in the course of the examination. An applicant's
2 failure to furnish all required information or to pay the required fee within 30 days after
3 filing the application may be considered an abandonment of the application.

4 **"§ 53-3-2. Permission to organize a bank.**

5 (a) With the approval of the Commissioner, the organizers may file articles of
6 incorporation for the proposed bank with the Secretary of State. The Commissioner
7 shall authorize the organization of the proposed bank if the Commissioner is satisfied
8 that each of the following conditions is met:

9 (1) The application is complete.

10 (2) The Commissioner's examination as provided for in G.S. 53-3-1
11 indicates that the requirements for the issuance of a charter to the
12 applicant are reasonably probable of satisfaction.

13 (3) The proposed name of the proposed bank is not likely to mislead the
14 public as to its character or purpose and is not the same as a name
15 already adopted by an existing depository institution or trust institution
16 operating in this State.

17 (b) If the Commissioner approves the organization of the proposed bank, the
18 Commissioner shall issue a certificate to the Secretary of State. The Secretary of State
19 shall transmit to the Commissioner a certified copy of the filed articles of incorporation
20 of the proposed bank.

21 (c) Unless and until the Commissioner issues a charter to the proposed bank:

22 (1) The proposed bank shall not transact any business except such as is
23 incidental and necessary to its organization or the application for a
24 charter or preparation for commencing the business of banking.

25 (2) All funds paid for shares of the proposed bank shall be placed in
26 escrow under a written escrow with a third party escrow agent
27 satisfactory to the Commissioner.

28 (3) All funds for shares placed into escrow, and all dividends or interest on
29 such funds, may be removed from escrow only with the
30 Commissioner's approval except to the extent that such funds are
31 refunded to subscribers or as otherwise required by law.

32 (d) A proposed bank is subject to the jurisdiction of the Commissioner.

33 **"§ 53-3-3. Articles of incorporation of a proposed bank.**

34 (a) The articles of incorporation of a proposed bank shall be signed and
35 acknowledged by or on behalf of an organizer and shall contain the following:

36 (1) The information required to be set forth in articles of incorporation
37 under Chapter 55 of the General Statutes.

38 (2) Any provision consistent with Chapter 55 of the General Statutes and
39 other applicable law that the organizers elect to set forth for the
40 regulation of the internal affairs of the proposed bank and that the
41 Commissioner authorizes or requires.

42 (3) Any provision the Commissioner requires or authorizes as a substitute
43 for a provision that otherwise would be required by Chapter 55 of the
44 General Statutes.

1 (b) Before the chartering of a proposed bank, the articles of incorporation filed
2 under the provisions of G.S. 53-3-2 shall be sufficient certification to the FDIC that the
3 proposed bank is a legal entity.

4 **"§ 53-3-4. Commissioner's approval of charter issuance.**

5 (a) The Commissioner may approve a charter for a proposed bank only when the
6 Commissioner has determined that all the following requirements have been satisfied or
7 are reasonably probable to be satisfied within a reasonable period of time specified by
8 the Commissioner in the order of approval:

- 9 (1) The proposed bank has solicited or will solicit subscriptions for
10 purchases of shares sufficient to provide an amount of required capital
11 satisfactory to the Commissioner for the commencement of the
12 business of banking.
- 13 (2) All prior public solicitations for purchases of shares, and all future
14 solicitations will be solicited with appropriate disclosure, taking into
15 account all the circumstances of the public solicitation, including a
16 prominent statement in any solicitation document to the effect that the
17 solicitation has not been approved by the Commissioner or the
18 Commission and that a representation to the contrary is a criminal
19 offense.
- 20 (3) All payments for purchases of shares in a bank in organization are
21 made in United States currency.
- 22 (4) The proposed bank has an operational expense fund from which to pay
23 organizational expenses, in an amount determined by the
24 Commissioner to be sufficient for the safe and sound operation of the
25 proposed bank while the charter application is pending.
- 26 (5) The proposed bank has been formed for legitimate and lawful business
27 purposes.
- 28 (6) The character, competence and experience of the organizers, proposed,
29 directors, proposed officers, and initial holders of more than ten
30 percent of the voting securities of the proposed bank will command the
31 confidence of the public.
- 32 (7) The proposed officers and directors, as a group, have degrees of
33 character, competence and experience sufficient to justify a belief that
34 the proposed bank will be free from improper or unlawful influence
35 and otherwise will operate safely, soundly and in compliance with law.
- 36 (8) The anticipated volume and nature of business of the proposed bank
37 projected in the application are reasonable and indicate a reasonable
38 probability of safe, sound, and profitable operation of the proposed
39 bank.
- 40 (9) If the proposed bank intends to conduct "trust business", as defined by
41 G.S. 53-1-4(69), it appears that trust powers should be granted based
42 on consideration of the various factors set forth in Article 24 of this
43 Chapter for considering applications and setting capital for a State trust
44 company.

1 (b) The Commissioner's determination that the requirements described in
2 subsection (a) are reasonably probable of satisfaction may be based on partial
3 satisfaction of the requirements at a level set by the Commissioner as a prerequisite for
4 approval of the charter, and also may be based on presentation of a plan for the full
5 satisfaction of the requirements.

6 (c) If it appears to the Commissioner that the proposed bank has satisfied or is
7 reasonably probable to satisfy the requirements for issuance of a charter, the
8 Commissioner shall issue an order approving the application for a charter and such
9 order shall be submitted to the Commission for its review at a public hearings. The
10 Commissioner may, in the order approving the proposed bank's charter, impose other
11 reasonable conditions or restrictions upon the proposed bank or the new bank,
12 consistent with this Chapter.

13 (d) If it appears to the Commissioner that the proposed bank has not satisfied and
14 is not reasonably probable of satisfying the requirements for issuance of a charter, the
15 Commissioner shall issue an order denying approval of the application. The applicant
16 may, within ten days of issuance of the order, give notice of appeal of this decision to
17 the Commission pursuant to G.S. 53-2-6.

18 **"§ 53-3-5. Notice; public hearing.**

19 (a) Not less than 30 days before the public hearing of the Commission to review
20 the Commissioner's approval of an application, the applicant shall cause to be published
21 a public notice. The public notice shall contain:

- 22 (1) A statement that the application has been filed with the Commissioner.
- 23 (2) The name of the community where the proposed bank intends to locate
24 its principal office.
- 25 (3) A statement that a public hearing will be held to review the
26 Commissioner's approval of the application.
- 27 (4) A statement that any interested person may file a written statement
28 either favoring or protesting the chartering of the proposed bank. The
29 statement shall note that, in order to be considered at the public
30 hearing, all written statements from interested persons must be filed
31 with the Commission within 30 days of the date of publication of the
32 public notice.

33 (b) At the public hearing, the Commission shall consider the findings and order
34 of the Commissioner and shall hear such testimony as the Commissioner may wish to
35 give or be called upon to give. To the extent that the Commission deems the information
36 and testimony relevant to its review of the Commissioner's order, the Commission shall
37 receive information and hear testimony from the organizers and shall hear from any
38 other interested persons.

39 **"§ 53-3-6. Commission decision.**

40 (a) The Commission shall consider the findings and order of the Commissioner,
41 oral testimony, and any other information and evidence, either written or oral that
42 comes before it at the public hearing to review the Commissioner's approval of an
43 application for a charter. The Commission may adjourn and reconvene the public
44 hearing in unusual circumstances. The Commission shall affirm or reverse the
45 Commissioner's order. The Commission may adopt the Commissioner's

1 recommendation with respect to conditions for issuance of a charter, or it may modify
2 the conditions recommended by the Commissioner. The Commission shall render its
3 decision at the public hearing, unless unusual circumstances require postponement of
4 the decision. The Commission's review shall be limited to a determination of whether
5 the criteria set forth in G.S. 53-3-4 have been met and whether the provisions of this
6 Article have been followed.

7 (b) If the Commission denies an application for a charter or if the Commission
8 approves an application with conditions not set forth in the Commissioner's approval,
9 the applicant may appeal the denial or approval containing such conditions as provided
10 in G.S. 53-2-6.

11 **"§ 53-3-7. Issuance of charter.**

12 (a) A proposed bank shall not engage in business except as allowed under
13 G.S. 53-3-2(c)(1), until it receives a charter issued by the Commissioner. The
14 Commissioner shall not issue the charter until the Commissioner is satisfied that the
15 proposed bank has done each of the following:

- 16 (1) Received payment in United States currency for the purchase of shares
17 and will have satisfactory required capital upon commencing business,
18 in each case in at least the amount required by the Commission's order
19 approving the application.
- 20 (2) Elected the proposed officers and directors named in the application or
21 other officers and directors approved by the Commissioner.
- 22 (3) Secured deposit insurance from the FDIC.
- 23 (4) Complied with all requirements of the Commission's order approving
24 the application for a charter.
- 25 (5) Appears to be ready to commence the business of banking, in the
26 reasonable discretion of the Commissioner upon a pre-opening
27 examination.

28 (b) The charter issued by the Commissioner shall set forth any trust powers of the
29 bank which may be full or partial trust powers.

30 (c) If a bank does not open and engage in the business of banking within six
31 months after the date its charter is issued or within such longer period as may be
32 permitted by the Commissioner, the Commissioner shall revoke the charter.

33 (d) If the Commissioner determines that a charter should not be issued following
34 Commission approval, the applicant may appeal that decision to the Commission as
35 provided in G.S. 53-2-6.

36 (e) Following the exhaustion of all appeals, the Commissioner may dissolve and
37 liquidate the proposed bank as provided in G.S. 53-9-301, or order the organizers to
38 dissolve and liquidate the proposed bank pursuant to G.S. 53-9-201, if any one of the
39 following occurs:

- 40 (1) The Commissioner does not recommend the issuance of a charter.
- 41 (2) The Commission denies approval of a charter.
- 42 (3) The charter is revoked by the Commissioner pursuant to subsection (c)
43 of this section or other applicable law."

44 Article 4A
45 Governance of Banks

1 **§ 53-4-1. Banks – form of organization.**

2 (a) A bank shall be formed as, and shall maintain the form of, a corporation
3 formed under the laws of this State.

4 (b) The provisions contained in Chapter 55 of the General Statutes shall apply to
5 banks except where provisions of this Chapter provide differently, or where the
6 Commissioner determines that any provision of Chapter 55 is inconsistent with the
7 business of banking or the safety and soundness of banks.

8 **§ 53-4-2. Banks controlled by boards of directors.**

9 (a) The corporate powers of a bank shall be exercised by or under the authority
10 of, and the business and affairs of the bank shall be managed by or under the direction
11 of, its board of directors.

12 (b) A bank's board of directors shall consist of not less than five individuals. For
13 good cause shown, the Commissioner may approve boards of directors consisting of
14 less than five individuals to the extent consistent with other applicable law.

15 (c) The board of directors shall meet at least quarterly provided that the executive
16 committee shall meet in any month in which there is no meeting of the board of
17 directors and the loan committee shall meet monthly.

18 (d) Except to the extent the provisions of this Chapter or other applicable federal
19 or state laws and regulations impose a different standard, bank directors shall have the
20 duties, authority, and liabilities of directors of corporations organized under Chapter 55
21 of the General Statutes.

22 (e) The board of directors of a bank may appoint directors with respect to such of
23 the bank's branches as it deems useful to the business of the bank. No such advisory
24 director shall be liable for acts or omissions undertaken as an advisory director under
25 the laws applicable to the performance of the duties of a director of a bank, unless and
26 only to the extent he or she undertakes or is delegated authority as a director of the
27 bank.

28 **"§ 53-4-3. Committees of boards of directors.**

29 (a) The board of directors shall appoint, at a minimum, an audit committee, an
30 executive committee, a loan committee (which may be the executive committee or the
31 board of directors as a whole), and may appoint such other committees as it deems
32 appropriate to provide for the safe and sound operation of the bank in a manner
33 consistent with applicable laws and regulations.

34 (b) The Commissioner may require the board of directors of a bank to establish
35 one or more additional committees if, in the judgment of the Commissioner, such
36 committees are reasonably necessary or appropriate for good corporate governance, for
37 the safe and sound operation of the bank, or to ensure the bank's compliance with
38 applicable laws and regulations. In the exercise of his or her judgment under this
39 subsection, the Commissioner may consider, among other factors, the asset size of the
40 bank, the range and complexity of the activities in which the bank is engaged, the
41 various risks undertaken by the bank, the experience and abilities of the bank's directors
42 and officers, and the adequacy of the bank's existing policies, procedures and internal
43 controls.

44 **"§ 53-4-4. Minutes of meetings of directors and committees.**

1 Minutes shall be recorded and retained for all meetings of the board of directors and
2 board committees and kept on file at the bank. The minutes shall show a record of
3 actions taken.

4 **"§ 53-4-5. Qualifications of bank directors.**

5 (a) At least three fourths of the directors of a bank shall be citizens of the United
6 States of America.

7 (b) A director must satisfy eligibility requirements for bank directors imposed by
8 federal law, including Section 19 of the Federal Deposit Insurance Act, 12 U.S.C.
9 1829(a).

10 (c) A director must either:

11 (1) Appoint an agent in Wake County, North Carolina, for service of
12 process; or

13 (2) Consent, on a form satisfactory to the Commissioner, that:

14 a. The Commissioner may serve as the director's agent for service
15 of process, and

16 b. The director consents to jurisdiction in Wake County, North
17 Carolina, but only for purposes of any action or proceeding
18 brought by the Commissioner.

19 **"§ 53-4-6. Liability of directors.**

20 (a) The standard of conduct for directors shall be as set forth in G.S. 55-8-30.

21 (b) Any director of any bank who shall knowingly violate, or who shall
22 knowingly permit to be violated by any officers, agents, or employees of the bank, any
23 of the provisions of this Chapter shall be held personally and individually liable for all
24 damages which the bank, its shareholders or any other person shall have sustained in
25 consequence of such violation. Any aggrieved shareholder of any bank in liquidation
26 may prosecute an action for the enforcement of the provisions of this section. Only one
27 such action may be brought.

28 **"§ 53-4-7. Directors may declare distributions.**

29 Provided a bank does not make distributions that reduce its capital below its
30 applicable required capital, the board of directors of a bank may declare such
31 distributions as it deems proper.

32 **"§ 53-4-8. Officers and employees shall give bond.**

33 (a) A bank shall require security in the form of a bond for the fidelity and faithful
34 performance of duties by its officers and employees. The bond shall be issued by a
35 bonding company authorized to do business in this State and upon such form as may be
36 approved by the Commissioner. Otherwise, the amount, form, and terms of the bond
37 shall be such as the board of directors may require. The premium for the bond is to be
38 paid by the bank.

39 (b) To provide for the safety and soundness of a bank, the Commissioner may
40 require an increase in the amount of the bond or additional or different security.

41 **"§ 53-4-9. Affiliate transactions.**

42 A bank may extend credit to, and engage in transactions with, its affiliates, directors,
43 executive officers, principal shareholders, and their respective immediate family
44 members only to the extent permitted by, and subject to such restrictions and conditions
45 as are imposed by, applicable State and federal laws and regulations,

1 **"§ 53-4-10. Examination of board composition, structure and conduct.**

2 (a) As part of its examinations of a bank, the OCOB may assess the competence,
3 composition, structure and conduct of such bank's board of directors, including:

- 4 (1) The number of directors.
5 (2) The independence of directors.
6 (3) The committee structure of the board.
7 (4) The education and training of board members.
8 (5) Compliance with the bank's code of ethics.

9 (b) In making the assessment authorized by subsection (a) of this section, the
10 OCOB shall take into consideration publicly issued regulations and guidance of the
11 Commissioner and the bank's primary federal supervisor and may consider, among
12 other factors, the asset size of the bank, the range and complexity of the activities in
13 which the bank is engaged, the various risks undertaken by the bank, the experience and
14 abilities of the bank's directors and officers, and the adequacy of the bank's existing
15 policies, procedures and internal controls.

16 **"§ 53-4-11. Reserve fund.**

17 (a) Each bank shall maintain a reserve fund as follows:

- 18 (1) If the bank is a member of the Federal Reserve System, it shall
19 maintain a reserve fund in accordance with the requirements if the
20 Federal Reserve Board.
21 (2) All other banks shall maintain a reserve fund as required by the
22 Commissioner.

23 (b) The Commissioner may require a level of reserve fund for non-member banks
24 as provided in subsection (a)(2) of this section taking into consideration the level of
25 liquidity the Commissioner deems necessary for the safe and sound operation of the
26 banks.

27 (c) In establishing the required level of reserve fund, the Commissioner shall
28 include the following types of liquid reserves:

- 29 (1) Cash on hand, which shall include both United States currency and
30 exchange of any clearing house association or similar intermediary.
31 (2) Balances on demand from designated depository institutions.
32 (3) Obligations of the United States Treasury, any agency of the United
33 States government which is guaranteed by the United States
34 government, and any general obligation of this State or any political
35 subdivision thereof which has an investment grade rating of A or
36 higher by a nationally recognized rating service.

37 (d) Notwithstanding any other provision of this Chapter, in the event the reserve
38 fund of a bank falls below the level required under subsection (b) of this section, the
39 Commissioner may require the bank to do the following:

- 40 (1) Discontinue making any new extension of credit; and
41 (2) Promptly restore its reserve fund to the applicable required level.

42 (e) In the event a bank shall fail to promptly restore its reserve fund to the
43 applicable level required within ten days after the Commissioner directs it to do so, the
44 Commissioner may take such actions under Article 8A of this Chapter as the
45 Commissioner deems necessary.

1 **"§ 53-4-12. Compliance review committee.**

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

3 (1) "Compliance review committee" means:

4 a. An audit, loan review, or compliance committee appointed by
5 the board of directors of a bank, or any other person to the
6 extent the person acts at the direction of or reports to such a
7 committee; and

8 b. Whose functions are to audit, evaluate, report, or determine
9 compliance with any of the following:

10 1. Loan underwriting standards.

11 2. Asset quality.

12 3. Financial reporting to federal or State regulatory agencies.

13 4. Adherence to the bank's investment, lending, accounting,
14 ethical, or risk assessment, and financial standards.

15 5. Compliance with federal or State statutory requirements.

16 (2) "Compliance review documents" means documents prepared for or
17 created by a compliance review committee.

18 (3) "Loan review committee" means a person or group of persons who, on
19 behalf of a bank, reviews assets, including loans held by the bank, for
20 the purpose of assessing the credit quality of the loans or the loan
21 application process, compliance with the bank's investment and loan
22 policies and compliance with applicable law and regulations.

23 (4) "Government agency" means a state or federal regulatory body that is
24 not a bank supervisory agency that has jurisdiction over a bank's
25 compliance with state or federal laws or regulations, including those
26 dealing with taxes, securities, or financial reporting.

27 (b) Banks shall maintain complete records of compliance review documents, and
28 the documents shall be available for examination by the Commissioner or any bank
29 supervisory agency or government agency having jurisdiction. Notwithstanding Chapter
30 132 of the General Statutes, compliance review documents in the custody of a bank, the
31 Commissioner, a government agency or a bank supervisory agency are confidential, are
32 not open for public inspection, and are not discoverable or admissible in evidence in a
33 civil action against a bank, its directors, officers, or employees, unless the court finds
34 that the interests of justice require that the documents be discoverable or admissible in
35 evidence.

36 Article 5A

37 Powers of Banks

38 **"§ 53-5-1. Powers.**

39 (a) Except as otherwise specifically provided by this Chapter, a bank shall have
40 the powers conferred upon business corporations organized under the laws of this State.
41 In addition, and not by way of limitation, a bank shall have the power to:

42 (1) Carry on the business of banking, which includes such activities as
43 discounting and negotiating promissory notes, drafts, bills of
44 exchange, and other evidences of indebtedness, receiving deposits,
45 issuing, advising, and confirming letters of credit, receiving money for

1 transmission, and loaning money on personal security or on real or
2 personal property.

3 (2) Make any loan that could be made by a federally chartered institution
4 doing business in this State.

5 (3) Purchase or invest in loans, or a participating interest in loans, of a
6 type that the bank could itself make.

7 (4) Sell any loan, including one or more participating interest in a loan.

8 (5) Make any investments authorized by G.S. 53-5-2 or any other section
9 of this Chapter.

10 (6) Through information technology systems, processes and capabilities,
11 provide, deliver or otherwise make available banking services and
12 products, enhance the effectiveness or efficiency of its operations, and
13 provide other benefits to its customers. Additionally, a bank may
14 utilize its information technology systems, processes, capabilities, and
15 capacities in the same manner and to the same extent as is permitted
16 for national banks.

17 (7) Engage in any other activities approved by rule, order, or interpretation
18 of the Commissioner.

19 (b) A bank shall also have the power to engage:

20 (1) As principal in any activity permissible for a national bank under any
21 law, including the National Bank Act, 12 U.S.C. 24, as well as any
22 activity recognized as permissible for a national bank in any
23 regulation, order or written interpretation issued by the OCC.

24 (2) As principal in any activity that is permissible or determined by the
25 FDIC to be permissible, for a bank under the Federal Deposit
26 Insurance Act, 12 U.S.C. 1831a, or in any regulation, order or written
27 interpretation thereunder.

28 (3) As principal in any activity that is permissible for a savings institution
29 organized under Chapters 54B or 54C of the General Statutes, or that
30 is permissible for a federal savings association under the Home
31 Owners' Loan Act of 1933, 12 U.S.C. 1464, or in any regulation, order
32 or written interpretation thereunder.

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

35 (c) In addition to the other powers described in this section, a bank shall have the
36 power to exercise all other powers that are reasonably necessary or incident to the
37 exercise of the powers authorized in subsections (a) and (b) of this section.

38 (d) Except as provided in subsection (e) of this section, a bank which proposes to
39 engage in any new activity shall apply to the Commissioner for approval to engage in
40 the activity before its commencement. If the new activity will be conducted in a new or
41 existing subsidiary in which the bank intends to make an investment, the bank shall
42 apply to the Commissioner for approval to engage in the activity before entering into the
43 investment. The bank shall not engage in the activity or make the investment unless and
44 until the Commissioner issues a written approval of the application. An application for
45 approval shall contain a description of the proposed activity and any other information

1 required by the Commissioner. A copy of any notice or application the bank is required
2 to file with any bank supervisory agency with respect to the proposed activity shall also
3 be provided to the Commissioner. For the purpose of this section, a "new activity" is
4 any business activity in which the bank is not currently engaged. The extension or
5 relocation of an existing activity into a new department, division, or subsidiary of the
6 bank shall not be considered a new activity.

7 (e) No application for approval to engage in a new activity shall be required,
8 provided all of the following conditions are met as of the date the activity is
9 commenced:

10 (1) The new activity is one described in subsections (a) (b) or (c) of this
11 section.

12 (2) The bank is well-capitalized and well-managed as demonstrated by the
13 supervisory rating it received during its most recent safety and
14 soundness examination.

15 (3) No notice or application to engage in the new activity is required to be
16 filed by the bank with any federal banking regulator.

17 (f) A bank permitted to commence a new activity without prior application and
18 approval pursuant to subsection (e) of this section shall notify the Commissioner in
19 writing of the commencement of the new activity no later than the 30th day after the
20 earlier of (i) commencing the new activity, or (ii) if applicable, making an investment in
21 a subsidiary through which the new activity will be conducted.

22 **"§ 53-5-2. Investment authority.**

23 (a) In addition to any powers or investments authorized by any other section of
24 this Chapter, a bank may invest in:

25 (1) The shares or other securities of the following:

26 a. Any other depository institution.

27 b. Any industrial bank, bankers' bank or other deposit taking entity
28 chartered or existing under any federal or State law, including
29 the shares or other securities of clearing corporations defined in
30 G.S. 25-8-102, the shares or other securities of central reserve
31 banks and the shares of an Edge Act bank. The investment of
32 any bank in the shares of a central reserve bank or bank
33 organized under the Edge Act, 12 U.S.C. 611 et seq., shall at no
34 time exceed ten percent of the required capital of the bank
35 making the investment.

36 c. Any company in which a federally chartered institution is
37 authorized to invest under any statute, or any regulation, official
38 circular, bulletin, order or written interpretation issued by the
39 OCC.

40 (2) Bonds or notes issued by or fully and unconditionally guaranteed as to
41 principal and interest by the United States Treasury. No bank shall be
42 required to maintain a reserve against deposits secured by United
43 States Treasury bonds or notes equal in market value to the amount of
44 such deposits, and such bonds or notes shall be valid security for all

1 loans and deposits to the same extent as are any obligations of the
2 United States.

3 (3) Federal farm loan bonds, notes, or similar obligations issued by a farm
4 credit system institution.

5 (4) Securities issued by federal home loan banks pursuant to the Federal
6 Home Loan Bank Act of 1932, as amended.

7 (5) Bonds or notes secured by a mortgage or deed of trust insured or
8 guaranteed by the Federal Housing Administration, Secretary of
9 Housing and Urban Development or the Veterans Administration, or in
10 mortgages or deeds of trust on real estate which have been accepted
11 for insurance or guarantee by the Federal Housing Administration,
12 Secretary of Housing and Urban Development or Veterans
13 Administration, and in obligations of a national mortgage association
14 which obligations are insured or guaranteed by the United States
15 government. No law of this State prescribing the nature, amount or
16 form of security or requiring security upon which loans or investments
17 may be made, or prescribing the rates or time of payment of the
18 interest any obligation may bear, or prescribing the period for which
19 loans or investments may be made, shall apply to investments made
20 pursuant to this subsection.

21 (6) Mutual funds, but subject to rules or orders adopted by the
22 Commissioner.

23 (b) A bank may make an investment in a subsidiary which will be operated as a:

24 (1) Bank operating subsidiary.

25 (2) Financial subsidiary.

26 (3) DPC subsidiary, as defined by G.S. 53-1-4(29).

27 (c) An investment by a bank or a bank subsidiary pursuant to subsection (b) or
28 (d) of this section shall receive the same accounting and regulatory treatment as is
29 accorded to such investment by the bank's primary federal supervisor. No investment
30 shall be made by a bank or a bank subsidiary pursuant to subsection (b) or (d) of this
31 section unless:

32 (1) The investment is approved by the board of directors of the bank.

33 (2) The bank has carefully investigated the business or activity in which
34 the subsidiary established by the investment will engage.

35 (3) The bank has established the risk management and financial controls
36 necessary to engage in the business or activity in a safe and sound
37 manner.

38 (4) The bank has, and following the making of the investment and the
39 application of the provisions of this subsection, will continue to satisfy
40 the capital requirements of this Chapter.

41 (d) A bank operating subsidiary may make an investment of any size in a lower
42 tier subsidiary.

43 (e) Except as provided in subsection (f) of this section, a bank or bank operating
44 subsidiary proposing to make an investment described in subsection (b), (c), or (d) of
45 this section shall give prior written notice to the Commissioner, providing such detail as

1 the Commissioner may require. Unless the Commissioner, within 30 days following
2 receipt of the notice, notifies the bank or bank operating subsidiary that the
3 Commissioner objects to the proposed investment, the bank or bank operating
4 subsidiary may complete the investment. However, the Commissioner may extend the
5 period within which to object to the proposed investment if the Commissioner
6 determines that it raises issues which require additional information or additional time
7 for analysis. While the objection period is so extended, the bank or bank operating
8 subsidiary may not proceed with respect to the proposed investment.

9 (f) The prior notice requirement provided by subsection (e) of this section shall
10 not apply if all of the following apply:

11 (1) The bank is well-capitalized and well-managed as demonstrated by the
12 supervisory rating it received during its most recent examination.

13 (2) Each activity of the subsidiary in which the investment is to be made is
14 either:

15 a. One in which the bank is then engaged or has previously been
16 engaged, directly or through a different subsidiary, and for
17 which all necessary approvals of bank supervisory agencies and
18 of the Commissioner have previously been obtained and remain
19 in effect; or

20 b. One for which no prior notice or application for approval to any
21 federal bank supervisory authority is required.

22 (3) A bank that makes an investment pursuant to the exception created by
23 this subsection shall nevertheless notify the Commissioner in writing
24 of the investment within 30 days thereafter.

25 (g) Any bank, out-of-state bank, national bank, or any subsidiary thereof, which
26 engages in an activity subject to licensure and/or regulation under the laws of this State,
27 other than this Chapter, shall be subject to licensure and/or regulation on a basis that
28 does not arbitrarily discriminate by the appropriate regulatory agency which licenses
29 and/or regulates nonbanks which engage in the same activity.

30 (h) The Commissioner shall monitor the impact of investment activities of banks
31 and their subsidiaries under this section on the safety and soundness of such banks. Any
32 securities owned or hereafter acquired in excess of the limitations herein imposed shall
33 be disposed of at public or private sale within six months after the date of acquiring the
34 securities, and if not so disposed of, they shall be charged to profit and loss account, and
35 no longer carried on the books as an asset. The limit of time in which securities shall be
36 disposed of or charged off the books of the bank may be extended by the Commissioner
37 if in the Commissioner's judgment it is for the best interest of the bank that the
38 extension be granted, provided that the limitations imposed in this section on the
39 ownership of shares or other equity ownership interest in companies are suspended only
40 to the extent that any bank operating under the supervision of the Commissioner may
41 subscribe for and purchase shares and other equity ownership interests in, or debentures,
42 bonds, or other types of securities of, any company organized under the laws of the
43 United States for the purposes of insuring the depositors a part or all of their funds on
44 deposit in banks to the extent as security ownership is required in order to obtain the
45 benefits of deposit insurance for such depositors.

1 (i) A bank may purchase, hold, and convey real estate other than bank premises
2 for the following purposes:

3 (1) As security for extensions of credit made or moneys due to it when
4 that real estate has been mortgaged to it in good faith.

5 (2) When the real estate has been purchased at sales upon foreclosures of
6 mortgages and deeds of trust held or owned by it, or on judgments or
7 decrees obtained and rendered for debts due to it, or through deeds in
8 lieu of foreclosure or other settlements affecting security of those
9 debts. All real property acquired under this subdivision shall be sold
10 by the bank within five years after it is acquired unless, upon
11 application by the bank, the Commissioner extends the time within
12 which the sale shall be made.

13 (j) A bank's investment in any bonds or other debt obligations of any one person,
14 other than obligations of the United States government, or an agency thereof, or other
15 obligations guaranteed by the United States, this State, another state, or other political
16 subdivision of this State or another state, shall at no time exceed ten percent of its
17 required capital.

18 **"§ 53-5-3. Banks, fiduciaries, etc., authorized to invest in securities approved by**
19 **the Secretary of Housing and Urban Development, Federal Housing**
20 **Administration, Veterans Administration, etc.**

21 (a) Insured Mortgages and Obligation of National Mortgage Associations and
22 Federal Home Loan Banks. – It shall be lawful for all commercial and industrial banks,
23 trust companies, building and loan associations, savings and loan associations,
24 insurance companies, mortgagees and loan correspondents approved by the Secretary of
25 Housing and Urban Development or Federal Housing Administration, and other
26 financial institutions engaged in business in this State, and for guardians, executors,
27 administrators, trustees or others acting in a fiduciary capacity in this State to invest, to
28 the same extent that such funds may be invested in interest-bearing obligations of the
29 United States, their funds or moneys in their custody or possession which are eligible
30 for investment, in bonds or notes secured by a mortgage or deed of trust insured or
31 guaranteed by the Federal Housing Administration, Secretary of Housing and Urban
32 Development or the Veterans Administration, or in mortgages or deeds of trust on real
33 estate which have been accepted for insurance or guarantee by the Federal Housing
34 Administration, Secretary of Housing and Urban Development or Veterans
35 Administration, and in obligations of a national mortgage association which obligations
36 are insured or guaranteed by the United States Government, or bonds, debentures,
37 consolidated bonds, or other obligations of any federal home loan bank or banks.

38 (b) Insured or Guaranteed Loans; Loans Purchased by National Mortgage
39 Associations and Federal Home Loan Banks. – All such banks, trust companies,
40 building and loan associations, savings and loan associations, insurance companies,
41 mortgagees and loan correspondents approved by the Secretary of Housing and Urban
42 Development, or Federal Housing Administration, and other financial institutions, and
43 also all such guardians, executors, administrators, trustees or others acting in a fiduciary
44 capacity in this State, may make such loans, secured by real estate, as the Secretary of
45 Housing and Urban Development, the Federal Housing Administration, a national

1 mortgage association, or the Veterans Administration has insured or guaranteed, or has
2 made a commitment to insure or guarantee, and may obtain such insurance or guarantee;
3 provided, further, that the above designated financial institutions, may make loans,
4 secured by real estate, that are eligible and committed for sale to a national mortgage
5 association, federal home loan bank, federal home loan mortgage corporation or other
6 agency or instrumentality of the United States.

7 (c) Eligibility for Credit Insurance. – All banks, trust companies, building and
8 loan associations, savings and loan associations, insurance companies, mortgagees and
9 loan correspondents approved by the Secretary of Housing and Urban Development, or
10 Federal Housing Administration and other financial institutions, on being approved as
11 eligible for credit insurance by the Secretary of Housing and Urban Development, the
12 Federal Housing Administration, or the Veterans Administration, may make such loans
13 as are insured by the Secretary of Housing and Urban Development or Federal Housing
14 Administration or insured or guaranteed by the Veterans Administration.

15 (d) Certain Securities Made Eligible for Collaterals, etc. – Whenever by statute
16 of this State, collateral is required as security for the deposit of public or other funds; or
17 deposits are required to be made with any public official or department; or an
18 investment of capital or surplus, or a reserve or other fund is required to be maintained,
19 consisting of designated securities, bonds, and notes secured by a mortgage or deed of
20 trust insured or guaranteed by the Secretary of Housing and Urban Development,
21 Federal Housing Administration, or Veterans Administration, debentures issued by the
22 Secretary of Housing and Urban Development or the Federal Housing Administration
23 and obligations of a national mortgage association shall be eligible for such purposes.

24 (e) General Laws not Applicable. – No law of this State prescribing the nature,
25 amount or form of security or requiring security upon which loans or investments may
26 be made, or prescribing or limiting the rates or time of payment of the interest any
27 obligation may bear, or prescribing or limiting the period for which loans or investments
28 may be made, shall be deemed to apply to loans or investments made pursuant to the
29 foregoing paragraphs.

30 Article 6A

31 Bank Operations.

32 **"§ 53-6-1. Loans and extensions of credit.**

33 (a) Subject to the provisions of this subsection, a bank may make a loan or
34 extension of credit secured by the pledge of its own shares or the shares of its holding
35 company, provided:

36 (1) When a bank exercises its security interest in shares of the bank or its
37 holding company, it shall dispose of all of the shares within a period of
38 six months. If the shares have not been disposed of within six months,
39 the shares shall be charged to profit and loss and no longer carried as
40 an asset of the bank. The Commissioner may extend the six-month
41 period not to exceed an additional six months.

42 (2) A bank may not extend credit to finance the purchase of or to carry
43 shares of the bank or the shares of its holding company. For purposes
44 of this subsection, the phrase "to carry" has the meaning set forth in 12
45 C.F.R. Part 221, as promulgated by the Federal Reserve Board.

1 (b) Loans and extensions of credit – limitations:

2 (1) The total loans and extensions of credit, both direct and indirect, by a
3 bank to a person, other than a municipal corporation for money
4 borrowed, including in the liabilities of a company, the liabilities of the
5 several members of the company, outstanding at one time and not fully
6 secured, as determined in a manner consistent with subdivision (2) of
7 this subsection, by collateral having a market value at least equal to the
8 amount of the loan or extension of credit shall not exceed the greater
9 of fifteen percent (15%) of the capital of the bank or the percentage
10 permitted for national banks in this State by statute or regulation of the
11 Comptroller of the Currency.

12 (2) The total loans and extensions of credit, both direct and indirect, by a
13 bank to a person outstanding at one time and fully secured by readily
14 marketable collateral having a market value, as determined by reliable
15 and continuously available price quotations, at least equal to the
16 amount of the loan or extension of credit outstanding shall not exceed
17 the greater of ten percent (10%) of the capital of the bank or the
18 percentage permitted for national banks by statute or regulation of the
19 Comptroller of the Currency. This limitation shall be separate from
20 and in addition to the limitation contained in subdivision (1) of this
21 subsection.

22 (3) The following shall not be considered as extensions of credit within
23 the meaning of this section; provided that the limitations of this
24 subsection shall not apply to loans or obligations to the extent that they
25 are secured or covered by guarantees or by commitments or
26 agreements to take over or purchase the same, made by any federal
27 reserve bank or by the United States or any department, board, bureau,
28 commission or establishment of the United States, including any
29 corporation wholly owned directly or indirectly by the United States.

30 a. The discount of bills of exchange drawn in good faith against
31 actual existing values.

32 b. The discount of solvent trade acceptances or other solvent
33 commercial or business paper actually owned by the person
34 negotiating the same.

35 c. Loans or extensions of credit secured by a segregated deposit
36 account in the lending bank.

37 d. The purchase of bankers' acceptances of the kind described in
38 section 13 of the Federal Reserve Act and issued by other
39 depository institutions.

40 e. The purchase of any notes and the making of any loans, secured
41 by not less than a like face amount of bonds of the United
42 States, or any agency of the United States, or other obligations
43 guaranteed by the United States government, or the State of
44 North Carolina or certificates of indebtedness of the United

1 States, or agency thereof, or other obligations guaranteed by the
2 United States government.

3 (4) For purposes of this subsection, the following definitions and
4 conditions apply:

5 a. "Person" includes an individual, or a corporation, partnership,
6 trust, association, joint venture, pool, syndicate, sole
7 proprietorship, unincorporated organization, or any other form
8 of entity not specifically listed, provided, the term "person"
9 shall not include (i) a clearing organization registered with the
10 Commodity Futures Trading Commission (or its successor) or
11 the Securities and Exchange Commission (or its successor) or
12 any federal banking agency, and (ii) a bank's affiliates.

13 b. Loans or extensions of credit to one person include loans made
14 to other persons when the proceeds of the loans or extensions of
15 credit are to be used for the direct benefit of the first person or
16 the persons are engaged in a common enterprise.

17 c. For purposes of this section, extensions of credit by a bank to a
18 person shall include the bank's credit exposures to the person in
19 derivative transactions with the bank.

20 d. "Derivative transaction" includes any transaction that is a
21 contract, agreement, swap, warrant, note or option that is based,
22 in whole or in part, on the value of, any interest in, or any
23 quantitative measure or the occurrence of any event relating to,
24 one or more commodities, securities, debt instruments,
25 currencies, interest or other rates, indices or assets.

26 e. Credit exposure to a person in connection with a derivative
27 transaction shall be determined based on an amount that the
28 bank reasonably determines in accordance with customary
29 industry practices under the terms of the derivative transaction
30 or otherwise would be its loss if the person were to default on
31 the date of determination, taking into account any netting and
32 collateral arrangements, and any guarantees or other credit
33 enhancements, provided that the bank may elect to determine
34 credit exposure on the basis of such other method of
35 determining credit exposure as may be permitted by the bank's
36 primary federal regulator.

37 (c) The Commissioner shall monitor the lending activities of banks under this
38 section for undue credit concentrations and inadequate risk diversification which could
39 adversely affect the safety and soundness of the banks.

40 (d) Rules adopted by the Commissioner to ensure that extensions of credit made
41 by banks are in keeping with sound lending practices and to promote the purposes of
42 this Chapter shall not prohibit a bank from making any extension of credit that is a
43 permitted extension of credit for a federally chartered institution.

44 "§ 53-6-2. Deposits.

1 (a) A bank may, consistent with applicable law and safe and sound banking
2 practices, offer all types of deposit accounts upon such terms and conditions as the bank
3 considers appropriate.

4 (b) A bank shall secure insurance for its deposits from the FDIC.

5 **"§ 53-6-3. Securing deposits.**

6 (a) A bank may not create a lien on its assets or otherwise secure the repayment
7 of a deposit except as authorized or required by this section, other laws of this State, or
8 federal law.

9 (b) A bank may pledge its assets to secure a deposit of the government of this
10 State or any other state, any agency or political subdivision of this State or any other
11 state, the United States government, any agency or instrumentality of the United States,
12 or any Indian tribe recognized by the United States government as eligible for the
13 services provided to Indian tribes by the Secretary of the Interior because of its status as
14 an Indian tribe.

15 (c) This section does not prohibit the pledge of assets by a bank to secure the
16 repayment of money borrowed.

17 (d) An act, deed, conveyance, pledge, or contract in violation of this section is
18 void.

19 **"§ 53-6-4. Minors.**

20 (a) A bank may issue and operate a deposit account in the name of a minor or in
21 the name of two or more individuals, one or more of whom are minors, and receive
22 payments, pay withdrawals, accept a pledge of the account, issue automated teller
23 machine (ATM) and debit cards, contract for overdraft protection, and act in any other
24 manner with respect to the account on the order of the minor with like effect as if the
25 minor were of full age and legal capacity. Any payment to or at the direction of a minor
26 is a discharge of the bank to the extent thereof. The account shall be held for the
27 exclusive right and benefit of the minor and any joint owners, free from the control of
28 all other persons except creditors. A minor who obtains a deposit account from a bank
29 under this subsection, whether individually or together with others, is bound by the
30 terms of the deposit account agreement to the same extent as if the minor were of full
31 age and legal capacity.

32 (b) Any bank may lease a safe deposit box to a minor or to two or more
33 individuals, one or more of whom are minors. With respect to any such lease, a bank
34 may deal with the minor in all regards as if the minor were of full age and legal
35 capacity. A minor entering a lease agreement with a bank under this subsection, whether
36 individually or together with others, is bound by the terms of the safe deposit box
37 agreement to the same extent as if the minor were of full age and legal capacity.

38 (c) If a minor with a deposit account, other than a joint account with right of
39 survivorship or a payable on death account, dies, a parent or legal guardian of the minor
40 may access and withdraw the funds on deposit and the bank is discharged to the extent
41 of any withdrawal. If a minor with a safe deposit box dies, the provisions of
42 G.S. 28A-15-13 shall control the opening, inventory, and release of contents of the safe
43 deposit box.

1 (d) This section shall not affect the law governing transactions with minors in
2 cases outside the scope of this section, including transactions that constitute an
3 extension of credit to the minor.

4 **"§ 53-6-6. Joint accounts.**

5 (a) Any two or more individuals may establish a joint deposit account by written
6 contract. The deposit account shall be held for them as joint tenants. The account may
7 also be held pursuant to G.S. 41-2.1 of the General Statutes and have the incidents set
8 forth in that section. If the account is held pursuant to G.S. 41-2.1 the contract shall set
9 forth that fact.

10 (b) Unless the individuals establishing a joint account have agreed with the bank
11 that withdrawals require more than one signature, payment by the bank to, or at the
12 direction of any joint tenant designated in the contract authorized by this section shall be
13 a total discharge of the bank's obligation as to the amount so paid.

14 (c) Funds in a joint account established with right of survivorship shall belong to
15 the surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall
16 be subject only to the personal representative's right of collection as set forth in
17 G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established
18 pursuant to the provisions of that section. Payment by the bank of funds in the joint
19 account to a surviving joint tenant or tenants shall terminate the personal
20 representative's authority under G.S. 28A-15-10(a)(3) to collect against the bank for the
21 funds so paid, but the personal representative's authority to collect such funds from the
22 surviving joint tenant or tenants is not terminated.

23 (d) A pledge of a joint account by any one or more of the joint tenants, unless
24 otherwise specifically agreed between the bank and all joint tenants in writing, shall be
25 a valid pledge and transfer of the account or of the amount so pledged, shall be binding
26 upon all joint tenants, shall not operate to sever or terminate the joint ownership of all or
27 any part of the account, and shall survive the death of any joint tenant.

28 (e) A bank is not liable to joint tenants for complying in good faith with a writ of
29 execution, garnishment, attachment, levy, or other legal process that appears to have
30 been issued by a court or other authority of competent jurisdiction and seeks funds held
31 in the name of any one or more of the joint tenants.

32 (f) Persons establishing a joint account with right of survivorship under this
33 section shall sign a statement showing their election of the right of survivorship in the
34 account, and containing language set forth in a conspicuous manner and substantially
35 similar to the following:

36 BANK (or name of institution)
37 JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP
38 G.S. 53-6-6

39 We understand that by establishing a joint account under the provisions of North
40 Carolina General Statute §53-6-6 that:

41 (1) The bank (or name of institution) may pay the money in the account
42 to, or on the order of, any person named as a joint holder of the
43 account unless we have agreed with the bank that withdrawals require
44 more than one signature; and

1 (2) Upon the death of one joint owner, the money remaining in the
2 account will belong to the surviving joint owners and will not pass by
3 inheritance to the heirs of the deceased joint owner or be controlled by
4 the deceased joint owner's will.

5
6
7 (g) This section does not repeal or modify any provision of law relating to estate
8 taxes.

9 (h) Any joint tenant may terminate a joint account.

10 (i) Where a joint account is held by two or more individuals and a joint tenant
11 does not wish for the account to be terminated but requests to be removed from the
12 account, the bank shall remove the joint tenant from the account. The joint account shall
13 continue in the names of the remaining tenant or tenants. Any joint tenant who
14 requested to be removed from an account remains liable for any debts incurred in
15 connection with the joint account during the period in which the individual was an
16 named joint tenant.

17 (j) Any joint account created under the provisions of G.S. 53-146.1 as it existed
18 prior to the effective date of this section shall for all purposes be governed by the
19 provisions of this section after the effective date of this section, and any reference to
20 G.S. 53-146.1 in any statement electing a right of survivorship shall be deemed a
21 reference to this section.

22 (k) This section shall not be deemed exclusive. Deposit accounts not conforming
23 to this section shall be governed by other applicable provisions of the General Statutes
24 or the common law, as appropriate.

25 "§ 53-6-7. Payable on death accounts.

26 (a) If any natural person establishing a deposit account shall execute a written
27 agreement with the bank containing a statement that it is executed pursuant to the
28 provisions of this section and providing for the account to be held in the name of the
29 natural person as owner for one or more beneficiaries, the account and any balance
30 thereof shall be held as a Payable on Death account. The account shall have the
31 following incidents:

32 (1) Any owner during the owner's lifetime may change any designated
33 beneficiary by a written direction to the bank.

34 (2) If there are two or more owners of a Payable on Death account, the
35 owners shall own the account as joint tenants with right of
36 survivorship and, except as otherwise provided in this section, the
37 account shall have the incidents set forth in G.S. 53-6-6.

38 (3) Any owner may withdraw funds by writing checks or otherwise, as set
39 forth in the account contract, and receive payment in cash or check
40 payable to the owner's personal order.

41 (4) If the beneficiary is a natural person, there may be one or more
42 beneficiaries and the following shall apply:

43 a. If only one beneficiary is living and of legal age at the death of
44 the last surviving owner, the beneficiary shall be the owner of
45 the account and payment by the bank to the owner shall be a

1 total discharge of the bank's obligation as to the amount paid. If
2 two or more beneficiaries are living at the death of the last
3 surviving owner, they shall be owners of the account as joint
4 tenants with right of survivorship as provided in G.S. 53-6-6,
5 and payment by the bank to the owners or any of the owners
6 shall be a total discharge of the bank's obligation as to the
7 amount paid.

8 b. If only one beneficiary is living and that beneficiary is not of
9 legal age at the death of the last surviving owner, the bank shall
10 transfer the funds in the account to the general guardian or
11 guardian of the estate, if any, of the minor beneficiary. If no
12 guardian of the minor beneficiary has been appointed, the bank
13 shall hold the funds in a similar interest bearing account in the
14 name of the minor until the minor reaches the age of majority or
15 until a duly appointed guardian withdraws the funds.

16 (5) If the beneficiary is an entity other than a natural person, there shall be
17 only one beneficiary.

18 (6) If one or more owners survive the last surviving beneficiary who was a
19 natural person, or if a beneficiary who is an entity other than a natural
20 person should cease to exist before the death of the owner, the account
21 shall become an individual account of the owner, or a joint account
22 with right of survivorship of the owners, and shall have the legal
23 incidents of an individual account in a case of a single owner or a joint
24 account with right of survivorship, as provided in G.S. 53-6-6, in the
25 case of multiple owners.

26 (7) Prior to the death of the last surviving owner, no beneficiary shall have
27 any ownership interest in a Payable on Death account. Funds in a
28 Payable on Death account established pursuant to this subsection shall
29 belong to the beneficiary or beneficiaries upon the death of the last
30 surviving owner, and the funds shall be subject only to the personal
31 representative's right of collection as set forth in G.S. 28A-15-10(a)(1).
32 Payment by the bank of funds in the Payable on Death account to the
33 beneficiary or beneficiaries shall terminate the personal
34 representative's authority under G.S. 28A-15-10(a)(1) to collect
35 against the bank for the funds so paid, but the personal representative's
36 authority to collect such funds from the beneficiary or beneficiaries is
37 not terminated.

38 The natural person establishing an account under this subsection shall sign a
39 statement containing language set forth in a conspicuous manner and substantially
40 similar to the language set out below. The language may be on a signature card or in an
41 explanation of the account that is set out in a separate document whose receipt is
42 acknowledged by the person establishing the account:

43 BANK (or name of institution)
44 PAYABLE ON DEATH ACCOUNT
45 G.S. 53-6-7

1 I (or we) understand that by establishing a Payable on Death account under the
2 provisions of North Carolina General Statute 53-6-7 that:

- 3 1. During my (or our) lifetime I (or we), individually or jointly, may
4 withdraw the money in the account.
- 5 2. By written direction to the bank (or name of institution) I (or we),
6 individually or jointly, may change the beneficiary or beneficiaries.
- 7 3. Upon my (or our) death, the money remaining in the account will
8 belong to the beneficiary or beneficiaries, and the money will not be
9 inherited by my (or our) heirs or be controlled by will.

10
11 (b) This section shall not be deemed exclusive. Deposit accounts not conforming
12 to this section shall be governed by other applicable provisions of the General Statutes
13 or the common law, as appropriate.

14 (c) No addition to the accounts, nor any withdrawal, payment, or change of
15 beneficiary, shall affect the nature of the account as Payable on Death accounts or affect
16 the right of any owner to terminate the account.

17 (d) This section does not repeal or modify any provisions of law relating to estate
18 taxes.

19 **"§ 53-6-8. Personal agency accounts.**

20 (a) Any person may establish a personal agency account by written contract
21 containing a statement that it is executed pursuant to the provisions of this section. A
22 personal agency account may be any type of deposit account. The written contract shall
23 name an agent who shall have authority to act on behalf of the depositor in the manner
24 set out in this subsection. The agent shall have the authority to:

- 25 (1) Make, sign or execute checks drawn on the account or otherwise make
26 withdrawals from the account.
- 27 (2) Endorse checks made payable to the principal for deposit only into the
28 account.
- 29 (3) Deposit cash or negotiable instruments, including instruments
30 endorsed by the principal, into the account.

31 (b) A person establishing an account under this section shall sign a statement
32 containing language substantially similar to the following in a conspicuous manner:

33 BANK (or name of institution)
34 PERSONAL AGENCY ACCOUNT
35 G.S. 53-6-8

36 The undersigned understands that by establishing a personal agency account under
37 the provisions of North Carolina General Statute §53-6-8, the agent named in the
38 account may:

- 39 1. Sign checks drawn on the account.
- 40 2. Make deposits into the account.

41 The undersigned also understand that if the undersigned is a natural person, upon his
42 or her death the money remaining in the account will be controlled by his or her will or
43 inherited by his or her heirs.

1 (c) An account created under the provisions of this section grants no ownership
2 right or interest in the agent. Upon the death of the principal there is no right of
3 survivorship to the account and the authority set out in subsection (a) of this section
4 terminates.

5 (d) The written contract referred to in subsection (a) of this section shall provide
6 that the principal may elect to extend the authority of the agent set out in subsection (a)
7 of this section to act on behalf of the principal in regard to the account notwithstanding
8 the subsequent incapacity or mental incompetence of the principal. If the principal is a
9 natural person and elects to extend the authority of the agent, then upon the subsequent
10 incapacity or mental incompetence of the principal, the agent may continue to exercise
11 the authority, without the requirement of bond or of accounting to any court, until such
12 time as the agent shall receive actual knowledge that the authority has been terminated.
13 The duly qualified guardian of the estate of the incapacitated or incompetent acting
14 pursuant to a durable power of attorney, as defined in G.S.32A-8, which grants to the
15 attorney-in-fact the authority in regard to the account which is granted to the agent by
16 the written contract executed pursuant to the provisions of this section, shall have the
17 power, upon notifying the agent and providing written notice to the bank where the
18 personal agency account is established, to terminate the agent's authority to act on
19 behalf of the principal with respect to the account. Upon termination of the agent's
20 authority, the agent shall account to the guardian or attorney-in-fact for all actions of the
21 agent in regard to the account during the incapacity or incompetence of the principal. If
22 the principal is a natural person and does not elect to extend the authority of the agent,
23 then upon the subsequent incapacity or mental incompetence of the principal, the
24 authority of the agent set out in subsection (a) of this section terminates.

25 (e) When an account under this section has been established, all or part of the
26 account or any interest or dividend may be paid on a check made, signed or executed by
27 the agent. In the absence of actual knowledge that the principal has died or that the
28 agency created by the account has been terminated, the payment shall be valid and
29 sufficient discharge to the bank for payment so made.

30 (f) A personal agency account shall have only one owner and one agent. The
31 owner shall retain the authority to change the named agent on the personal agency
32 account.

33 (g) Any personal agency account created under the provisions of G.S. 53-146.3
34 as it existed prior to the effective date of this section shall for all purposes be governed
35 by the provisions of this section after the effective date of this section, and any reference
36 to G.S. 53-146.3 in any statement establishing the account shall be deemed a reference
37 to this section.

38 **"§ 53-6-9. Accounts opened by adults for minors.**

39 (a) One or more adults may open and maintain a custodial deposit account for or
40 in the name of a minor and using the minor's taxpayer identification number. Unless
41 otherwise provided in the agreement governing the account:

- 42 (1) Beneficial ownership of the account vests exclusively in the minor. All
43 interest credited to the account shall belong to the minor and shall be
44 reported to the appropriate taxing authorities in the name of the minor
45 using the minor's taxpayer identification number.

1 (2) Except as otherwise provided, control of the account vests exclusively
2 in the custodian whose name appears on the bank's records for the
3 account. If there is more than one custodian named on the bank's
4 account records, each may act independently. Any one or more of the
5 custodians named on the bank's records may turn over control of the
6 account to the minor at any time, either before or after the minor
7 reaches the age of majority.

8 (3) If the custodian has not already transferred control then after the minor
9 beneficiary reaches the age of majority, the beneficiary may instruct
10 the bank to transfer control to the beneficiary and remove the named
11 custodian.

12 (4) If the custodian, or if more than one custodian is on the account, the
13 last of the custodians to survive, dies before the minor reaches the age
14 of majority, the minor's parent or the minor's legal guardian may act as
15 custodian or name another custodian on the account.

16 (b) This section shall not be deemed exclusive. Accounts not conforming to this
17 section shall be governed by other applicable provisions of the General Statutes,
18 including Chapter 33A, the North Carolina Uniform Transfers to Minors Act, or the
19 common law, as appropriate.

20 **"§ 53-6-10. Payment of balance of deceased person or person under disability to**
21 **personal representative or guardian.**

22 (a) A bank may pay any balance on deposit to the credit of any deceased
23 individual to the duly qualified personal representative, collector, or public
24 administrator of the decedent who is qualified as such under the laws of any state.

25 (b) A bank may pay any balance on deposit to the credit of any individual
26 judicially declared incompetent or otherwise under a legal disability to the duly
27 qualified personal representative, guardian, curator, conservator, or committee of the
28 person declared incompetent or under disability who is qualified as such under the laws
29 of any state.

30 (c) The presentation of a letter of qualification as personal representative,
31 collector, public administrator, guardian, curator, conservator, or committee of the
32 person issued or certified by the appointing court shall be conclusive proof of the
33 jurisdiction of the court issuing the same and sufficient authority for the payment.

34 (d) Payment by a bank in good faith under the authority of this section discharges
35 the liability of the bank to the extent of the payment.

36 **"§ 53-6-11. Powers of attorney; notice of revocation; payment after notice.**

37 (a) Any bank may continue to recognize any act of an attorney-in-fact or other
38 agent until the bank receives actual notice of the principal's death or a written notice of
39 revocation signed by the principal who granted the authority or, in the case of a
40 company, evidence satisfactory to the bank of the revocation. Payment by the bank to or
41 at the direction of an attorney-in-fact or other agent before receipt of the notice is a total
42 discharge of the bank's obligation as to the amount so paid.

43 (b) Notwithstanding that a bank has received written notice of revocation of the
44 authority of an attorney-in-fact or other designated agent, a bank may, until ten days
45 after receipt of notice, pay any item made, drawn, accepted or endorsed by the

1 attorney-in-fact or agent prior to the revocation, provided that the item is otherwise
2 properly payable.

3 **"§ 53-6-12. Account statements to be rendered annually or on request.**

4 (a) Every bank shall render an account statement for each deposit account at least
5 annually to the depositor; provided, however, the statements are not required for time
6 deposits. Every bank shall render a statement of account for each deposit account,
7 including time deposits upon receipt of an appropriate request reasonably made by a
8 depositor.

9 (b) For purposes of this section, an account statement is deemed to have been
10 "rendered" to a depositor as of the earlier of the date the statement is mailed to the
11 depositor's address as shown on bank records and the date the account is posted to the
12 bank's website in a manner and a form ensuring the statement to be readily available to
13 the depositor; provided however, the bank and the depositor may agree that an account
14 statement may be rendered by other means.

15 (c) Nothing in this section shall be construed to relieve the depositor from the
16 duty of exercising due diligence in the review of an account statement rendered by the
17 bank and of timely notification to the bank upon discovery of any error.

18 **"§ 53-6-13. Safe deposit boxes; unpaid rentals; procedure; escheats.**

19 (a) If the rental due on a safe deposit box is 90 days or more past due, the lessor
20 bank may send a notice by registered mail or certified mail, return receipt requested, to
21 the last known address of the lessee or by another means agreed to in writing by the
22 lessor bank and the lessee, stating that the safe deposit box will be opened and its
23 contents stored at the expense of the lessee unless payment of the rental is made within
24 30 days of the date of the mailing of the notice or the date such notice is given by the
25 means otherwise previously agreed to in writing the lessor bank and the lessee. If the
26 rental is not paid within the stated period, the box may be opened in the presence of an
27 officer of the bank and of a notary public who is not a director, officer, employee, or
28 shareholder of the bank. The contents shall be sealed in a package by the notary public
29 who shall write on the outside the name of the lessee and the date of the opening. The
30 notary public shall execute a certificate reciting the name of the lessee, the date of the
31 opening of the box and a list of its contents. The certificate shall be included in the
32 package and a copy of the certificate shall be sent by registered mail or certified mail,
33 return receipt requested, to the last known address of the lessee or by the means
34 otherwise previously agreed to in writing by the lessor bank and the lessee. The package
35 shall then be placed in the general vaults of the bank at a rental not exceeding the rental
36 previously charged for the box.

37 (b) If the contents of the safe deposit box have not been claimed within two years
38 of the mailing or other permissible delivery of the copy of the certificate to the lessee,
39 the bank may send a further notice to the last known address of the lessee by registered
40 mail or certified mail, return receipt requested, to the last known address of the lessee or
41 by a means otherwise previously agreed to in writing by the lessor bank and the lessee,
42 stating that unless the accumulated charges are paid within 30 days of the date of the
43 mailing of the notice, the contents of the box will be delivered to the State Treasurer as
44 abandoned property under the provisions of Chapter 116B of the General Statutes.

1 (c) The bank shall submit to the State Treasurer a verified inventory of all of the
2 contents of the safe deposit box upon delivery of the contents of the box or such part
3 thereof as shall be required by the State Treasurer under G.S. 116B-55, but the bank
4 may deduct from any cash of the lessee in the safe deposit box an amount equal to
5 accumulated charges for rental and shall submit to the State Treasurer a verified
6 statement of the charges and deduction. If there is no cash, or insufficient cash to pay
7 accumulated charges in the safe deposit box, the bank may submit to the State Treasurer
8 a verified statement of accumulated charges or balance of the accumulated charges due,
9 and the State Treasurer shall remit to the bank the charges or balance due, up to the
10 value of the property in the safe deposit box delivered to the State Treasurer, less any
11 costs or expenses of sale; but if the charges or balance due exceeds the value of the
12 property, the State Treasurer shall remit only the value of the property, less costs or
13 expenses of sale. Any accumulated charges for safe deposit box rental paid by the State
14 Treasurer to the bank shall be deducted from the value of the property of the lessee
15 delivered to the State Treasurer.

16 (d) Any property, including documents or writings of a private nature, which has
17 little or no apparent financial value, need not be sold but may be destroyed by the bank
18 if the State Treasurer declines to receive the property under G.S. 116B-69(a).

19 (e) An explanation of the contractual provisions pertaining to default, together
20 with reference to this section, shall be printed on every contract for rental of a safe
21 deposit box.

22 **"§ 53-6-14. Reproduction and retention of records; admissibility of copies in**
23 **evidence; disposition of originals; record production generally.**

24 (a) Any bank may cause any or all records kept by it to be recorded, copied or
25 reproduced by any photographic, reproduction, electronic, or digital process or method,
26 or by any other records retention technology approved by rule or order of the
27 Commissioner, of a kind which is capable of accurately converting the records into
28 tangible form within a reasonable time. Each such converted tangible form of record
29 shall also be deemed a record.

30 (b) Any tangible form of a record shall be deemed for all purposes to be an
31 original record and shall be admissible in evidence in all courts and administrative
32 agencies in this State, if otherwise admissible, and the bank may destroy or otherwise
33 dispose of the original form of the record; provided, however, that a bank shall retain
34 either the originals or convertible form of its records for such period as may be required
35 by law or by rule or order of the Commissioner. Any bank may dispose of any original
36 or convertible form of a record that has been retained for the period prescribed by law or
37 by rule or order of the Commissioner for its class.

38 (c) Originals and converted tangible forms of records shall not be held
39 inadmissible in any court action or proceeding on the grounds that they lack
40 certification, identification, or authentication, and shall be received as evidence if
41 otherwise admissible in any court or quasi-judicial proceeding if they have been
42 identified and authenticated by the live testimony of a competent witness or if the
43 records are accompanied by a certificate substantially in the following form:

44 CERTIFICATE REGARDING BANK RECORDS

1 (e) Upon receipt of an application to establish a branch, the Commissioner shall
2 conduct an examination of the pertinent facts and information and may request such
3 additional information as the Commissioner deems necessary to make a decision on the
4 application. In deciding whether to approve a branch application, the Commissioner
5 shall take into account such factors as the financial condition and history of the
6 applicant, the adequacy of its capital, the applicant's future earnings prospects, the
7 character, competency and experience of its management, the probable impact of the
8 branch on the condition of the applicant bank and existing depository institutions in the
9 community to be served, and the convenience and needs of the community the proposed
10 branch is to serve.

11 **"§ 53-6-16. Change of location of a branch or principal office.**

12 (a) A bank may change the location of its principal office or a branch with the
13 prior written approval of the Commissioner. A request to relocate the principal office or
14 a branch of a bank shall be made in a form acceptable to the Commissioner, and shall
15 include information regarding the reason for the proposed relocation, the distance and
16 direction of the move, and such other information as the Commissioner may require in
17 order to reach a decision in the matter.

18 (b) Not more than 30 days before nor less than 10 days after filing a request to
19 relocate the principal office or a branch of a bank, the applicant shall publish public
20 notice of the request. The public notice shall contain all of the following:

- 21 (1) A statement that the request has been filed with the Commissioner.
- 22 (2) The physical address of the principal office or branch to be relocated,
23 and the physical address of the proposed new location.
- 24 (3) A statement that any interested person may make written comment on
25 the request to the Commissioner, and that comments received by the
26 Commissioner within 14 days of the date of publication of the public
27 notice will be considered. The statement shall provide the then current
28 mailing address of the Commissioner.

29 (c) The Commissioner shall approve a request to relocate the principal office or a
30 branch of a bank if the relocation is to a site within the same vicinity as the original
31 location, or does not result in a material change in the primary service area of the
32 principal office or branch, or is considered important to the economic viability of the
33 bank or the branch, or is otherwise found not to be inconsistent with the public need and
34 convenience.

35 **"§ 53-6-17. Branch closings.**

36 A bank may close a branch upon providing written notice to the Commissioner and
37 the customers of the branch at least 90 days prior to the proposed closing. The notice
38 shall include the date the branch will close and a posting in a conspicuous manner on
39 the branch premises a notice of its intent to close the branch for a period of 30 days
40 prior to the proposed closing date. The consolidation of two or more branches into a
41 single location in the same vicinity shall not be considered a closure subject to the
42 90-day and 30-day notice requirements of this section. To be considered a
43 consolidation, the bank shall request consolidation treatment from the Commissioner,
44 who shall decide, in his or her discretion, whether the branches to be consolidated are

1 considered to be in the same vicinity, with due consideration to the distance between the
2 branches and the nature of the market in which the branches are situated.

3 **"§ 53-6-18. Nonbranch bank business offices.**

4 (a) A bank may establish one or more nonbranch bank business offices as
5 defined by G.S. 53-1-4(45).

6 (1) If a proposed nonbranch bank business office will offer a product,
7 service or other type of business not previously engaged in by the
8 bank, the bank shall provide the Commissioner with written
9 notification of the intent to open the office. The notification shall
10 include the proposed location of the office and a description of the
11 business to be conducted at the office. If the Commissioner does not
12 request additional information or object to its establishment within ten
13 days of the date of receipt of the notification, the nonbranch bank
14 business office shall be deemed approved. In deciding whether to
15 object to the establishment of a nonbranch bank business office, the
16 Commissioner shall consider, without limitation, whether the business
17 proposed to be conducted at the nonbranch bank business office is
18 permissible for a bank, the costs of its establishment and ongoing
19 operation and the impact of the costs on the bank's capital and
20 profitability, and the ability of the bank's management to conduct the
21 proposed business.

22 (2) If a proposed nonbranch bank business office will offer only products,
23 services or other types of business already engaged in by the bank, the
24 bank shall provide the Commissioner with written notification of the
25 intent to open the office.

26 (b) An out-of-state bank may establish and operate a nonbranch bank business
27 office in this State upon written notice to the Commissioner.

28 (c) A bank or an out-of-state bank may close a nonbranch bank business office at
29 any time with notice to the Commissioner.

30 (d) No deposits may be taken at a nonbranch bank business office.

31 **"§ 53-6-19. Operations; suspension.**

32 (a) A bank, any of its branches and any of its nonbranch bank business offices
33 may operate on such days and during such hours, and may observe such holidays, as the
34 bank's board of directors shall designate.

35 (b) Whenever the Commissioner determines that an emergency exists or is
36 pending in this State or any part thereof, the Commissioner may authorize banks
37 operating in the affected area or areas to suspend any or all of their operations in such
38 area or areas for such period or periods as the Commissioner establishes. An emergency
39 is any condition or occurrence which may interfere with a bank's operations or poses an
40 existing or imminent threat to the safety or security of persons or property, or both.

41 (c) In the event that an emergency exists or is pending in this State or any part
42 thereof and a bank operating in the affected area or areas is unable to communicate the
43 existence or pendency of the emergency to the OCOB, an officer of the bank may
44 suspend any or all of the bank's operations in the affected area or areas without the prior

1 approval of the Commissioner. The bank shall give notice of such closing to the
2 Commissioner as soon as practicable.

3 Article 7A

4 Control Transactions; Combinations; Conversions.

5 Part 1. Change in Control.

6 "§ 53-7-101. Control transactions.

7 (a) Except as otherwise expressly permitted by this section, a person shall not
8 engage in a control transaction, as defined by G.S. 53-1-4(21), involving a bank without
9 the prior approval of the Commissioner. A person may contract to engage in a control
10 transaction with the consummation of such control transaction being subject to receipt
11 of the approval of the Commissioner. Each bank shall report to the Commissioner any
12 changes in its directors, president, chief executive officer, chief financial officer, chief
13 loan officer, or chief credit officer by the close of the second day on which the holding
14 company is open for business following such change.

15 (b) The Commissioner may require a person who is obligated to file an
16 application under this Part to appoint an agent resident in this State for service of
17 process upon the filing of such notice or as a condition to the acceptance of such
18 application for review. The application for approval shall be in a form required by the
19 Commissioner and shall be accompanied by such fee as may be required by rule.

20 (c) The following transactions shall not constitute a control transaction requiring
21 the prior approval of the Commissioner:

22 (1) The acquisition of control over voting securities in connection with
23 securing, collecting, or satisfying a debt previously contracted for in
24 good faith and not for the purpose of acquiring control of the bank, if
25 the acquiring person files a notice with the Commissioner, in the form
26 required by the Commissioner, describing such transaction at least 10
27 days before the acquiring person first votes or directs the voting of the
28 voting securities.

29 (2) The acquisition of control over voting securities by a person who has
30 previously engaged in a control transaction with respect to the bank
31 after receiving the approval of the Commissioner under this Article,
32 which approval permits the acquisition of control over additional
33 voting securities, or any person who is an affiliate of the person
34 previously engaging in the approved control transaction with the
35 permission and who is identified in the application submitted for the
36 approval, if the acquiring person files a notice with the Commissioner,
37 in the form required by the Commissioner, describing the transaction
38 at least 10 days before the acquiring person or affiliate thereof first
39 votes or directs the voting of the voting securities.

40 (3) An acquisition of control over voting securities by operation of law,
41 will, or intestate succession, if the acquiring person files a notice with
42 the Commissioner, in the form required by the Commissioner,
43 describing the acquisition or transfer at least 10 days before the
44 acquiring person first votes or directs the voting of the voting
45 securities.

- 1 (4) Bona fide gifts.
2 (5) A transaction exempted by rules, orders, or declaratory rulings of the
3 Commissioner issued because approval of such a transaction is not
4 necessary to achieve the objectives of this Chapter.
5 (6) An acquisition of control over voting securities in a transaction subject
6 to approval under Section 3 of the Bank Holding Company Act, as
7 amended (12 U.S.C. 1842).

8 (d) Upon receipt of a notice described in subsection (c), the Commissioner may,
9 before the 10th day following the receipt, notify the acquiring person of the
10 Commissioner's objection to the exercise of control over the voting securities or may
11 require the acquiring party to submit further information before exercising control over
12 the voting securities. An acquiring person receiving a notice of objection shall be
13 required to submit an application for approval of a control transaction. An acquiring
14 person receiving a notice to submit further information may be required to provide any
15 information which would be included in an application for approval of a control
16 transaction. In the event such an acquiring person is comprised of a group of persons,
17 the Commissioner may require each member of the group to submit relevant
18 information.

19 (e) All voting securities over which control has been acquired by an acquiring
20 person shall not be voted on any matter submitted to a vote of the holders of the
21 outstanding voting securities of the bank and shall be deemed authorized by unissued
22 for purposes of determining the presence of a quorum of holders of voting securities
23 until such time as:

- 24 (1) The Commissioner has approved an application for approval of a
25 control transaction with respect to the voting securities.
26 (2) The transaction is one listed in subsection (c) which does not require
27 the filing of a notice with the Commissioner.
28 (3) The transaction is one listed in subsection (c) which requires a notice
29 to be filed with the Commissioner and the Commissioner has not
30 issued an objection to the notice and any requirement of the
31 Commissioner for the filing of further information has been
32 determined by the Commissioner to have been satisfied.

33 "**§ 53-7-102. Application regarding a control transaction.**"

34 (a) A person seeking approval of a control transaction involving a bank under
35 this Article shall file with the Commissioner:

- 36 (1) An application in the form prescribed by the Commissioner.
37 (2) All filing fees required by a rule of the Commissioner.
38 (3) Such information as is required by a rule of the Commissioner or as is
39 deemed by the Commissioner to achieve the objectives of this Chapter.

40 (b) In the event a person submitting an application is a group of persons, the
41 Commissioner may require each member of the group to submit information relevant to
42 the application.

43 (c) Notwithstanding any laws to the contrary, information about the character,
44 competence or experience of an acquiring person or its proposed management personnel
45 or affiliates shall be deemed a record of the Commissioner and subject to G.S. 53-2-8.

1 **"§ 53-7-103. Public notice.**

2 A person filing an application for approval of a control application shall publish a
3 public notice of the filing of the application not more than 30 days before nor more than
4 10 days after the filing of the application with the Commissioner. The public notice
5 shall contain:

- 6 (1) A statement that the application has been filed with the Commissioner.
7 (2) The name of the applicable bank and the address of its principal office.
8 (3) A statement that any interested person may make written comment on
9 the proposed control transaction and that comments received by the
10 Commissioner within 14 days of the date of the publication of the
11 public notice shall be considered. The public notice shall provide the
12 current mailing address of the Commissioner.

13 **"§ 53-7-104. Actions on control transaction applications.**

14 (a) The Commissioner shall examine the proposed control transaction, including
15 the character, competence, and experience of the acquiring person and its proposed
16 management personnel, to determine whether the interests of the customers and
17 communities served by the bank would be adversely affected by the proposed control
18 transaction. Not later than the 60th day following receipt of a completed application for
19 approval of a control transaction unless extraordinary circumstances require a longer
20 period of review, the Commissioner shall approve or deny the application.

21 (b) The Commissioner may deny an application for approval of a control
22 transaction for any of the following reasons:

- 23 (1) The financial condition of the person seeking approval of a control
24 transaction could jeopardize the financial stability of the bank or the
25 financial interests of its customers.
26 (2) An examination of the character, competence, and experience of any
27 acquiring person or of any of the proposed management personnel
28 shows that it would not be in the interest of the depositors of the bank,
29 or in the interest of the public to permit the person to control the bank.
30 (3) The plans or proposals of the person seeking approval with respect to
31 exercising control over the bank would not be in the best interests of
32 the bank's customers.
33 (4) Upon the effective date of such proposed control transaction, the bank
34 would not be solvent, have inadequate capital, or not be in compliance
35 with this Chapter or rules of the Commissioner.
36 (5) The application for approval is incomplete.
37 (6) If the acquiring person solicits votes for the approval of or consents to
38 the control transaction from the holders of the voting securities of the
39 bank, adequate and complete disclosures of all material information
40 about the proposed control transaction, together with a prominent
41 statement that neither the control transaction nor any solicitation of the
42 holders' votes or consents have been approved by the Commissioner
43 and that any representation to the contrary is a criminal offense, have
44 not been made to the holders.

1 (c) If an application filed under this Part is approved by the Commissioner, the
2 control transaction may become effective. All conditions to approval set forth in the
3 order of the Commissioner shall be enforceable against the person, and each member of
4 a group of persons, receiving the approval.

5 **"§ 53-7-105. Appeal.**

6 Any order of the Commissioner denying an application for approval of a control
7 transaction may be appealed to the Commission by the person filing the application
8 denied as provided in G.S. 53-2-6.

9 **Part 2. Combinations.**

10 **"§ 53-7-201. Combination authority.**

11 With the approval of the Commissioner, a bank may combine with one or more
12 depository institutions or non-depository institutions, provided that the bank is the
13 surviving entity in any combination with a non-depository institution. The application
14 for approval shall be in the form required by the Commissioner and shall be
15 accompanied by a fee as set forth by rule.

16 **"§ 53-7-202. Combination application and investigation.**

17 (a) A bank seeking approval of a combination shall file with the Commissioner
18 an application for approval, copies of the agreement under which the bank proposes to
19 effect the combination, and such additional information as the Commissioner shall
20 require by rule or as is required by the Commissioner in connection with the application
21 in order to achieve the objectives of this Chapter.

22 (b) A bank filing an application for approval of a combination shall publish a
23 public notice of the filing of the application not more than 30 days before nor more than
24 10 days after the filing of the application with the Commissioner. The public notice
25 shall contain:

- 26 (1) A statement that the application has been filed with the Commissioner.
27 (2) The names of the parties to the proposed combination and the
28 addresses of their principal offices.
29 (3) A statement that any interested person may make written comment on
30 the proposed combination and that comments received by the
31 Commissioner within 14 days of the date of the publication of the
32 public notice shall be considered. The public notice shall contain the
33 current mailing address of the Commissioner.

34 (c) The Commissioner shall examine the proposed combination, including the
35 character, competency and experience of the proposed directors and executive officers
36 of the surviving party of the combination, to determine whether the interests of the
37 customers of and communities served by the parties to the combination would be
38 adversely affected by the proposed combination.

39 (d) Notwithstanding any laws to the contrary, information about the character,
40 competence, or experience of the directors and executive officers of the parties to a
41 combination received by the Commissioner shall be subject to G.S. 53-2-7(b).

42 **"§ 53-7-203. Decision on application.**

43 Based on the application and the Commissioner's examination, the Commissioner
44 shall enter an order approving or denying approval of the proposed combination, not
45 later than the 60th day following the date the Commissioner notifies the parties that the

1 application is complete, unless extraordinary circumstances require a longer period of
2 review.

3 **"§ 53-7-204. Interim banks.**

4 The Commissioner may approve an application to organize an interim bank solely
5 for the purpose of effecting a combination under this Article. No interim bank shall
6 transact any business except as is incidental and necessary to its organization and the
7 combination. The Commissioner may set forth in the order approving the organization
8 such additional conditions with respect to the interim bank as the Commissioner deems
9 necessary.

10 **"§ 53-7-205. Fiduciary powers and liabilities of North Carolina financial**
11 **institutions combining or transferring assets and liabilities.**

12 Whenever any North Carolina financial institution or federally chartered institution
13 doing business in this State shall combine with or shall sell to and transfer its assets and
14 liabilities to any other bank, trust institution, savings institution, or other company, as
15 provided by the laws of this State or the United States, all the then existing fiduciary
16 rights, powers, duties and liabilities of the combining transferring institution, including
17 the rights, powers, duties and liabilities as executor, administrator, guardian, trustee, and
18 /or any other fiduciary capacity, whether under appointment by order of court, will,
19 deed, or other instrument, shall upon the effective date of the combination or sale and
20 transfer, vest in, devolve upon, and thereafter be performed by the surviving or
21 transferee company and such latter institution shall be deemed substituted for and shall
22 have all the rights and powers of the transferring institution.

23 **"§ 53-7-206. Combination with federally chartered institution.**

24 A combination by a bank with a federally chartered institution in which the federally
25 chartered institution will be the surviving party shall be subject to approval by the
26 chartering authority of the federally chartered institution in accordance with the laws of
27 the United States.

28 **"§ 53-7-207. Combination with a subsidiary.**

29 (a) With the approval of the Commissioner, a bank may do any one the
30 following:

- 31 (1) Combine with a subsidiary so long as a bank is the resulting entity of
32 the combination.
- 33 (2) Combine a subsidiary with another company if a subsidiary is the
34 resulting entity.
- 35 (3) Combine two or more subsidiaries of two or more banks under
36 common control of the same holding company.

37 The approval of the Commissioner is not required for a combination of a subsidiary
38 and another company when a subsidiary is not the resulting entity, which shall be
39 effected in accordance with organizational law applicable to each, or for a combination
40 of two or more subsidiaries of the same bank.

41 (b) The bank seeking approval of the combination shall file with the
42 Commissioner an application for approval, and such additional information as the
43 Commissioner shall require by rule or as is required by the Commissioner in connection
44 with the application in order to achieve the objectives of this Chapter. The bank shall
45 pay to the Commissioner a fee as set forth by rule.

1 (c) The Commissioner shall examine the proposed combination to determine
2 whether the customers and communities served by the bank would be adversely affected
3 by the combination, the combination would cause the bank to not be solvent, have
4 inadequate capital, or not be in compliance with this Chapter or the rules of the
5 Commissioner, or the combination would present other risks to the safe and sound
6 operation of the bank deemed unacceptable by the Commissioner.

7 **"§ 53-7-208. Fiduciary powers and liabilities of combining banks.**

8 Whenever any bank shall combine with another depository institution and the other
9 depository institution shall be the resulting institution, all the then existing fiduciary
10 rights, powers, duties and liabilities of the combining bank, including its rights, powers,
11 duties and liabilities as a fiduciary, shall, upon the effective date of the combination,
12 vest in the resulting depository institution, and the resulting depository institution shall
13 be deemed substituted for the combining bank for all fiduciary purposes.

14 **"§ 53-7-209. Appeal.**

15 Any order of the Commissioner denying an application for approval of a
16 combination may be appealed to the Commission by a party to the combination as
17 provided in G.S. 53-2-6.

18 **Part 3. Charter Conversion.**

19 **"§ 53-7-301. Conversion to a North Carolina bank charter.**

20 (a) Any depository institution that is not a bank may apply to the Commissioner
21 for permission to convert into a bank and for certification of related amendments to is
22 organizational documents necessary to effect the conversion. The application for
23 approval shall be in the form required by the Commissioner and shall be accompanied
24 by a fee as set forth by rule.

25 (b) A plan of conversion shall be submitted as a part of the application filed with
26 the Commissioner. The Commissioner may require amendment of the plan.

27 (c) The Commissioner shall approve the plan of conversion, as amended if
28 applicable, if upon examination the Commissioner finds that:

- 29 (1) The resulting bank will commence operations in a safe, sound and
30 prudent manner with adequate capital, liquidity, reserves, asset
31 composition and earnings prospects.
- 32 (2) The directors and officers of the converting institution are qualified by
33 character, competency and experience to control and operate the
34 resulting bank in a legal and proper manner.
- 35 (3) The interests of the converting institution's customers, creditors, and
36 shareholders will not be materially and adversely affected by the
37 proposed conversion.
- 38 (4) The plan of conversion is not in violation of the converting institution's
39 applicable organizational law.
- 40 (5) Adequate written disclosure of the material terms of the plan of
41 conversion and other relevant material information has been or will be
42 made to the converting institution's equity ownership interest holders
43 as required by the converting institution's organizational law, including
44 a statement in any such written disclosure that any materials used to
45 solicit the votes of the holders have not been approved by the

1 Commission or the Commissioner and that any representation to the
2 contrary is a criminal offense.

3 (d) Following approval of the plan of conversion, the Commissioner shall
4 supervise and monitor the conversion process in order to determine compliance by the
5 converting institution with the plan of conversion and applicable law.

6 (e) The Commissioner shall authorize by order the consummation of the
7 conversion, issue a charter, and permit the converting institution to file with the
8 Secretary of State and other public officials such documents as are necessary to effect
9 the conversion when the Commissioner determines the conversion process complied
10 with the organizational law applicable to the converting institution and the plan of
11 conversion was approved, if required by applicable organizational law, by such vote of
12 the converting institution's equity ownership interest holders as is required under the
13 organizational law.

14 (f) The Commissioner may provide in the order authorizing the consummation of
15 conversion for the resulting bank to:

16 (1) Wind up any activities legally engaged in by the converting institution
17 at the time of conversion but not permitted to banks.

18 (2) Return any assets and deposit liabilities legally held by the converting
19 institution at the time of the conversion but not permitted to be held by
20 banks.

21 The length, terms, and conditions of the transitional periods described in this
22 subsection shall be subject to the discretion of the Commissioner.

23 (g) Upon the effective date of the conversion, the converting institution shall
24 continue in existence as a bank and all rights, liabilities and obligations of whatever
25 kind of the converting institution shall continue and remain in its new form of
26 organization. Except as may be authorized by the Commissioner pursuant to subsection
27 (f) of this section, the bank shall have only those rights, powers and duties authorized
28 for or imposed upon banks by the laws of this State and the United States. All actions
29 and proceedings to which the converting institution was party prior to conversion shall
30 be unaffected by the conversion and shall proceed as if the conversion had not been
31 effected.

32 **"§ 53-7-302. Appeal.**

33 Any order of the Commissioner denying an application for approval of a conversion
34 to a bank may be appealed to the Commission by the party filing the application as
35 provided in G.S. 53-2-6.

36 **"§ 53-7-303. Conversion by North Carolina bank.**

37 (a) A bank may convert to another form of depository institution under the laws
38 of this State, of another state, or the United States in accordance with applicable law.

39 (b) Upon the effective date of the conversion, the depository institution shall
40 notify the Commissioner of the effective date and file with the Commissioner a copy of
41 its authorization to operate as a depository institution certified by the applicable federal
42 regulator or financial institution regulator.

43 (c) Upon the effective date of the conversion, the resulting depository institution
44 shall cease to be a bank.

1 (d) Upon the effective date of the conversion, all rights, liabilities and obligations
2 of whatever kind of the bank shall continue and remain in its new form of organization
3 as a depository institution organized under the laws of this State, another state, or the
4 United States. All actions and proceedings to which the bank was party prior to
5 conversion shall be unaffected by the conversion and shall proceed as if the conversion
6 had not been effected.

7 Article 8A

8 Bank Supervision

9 **"§ 53-8-1. Commissioner has authority to supervise banks.**

10 (a) Every bank shall be under the supervision of the Commissioner. It shall be
11 the Commissioner's duty to enforce the banking laws through the employees and agents
12 of the OCOB. All banks shall conduct their business in a manner consistent with the
13 banking laws.

14 (b) The Commissioner may enter into written agreements, cease and desist order
15 stipulations, cease and desist orders, consent orders, and similar arrangements with
16 banks and their holding companies, or either of them; may request resolutions be
17 approved by boards of directors of banks and their holding companies, or either of
18 them; and may take other similar corrective actions.

19 (c) Upon written request, the Commissioner may, notwithstanding any other
20 provision of law to the contrary, issue letters of interpretation, advisory opinions, or
21 written guidance on any laws under the Commissioner's jurisdiction, provided that the
22 interpretations, opinions, and guidance shall not have the force and effect of rules of
23 law.

24 **"§ 53-8-2. Assessments and fees.**

25 Banks shall pay the following assessments and fees into the OCOB within 10 days
26 after receipt of an invoice:

27 (1) Annual Assessments. – Each bank shall pay a cumulative assessment
28 based on its total assets, as shown on its report of condition made to
29 the Commissioner as of December 31 each year or the date most
30 nearly approximating the same, not to exceed the amount determined
31 by applying the following schedule:

32 a. On the first fifty million dollars (\$50,000,000.00) of assets, or
33 fraction thereof, ten thousand dollars (\$10,000.00).

34 b. On assets greater than fifty million dollars (\$50,000,000.00) but
35 not more than two hundred fifty million dollars
36 (\$250,000,000.00), fourteen dollars (\$14.00) per hundred
37 thousand dollars (\$100,000.00), or fraction thereof.

38 c. On assets greater than two hundred fifty million dollars
39 (\$250,000,000.00), but not more than five hundred million
40 dollars (\$500,000,000.00), eleven dollars (\$11.00) per hundred
41 thousand dollars (\$100,000.00), or fraction thereof.

42 d. On assets greater than five hundred million dollars
43 (\$500,000,000.00), but not more than one billion dollars
44 (\$1,000,000,000.00), seven dollars (\$7.00) per hundred
45 thousand dollars (\$100,000.00), or fraction thereof.

1 e. On assets greater than one billion dollars (\$1,000,000,000.00),
2 but not more than ten billion dollars (\$10,000,000,000.00), four
3 dollars (\$4.00) per hundred thousand dollars (\$100,000.00), or
4 fraction thereof.

5 f. On assets greater than ten billion dollars (\$10,000,000,000.00),
6 two dollars (\$2.00) per hundred thousand dollars (\$100,000.00),
7 or fraction thereof.

8 (2) Assessments on Trust Assets. – Each bank shall pay an assessment on
9 trust assets held by it in the amount of one dollar (\$1.00) per hundred
10 thousand dollars (\$100,000.00) of trust assets, or fraction thereof;
11 except that banks are not required to pay assessments on real estate
12 held as trust assets.

13 (3) Special Assessments. – If the Commissioner determines that the
14 financial condition or manner of operation of a bank warrants further
15 examination or an increased level of supervision, or in the event of a
16 combination or conversion, the Commissioner may charge, and the
17 institutions shall pay, an assessment equal to the reasonable cost of
18 further examination, increased level of supervision, or supervision
19 with regard to the combination or conversion. The Commissioner's
20 determination of the cost of further examination shall be, in the
21 absence of manifest error, dispositive of the issue of reasonableness.

22 (4) In the first half of each calendar year, the Commission shall review the
23 estimated cost of maintaining each division of the OCOB for the next
24 fiscal year. If the estimated assessments provided for under this
25 Chapter for any division shall exceed the estimated cost of maintaining
26 that division for the next fiscal year, then the Commission may reduce
27 by a uniform percentage any assessments provided for in this Chapter
28 for that division. If the estimated assessments provided for in this
29 Chapter for any division shall be less than the estimated cost of
30 maintaining that division for the next fiscal year, then the Commission
31 may increase by a uniform percentage any assessments provided for in
32 this Chapter for that division to an amount which will increase the
33 amount of assessments to be collected to an amount at least equal to
34 the estimated cost of maintaining that division of the OCOB for the
35 next fiscal year.

36 "**§ 53-8-3. Reports required of banks.**

37 (a) Each bank shall file with the Commissioner, at such times, on such forms and
38 in such formats as the Commissioner may require:

39 (1) Annual reports of conditions.

40 (2) Periodic reports for interim periods within a year, not less than a
41 month in any case.

42 (b) In addition to the reports filed pursuant to subsection (a) of this section, each
43 bank shall provide to the Commissioner copies of all applications and reports of
44 condition filed by it under applicable federal law contemporaneously with the filing of
45 such application and reports by the bank with its primary federal regulator.

1 (c) Nothing in this section shall be interpreted to limit the authority of the
2 Commissioner to request and obtain other information that the commissioner may deem
3 necessary to discharge the duties of the Commissioner under this Chapter.

4 **"§ 53-8-4. Examination by Commissioner.**

5 (a) The Commissioner may examine everything relating to the business of a bank
6 or its holding company, and may appoint examiners to make such examination. The
7 examiners shall file with the Commissioner a full report of the findings resulting from
8 the examination, including any violation of law or any unauthorized or unsafe practices
9 of the bank or the holding company disclosed by the examination.

10 (b) Examinations under subsection (a) of this section shall be conducted pursuant
11 to practices and procedures established by the OCOB, provided the Commissioner may
12 take into consideration the guidelines and requirements for such activity of the primary
13 federal supervisor of the bank or holding company.

14 (c) The Commissioner shall furnish a copy of the report of examination to the
15 bank or the holding company examined and may, upon request, furnish a copy of the
16 report to the primary federal regulator of the bank or its holding company and to the
17 FDIC if not the bank's primary federal regulator.

18 **"§ 53-8-5. Examination of affiliates.**

19 The Commissioner, at his or her discretion, may examine the affiliates of a bank to
20 the extent it is necessary to safeguard the interest of depositors and creditors of the bank
21 and of the general public, and to enforce the provisions of this Chapter. The
22 Commissioner may conduct the examination in conjunction with any examination of the
23 bank or an affiliate thereof conducted by any other state or federal regulatory authority.

24 **"§ 53-8-6. Access to books and records; right to issue subpoenas, administer oaths,**
25 **and examine witnesses.**

26 (a) The Commissioner and the Commissioner's examiners and agents:

27 (1) Shall have free access to all books and records of a bank, its holding
28 company and their affiliates that relate to the business of the bank or
29 the holding company, and the books and records kept by an officer,
30 agent, or employee of the bank or holding company relating to or upon
31 which any record is kept.

32 (2) May subpoena witnesses and administer oaths or affirmations in the
33 examination of any director, officer, agent, or employee of the bank,
34 its holding company or their affiliates or of any other person in relation
35 to affairs, transactions, and conditions of the bank, its holding
36 company, or their affiliates.

37 (3) May require the production of the records, books, papers, contracts,
38 and other documents of a bank, its holding company, and their
39 affiliates.

40 (4) May order that improper entries be corrected on the books and records
41 of a bank, its holding company, and the bank's affiliates.

42 (b) The Commissioner may issue subpoenas duces tecum.

43 (c) If a person fails to comply with a subpoena so issued or a party or witness
44 refuses to testify on any matters, a court of competent jurisdiction, on the application of
45 the Commissioner, may compel compliance by proceedings for contempt as in the case

1 of disobedience of the requirements of a subpoena issued from the court or a refusal to
2 testify in the court.

3 **"§ 53-8-7. Examiner making false report.**

4 If any bank examiner shall knowingly and willfully make any false or fraudulent
5 report of the condition of any bank which the examiner has examined with the intent to
6 aid or abet the bank or its affiliates in committing violations of any provision of the
7 Chapter, or if any examiner shall keep or accept any bribe or gratuity given for the
8 purpose of inducing the examiner not to file any report of examination of any bank, or if
9 any examiner shall neglect to make an examination of any bank by reason of having
10 received or accepted any bribe or gratuity, the examiner shall be guilty of a Class H
11 felony.

12 **"§ 53-8-8. Examiner disclosing confidential information.**

13 If any examiner or other employee of the OCOB fails to keep secret the facts and
14 information obtained in the course of an examination of a bank except as permitted or
15 required by this Chapter, the examiner shall be guilty of a Class 1 misdemeanor.

16 **"§ 53-8-9. Loans or gratuities forbidden.**

17 (a) No bank, or any officer, director, employee or affiliate thereof, shall make an
18 extension of credit or grant any gratuity to the Commissioner, any deputy
19 commissioner, or any bank examiner. Any person violating this provision shall be guilty
20 of a Class 1 misdemeanor and may be fined a sum equal to the amount of the extension
21 made or the gratuity given. If the Commissioner, any deputy commissioner, or any bank
22 examiner accepts an extension of credit or gratuity from any bank, or from any officer,
23 director, employee or affiliate thereof, that individual shall be guilty of a Class 1
24 misdemeanor, and may be fined a sum equal to the extension of credit made or the
25 gratuity given.

26 (b) Notwithstanding the provisions of subsection (a) of this section, the
27 Commissioner may exempt from the application of subsection (a) any deputy
28 commissioner, or any bank examiner with respect to any extension of credit existing
29 upon the hiring of the deputy commissioner or bank examiner by the OCOB and any
30 extension of the term or renewal of such extension of credit made thereafter, so long as
31 the extension of term or renewal has terms and conditions generally available to
32 customers of the applicable bank having generally the same creditworthiness as the
33 deputy commissioner or bank examiner.

34 **"§ 53-8-10. Willfully and maliciously making derogatory reports.**

35 Any person who shall willfully and maliciously make, circulate, transmit, or
36 otherwise communicate any statement, rumor, or suggestion to one or more other
37 persons which is directly or by inference false and derogatory to the financial condition,
38 or affects the solvency or financial standing, of any bank, or who shall counsel, aid,
39 procure, or induce another to make, circulate, transmit or otherwise communicate any
40 such statement or rumor shall be guilty of a Class 1 misdemeanor.

41 **"§ 53-8-11. Misapplication, embezzlement of funds, etc.**

42 (a) Any person who with intent to defraud or injure a bank or any other person,
43 or with intent to deceive an officer of the bank or an employee of the OCOB appointed
44 to examine the affairs of the bank, commits any of the following acts shall be guilty of a
45 felony:

- 1 (1) Embezzles, converts or misapplies any of the money, funds, credit or
2 property of the bank, whether owned by it or held in trust.
- 3 (2) Issues or puts forth a certificate of deposit, draws an order or bill of
4 exchange, makes an acceptance, assigns a note, bond, draft, bill of
5 exchange, mortgage, judgment or decree, or fictitiously borrows or
6 solicits, obtains or receives money for a bank not in good faith.
- 7 (3) Makes or permits to be made a false entry in a record of a bank, or
8 conceals or permits to be concealed by any means or manner, the true
9 and correct entries in a record of a bank.
- 10 (4) Knowingly makes an extension of credit, or permits an extension of
11 credit, by a bank to any insolvent person or to a person who has ceased
12 to exist, or which never had any existence, or upon collateral
13 consisting of stocks or bonds of an insolvent, or non-existent person.
- 14 (5) Makes or publishes, or knowingly permits to be made or published, a
15 false report, statement or certificate as to the true financial condition of
16 a bank.

17 (b) If an offense committed under this section involves money, funds, credit, or
18 property with a value of one hundred thousand dollars (\$100,000.00) or more, it is a
19 Class C felony. If an offense committed under this section involves money, funds,
20 credit, or property with a value of less than one hundred thousand dollars (\$100,000.00),
21 it is a Class H felony.

22 **"§ 53-8-12. Enforcement of the banking laws.**

23 (a) When the Commissioner believes that a violation of the banking laws has
24 occurred or is continuing, the Commissioner may order an examination or investigation
25 of the facts and circumstances relating to the suspected violation.

26 (b) Every bank failing to make and transmit any report which the Commissioner
27 is authorized to require by the Chapter, and in and according to the form prescribed by
28 the Commissioner, within 10 business days after the receipt of a request or requisition
29 therefor, or within the extension of time granted by the Commissioner, shall be notified
30 by the Commissioner, and if the failure continues for five business days after the receipt
31 of the notice, the delinquent bank shall be subject to a penalty of up to one thousand
32 dollars (\$1,000.00) The penalty provided by this section shall be recovered in a civil
33 action in any court of competent jurisdiction, and it shall be the duty of the Attorney
34 General to prosecute all such actions.

35 (c) In addition to any other powers conferred by this Chapter, the Commissioner
36 shall have the power to:

- 37 (1) Order any bank, trust company, or subsidiary thereof, or any director,
38 officer, or employee, or any other person the Commissioner is
39 authorized to regulate, to cease and desist violating any provision of
40 this Chapter or any lawful rule issued thereunder.
- 41 (2) Order any bank, trust company, or subsidiary thereof, or any director,
42 officer, or employee, or any other person the Commissioner is
43 authorized to regulate, to cease and desist from a course of conduct
44 that is unsafe or unsound and which is likely to cause insolvency or

1 dissipation of assets or is likely to jeopardize or otherwise seriously
2 prejudice the interests of a depositor.

3 (d) Consistent with Article 3A of Chapter 150B of the General Statutes, notice
4 and opportunity for hearing shall be provided before any of the actions authorized by
5 this section shall be undertaken by the Commissioner. In cases involving extraordinary
6 circumstances requiring immediate action, the Commissioner may take such action, but
7 shall promptly afford a subsequent hearing upon application to rescind the action taken.

8 (e) The Commissioner shall have the power to subpoena witnesses, compel their
9 attendance, require the production of evidence, administer oaths, and examine any
10 person under oath in connection with any subject related to a duty imposed or a power
11 vested in the Commissioner.

12 (f) The Commissioner may impose a civil money penalty of not more than one
13 thousand dollars (\$1,000.00) for each violation by any bank, trust company, or
14 subsidiary thereof, or any director, officer, or employee, or any other person the
15 Commissioner is authorized to regulate, of an order issued under subdivision (1) of
16 subsection (c) of this section. The Commissioner may impose a civil money penalty of
17 not more than five hundred dollars (\$500.00) per day for each day that a bank, trust
18 company, or subsidiary thereof, or any director, officer, or employee, or any other
19 person the Commissioner is authorized to regulate, violates a cease and desist order
20 issued under subdivision (2) of subsection (c) of this section. The proceeds of civil
21 money penalties imposed pursuant to this subsection, net of documented expenses of
22 examination and enforcement shall be remitted to the Civil Penalty and Forfeiture Fund
23 in accordance with G.S. 115C-457.2.

24 (g) Administrative orders issued by the Commissioner and civil money penalties
25 imposed for violation of such orders shall be subject to review by the Commission
26 which shall have power to amend, modify, or disapprove the same at any regular or
27 special meeting.

28 (h) Notwithstanding any penalty imposed by the Commissioner, the Commission
29 may after notice of and opportunity for hearing, impose, enter judgment for, and enforce
30 by appropriate process, a penalty of not more than ten thousand dollars (\$10,000.00)
31 against any bank, trust company, or subsidiary thereof, or against any of its directors,
32 officers, or employees, or any other person the Commissioner is authorized to regulate,
33 for violating any lawful order of the Commission or Commissioner. The proceeds of
34 civil money penalties imposed pursuant to this subsection, net of documented expenses
35 of examination and enforcement shall be remitted to the Civil Penalty and Forfeiture
36 Fund in accordance with G.S. 115C-457.2.

37 (i) If the Commissioner believes that a violation of a criminal statute has
38 occurred, the Commissioner may refer the matter to the appropriate prosecutorial
39 agency.

40 **"§ 53-8-13. Immediate action orders.**

41 (a) In the event that the Commissioner shall determine that a bank has inadequate
42 capital or insufficient capital or shall determine that immediate action is necessary to
43 cause a bank to conduct its business in a safe and sound manner or to cause a bank or
44 any of its directors, officers or employees to cease from an act or course of conduct that
45 threatens or is reasonably probable of threatening, the financial integrity of the bank, the

1 commissioner may order, as applicable, the bank to take such corrective action as the
2 Commissioner deems necessary or may order the bank, director, officer or employee to
3 immediately cease such conduct, act or course of conduct, to refrain therefrom in the
4 future.

5 (b) Any order made under this section shall be effective upon issuance, provided
6 however, that the Commissioner shall promptly afford a subsequent hearing upon the
7 order as provided in G.S. 53-2-6.

8 **"§ 53-8-14. Supervisory control.**

9 (a) Whenever the Commissioner determines that a bank has insufficient capital
10 and is conducting its business in an unsafe or unsound manner or in any fashion that
11 threatens the financial integrity of the bank, the Commissioner may serve a notice of
12 charges on the bank, requiring it to show cause why it should not be placed under
13 supervisory control. The notice of charges shall specify the grounds for supervisory
14 control, and set the time and place for a hearing. A hearing before the Commissioner
15 shall be held no earlier than seven days, and no later than 15 days after issuance of the
16 notice of charges.

17 (b) If, after the hearing provided in subsection (a) of this section, the
18 Commissioner determines that supervisory control of the bank is necessary to protect
19 the bank's customers, creditors, or the general public, the Commissioner shall issue an
20 order taking supervisory control of the bank. The board of directors of the bank in office
21 on the date of the issuance of the order may appeal the order of the Commissioner to the
22 Commission pursuant to G.S. 53-2-6 no later than 10 days after the date of the issuance
23 of the order.

24 (c) The Commissioner may appoint an agent to supervise and monitor the
25 operations of the bank during the period of supervisory control. During the period of
26 supervisory control, the bank shall act in accordance with any instructions and
27 directions as may be given by the Commissioner, directly or through the agent, and shall
28 not act or fail to act except when to do so would violate an outstanding order of its
29 federal bank supervisory agent or the FDIC if the FDIC is not its primary federal
30 regulator.

31 (d) Within 180 days of the date of the order taking supervisory control, the
32 Commissioner shall issue an order approving a plan for the termination of supervisory
33 control on the 30th day following the issuance of the order. The plan may provide for:

- 34 (1) The issuance by the bank of debt instruments or shares.
35 (2) The appointment or removal of one or more officers and /or one or
36 more directors.
37 (3) The reorganization or combination of the bank.
38 (4) A control transaction with respect to the bank.
39 (5) The dissolution and liquidation of the bank.

40 (e) The reasonable costs of the Commissioner under this section shall be paid by
41 the bank. The Commissioner's determination of the costs shall be, in the absence of
42 manifest error, dispositive of the issue of reasonableness.

43 **"§ 53-8-15. Removal of directors, officers, and employees.**

44 (a) If the Commissioner determines that a director, officer, or employee of a bank
45 has participated in or consented to any violation of this Chapter or an order of the

1 Commissioner, or has engaged in any unsafe or unsound business practice in the
2 operation of the bank, or has been dishonest, incompetent or reckless in the
3 management of the affairs of the bank, or has persistently violated the laws of this State,
4 or repeatedly violated or failed to comply with any of the bank's organizational
5 documents, and that as a result, a situation exists requiring prompt corrective action in
6 order to protect the bank, its customers, or the public, the Commissioner may issue an
7 order temporarily removing the director, officer or employee pending a hearing which
8 shall occur not less ten days after removal. The order shall state that it is a "Temporary
9 Order of Removal" and shall further state the grounds upon which it was issued together
10 with the date, time, and location of a hearing on the matter. For good cause shown, the
11 Commissioner may grant the director, officer or employee subject to the order a ten day
12 extension of the hearing date but the temporary removal order shall remain in full force
13 and effect. Upon a hearing before the Commissioner within the prescribed time, the
14 temporary removal order may be dissolved or made permanent in whole or in part.

15 (b) Any removal under this section is effective in all respects as if the removal
16 had been made by the shareholders of the bank in question.

17 (c) Without the prior written approval of the Commissioner, no director, officer,
18 or employee subject to an order under this section shall be eligible to be elected,
19 re-elected, or appointed any position as a director, officer, or employee of that bank or
20 any other North Carolina financial institution during the period of the order's effect.

21 (d) An individual who is the subject of an order of the Commissioner under this
22 section may appeal the order to the Commission pursuant to G.S. 53-2-6 no later than
23 10 days after the date of issuance of the order.

24 **"§ 53-8-16. Emergency powers.**

25 In the event of a natural disaster or other national, regional, state, or local
26 emergency, the Commissioner may temporarily waive or suspend requirements for
27 compliance by one or more banks with any provisions of this Chapter.

28 **"§ 53-8-17. Interstate regulatory agreements.**

29 The Commissioner may enter into cooperative, coordinating and information sharing
30 agreements with (i) any bank supervisory agency having jurisdiction over an
31 out-of-state bank that operates one or more branches in this State and (ii) any bank
32 supervisory agency of another state in which a bank operates one or more branches with
33 respect to the periodic examination or other supervision of the branches of the
34 out-of-state bank operating in this State or the branches of the bank operating in such
35 other state.

36 Article 9A

37 Supervisory Liquidation; Voluntary Dissolution and Liquidation.

38 **Part 1. General Provisions.**

39 **"§ 53-9-101. Supervisory combinations.**

40 Notwithstanding any other provision of this Chapter, in order to protect the public,
41 including depositors and creditors of a bank, the Commissioner, upon making a finding
42 that a bank is unable to operate in a safe and sound manner and is not reasonably likely
43 to be able to resume safe and sound operations, may authorize or require a combination
44 of the bank, a control transaction or any other transaction, whether or not the
45 Commissioner has taken supervisory control pursuant to G.S. 53-8-14. In ordering any

1 such combination, control transaction or other transaction, the Commissioner may order
2 that a vote of the bank's shareholders shall not be required to effect the combination,
3 control transaction or other transactions.

4 **"§ 53-9-102. Distributions; assignments restricted.**

5 A bank which is in the process of involuntary or voluntary dissolution pursuant to
6 this Article may not make or pay distributions to its shareholders unless the bank has the
7 prior written approval of the Commissioner. No bank shall make any general
8 assignment for the benefit of its creditors except by surrendering possession of its assets
9 to the Commissioner for dissolution and liquidation pursuant to G.S. 53-9-301, and any
10 other purported assignment by the bank for the benefit of its creditors shall be void.

11 **"§ 53-9-103. Cancellation of charter.**

12 Whenever a combination, dissolution, or other transaction occurs by which a bank
13 ceases to exist or ceases to be eligible for a charter, the Commissioner shall by order
14 cancel the bank's charter and shall publish the order in accordance with G.S. 53-1-4(55).
15 A copy of the order shall be filed by the Commissioner with the Secretary of State. The
16 bank shall continue to exist under Chapter 55 of the General Statutes for the purpose of
17 dissolving and liquidating its business and affairs.

18 **Part 2. Voluntary Dissolution and Liquidation.**

19 **"§ 53-9-201. Voluntary dissolution prior to receipt of charter.**

20 A bank in formation may, prior to issuance of its charter, give notice to the
21 Commissioner and, with the Commissioner's consent, abandon its application to the
22 Commissioner and dissolve and liquidate by a majority vote of its board of directors and
23 as provided under Chapter 55 of the General Statutes.

24 **"§ 53-9-202. Voluntary dissolution.**

25 (a) With the approval of the Commissioner, a bank may engage in a voluntary
26 dissolution and liquidation.

27 (b) If, by a majority vote, the board of directors of a bank should determine that
28 in their judgment the bank should be dissolved and liquidated, then the board of
29 directors shall submit immediately to the Commissioner the following documents,
30 certified by an appropriate officer of the bank;

31 (1) The board of directors' resolution.

32 (2) The bank's proposed articles of dissolution.

33 (3) The board of directors' plan for liquidation.

34 (4) Any notices or proxy solicitation materials proposed to be sent to
35 shareholders.

36 (c) The Commissioner shall examine the documents submitted under subsection
37 (b) of this section and such other matters as the Commissioner deems relevant and may
38 issue an order authorizing the bank and its board of directors to proceed with dissolution
39 and liquidation as provided in G.S. 53-9-203. Examination by the Commissioner of the
40 materials referred to in subsection (b)(4) of this section shall not be deemed to be
41 approval of the documents for any purpose.

42 (d) At any annual or special meeting of shareholders called for the purpose of
43 voting upon a proposal for voluntary dissolution of a bank, the shareholders of the bank
44 may, by an affirmative vote, in person or by proxy, of the holders of shares representing
45 at least two-thirds of the votes entitled to be cast on such matters resolve to dissolve and

1 liquidate the bank in accordance with the order of the Commissioner issued under
2 subsection (c) of this section.

3 (e) If a majority of the board of directors of a bank should determine that in its
4 best judgment the bank should be dissolved and liquidated but deems it impractical or
5 otherwise inadvisable to proceed with a vote upon voluntary dissolution by the
6 shareholders, then the board of directors shall immediately forward a certified copy of
7 its resolution to the Commissioner and the Commissioner shall place the bank in
8 receivership pursuant to G.S. 53-9-301.

9 **"§ 53-9-203. Voluntary dissolution and liquidation procedure.**

10 (a) At the appropriate time, the Commissioner shall:

11 (1) Inform the FDIC and the bank's federal supervisory agency if other
12 than the FDIC.

13 (2) Select and appoint a receiver or receiver in liquidation, just as if the
14 liquidation were involuntary under G.S. 53-9-301.

15 (3) Attach a certificate of approval to the articles of dissolution, and the
16 bank shall then file the certified articles with the Secretary of State.

17 (b) Upon the filing of the articles of dissolution with the Secretary of State, it
18 shall be unlawful for the bank to accept any additional deposit accounts or additions to
19 deposit accounts or make any additional extensions of credit, but all its income and
20 receipts in excess of actual expenses of liquidation of the bank shall be applied to the
21 discharge of its liabilities.

22 (c) The persons charged with liquidation of the bank in the approved plan of
23 dissolution shall cause to be published a public notice stating the bank has closed and
24 will dissolve and liquidate and notifying its depositors and creditors to present their
25 claims for payment, specifying the method for doing so.

26 (d) The bank may pay reasonable compensation, subject to the approval of the
27 Commissioner, to the persons charged with its liquidation.

28 (e) Any bank in the process of voluntary dissolution and liquidation shall be
29 subject to examination by the Commissioner and shall furnish any reports required by
30 the Commissioner.

31 (f) If the Commissioner determines at any time that the voluntary liquidation
32 plan is not working, the Commissioner may place the bank in receivership pursuant to
33 G.S. 53-9-301.

34 **Part 3. Receivership; Involuntary Dissolution.**

35 **"§ 53-9-301. Receivership.**

36 (a) The Commissioner may take custody of the books, records, and assets of
37 every kind and character of any bank in the instances established in Part 2 of this Article
38 or if it reasonably appears from one or more examinations made by the Commissioner
39 that any of the following conditions exist:

40 (1) The directors or officers of the bank, or the liquidators of the bank
41 subject to a voluntary plan of liquidation, have neglected, failed, or
42 refused to take action that the Commissioner deems necessary for the
43 protection of the bank.

44 (2) The directors, officers, or liquidators of the bank have impeded or
45 obstructed an examination.

- 1 (3) The business of the bank is being conducted in a fraudulent, illegal, or
2 unsafe manner.
- 3 (4) The bank is in an unsafe or unsound condition to transact business and
4 it is not reasonably probable that it will be able to return to a safe and
5 sound condition.
- 6 (5) The capital of the bank is impaired such that the likely realizable value
7 of its assets is insufficient to pay and satisfy the claims of all
8 depositors and all creditors.
- 9 (6) The directors or officers of the bank, or the liquidators of a bank
10 subject to a voluntary plan of liquidation, have assumed duties or
11 performed acts in excess of those authorized by applicable statutes or
12 regulations, by the bank's organizational documents or plan of
13 liquidation, or without supplying the required bond.
- 14 (7) The bank is insolvent, or is in imminent danger of insolvency or has
15 suspended its ordinary business transactions due to insufficient funds.
- 16 (8) The bank is unable to continue operations.

17 (b) Unless the Commissioner reasonably finds that an emergency exists that
18 requires that the Commissioner take custody immediately, the Commissioner shall first
19 give written notice to the board of directors of the bank specifying which of those
20 circumstances listed in subdivisions (1) through (8) of subsection (a) have been
21 determined to exist, and shall allow a reasonable time in which corrections may be
22 made before a receiver of the bank will be appointed as outlined in subsections (c) and
23 (d) of this section. For these purposes, "written notice" shall be deemed to include any
24 report of examination or other confidential or non-confidential written communication
25 that is either directly from the Commissioner or is joined in by the Commissioner.

26 (c) The Commissioner shall appoint as receiver or co-receivers one or more
27 qualified persons for the purpose of receivership and liquidation of the bank of which
28 the Commissioner has taken custody under subsection (a) of this section, which receiver
29 shall furnish a bond in such form and amount, and with such surety, as the
30 Commissioner may require.

31 (d) The Commissioner may appoint the FDIC or its nominee as the receiver, and
32 the receiver shall be permitted to serve without posting bond. In the event of such an
33 appointment, the Commissioner shall thereafter be forever relieved of any and all
34 responsibility and liability in respect to the receivership and the liquidation of the bank.

35 (e) In the event the Commissioner takes custody of a bank and then appoints a
36 receiver for the bank, the Commissioner shall serve personally at the bank's principle
37 office through the officer who is present and appears to be in charge, the
38 Commissioner's order taking possession and, if applicable, the Commissioner's order
39 appointing a receiver for the bank in liquidation. The Commissioner shall also mail or
40 send, by express delivery to any previous receiver or other legal custodian of the bank
41 and to the Clerk of Superior Court of Wake County. The Commissioner shall give
42 notice to the public of the Commissioner's actions by posting a notice summarizing the
43 Commissioner's actions near the entrance to each branch of the bank, and the
44 Commissioner shall issue a similar public notice as defined in G.S. 53-1-4(58).

1 (f) Whenever a receiver for a bank is duly appointed and qualified under
2 subsection (c) or (d) of this section:

3 (1) The receiver, by operation of law and without any conveyance or other
4 instrument, act or deed, shall succeed to all the rights , titles, powers,
5 and privileges of the bank, its shareholders, officers and directors or
6 any of them, and to the titles to the books, records, and assets of every
7 description of any previous receiver or other legal custodian of the
8 bank. Neither the shareholders, officers or directors, nor any of them
9 shall thereafter, except as expressly provided in this section, have or
10 exercise any rights, powers or privileges or act in connection with any
11 assets or property of any nature of the bank in receivership.

12 (2) the Commissioner may at any time, direct the receiver (unless it is the
13 FDIC) to return the bank to its previous or a newly constituted
14 management and its shareholders.

15 (3) A receiver, other than the FDIC, may, at any time during the
16 receivership and before final liquidation, be removed and a
17 replacement appointed by the Commissioner.

18 (g) A receiver may perform any of the following acts:

19 (1) Demand, sue for, collect, receive and take into possession all the goods
20 and chattels, rights and credits, moneys and effects, lands and
21 tenements, books, papers, choses in action, bills, instruments, notes,
22 intangible interests and property of every description of the bank.

23 (2) Foreclose mortgages, deeds of trust, and other liens granted to the bank
24 to the extent the bank would have the right to do so.

25 (3) Seek injunctions and institute suits for the recovery of any property,
26 damages, or demands existing in favor of the bank, and shall, upon the
27 receiver's own application, be substituted as party plaintiff in the place
28 of the bank in any suit or proceeding pending at the time of the
29 receiver's appointment.

30 (4) Sell, convey and assign any or all of the property rights and interests
31 owned by the bank.

32 (5) Appoint agents and engage independent contractors.

33 (6) Examine papers and investigate persons.

34 (7) Make and carry out agreements with the FDIC for the payment or
35 assumption of the bank's liabilities, in whole or in part, and to sell,
36 convey, transfer, pledge, or assign assets as security or otherwise and
37 to make guarantees in connection therewith.

38 (8) Perform all other acts that might be done by the employees, officers,
39 and directors of the bank.

40 These powers shall be continued in effect until liquidation of the bank or until return
41 of the bank to its prior or newly constituted management.

42 (h) The Commissioner may, unless the FDIC has been appointed as receiver,
43 determine that the receivership proceedings of a bank should be discontinued and the
44 possession of the bank returned to newly constituted management. The Commissioner
45 shall then remove the receiver and restore all the rights, powers, and privileges of the

1 bank's depositors, shareholders, customers, employees, officers, and directors. The
2 return of a bank to a newly constituted management from the possession of a receiver
3 shall, by operation of law and without any conveyance or other instrument, act or deed,
4 vest in the bank the title to all property held by the receiver in the capacity as receiver
5 for the bank.

6 (i) Claims against a bank in receivership shall have the following order of
7 priority for payment:

8 (1) Costs, expenses, and debts of the bank incurred on or after the date of
9 the appointment of the receiver, including compensation for the
10 receiver and a reasonable sum for the time of employees and agents of
11 the OCOB.

12 (2) Claims of holders of deposit accounts.

13 (3) Claims of secured creditors in such order of priority as is established
14 by applicable law or regulation.

15 (4) Claims of general creditors.

16 (5) Claims of holders of the bank's shares in the order of preference
17 established by the bank's organizational documents.

18 (j) All claims of each class described within subsection (i) of this section shall be
19 paid in full so long as sufficient assets are available therefor. Members of a class for
20 which the receiver cannot make payment in full shall be paid an amount proportionate
21 to their total claims.

22 (k) The Commissioner may direct the receiver to make payment of claims for
23 which no provision is made in this section, and may direct the payment of less than all
24 claims within a class.

25 (l) When all assets of the bank have been fully liquidated, all claims and
26 expenses have been paid or settled, and the receiver has recommended a final
27 distribution, the dissolution of the bank in receivership shall be accomplished in the
28 following manner:

29 (1) The receiver shall file with the Commissioner a detailed report, in a
30 form to be prescribed by the Commissioner, of the receiver's acts and
31 proposed final distribution of the bank's assets.

32 (2) Upon the Commissioner's approval of the final report of the receiver,
33 the receiver shall make the final distribution of the bank's assets, in
34 any manner as the Commissioner may direct.

35 (3) When any unclaimed property, including funds due to a known but
36 unlocated depositor, remains following the final distribution of the
37 bank's assets, such property shall be promptly transferred to the State
38 Treasurer to hold in accordance with the provisions of Chapter 115B
39 of the General Statutes.

40 (4) Upon completion of the actions described in this subsection, the
41 process of dissolution and liquidation of the bank shall be deemed
42 complete, and the Commissioner shall issue a certification of
43 completed liquidation to the Secretary of State.

44 (5) Upon completion of the process of dissolution and liquidation, the
45 Commissioner shall cause an examination of the receiver's activities

1 and records to be conducted, with which the receiver shall assist. The
2 accounts of the receiver shall then be ruled upon by the Commissioner,
3 and if approved, the receiver shall be given a final and complete
4 discharge and release.

5 **Part 4. Provisions Relating to Any Dissolution or Receivership.**

6 **"§ 53-9-401. Statute relating to receivers applicable to insolvent banks.**

7 The provisions of G.S. 1-507.1 through 1-507.11, relating to receivers, when not
8 inconsistent with the provisions of this Article, shall apply to the liquidation of banks
9 under this Article.

10 **"§ 53-9-402. Storage and destruction of records.**

11 (a) Any record of a bank that is in or has completed the process of dissolution
12 and liquidation may be kept in compliance with the provisions of G.S. 53-6-14.

13 (b) All records of a bank which has completed the process of dissolution and
14 liquidation shall be held in such place as in the Commissioner's judgment will provide
15 for their proper safekeeping and protection.

16 (c) After the expiration of five years from the date of filing of the certificate of
17 completed liquidation under G.S. 53-9-301, the records of the liquidated bank may be
18 destroyed by the Commissioner using commercially reasonable record destruction
19 procedures.

20 (d) Nothing in this section shall be construed to authorize the destruction by the
21 Commissioner of any of the records of the OCOB made by it with reference to the
22 dissolution, receivership or liquidation of any bank.

23 **"§ 53-9-403. Authority to serve as trustee terminated.**

24 Whenever any bank, which has been, or shall be, appointed trustee in any indenture,
25 deed of trust or other instrument of like character, executed to secure the payment of
26 any bonds, notes or other evidences of indebtedness, has been or shall be placed in
27 receivership, the powers and duties of the bank as trustee in any such instrument shall,
28 upon the entry of an order of the Clerk of Superior Court having jurisdiction under
29 G.S. 53-9-405 appointing a successor trustee, upon a petition as described in this Part,
30 immediately cease.

31 **"§ 53-9-404. Petition for new trustee; upon parties interested.**

32 In all cases of dissolution receivership and liquidation under this Article, the Clerk
33 of Superior Court of any county in which an indenture, deed of trust or other instrument
34 of like character is recorded shall, upon the verified petition of any person interested in
35 any such trust, either as trustee, beneficiary or otherwise, which interest shall be set out
36 in the petition, enter an order directing service, in the manner required by law for
37 service of summons, on all interested parties of a notice requiring all persons having any
38 interest in the trust, to appear at the Clerk's office on a day designated in the order and
39 notice, not less than 30 days from the date of the first publication of the notice, and
40 show cause why a new trustee shall not be appointed. The notice shall set forth the
41 names of the parties to the indenture, deed of trust or other such instrument, and the
42 date the documents were executed and the place of recording.

43 **"§ 53-9-405. Appointment of substitute trustee where no objection made.**

44 If, upon the day fixed in the notice, no person appears and objects to the
45 appointment of a substitute trustee, the Clerk of Superior Court shall, upon such terms

1 as her or she deems advisable to the best interest of all parties, appoint a competent
2 person authorized to act as substitute trustee, who shall be vested with and shall exercise
3 all the powers conferred upon the trustee named in the instrument.

4 **"§ 53-9-406. Hearing where objection made; appeal from order.**

5 If objection is made to the appointment of a new trustee under this Part, the Clerk
6 shall hear and determine the matter, and from his or her decision an appeal may be
7 prosecuted as in cases of special proceedings generally.

8 **"§ 53-9-407. Registration of final order.**

9 The final order of appointment of a new trustee or trustees under this Part shall be
10 certified by the Clerk of Superior Court issuing the order and shall be recorded in the
11 office of the Register of Deeds in the county or counties in which the instrument under
12 which the appointment has been made is recorded.

13 **"§ 53-9-408. Petition and order applicable to all instruments involved.**

14 The petition and the order appointing a new trustee or trustees under this Part may
15 apply to any number of indentures, deeds of trust or other instruments, wherein the same
16 trustee or trustees are named.

17 **"§ 53-9-409. Additional remedy.**

18 The appointment of a substitute trustee as described in this Part shall be in addition
19 to and not substitution for any other remedy provided by law.

20 Article 10A

21 Bank Holding Companies.

22 **Part 1. Change in Control**

23 **"§ 53-10-101. Holdings companies.**

24 Every holding company, as defined in G.S. 53-1-4(38), of a bank shall register with
25 the Commissioner and maintain that registration on an annual basis in the form
26 prescribed by the Commissioner.

27 **"§ 53-10-102. Holding company control transaction.**

28 (a) Except as otherwise expressly permitted by this section, a person shall not
29 engage in a control transaction to which a holding company formed under the laws of
30 this State and having a bank as a subsidiary is a party without the prior approval of the
31 Commissioner. A person may contract to engage in a control transaction with the
32 consummation of the control transaction being subject to receipt of the approval of the
33 Commissioner.

34 (b) The Commissioner may require a person who is obligated to file a notice or
35 an application under this section to appoint an agent resident in this State for service of
36 process upon the filing of the notice or application or as a condition to the acceptance of
37 the notice or application for review. An application for approval shall be in a form
38 required by the Commissioner and shall be accompanied by such fee as may be required
39 by rule.

40 (c) The following transactions shall not constitute a control transaction under this
41 section requiring the prior approval of the Commissioner:

- 42 (1) The acquisition of control over voting securities by a person who has
43 previously engaged in a control transaction with respect to the holding
44 company after receiving the approval of the Commissioner under this
45 Article, which approval permits the acquisition of control over

1 additional voting securities, or any person who is an affiliate of the
2 person previously engaging in the approved control transaction with
3 such permission and who is identified in the application submitted for
4 the approval, if the acquiring person files a notice with the
5 Commissioner, in the form required by the Commissioner, describing
6 the transaction at least ten days before the acquiring person or affiliate
7 thereof first votes or directs the voting of the voting securities.

8 (2) An acquisition of control over voting securities by operation of law,
9 will, or intestate succession, if the acquiring person files a notice with
10 the Commissioner, in the form required by the Commissioner,
11 describing the acquisition or transfer at least ten days before the
12 acquiring person first votes or directs the voting of the voting
13 securities.

14 (3) Bona fide gifts.

15 (4) A transaction exempted by rules, orders, or declaratory ruling s of the
16 Commissioner, issued because approval of the transaction is not
17 necessary to achieve the objectives of this Chapter.

18 (5) An acquisition of control over voting shares exempt from the prior
19 approval requirements set forth in Section 3 of the Bank Holding
20 Company Act, as amended (12 U.S.C. 1842), pursuant to the
21 exceptions described in items (A), (B) or (C) of that Section.

22 (d) Upon receipt of a notice described in subsection (c) of this section, the
23 Commissioner may, before the 10th day following the receipt, notify the acquiring g
24 person of the Commissioner's objection to the exercise of control over the voting
25 securities or may require the acquiring party to submit further information before
26 exercising control over the voting securities. An acquiring person receiving a notice of
27 objection shall be required to submit an application for approval of a control transaction.
28 An acquiring person receiving a notice to submit further information may be required to
29 provide any information which would be included in an application for approval of a
30 control transaction. In the event such an acquiring person is comprised of a group of
31 persons, the Commissioner may require each member of the group to submit relevant
32 information.

33 (e) All voting securities over which control has been acquired by an acquiring
34 person shall not be voted on any matter submitted to a vote of the holders of the
35 outstanding voting securities of the holding company of a bank and shall be deemed
36 authorized but unissued for purposes of determining the presence of a quorum of
37 holders of voting securities until such time as:

38 (1) The Commissioner has approved an application for approval of a
39 control transaction with respect to the voting securities.

40 (2) The transaction is one listed in subsection (c) which does not require
41 the filing of a notice with the Commissioner.

42 (3) The transaction is one listed in subsection (c) which requires a notice
43 to be filed with the Commissioner and the Commissioner has not
44 issued an objection to the notice and any requirement of the

1 Commissioner for the filing of further information had been
2 determined by the Commissioner to have been satisfied.

3 **"§ 53-10-103. Application regarding a control transaction.**

4 (a) A person seeking approval of a control transaction to which a holding
5 company of a bank is a party under this Article shall file the following with the
6 Commissioner:

7 (1) An application in the form prescribed by the Commissioner.

8 (2) All filing fees required by rule of the Commissioner.

9 (3) Any other information required by a rule of the Commissioner or
10 deemed by the Commissioner to achieve the objectives of this Chapter.

11 (b) In the event a person submitting an application is a group of persons, the
12 Commissioner may require each member of the group to submit information relevant to
13 the application.

14 (c) Notwithstanding any laws to the contrary, information about the character,
15 competence or experience of an acquiring person or its proposed management personnel
16 or affiliates shall be deemed a confidential record of the Commissioner subject to
17 G.S. 53-2-7(b).

18 **"§ 53-10-104. Public notice.**

19 A person filing an application for approval of a control transaction shall publish a
20 public notice of the filing of the application not more than 30 days before nor more than
21 10 days after the filing of the application with the Commissioner. The public notice
22 shall contain the following:

23 (1) A statement that the application has been filed with the Commissioner.

24 (2) The name of the applicable holding company and the address of its
25 principle office.

26 (3) A statement that any interested person may make written comment on
27 the proposed control transaction and that comments received by the
28 Commissioner within 14 days of the publication of the public notice
29 shall be considered. The public notice shall provide the current mailing
30 address of the Commissioner.

31 **"§ 53-10-105. Actions on control transaction applications.**

32 (a) The Commissioner shall examines the proposed control transaction, including
33 the character, competence, and experience of the acquiring person and its proposed
34 management personnel, to determine whether the financial stability of the holding
35 company or the interests of the customers served by one or more bank subsidiaries of
36 the holding company would be adversely affected by the proposed control transaction.
37 Not later than the 60th day following receipt of a completed application for approval of a
38 control transaction unless extraordinary circumstances require a longer period of
39 review, the Commissioner shall approve or deny the application.

40 (b) The Commissioner may deny an application for approval of a control for any
41 of the following reasons:

42 (1) The financial condition of the person seeking approval of a control
43 transaction could jeopardize the financial stability of the holding
44 company, one or more bank subsidiaries of the holding company or the
45 financial interests of the bank's customers.

1 (b) A holding company filing an application for approval of a combination shall
2 publish a public notice of the filing of the application not more than 30 days before nor
3 more than 10 days after the filing of the application with the Commissioner. The public
4 notice shall contain the following:

- 5 (1) A statement that the application has been filed with the Commissioner.
6 (2) The names of the parties to the proposed combination and the
7 addresses of its principle offices.
8 (3) A statement that any interested person may make written comment on
9 the proposed combination and that comments received by the
10 Commissioner within 14 days of the publication of the public notice
11 shall be considered. The public notice shall provide the current mailing
12 address of the Commissioner.

13 (c) The Commissioner shall examine the proposed combination including the
14 character, competency and experience of the proposed directors and executive officers
15 of the surviving party of the combination, to determine whether the interests of the
16 customers and communities served by the banks controlled by the parties to the
17 combination would be adversely affected by the proposed combination.

18 (d) Notwithstanding any laws to the contrary, information about the character,
19 competence, and experience of the directors and executive officers of the parties to a
20 combination received by the Commissioner shall be deemed a confidential record of the
21 Commissioner subject to G.S. 53-2-7(b).

22 **"§ 53-10-203. Decision on application.**

23 Based on the application and the Commissioner's examination, the Commissioner
24 shall enter an order approving or denying approval of the proposed combination, not
25 later than the 60th day following the date the Commissioner notifies the parties that the
26 application is complete, unless extraordinary circumstances require a longer period of
27 review.

28 **"§ 53-10-204. Appeal.**

29 Any order of the Commissioner denying an application for approval of a
30 combination may be appealed to the Commission by a party to the combination as
31 provided in G.S. 53-2-6.

32 **Part 3. General Authority**

33 **"§ 53-10-301. Cease and desist order.**

34 Upon a finding that any action of a holding company subject to this Article may be
35 in violation of any banking laws, the Commissioner, after a reasonable notice to the
36 holding company and an opportunity for it to be heard, shall have the authority to order
37 it to cease and desist from such action. If the holding company fails to appeal the
38 decision within ten days of the date of the issuance of the order in accordance with
39 G.S. 53-2-6, and continues to engage in the action in violation of the Commissioner's
40 order to cease and desist such action, it shall be subject to a civil money penalty of
41 twenty thousand dollars (\$20,000.00) for each day it remains in violation of the order.
42 The penalty provision of this section shall be in addition to and not in lieu of any other
43 provision of law applicable to a holding company's failure to comply with an order of
44 the Commissioner. The clear proceeds of the civil money penalty shall be remitted to
45 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

1 **"§ 53-10-302. Other control changes.**

2 Each holding company of a bank shall report to the Commissioner any changes in its
3 directors, president, chief executive officer, or chief financial officer by the close of the
4 second day on which the holding company is open for business following the change."

5 **SECTION 4.** G.S. 1-339.1(a) reads as rewritten:

6 "(a) A judicial sale is a sale of property made pursuant to an order of a judge or
7 clerk in an action or proceeding in the superior or district court, including a sale
8 pursuant to an order made in an action in court to foreclose a mortgage or deed of trust,
9 but is not

10 ...

11 (7) A sale made in the course of liquidation of a bank pursuant to
12 G.S. 53-20, Article 9A of Chapter 53 of the General Statutes, or

13 ..."

14 **SECTION 5.** G.S. 24-1.1A(d) reads as rewritten:

15 "(d) The loans or investments regulated by G.S. 53-45 G.S. 53-5-3 shall not be
16 subject to the provisions of this section."

17 **SECTION 6.** G.S. 25-4-405(c) reads as rewritten:

18 "(c) A transaction, although subject to this Article, is also subject to G.S. 41-2.1,
19 53-146-1, 53-6-6, 54-109.58, and 54B-129, and in case of conflict between the
20 provisions of this section and either of those sections, the provisions of those sections
21 control."

22 **SECTION 7.** G.S. 36C-1-102 reads as rewritten:

23 **"§ 36C-1-102. Scope.**

24 This Chapter applies to any express trust, private or charitable, with additions to the
25 trust, wherever and however created. The term "express trust" includes both
26 testamentary and inter vivos trusts, regardless of whether the trustee is required to
27 account to the clerk of superior court. This Chapter also applies to any trust created for
28 or determined by judgment or decree under which the trust is to be administered in the
29 manner of an express trust. This Chapter does not apply to constructive trusts, resulting
30 trusts, conservatorships, estates, ~~trust~~ Payable on Death accounts as defined in
31 G.S. 53-146-2, G.S. 53-6-7, 54-109.57, 54B-130, and 54C-166, trust funds subject to
32 G.S. 90-210.61, custodial arrangements under Chapter 33A of the General Statutes and
33 Chapter 33B of the General Statutes, business trusts providing for certificates to be
34 issued to beneficiaries, common trust funds, voting trusts, security arrangements,
35 liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest,
36 salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement
37 under which a person is nominee or escrowee for another."

38 **SECTION 8.** G.S. 53-163.1(b) reads as rewritten:

39 "(b) Funds held in a fiduciary capacity by a depository institution, awaiting
40 investment or distribution may, unless prohibited by the instrument creating the
41 fiduciary relationship, be deposited in the commercial or savings or other department of
42 the depository institution, provided that it shall first set aside under control of the trust
43 department as collateral security, the classes of securities listed in G.S. 159-30(c) as
44 being eligible for the investment of funds by local governments and public authorities
45 equal in market value of such deposited funds, or readily marketable commercial bonds

1 having not less than a recognized "A" rating equal to one hundred and twenty-five
2 percent (125%) of the funds so deposited.

3 The securities so deposited or securities substituted therefor as collateral in the trust
4 department by the commercial or savings or other department (as well as the deposit of
5 cash in the commercial or savings or other department by the trust department) shall be
6 held pursuant to the provisions of ~~G.S. 53-43(6)~~. G.S. 53-163.3.

7 If such funds are deposited in a depository institution insured under the provisions of
8 the Federal Deposit Insurance Act, the above collateral security will be required only for
9 that portion of uninvested balances of each trust which are not fully insured under the
10 provisions of that act."

11 **SECTION 9.** Article 14 of Chapter 53 of the General Statutes is amended by
12 adding a new section to read:

13 **§ 53-163.3. Fiduciary funds awaiting investment.**

14 A bank which is a trust institution may maintain separate departments and deposit in
15 its commercial department to the credit of its trust department all uninvested fiduciary
16 funds of cash and secure all such deposits in the name of the trust department whether in
17 consolidated deposits or for separate fiduciary accounts, by segregating and delivering
18 to the trust department such securities as are required by G.S. 53-163.1 for such
19 deposits. Such securities shall be held by the trust department as security for the full
20 payment or repayment of all such deposits, and shall be kept separate and apart from
21 other assets of the trust department. Until all of the deposits shall have been accounted
22 for to the trust department or to the individual fiduciary accounts, no creditor of the
23 bank shall have any claim or right to such security. When fiduciary funds are deposited
24 by the trust department in the commercial department of the bank, the deposit thereof
25 shall not be deemed to constitute a use of such funds in the general business of the bank.
26 To the extent and in the amount such deposits may be insured by the FDIC, the amount
27 of security required for such deposits by this section may be reduced. The Banking
28 Commission shall have power to make such rules as it may deem necessary for the
29 enforcement of the provisions of this section."

30 **SECTION 10.** G.S. 53-167 reads as rewritten:

31 **§ 53-167. Expenses of supervision.**

32 ~~Each licensee, for~~ For the purpose of defraying necessary expenses of the
33 ~~Commissioner of Banks and his agents in supervising them,~~ Office of Commissioner of
34 Banks for supervision, each licensee shall pay to the Commissioner of Banks the fees
35 ~~prescribed in G.S. 53-122 at the times therein specified.~~ an assessment not to exceed
36 eighteen dollars (\$18.00) per one hundred thousand dollars (\$100,000.00) of assets, or
37 fraction thereof, plus a fee of three hundred dollars (\$300.00) per office, provided,
38 however, a consumer finance licensee shall pay a minimum annual assessment of not
39 less than five hundred dollars (\$500.00). The assessment shall be determined on a
40 consumer finance licensee's total assets as shown on its report of condition made to the
41 Commissioner as of December 31 of each year, or the date most nearly approximating
42 that date. If the Commissioner determines that the financial condition or manner of
43 operation of a consumer finance licensee warrants further examination or an increased
44 level of supervision, the licensee may be subject to assessment not to exceed the amount
45 determined in accordance with the schedule set forth in this section."

1 **SECTION 11.** G.S. 53-184(a) reads as rewritten:

2 (a) Each licensee shall maintain all books and records relating to loans made
3 under this Article required by the Commissioner of Banks to be kept, and the
4 Commissioner, his deputy, or duly authorized examiner or agent or employee is
5 authorized and empowered to examine such records at any reasonable time. Such books
6 and records may be maintained in the form of magnetic tape, magnetic disk, optical
7 disk, or other form of computer, electronic or microfilm media available for
8 examination on the basis of computer printed reproduction, video display or other
9 medium acceptable to the Commissioner of Banks; provided, however, that such books
10 and records so kept must be convertible into clearly legible tangible documents within a
11 reasonable time. Any licensee having more than one licensed office may maintain such
12 books and records at a location other than the licensed office location if such location is
13 approved by the Commissioner; provided that, upon such requirements as may be
14 imposed by the Commissioner of Banks, there shall be available to the borrower at each
15 licensed location or such other location convenient to the borrower, as designated by the
16 licensee, complete loan information; and provided further that such books and records
17 of each licensed office shall be clearly segregated. When a licensee maintains its books
18 and records outside of North Carolina, the licensee shall make them available for
19 examination at the place where they are maintained and shall pay for all reasonable and
20 necessary expenses incurred by the Commissioner in conducting such examination.
21 Where the data processing for any licensee is performed by a person other than the
22 licensee, the licensee shall provide to the Commissioner of Banks a copy of a binding
23 agreement between the licensee and the data processor which allows the Commissioner
24 of Banks, his deputy, or duly authorized examiner or agent or employee to examine that
25 particular data processor's activities pertaining to the licensee to the same extent as if
26 such services were being performed by the licensee on its own premises; and,
27 notwithstanding the provisions of G.S. 53-167 and ~~53-122~~, when billed by the
28 Commissioner of Banks, the licensee shall reimburse the Commissioner of Banks for all
29 costs and expenses incurred by the Commissioner in such examination.

30 **SECTION 12.** G.S. 53-188 reads as rewritten:

31 "**§ 53-188. Review of regulations, order or act of Commission or Commissioner.**

32 The Commission may review any rule, regulation, order or act of the Commissioner
33 done pursuant to or with respect to the provisions of this Article. Any person aggrieved
34 by any such rule, regulation, order or act may appeal, pursuant to ~~G.S. 53-92(d),~~
35 ~~G.S.53-2-6(b)~~, to the Commission for review upon giving notice in writing within 20
36 days after such rule, regulation, order or act complained of is adopted, issued or done.
37 Notwithstanding any other provision of law to the contrary, any aggrieved party to a
38 decision of the Commission shall be entitled to petition for judicial review pursuant to
39 ~~G.S. 53-92(d), G.S.53-2-6(b).~~"

40 **SECTION 13.** G.S. 53-208.27(b) reads as rewritten:

41 (b) The Banking Commission may review any rule, regulation, order, or act of
42 the Commissioner done pursuant to or with respect to the provisions of this Article. Any
43 person aggrieved by any such rule, regulation, order, or act may appeal, pursuant to
44 ~~G.S. 53-92(d), G.S.53-2-6(b)~~, to the Commission for review upon providing notice in
45 writing within 20 days after any rule, regulation, order, or act complained of is adopted,

1 issued, or done. Notwithstanding any other provision of law, any aggrieved party to a
2 decision of the Banking Commission shall be entitled to petition for judicial review
3 pursuant to ~~G.S. 53-92(d).~~ G.S. 53-2-6(b)."

4 **SECTION 14.** G.S. 53-215 reads as rewritten:

5 "**§ 53-215. Appeal of Commissioner's decision.**

6 Any aggrieved party in a proceeding under ~~G.S. 53-211.~~ G.S. 53-211,
7 G.S. 53-10-102, or ~~G.S. 53-227.4.~~ G.S. 53-10-201 may, within 20 days after final
8 decision of the Commissioner, appeal in writing any decision to the State Banking
9 Commission. An appeal under this section shall be made pursuant to ~~G.S. 53-92(d).~~
10 G.S. 53-2-6. Notwithstanding any other provision of law, any aggrieved party to a
11 decision of the State Banking Commission shall be entitled to petition for judicial
12 review pursuant to ~~G.S. 53-92(d).~~ G.S. 53-2-6."

13 **SECTION 15.** G.S. 53-217 reads as rewritten:

14 "**§ 53-217. Enforcement.**

15 The Commissioner shall have the power to enforce the provisions of this Article
16 through an action in any court of this State or any other state or in any court of the
17 United States, as provided in ~~G.S. 53-94 and G.S. 53-134,~~ G.S. 53-8-12, for the purpose
18 of obtaining an appropriate remedy for violation of any provision of this ~~Article,~~
19 ~~including such criminal penalties as are contemplated by G.S. 53-134.~~ Article. "

20 **SECTION 16.** G.S. 53-224.11(b) reads as rewritten:

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

31 **SECTION 17.** G.S. 53-224.18 reads as rewritten:

32 "**§ 53-224.18. Authority of State banks to establish interstate branches by merger.**

33 With the prior approval of the Commissioner, a North Carolina State bank may
34 establish, maintain, and operate one or more branches in a state other than North
35 Carolina pursuant to an interstate merger transaction in which the North Carolina State
36 bank is the resulting bank. Not later than the date on which the required application for
37 the interstate merger transaction is filed with the responsible federal bank supervisory
38 agency, the applicant North Carolina State bank shall file an application on a form
39 prescribed by the ~~Commissioner and pay the fee prescribed by regulation pursuant to~~
40 ~~G.S. 53-122.~~ Commissioner. The applicant shall also comply with the applicable
41 provisions of ~~G.S. 53-12.~~ Part 2 of Article 7A of this Chapter. If the Commissioner
42 finds that (i) the proposed transaction will not be detrimental to the safety and
43 soundness of the applicant or the resulting bank, (ii) any new officers and directors of
44 the resulting bank are qualified by character, experience, and financial responsibility to
45 direct and manage the resulting bank, and (iii) the proposed merger is consistent with

1 the convenience and needs of the communities to be served by the resulting bank in this
2 State and is otherwise in the public interest, it shall approve the interstate merger
3 transaction and the operation of branches outside of North Carolina by the North
4 Carolina State bank. Such an interstate merger transaction may be consummated only
5 after the applicant has received the Commissioner's written approval."

6 **SECTION 18.** G.S. 53-224.20 reads as rewritten:

7 "**§ 53-224.20. Notice and filing requirements.**

8 Any out-of-state bank that will be the resulting bank pursuant to an interstate merger
9 transaction involving a North Carolina bank shall notify the Commissioner of the
10 proposed merger not later than the date on which it files an application for an interstate
11 merger transaction with the responsible federal bank supervisory agency, and shall
12 submit a copy of that application to the Commissioner and pay the filing fee required by
13 the Commissioner. All banks which are parties to such interstate merger transaction
14 involving a North Carolina State bank shall comply with ~~G.S. 53-12~~ [Part 2 of Article](#)
15 [7A of this Chapter](#) and with other applicable state and federal laws. Any out-of-state
16 bank which shall be the resulting bank in such an interstate merger transaction shall
17 comply with Article 15 of Chapter 55 of the North Carolina General Statutes."

18 **SECTION 19.** G.S. 53-224.24(a) reads as rewritten:

19 (a) The Commissioner may make such examinations of any branch of an
20 out-of-state state bank established under this Article and located in this State as the
21 Commissioner may deem necessary to determine whether the branch is operating in
22 compliance with the laws of this State and to ensure that the branch is being operated in
23 a safe and sound manner. The provisions of ~~G.S. 53-117~~ [Article 8A of this Chapter](#)
24 apply to such examinations."

25 **SECTION 20.** G.S. 53-224.30 reads as rewritten:

26 "**§ 53-224.30. Appeal of Commissioner's decision.**

27 Any aggrieved party in a proceeding under this Article may, within 20 days after
28 final decision of the Commissioner, appeal, in writing, such decision to the North
29 Carolina State Banking Commission. An appeal under this section shall be made
30 pursuant to ~~G.S. 53-92(d).~~ [G.S. 53-2-6](#). Notwithstanding any other provision of law, any
31 aggrieved party to a decision of the Commission shall be entitled to petition for judicial
32 review pursuant to ~~G.S. 53-92(d).~~ [G.S. 53-2-6](#)."

33 **SECTION 21.** G.S. 53-232.12(b) is repealed.

34 **SECTION 22.** G.S. 53-232.17 reads as rewritten:

35 **§ 53-232.17. Appeal of Commissioner's decision.**

36 Any aggrieved party in a proceeding under this Article may, within 20 days after
37 final decision of the Commissioner, appeal such decision in writing to the Banking
38 Commission. An appeal under this section shall be made pursuant to
39 ~~G.S. 53-92(d).~~ [G.S. 53-2-6](#). Notwithstanding any other provision of law, any aggrieved
40 party to a decision of the Banking Commission shall be entitled to petition for judicial
41 review pursuant to ~~G.S. 53-92(d).~~ [G.S. 53-2-6](#)."

42 **SECTION 23.** G.S. 53-244.120(c) reads as rewritten:

43 "(c) The requirements of ~~G.S. 53-99(b)~~ [G.S. 53-2-7](#) regarding the privacy or
44 confidentiality of any information or material provided under subsections (a) and (b) of
45 this section, and any privilege arising under any other federal or State law with respect

1 to such information or material, shall continue to apply to the information or material
2 after it has been disclosed to an entity described in subsection (a) or (b) of this section.
3 Information or material held by such an entity shall not be subject to disclosure under
4 any State law governing the disclosure to the public of information held by an officer or
5 agency of the State. The entities described in subsections (a) and (b) of this section may
6 share information and material with all State and federal regulatory officials with
7 mortgage industry oversight authority without the loss of privilege or the loss of
8 confidentiality protections provided by State or federal law."

9 **SECTION 24.** G.S. 53-244.121 reads as rewritten:

10 **"§ 53-244.121. Review by Banking Commission.**

11 The Banking Commission may review any rule, regulation, order, or act of the
12 Commissioner made pursuant to or with respect to the provisions of this Article, and
13 any person aggrieved by any rule, regulation, order, or act may, pursuant to
14 ~~G.S. 53-92(d)~~, G.S. 53-2-6, appeal to the Banking Commission for review upon giving
15 20 days' written notice after the rule, regulation, order, or act is adopted or issued. The
16 notice of appeal shall specifically state the grounds for appeal and, in the case of an
17 appeal from a contested case proceeding before the Commissioner, shall set forth in
18 numbered order the assignments of error for review by the Banking Commission.
19 Failure to specify the assignments of error shall constitute grounds to dismiss the
20 appeal. Failure to comply with the briefing schedule as provided by the Banking
21 Commission shall also constitute grounds to dismiss the appeal. Notwithstanding any
22 other provision of law, any party aggrieved by a decision of the Banking Commission
23 shall be entitled to an appeal pursuant to ~~G.S. 53-92(d)~~, G.S. 53-2-6."

24 **SECTION 25.** G.S. 53-252 reads as rewritten:

25 **"§ 53-252. Appeal of Commissioner's decision.**

26 The Commission may review any rule, regulation, order, or act of the Commissioner
27 done pursuant to or with respect to the provisions of this Article. Any person aggrieved
28 by any such rule, regulation, order, or act may appeal, pursuant to ~~G.S. 53-92(d)~~,
29 G.S. 53-2-6, to the Commission for review upon giving notice in writing within 20 days
30 after such rule, regulation, order, or act complained of is adopted, issued, or done.
31 Notwithstanding any other provision of law, any aggrieved party to a decision of the
32 Banking Commission shall be entitled to petition for judicial review pursuant to
33 ~~G.S. 53-92(d)~~, G.S. 53-2-6."

34 **SECTION 26.** G.S. 53-272 reads as rewritten:

35 **"§ 53-272. Appeals.**

36 The Banking Commission may review any rule, regulation, order, or act of the
37 Commissioner done pursuant to or with respect to the provisions of this Article. Any
38 person aggrieved by any such rule, regulation, order, or act may appeal, pursuant to
39 ~~G.S. 53-92(d)~~, G.S. 53-2-6, to the Commission for review upon giving notice in writing
40 within 20 days after such rule, regulation, order, or act complained of is adopted, issued,
41 or done. Notwithstanding any other provision of law, any aggrieved party to a decision
42 of the Banking Commission shall be entitled to petition for judicial review pursuant to
43 ~~G.S. 53-92(d)~~, G.S. 53-2-6."

44 **SECTION 27.** G.S. 53-289 reads as rewritten:

45 **"§ 53-289. Commission may review rules, orders, or acts by Commissioner.**

1 The Commission may review any rule, regulation, order, or act of the Commissioner
2 done pursuant to or with respect to the provisions of this Article. Any person aggrieved
3 by any such rule, regulation, order, or act may appeal, pursuant to ~~G.S. 53-92(d),~~
4 ~~G.S. 53-2-6,~~ to the Commission for review upon giving notice in writing within 20 days
5 after such rule, regulation, order, or act complained of is adopted, issued, or done.
6 Notwithstanding any other provision of law, any aggrieved party to a decision of the
7 Banking Commission shall be entitled to petition for judicial review pursuant to
8 ~~G.S. 53-92(d), G.S. 53-2-6."~~

9 **SECTION 28.** G.S. 53-301(a) reads as rewritten:

10 "(a) Except as otherwise provided in this Article, or when the context clearly
11 indicates that a different meaning is intended, the following definitions shall apply
12 throughout this Article:

13 ...

14 (7) "Branch" has the meaning set forth in ~~G.S. 53-1(1a), G.S. 53-1-4(10).~~

15 ..."

16 **SECTION 29.** G.S. 53-359(b) reads as rewritten:

17 "(b) A merger or share exchange authorized by subsection (a) of this section, shall
18 be governed by Article 11 of Chapter 55 of the General Statutes and ~~G.S. 53-17,~~
19 ~~G.S. 53-7-205.~~ An acquisition or transfer of assets authorized by subsection (a) of this
20 section shall be governed by Article 12 of Chapter 55 of the General Statutes and
21 ~~G.S. 53-17, G.S. 53-7-205."~~

22 **SECTION 30.** G.S. 53-366 reads as rewritten:

23 "**§ 53-366. Applicability of other laws to authorized trust institutions; status of**
24 **State trust company.**

25 (a) Except as otherwise provided in this Article, the following provisions of this
26 Chapter shall apply to authorized trust institutions:

27 (1) ~~G.S. 53-14;~~

28 (2) ~~G.S. 53-16;~~

29 (3) ~~G.S. 53-17;~~ G.S. 53-7-205;

30 (4) ~~G.S. 53-68;~~

31 (5) ~~G.S. 53-77.3;~~

32 (6) ~~G.S. 53-85;~~

33 (7) ~~Article 8~~ Article 8A of this Chapter, except where it clearly appears
34 from the context that a particular provision is not applicable to trust
35 business or trust marketing, and except that the provisions of this
36 Article shall apply in lieu of:

37 a. ~~G.S. 53-95;~~ G.S. 53-8-2.

38 b. ~~G.S. 53-104;~~ G.S. 53-8-3.

39 c. ~~G.S. 53-105;~~ G.S. 53-8-17.

40 d. ~~G.S. 53-106;~~ and

41 e. ~~G.S. 53-107.1(a), (b) and (d).~~

42 (8) ~~Article 9 of this Chapter, except where it clearly appears from the~~
43 ~~context that a particular provision is not applicable to trust business or~~
44 ~~trust marketing, and except that the provisions of this Article shall~~
45 ~~apply in lieu of G.S. 53-119.~~

1 ~~(9) Article 10 of this Chapter, except where it clearly appears from the~~
2 ~~context that a particular provision is not applicable to trust business or~~
3 ~~trust marketing, and except that the provisions of this Article shall~~
4 ~~apply in lieu of G.S. 53-135, and except that G.S. 53-131 and~~
5 ~~G.S. 53-132 shall not apply to authorized trust institutions.~~

6 (10) Article 14 of this Chapter.

7 (b) Rules adopted by the Commissioner to implement those provisions of this
8 Chapter made applicable to authorized trust institutions by subsection (a) of this section
9 also shall apply to authorized trust institutions unless the rules are inconsistent with this
10 Article or it clearly appears from the context that a particular provision is inapplicable to
11 trust business or trust marketing.

12 (c) Activities of authorized trust institutions for clients shall not be considered
13 the sale or issuance of checks under ~~G.S. 53-194. Article 16A of this Chapter.~~

14 (d) Until the Commissioner has issued new rules governing State trust
15 companies, State trust companies shall be governed by rules issued by the
16 Commissioner for banks acting in a fiduciary capacity, except to the extent the rules are
17 inconsistent with this Article or it clearly appears from the context that a particular
18 provision is inapplicable to the business of a State trust company.

19 (e) Notwithstanding any other provision of this Chapter, a State trust company:

20 ~~(1) Is a "banking entity" for purposes of G.S. 53-127;~~

21 (2) Is a "bank" for purposes of laws made applicable to authorized trust
22 institutions in this section and for purposes of G.S. 53-277.

23 (3) Is a trust company organized and doing business under the laws of the
24 State of North Carolina, a substantial part of the business of which is
25 exercising fiduciary powers similar to those permitted national banks
26 under authority of the Comptroller of the Currency, and which is
27 subject by law to supervision and examination by the Commissioner as
28 a banking institution; and

29 (4) Is a financial institution similar to a bank.

30 (f) In the case of a State trust company controlled by a company that has
31 declared itself to be a "financial holding company" under 12 U.S.C. § 1843(l)(1)(C)(i),
32 deposits held for an account shall be deemed to be "trust funds" within the meaning of
33 12 U.S.C. § 1813(p) unless all fiduciary duties with respect to the account are explicitly
34 disclaimed. This subsection does not prescribe the nature or extend the scope of any
35 fiduciary duties; the nature and extent of any fiduciary duties with respect to deposits
36 held for accounts shall be as provided by the instruments and laws applicable to those
37 accounts.

38 (g) Subject to any limitations contained in this Article, an authorized trust
39 institution is a "trust company", a "corporate trustee", a "corporate fiduciary", and a
40 "corporation acting in a fiduciary capacity", as such and similar terms are used in the
41 General Statutes, except where it clearly appears from the context in which those terms
42 are used that a different meaning is intended."

43 **SECTION 31.** G.S. 53-368(c) is repealed.

44 **SECTION 32.** G.S. 53-385 reads as rewritten:

45 **"§ 53-385. Inventory.**

1 Within 90 days after the filing of a notice described in [G.S. 53-279](#), [G.S. 53-379](#), the
2 Commissioner shall file an inventory of the assets and liabilities, not including assets
3 and liabilities held in accounts of the State trust company, of the State trust company. A
4 copy of the inventory shall be filed with the clerk of the superior court of the county in
5 which the action is pending, and a copy shall be kept on file with the State trust
6 company. The inventory shall be open for inspection during usual business hours,
7 provided that nothing herein shall require the State trust company to remain open
8 unnecessarily."

9 **SECTION 33.** G.S. 53-412 reads as rewritten:

10 "**§ 53-412. Commissioner hearings; appeals.**

11 (a) This section does not grant a right to a hearing to a person that is not
12 otherwise granted by governing law.

13 (b) The Commissioner may convene a hearing to receive evidence and argument
14 regarding any matter before the Commissioner for decision or review under the
15 provisions of this Article. The hearing shall be conducted in accordance with Article 3A
16 of Chapter 150B of the General Statutes.

17 (c) Disputes over decisions and actions of the Commissioner under the
18 provisions of this Article shall be "contested cases" as defined in G.S. 150B-2(2).

19 (d) Except as expressly provided otherwise by this Chapter, an order of the
20 Commissioner may be appealed, in writing, to the Commission for review, pursuant to
21 [G.S. 53-92\(d\)](#), [G.S. 53-2-6](#). The Commission may affirm, modify, or reverse a decision
22 of the Commissioner.

23 (e) Petitions for judicial review from the Commission shall be made to the Wake
24 County Superior Court and shall proceed as provided in [G.S. 53-92\(d\)](#), [G.S. 53-2-6](#)."

25 **SECTION 34.** G.S. 54-73 reads as rewritten:

26 "**§ 54-73. Banking laws applicable.**

27 ~~The statutes relating to banks and banking in this State, that is, G.S. 53-1 to 53-158~~
28 ~~[G.S. 53-1 to 53-242].~~ The banking laws as defined in G.S. 53-1-4(4a), insofar as
29 applicable and not in conflict with the provisions hereof shall apply to land mortgage
30 associations."

31
32 **SECTION 35.** G.S. 54B-4(b) reads as rewritten:

33 "(b) As used in this Chapter, unless the context otherwise requires, the term:

34 ...

35 (14a) "Commissioner" means the Commissioner of Banks authorized
36 pursuant to [G.S. 53-92](#), Article 2A of Chapter 53 of the General
37 Statutes.

38 ..."

39 **SECTION 36.** G.S. 54B-34.2(a) reads as rewritten:

40 "(a) A savings and loan association, upon a majority vote of its board of directors,
41 may apply to the Commissioner of Banks for permission to convert to a bank, as defined
42 under [G.S. 53-1\(1\)](#), [G.S. 53-1-4\(4\)](#), or to a national bank or other form of depository
43 institution and for certification of appropriate amendments to its certificate of
44 incorporation to effect the change. Upon receipt of an application to so convert, the
45 Commissioner of Banks shall examine all facts connected with the conversion including

1 receipt of approval of the converting institution's plan of conversion by other federal or
2 state regulatory agencies having jurisdiction over the institution upon completion of its
3 conversion. The depository institution applying for permission to convert shall pay all
4 the expenses and costs of examination."

5 **SECTION 37.** G.S. 54B-46(a) reads as rewritten:

6 "(a) Any bank, as defined in ~~G.S. 53-1~~, G.S. 53-1-4(4), may convert to a stock
7 association as provided in this section."

8 **SECTION 38.** G.S. 54B-47(a) reads as rewritten:

9 "(a) Any State association, upon a majority vote of its board of directors, may
10 apply to the Commissioner of Banks for permission to merge with any bank, as defined
11 in ~~G.S. 53-1~~, G.S. 53-1-4(4)."

12 **SECTION 39.** G.S. 54B-54 reads as rewritten:

13 **"§ 54B-54. Deputy commissioner of Savings Institutions Division.**

14 There shall be a deputy commissioner of the Savings Institutions Division as
15 appointed by the Commissioner in ~~G.S. 53-93.1(b)~~, G.S. 53-2-2. The deputy
16 commissioner authorized by this section shall perform any duties and exercise any
17 powers directed by the Commissioner."

18 **SECTION 40.** G.S. 54B-158 reads as rewritten:

19 **"§ 54B-158. Insured or guaranteed loans.**

20 An association may make insured or guaranteed loans in accordance with the
21 provisions of ~~G.S. 53-45~~, G.S. 53-5-3."

22 **SECTION 41.** G.S. 54C-4(b) reads as rewritten:

23 "(b) Unless the context otherwise requires, the following definitions apply in this
24 Chapter:

25 ...

26 (8a) Commissioner. – The Commissioner of Banks authorized pursuant to
27 ~~G.S. 53-92~~, Article 2A of Chapter 53 of the General Statutes.

28 ..."

29 **SECTION 42.** G.S. 54C-40(a) reads as rewritten:

30 "(a) A State savings bank, upon a majority vote of its board of directors, may
31 apply to the Commissioner of Banks for permission to merge with any bank, as defined
32 in ~~G.S. 53-1~~, G.S. 53-1-4(4), or any association, as defined in G.S. 54B-4."

33 **SECTION 43.** G.S. 54C-47(a) reads as rewritten:

34 "(a) A State savings bank, upon a majority vote of its board of directors, may
35 apply to the Commissioner of Banks for permission to convert to a bank, as defined
36 under ~~G.S. 53-1(1)~~, G.S. 53-1-4(4), or to a national bank or other form of depository
37 institution and for certification of appropriate amendments to its certificate of
38 incorporation to effect the change. Upon receipt of an application to so convert, the
39 Commissioner of Banks shall examine all facts connected with the conversion,
40 including receipt of approval of the converting institution's plan of conversion by other
41 federal or state regulatory agencies having jurisdiction over the institution upon
42 completion of its conversion. The depository institution applying for permission to
43 convert shall pay all the expenses and costs of examination."

44 **SECTION 44.** G.S. 54C-122(e) reads as rewritten:

1 "(e) A savings bank may make insured or guaranteed loans in accordance with
2 ~~G.S. 53-45~~, G.S. 53-5-3."

3 **SECTION 45.** G.S. 116B-55 reads as rewritten:

4 "**§ 116B-55. Contents of safe deposit box or other safekeeping depository.**

5 Contents of a safe deposit box or other safekeeping depository held by a financial
6 organization is presumed abandoned if the apparent owner has not claimed the property
7 within the period established by ~~G.S. 53-43.7~~ G.S. 53-6-13 and shall be delivered to the
8 Treasurer as provided by that section. If the contents include property described in
9 G.S. 116B-53, the Treasurer shall hold the property for the remainder of the applicable
10 period set forth in that section before the property is deemed to be received for purpose
11 of sale under G.S. 116B-65."

12 **SECTION 46.** G.S. 120-123 reads as rewritten:

13 "**§ 120-123. Service by members of the General Assembly on certain boards and
14 commissions.**

15 No member of the General Assembly may serve on any of the following boards or
16 commissions:

17 ...

18 (3a) The State Banking Commission, as established by ~~G.S. 53-92~~ Article
19 2A of Chapter 53 of the General Statutes.

20 ..."

21 **SECTION 47.** G.S. 143-143.9(1) reads as rewritten:

22 "(1) Bank. – A federally insured financial institution including institutions
23 defined under ~~G.S. 53-1(1)~~, G.S. 53-1-4(4), savings and loan
24 associations, credit unions, savings banks and other financial
25 institutions chartered under this or any other state law or chartered
26 under federal law."

27 **SECTION 48.** G.S. 164-11.6(a) reads as rewritten:

28 "(a) The chapters, subchapters, articles and sections now comprising Volume 2B
29 of the General Statutes of North Carolina, and Cumulative Supplement thereto,
30 consisting of ~~G.S. 53-1~~ G.S. 53-1-1 through 82-18, now in force, as amended, are
31 hereby reenacted and designated as Replacement Volume 2B of the General Statutes of
32 North Carolina."

33 **SECTION 49.** G.S. 164-11.7(a) reads as rewritten:

34 "(a) The chapters, subchapters, articles and sections now comprising Volumes 2B
35 and 2C of the General Statutes of North Carolina, and Cumulative Supplements thereto,
36 consisting of ~~G.S. 53-1~~ G.S. 53-1-1 to 105-462, now in force, as amended, are hereby
37 reenacted and designated as 1965 Replacement Volumes 2B, 2C and 2D of the General
38 Statutes of North Carolina."

39 **SECTION 50.** This act becomes effective October 1, 2012.
40



Bill Draft 2011-ROz-10: Banking Law Modernization Act.

2011-2012 General Assembly

Committee:		Date:	April 22, 2012
Introduced by:		Prepared by:	Karen Cochrane-Brown Committee Counsel
Analysis of:	2011-ROz-10		

SUMMARY: *This draft rewrites much of the State's banking law as recommended by the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws.*

CURRENT LAW: The current banking law, Chapter 53 of the General Statutes, has remained largely unchanged since 1931. Since then there have been clarifying amendments and amendments to respond to changes in federal law, especially with regard to interstate banking and branching, and bank holding companies, but there has not been a comprehensive revision of the law.

BILL ANALYSIS: The draft bill renames Chapter 53 of the General Statutes "Regulation of Banks and Other Financial Services" to more accurately reflect the scope of the Chapter.

Articles 1 through 10, 12, and 13 of Chapter 53 are repealed and replaced with the following new Articles:

Article 1A – General Provisions

- Defines the scope and applicability of the Chapter.
- Creates much more comprehensive definitions section than under current law. The draft replaces the definitions under current law that reflects accounting and supervisory capital restrictions with definitions relating to capital adequacy. The definitions also describe the various banking organizations affected by the statute and the federal and state supervisory and regulatory agencies.
- Severability clause.

Article 2A – Commission and Commissioner

- Reauthorizes the Banking Commission. Reduces the membership to 15; adds a representative from the consumer finance industry.
- Reauthorizes the authority of the Commissioner and the Office of Commissioner of Banks.
- Restates the authority of the Commissioner, subject to approval of the Commission to adopt all necessary rules.

- Establishes uniform provisions for hearings and appeals for all statutes administered by the Commission and the Commissioner.
- Revises and expands the list of records which are confidential and extends the legally required confidentiality to legal discovery as well as other requests.

Article 3A – Organization of a Bank

- Authorizes an applicant to seek permission to organize a bank from the Commissioner. With the Commissioner's permission, the organizers may file articles of incorporation with the Secretary of State and continue the organizational process. Upon completion of the initial process, the bank's organization can be done through the corporation with funds held in an escrow account approved by the Commissioner.
- The proposed bank's articles of incorporation must contain information required by Chapter 55 (the Business Corporation Act). The bank cannot begin the business of banking, however, until the Commissioner issues a charter. The Commissioner's decision may be approved, modified, or disapproved by the Commission after a public hearing.
- The Commissioner may dissolve and liquidate a proposed bank if (1) the Commissioner does not recommend issuance of a charter; (2) the Commission denies approval of the charter; or (3) the charter is revoked because the bank does not open within 6 months or for other reasons.

Article 4A – Governance of a Bank

- Provides that banks must be formed as corporations under North Carolina law and shall be operated and controlled by the board of directors. The article establishes the qualifications and liabilities of directors.
- The board must establish at minimum, an audit, executive, and loan committees, and may establish others. Minutes of meetings must be recorded and maintained.
- Establishes the basis upon which the directors may declare a distribution.
- Requires officers and employees to give a bond.
- Provides when a bank may extend credit and engage in transactions with affiliates, directors, executive officers, principal shareholders, and their immediate families.
- Sets reserve fund requirements, including that banks that are not members of the Federal Reserve must meet requirements set by the Commissioner.
- Provides that banks may establish a compliance review committee to monitor and review state and federal laws, regulations, policies, and safe and sound banking practices. Compliance review documents are confidential.

Article 5A – Powers of Banks

- Lists seven express powers, including authority to engage in activities approved by the Commissioner, traditional bank activities, and activities permissible for banks under the FDIC Act. Also, confirms that a bank has all powers "necessary and incident" to carry out the business of banking. The exercise of new powers must get prior approval from the Commissioner.

- Restates the investment authority for banks. Permits investments in depository institutions, other specialized financial institutions, federally chartered institutions; and a variety of state and federal bonds.
- Recodifies former G.S. 53-45 which authorizes banks, and other fiduciaries to invest in securities approved by the Secretary of HUD, FHA, and VA.

Article 6A – Bank Operations

- Establishes the numerous aspects of a bank's lending function. Prohibits loans to finance the purchase of the bank's stock or "to carry" the stock. Provides rules for the maximum amount of loans that may be made to a single borrower. Prevents the Commissioner from adopting rules that preclude a state bank from making loans that would be permitted to a federally chartered institution.
- Authorizes banks to offer all types of deposit accounts and requires the bank to obtain FDIC insurance on accounts.
- Authorizes banks to deal with a minor like an adult for purposes of deposit accounts, including with regard to safe deposit boxes. Also, provides the structure for simple account opened by an adult for a minor. This does not alter the Uniform Transfer to Minors Act.
- Authorizes banks to establish deposit accounts or lease a safe deposit box to persons purporting to be trustees without requiring or seeing further documentation.
- Establishes the incidents of joint accounts and sets specific requirements for joint accounts with right of survivorship and provides a model disclosure form for such accounts.
- Establishes the incidents of Payable on Death (POD) accounts and provides a model disclosure form.
- Establishes the incidents of personal agency accounts and provides a model disclosure form.
- Defines the bank's duty in a number of cases, including payment of the balance of an account of a person who is deceased or under a disability; payment pursuant to a power of attorney; when and how account statements must be sent and are deemed final; safe deposit boxes, unpaid rentals; and reproduction and retention of records.
- Sets the process for establishment of branches. The Commissioner's approval is required to open a branch, to change the location of a branch or a principal office, or to close a branch.
- Sets the process for banks to establish nonbranch bank business offices.
- Provides that the bank management has discretion to determine the days and hours of the bank's operation. The Commissioner may authorize banks to suspend operation during an emergency.
- Requires notice to the Commissioner if an out-of-state bank intends to establish or buy a branch in North Carolina.

Article 7A – Control Transactions; Combinations; Conversions

- Part 1. - Requires the approval of the Commissioner before a person may engage in a control transaction. Authorizes a contract for a control transaction to be executed without approval so long as consummation of the transaction is contingent on the Commissioner's approval. A control transaction applicant must file an application, filing fee, (currently set in rules) and any additional information required with the Commissioner. The applicant must publish public notice of the application. The Commissioner must act on the application within 60 days, absent extraordinary circumstances.
- Part 2. - Sets the process for dealing with combination applications. The application must include copies of agreements under which the combination is proposed and any information required by the Commissioner. Applicant must publish public notice. Commissioner must act on the application within 60 days, absent extraordinary circumstances. Authorizes the establishment of an interim bank to effectuate the combination. Also, authorizes combination with a subsidiary.
- Part 3. - Sets the process by which a financial institution may convert to a North Carolina bank charter. Also, authorizes a state bank to convert to another type of institution.

Article 8A – Bank Supervision

- Restates the Commissioner's authority to supervise banks, including the authority to order an examination or investigation of any suspected violation of the banking laws.
- Sets the schedule of bank assessment brackets. The operation of Office of Commissioner of Banks is funded by these assessments. This provision does not change current law.
- Requires banks to file annual and periodic reports of condition.
- Grants broad authority to the Commissioner to examine a bank, its holding company and affiliates, including access to all books and records of the bank, its holding company or affiliate.
- Makes it a Class H felony for an examiner to knowingly or willfully make a false report after an examination. It is a Class 1 misdemeanor for an examiner or other employee of OCOB to fail to keep secret facts or information obtained in an examination.
- Makes it a Class 1 misdemeanor for a bank to make any loan or give any gratuity to the Commissioner or any examiner. Also, makes it a Class 1 misdemeanor to transmit false statements about financial condition of a bank.
- Authorizes the Commissioner to issue a show cause order to place a bank under supervisory control, when the Commissioner believes the bank has insufficient capital or is being operated in an unsafe or unsound manner that threatens the financial integrity of the bank. The Commissioner may also issue an order temporarily removing an officer, director or employee of the bank if the Commissioner believes the person has violated the law or engaged in unsafe or unsound practices or for other reasons.

- Authorizes the Commissioner to enter cooperative supervisory and information sharing agreements with out-of-state bank regulatory agencies.

Article 9A – Supervisory Liquidation; Voluntary Dissolution and Liquidation

- Part 1. - Authorizes the Commissioner to require a combination or other control transaction, upon a finding that the bank is unable to operate in a safe and sound manner. The Commissioner may order that the transaction take place without the vote of the equity owners of the bank which would otherwise be required. Prohibits a bank in the process of either voluntary or involuntary dissolution from paying distributions to its shareholders without the prior written consent of the Commissioner. Establishes the procedural requirements for the Commissioner to cancel a charter.
- Part 2. – Authorizes a bank, with the Commissioner's approval, to undertake a voluntary dissolution and liquidation.
- Part 3. – Sets forth the process for the Commissioner to take custody of the books, records, and assets of a bank, and appointing a receiver for the purpose of receivership and liquidation of the bank.
- Part 4. – Establishes the provisions relating to any dissolution or receivership, including storage and destruction of records, termination of trusts and appointment of successor or substitute trustee.

Article 10A – Bank Holding Companies

- Part 1. - Requires holding companies to register with the Commissioner and to renew registration annually. Requires the approval of the Commissioner before a person may engage in a control transaction. The process is similar to that required in Article 7A.
- Part 2. – Authorizes combinations of one or more holding companies or other companies with the approval of the Commissioner. The process is similar to that required in Article 7A.
- Part 3. – Authorizes the Commissioner to issue cease and desist orders to holding companies upon a finding that it may have violated the laws of this State. Requires holding companies to notify the Commissioner of changes in key personnel within two business days of the change.

Sections 4 through 49 of the bill make conforming changes to various sections of the General Statutes. These sections contained references to sections of the banking law that are repealed by this act.

EFFECTIVE DATE: This act becomes effective October 1, 2012.

2011-ROz-10-SMRO-46 v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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D

BILL DRAFT 2011-ROfz-11 [v.3] (03/27)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/23/2012 1:25:18 PM

Short Title: Modify Mortgage Regulation Funding.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE LAW DEALING WITH THE ANNUAL
3 ASSESSMENTS OF MORTGAGE BANKERS, MORTGAGE BROKERS, AND
4 MORTGAGE SERVICERS AS RECOMMENDED BY THE JOINT
5 LEGISLATIVE COMMISSION ON THE MODERNIZATION OF NORTH
6 CAROLINA BANKING LAWS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Article 19B of Chapter 53 of the General Statutes is amended
9 by adding a new section to read:

10 "**§ 53-244.100A. Assessments.**

11 (a) For the purpose of meeting the cost of regulation under this Article, each
12 mortgage lender, mortgage broker, and mortgage servicer licensed under this Article
13 shall pay into the OCOB an assessment as provided in this subsection. The annual
14 assessment shall consist of a base amount of two thousand dollars (\$2,000.00) for
15 volumes of no more than one million five hundred thousand dollars (\$1,500,000.00)
16 plus an additional sum, calculated on the loan and servicing dollar volume reported by
17 the licensee to the OCOB for the previous calendar year. If a licensee has both loan and
18 servicing volume, those amounts shall be added together and the assessment shall be
19 calculated from the table below as follows:

Loan and/or Servicing Dollar Volume		Per Thousand
\$1,500,001.00 to	\$2,500,000.00	\$0.07
\$2,500,001.00 to	\$5,000,000.00	\$0.06
\$5,000,001.00 to	\$10,000,000.00	\$0.05
\$10,000,001.00 to	\$30,000,000.00	\$0.04
\$30,000,001.00 to	\$100,000,000.00	\$0.03
\$100,000,001.00 to	\$1,300,000,000.00	\$0.02
More Than \$1,300,000,001.00		\$0.01

20 (b) The Commissioner may collect the assessment provided for in subsection (a)
21 of this section annually or in periodic installments as approved by the Commission.

1 **SECTION 2.** G.S. 53-244.101 reads as rewritten:

2 "**§ 53-244.101. License renewal.**

3 (a) All licenses issued by the Commissioner under the provisions of this Article
4 shall expire annually on the 31st day of December following issuance or on any other
5 date that the Commissioner may determine. The license is invalid after that date and
6 shall remain invalid unless renewed under subsection (b) of this section.

7 (b) A license may be renewed on or after November 1 of each year by complying
8 with the requirements of subsection (c) of this ~~section~~ section. A mortgage loan
9 originator shall pay a nonrefundable renewal fee of one hundred twenty-five dollars
10 (\$125.00) and by paying to the Commissioner, in addition to plus the actual cost of
11 obtaining credit reports and State and national criminal history record checks and ~~of~~
12 processing fees ~~of~~ for the ~~nationwide system~~ Nationwide Mortgage Licensing System
13 and Registry as the Commissioner shall ~~require, nonrefundable renewal fees as follows:~~
14 require.

15 ~~(1) Licensed mortgage lenders, licensed mortgage brokers, and licensed~~
16 ~~mortgage servicers shall pay an annual renewal fee of six hundred~~
17 ~~twenty five dollars (\$625.00), licensed exclusive mortgage brokers~~
18 ~~shall pay an annual renewal fee of three hundred dollars (\$300.00), and~~
19 ~~licensed mortgage lenders and mortgage brokers shall pay three~~
20 ~~hundred dollars (\$300.00) for each licensed branch office.~~

21 ~~(2) Licensed mortgage loan originators shall pay an annual renewal fee of~~
22 ~~one hundred twenty five dollars (\$125.00).~~

23 (c) Licensees may apply to renew a mortgage loan originator, mortgage lender,
24 mortgage broker, and mortgage servicer license. The application for renewal shall
25 demonstrate that:

26 (1) The licensee continues to meet the initial minimum standards for
27 licensure under G.S. 53-244.060;

28 (2) The mortgage loan originator has satisfied the annual continuing
29 education requirements described in G.S. 53-244.102; and

30 (3) The licensee has paid all required fees ~~for renewal of the license.~~ And
31 assessments.

32 (d) If a mortgage lender, mortgage broker, or mortgage servicer's license is not
33 renewed prior to the expiration date, then the licensee shall pay two hundred fifty
34 dollars (\$250.00) as a nonrefundable late ~~fee in addition to the renewal fee set forth in~~
35 ~~subsection (b) of this section.~~ fee. If a mortgage loan originator's license is not renewed
36 prior to the expiration date, then the licensee shall pay a nonrefundable late fee of one
37 hundred dollars (\$100.00) in addition to the renewal fee set forth in subsection (b) of
38 this section. In the event a licensee fails to obtain a reinstatement of the license prior to
39 March 1, the Commissioner shall require the licensee to comply with the requirements
40 for the initial issuance of a license under the provisions of this Article.

41 (e) When required by the Commissioner, each person shall furnish to the
42 Commissioner the person's consent to a criminal history record check and a set of the
43 person's fingerprints in a form acceptable to the Commissioner or to the Nationwide
44 Mortgage Licensing System and Registry. Refusal to consent to a criminal history
45 record check shall constitute grounds for the Commissioner to deny renewal of the

1 license of the person as well as the license of any other person by whom the person is
2 employed, over which the person has control, or as to which the person is the current or
3 proposed qualifying individual or current or proposed branch manager."

4 **SECTION 3.** G.S. 53-244.115 reads as rewritten:

5 "**§ 53-244.115. Investigation and examination authority.**

6 (a) For purposes of initial licensing, license renewal, suspension, conditioning,
7 revocation, or termination, or general or specific inquiry, investigation, or examination
8 to determine compliance with this Article, the Commissioner ~~may, at the expense of the~~
9 ~~applicant or licensee, may~~ access, receive, and use any books, accounts, records, files,
10 documents, information, or evidence, including:

- 11 (1) Criminal, civil, and administrative history information, including
12 nonconviction data;
- 13 (2) Personal history and experience information, including independent
14 credit reports obtained from a consumer reporting agency described in
15 section 603(p) of the Fair Credit Reporting Act; and
- 16 (3) Any other documents, information, or evidence the Commissioner
17 deems relevant to the inquiry, investigation, or examination regardless
18 of the location, possession, control, or custody of the documents,
19 information, or evidence.

20 (b) For purposes of investigating violations or complaints arising under this
21 Article, or for the purposes of examination, the Commissioner may review, investigate,
22 or examine any licensee, individual, or person subject to this Article as often as
23 necessary in order to carry out the purposes of this Article. The Commissioner may
24 interview the officer, principals, person with control, qualified individual, mortgage
25 loan originators, employees, independent contractors, agents, and customers of the
26 licensee, individual, or person concerning their business. The Commissioner may direct,
27 subpoena, or order the attendance of and examine under oath all persons whose
28 testimony may be required about the loans or the business or subject matter of any
29 examination or investigation and may direct, subpoena, or order the person to produce
30 books, accounts, records, files, and any other documents the Commissioner deems
31 relevant to the inquiry. ~~The reasonable cost of the investigation or examination shall be~~
32 ~~charged against the licensee, individual, or person subject to this Article. The~~
33 ~~assessment set forth in G.S. 53-244.100A are for the purpose of meeting the cost of~~
34 ~~regulation under Article 19B. Any investigation or examination which in the opinion of~~
35 ~~the Commissioner of Banks requires extraordinary review, investigation or special~~
36 ~~examination shall be subject to the actual costs of additional expenses and the hourly~~
37 ~~rate for the staff's time, to be determined annually by the Banking Commission.~~

38 (c) Each licensee, individual, or person subject to this Article shall make
39 available to the Commissioner upon request the books and records relating to the
40 operations of the licensee, individual, or person. No licensee, individual, or person
41 subject to investigation or examination under this section may knowingly withhold,
42 abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or
43 other information. Each licensee, individual, or person subject to this Article shall also
44 make available for interview by the Commissioner the officers, principals, persons with
45 control, qualified individuals, mortgage loan originators, employees, independent

1 contractors, agents, and customers of the licensee, individual, or person concerning their
2 business.

3 (d) Each licensee, individual, or person subject to this Article shall make or
4 compile such reports or prepare other information as may be directed or requested by
5 the Commissioner in order to carry out the purposes of this section, including:

- 6 (1) Accounting compilations;
- 7 (2) Information lists and data concerning loan transactions in a format
8 prescribed by the Commissioner;
- 9 (3) Periodic reports, including:
 - 10 a. Annual Report Questionnaire,
 - 11 b. Servicer Activity Report,
 - 12 c. Servicer Schedule of the Ranges of Costs and Fees,
 - 13 d. Lender/Servicer Audited Statements of Financial Condition,
 - 14 e. Broker Certified Statements of Financial Condition, and
 - 15 f. Quarterly Loan Origination Reports.
- 16 (4) Any other information deemed necessary to carry out the purposes of
17 this section.

18 (e) In making any examination or investigation authorized by this Article, the
19 Commissioner may control access to any documents and records of the licensee or
20 person under examination or investigation. The Commissioner may take possession of
21 the documents and records or place a person in exclusive charge of the documents and
22 records in the place where they are usually kept. During the period of control, no
23 individual or person shall remove or attempt to remove any of the documents and
24 records except pursuant to a court order or with the consent of the Commissioner.
25 Unless the Commissioner has reasonable grounds to believe the documents or records of
26 the licensee have been or are at risk of being altered or destroyed for purposes of
27 concealing a violation of this Article, the licensee or owner of the documents and
28 records shall have access to the documents or records as necessary to conduct its
29 ordinary business.

30 (f) In order to carry out the purposes of this section, the Commissioner may:

- 31 (1) Retain attorneys, accountants, or other professionals and specialists as
32 examiners, auditors, or investigators to conduct or assist in the conduct
33 of examinations or investigations;
- 34 (2) Enter into agreements or relationships with other government officials
35 or regulatory associations in order to improve efficiencies and reduce
36 regulatory burden by sharing resources, standardized or uniform
37 methods or procedures, documents, records, information, or evidence
38 obtained under this section;
- 39 (3) Use, hire, contract, or employ public or privately available analytical
40 systems, methods, or software to examine or investigate the licensee,
41 individual, or person subject to this Article;
- 42 (4) Accept and rely on examination or investigation reports made by other
43 government officials, within or without this State; or
- 44 (5) Accept audit reports made by an independent certified public
45 accountant for the licensee, individual, or person in the course of that

1 part of the examination covering the same general subject matter as the
2 audit and may incorporate the audit report in the report of the
3 examination, report of investigation, or other writing of the
4 Commissioner.

5 (g) In addition to the authority granted by G.S. 53-244.113 and G.S. 53-244.115,
6 the Commissioner is authorized to take action, including summary suspension of the
7 license, if the licensee fails, within 20 days or a lesser time if specifically requested for
8 good cause, to:

9 (1) Respond to inquiries from the Commissioner or the Commissioner's
10 designee regarding any complaints filed against the licensee that allege
11 or appear to involve violation of this Article or any law or rule
12 affecting the mortgage lending business;

13 (2) Respond to and cooperate fully with notices from the Commissioner or
14 the Commissioner's designee relating to the scheduling and conducting
15 of an examination or investigation under this Article; or

16 (3) Consent to a criminal history record check. The refusal shall constitute
17 grounds for the Commissioner to deny licensure to the applicant as
18 well as to any entity:

19 a. By whom or by which the applicant is employed,

20 b. Over which the applicant has control, or

21 c. As to which the applicant is the current or proposed qualifying
22 individual or a current or proposed branch manager.

23 (h) The authority of this section shall remain in effect, whether a licensee,
24 individual, or person subject to this Article acts or claims to act under any licensing law
25 of the State, or claims to act without such authority."

26 **SECTION 4.** G.S. 53-244.119(e) is repealed.

27 **SECTION 5.** This act becomes effective October 1, 2012.
28



Bill Draft 2011-ROfz-11: Modify Mortgage Regulation Funding.

2011-2012 General Assembly

Committee:		Date:	April 23, 2012
Introduced by:		Prepared by:	Karen Cochrane-Brown Committee Counsel
Analysis of:	2011-ROfz-11		

SUMMARY: *This draft bill would amend the law relating regulation of the mortgage licensing industry to change the way regulation is funded from a fee based to an assessment based system.*

CURRENT LAW: Under the current law, mortgage lenders, mortgage brokers, mortgage servicers, and loan originators are required to be licensed by the Commissioner of Banks before engaging in the business of mortgage lending, mortgage brokering, or servicing unless exempt.

Mortgage brokers, mortgage lenders, and mortgage servicers, must pay a license application fee of \$1,250.00 and for mortgage loan originators the fee is \$125.00. Each additional branch office must pay a \$300.00 filing fee. In addition, applicants must pay any processing fees required by the Nationwide Mortgage Licensing System and Registry.

Licenses must be renewed annually. The renewal fee for licensed mortgage brokers, mortgage lenders, and mortgage servicers is \$625.00, together with a \$300.00 fee for each branch office. The renewal fee for mortgage loan originators is \$125.00. The late fee for mortgage brokers, mortgage lenders, and mortgage servicers is \$250.00 and for mortgage loan originators is \$100.00.

BILL ANALYSIS: The draft bill would create a new funding mechanism for mortgage regulation by replacing the licensing fees for mortgage companies with an assessment. The assessment would include a minimum level of \$2,000 plus an additional amount based on loan and servicing volume. The draft includes a table setting out the amount per thousand dollars to be applied to various brackets of loan and servicing volume.

The draft also repeals the renewal fees currently paid by lenders, brokers, and servicers.

EFFECTIVE DATE: This act would become effective October 1, 2012.

2011-ROfz-11-SMRO-47 v1