

NORTH CAROLINA GENERAL ASSEMBLY
1961 SESSION

CHAPTER 964
SENATE BILL 251

1 AN ACT CONCERNING THE FORMATION AND OPERATION OF MUTUAL TRUST
2 INVESTMENT COMPANIES UNDER THE SUPERVISION OF THE COMMISSIONER
3 OF BANKS AND INVESTMENT BY CORPORATE FIDUCIARIES OF NORTH
4 CAROLINA IN SHARES OF SUCH COMPANIES.
5

6 The General Assembly of North Carolina do enact:

7 **Section 1.** (Definition) As used in this Act, the term "mutual trust investment
8 company" means a corporation which is:

- 9 (1) An investment company as defined by an Act of Congress entitled
10 "Investment Company Act of 1940" approved August 22, 1940, as amended.
11 (2) Incorporated in compliance with the provisions of this Act to constitute a
12 medium for the common investment of trust funds held in a fiduciary
13 capacity, either alone or with one or more co-fiduciaries, by state banks with
14 trust powers, trust companies and national banks with trust powers which are
15 located in this State.

16 **Sec. 2.** (Authority to Incorporate) Any five or more state banks with trust powers,
17 trust companies and national banks with trust powers located in this State, are authorized,
18 subject to the approval of the Commissioner of Banks and subject to such regulations as he may
19 from time to time prescribe, to cause a mutual trust investment company to be organized and
20 incorporated.

21 **Sec. 3.** (Application of General Corporation Law: Articles of Incorporation) Such a
22 mutual trust investment company shall be incorporated under and be subject to the general
23 corporation laws of this State except as herein otherwise provided. The incorporators
24 subscribing and acknowledging the articles of incorporation shall consist of five or more
25 persons who are officers or directors of the banks and trust companies causing such mutual
26 trust investment company to be incorporated, and the articles of incorporation shall set forth, in
27 addition to the facts specified in the general corporation laws, the name of each bank and trust
28 company causing such corporation to be incorporated and the amount of stock subscribed for
29 by each.

30 **Sec. 4.** (Corporate Requirements and Restrictions)

- 31 (1) The stock of a mutual trust investment company shall be owned only by
32 state banks with trust powers, trust companies and national banks with trust
33 powers located in this State, acting as fiduciaries, and their individual
34 co-fiduciaries, if any, but may be registered in the name of their nominee or
35 nominees.
36 (2) A mutual trust investment company shall have not less than five directors.
37 Such directors need not be stockholders but shall be officers or directors of
38 banks or trust companies which are stockholders.
39 (3) A mutual trust investment company shall make no investment of its assets
40 in:
41 (a) Shares of stock of any one corporation which would cause the total
42 number of such shares held by the mutual trust investment company
43 to exceed 10% of the number of such shares outstanding.

1 (b) Stock of any bank or trust company authorized to do business in
2 North Carolina.

3 (4) A mutual trust investment company may acquire, purchase or redeem its
4 own stock and may, by means of contract, or of its bylaws, bind itself to
5 acquire, purchase or redeem its own stock, but it shall not vote shares of its
6 own stock held by it in any manner.

7 (5) A mutual trust investment company shall not be responsible for ascertaining
8 the investment powers of any fiduciary who may purchase its stock and shall
9 not be liable for accepting funds from a fiduciary in violation of the
10 restrictions of the will, trust indenture or other instrument under which such
11 fiduciary is acting in the absence of actual knowledge of such violation, and
12 shall be accountable only to the Commissioner of Banks and the fiduciaries
13 who are the owners of its stock.

14 (6) Nothing in this Act shall be construed or operate so as to relieve any
15 fiduciary from his responsibility under the will, trust indenture or other
16 instrument under which such fiduciary is acting or from any obligation,
17 responsibility or liability imposed by law upon such fiduciary.

18 (7) Investment policy of a mutual trust investment company shall be fixed by its
19 board of directors. The board of directors shall be responsible for the
20 execution of policies fixed by it, but shall have the power to employ
21 managers, officers and other personnel necessary for the orderly and
22 efficient operation of the company. No investment shall be made except by
23 vote of a majority of the directors at a meeting at which a majority of the
24 directors are present and voting.

25 **Sec. 5. (Purchase of Stock by Fiduciaries; Authority and Restrictions)**

26 (1) State banks with trust powers, trust companies and national banks with trust
27 powers located in this State, acting in a fiduciary capacity either alone or
28 with one or more individual co-fiduciaries, may, if exercising the care of a
29 prudent investor and with the consent of such individual co-fiduciary or co-
30 fiduciaries, if any, invest and re-invest funds held in such fiduciary capacity
31 in the shares of stock of a mutual trust investment company complying with
32 the requirements of this Act except where the will, trust indenture or other
33 instrument under which such fiduciary is acting prohibits such investment;
34 provided, however, that no funds or property of any estate, trust or fund shall
35 be invested in the stock of a mutual trust investment company in an amount
36 which would result in such estate, trust or fund having a total investment
37 therein in excess of the lesser of the following:

38 (a) The maximum amount or percentage that might be invested by such
39 estate, trust or fund, under regulations of the Federal Reserve Board
40 in effect at the time of such investment, in a common trust fund
41 having total assets equal to the total assets of the mutual trust
42 investment company, as increased by the proposed investment.

43 (b) Ten per cent of the assets of the mutual trust investment company as
44 increased by the proposed investment.

45 (2) No funds of any estate, trust or fund shall be invested in the stock of a
46 mutual trust investment company in an amount which would result in any
47 bank or trust company having an aggregate holding in excess of twenty-five
48 per cent of the total issued and outstanding stock of such mutual trust
49 investment company as increased by the amount of the proposed investment.
50 In the event that by reason of reduction of the holdings of stock by other
51 banks or trust companies, mergers of banks or trust companies, or for other

1 reasons the aggregate holding of stock in the mutual trust investment
2 company by any bank or trust company shall become greater than twenty-
3 five per cent of the total issued and outstanding stock, such bank or trust
4 company may retain the stock then "held by it but may not make further
5 investments in such stock until its aggregate holdings have become less than
6 such twenty-five per cent.

- 7 (3) A mutual trust investment company shall be permitted to rely on the written
8 statement of any bank or trust company purchasing its stock, that the
9 purchase complies with the foregoing requirements.

10 **Sec. 6.** (Powers of the Commissioner of Banks)

- 11 (1) The Commissioner of Banks shall have authority to adopt and issue
12 reasonable and uniform rules and regulations to govern the conduct and
13 management of all mutual trust investment companies formed pursuant to
14 this Act and to prescribe, among other things:

15 (a) The records and accounts to be kept by the mutual trust investment
16 company.

17 (b) The methods and standards to be employed in establishing the value
18 of the shares of stock in the mutual trust investment company and of
19 its assets.

20 (c) The procedure to be followed in the sale and redemption of its stock.

- 21 (2) The Commissioner of Banks shall at least once in each calendar year, and
22 whenever he deems it necessary or expedient, examine every such mutual
23 trust investment company. On every such examination of a mutual trust
24 investment company the Commissioner of Banks shall make inquiry as to its
25 financial condition, the policies of its management, whether it is complying
26 with the laws of this State and such other matters as the Commissioner of
27 Banks may prescribe. The reasonable expenses of each examination of a
28 mutual trust investment company pursuant to this Section shall be borne and
29 paid for by such company.

- 30 (3) In the enforcement of this Act and the fulfillment of his responsibilities
31 hereunder, the Commissioner of Banks shall have the same powers and
32 authorities over and with respect to mutual trust investment companies and
33 their directors, officers and employees, including the power to compel the
34 attendance of witnesses and the production of books, records, documents and
35 testimony, the power to require the submission to him of reports and
36 information in such form and at such times as he may prescribe, the power to
37 direct the discontinuation of any practice which he may consider illegal,
38 unauthorized or unsafe, and all other powers and authorities, whether or not
39 specifically mentioned herein, as are given the Commissioner of Banks by
40 the laws of this State with respect to banks and trust companies, in the same
41 manner and with like effect as if mutual trust investment companies were
42 expressly named therein.

43 **Sec. 7.** (Short Title) This Act may be cited as the "Mutual Trust Investment
44 Company Act."

45 **Sec. 8.** (Severability) If any provision of this Act or the application of such
46 provision to any person, corporation or circumstance shall be held invalid, the remainder of this
47 Act or the application of such provisions to persons, corporations or circumstances other than
48 those as to which it is held invalid, shall not be affected thereby.

49 **Sec. 9.** All laws and clauses of laws in conflict herewith are hereby repealed.

50 **Sec. 10.** This Act shall be in full force and effect from and after its ratification.

1
2 1961.

In the General Assembly read three times and ratified, this the 17th day of June,