

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 129
SENATE BILL 482

AN ACT TO MAKE CERTAIN MISCELLANEOUS AMENDMENTS TO THE
BANKING LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-1(3) reads as rewritten:

"(3) Insolvency. – The term 'insolvency' means:

- a. When a bank cannot meet its deposit liabilities as they become due in the regular course of business;
- b. When the actual cash market value of its assets is insufficient to pay its liabilities to depositors and other creditors;
- c. When its reserve shall fall under the amount required by this Chapter, and it shall fail to make good such reserve within 30 days after being required to do so by the Commissioner of Banks; or
- d. Whenever the undivided profits and surplus shall be inadequate to cover losses of the bank, whereby an impairment of the capital stock is created."

Sec. 2. G.S. 53-18 reads as rewritten:

"§ 53-18. Voluntary liquidation.

A bank may go into voluntary liquidation and be closed, and may surrender its charter and franchise as a corporation of this State by the affirmative votes of its stockholders owning two thirds of its stock, such vote to be taken at a meeting of the stockholders duly called by resolution of the board of directors, written notice of which, stating the purpose of the meeting, shall be mailed to each stockholder, or in case of his death, to his legal representative or heirs at law, addressed to his last known residence 10 days previous to the date of said meeting. Whenever stockholders shall by such vote at a meeting regularly called for the purpose, notice of which shall be given as herein provided, decide to liquidate such bank, a certified copy of all proceedings of the meeting at which said action shall have been taken, verified by the oath of the president and ~~cashier~~, secretary, shall be transmitted to the Commissioner of Banks for his approval. If the Commissioner of Banks shall approve the same, he shall issue to the said bank, under his seal, a permit for such purpose. No such permit shall be issued by the Commissioner of Banks until said Commissioner of Banks shall be satisfied that provision has been made by such bank to satisfy and pay off all depositors and all creditors of such bank. If not so satisfied, the Commissioner of Banks shall refuse to issue a permit, and shall be authorized to take possession of said bank and its assets and

business, and hold the same and liquidate said bank in the manner provided in this Chapter. When the Commissioner of Banks shall approve the voluntary liquidation of a bank, the directors of said bank shall cause to be published in a newspaper in the ~~city, town, or county~~ in which such bank is located, or if no newspaper is published in such county, then in a newspaper having a general circulation in such county, a notice that the bank is closing up its affairs and going into liquidation, and notify its depositors and creditors to present their claims for payment. Such notice shall be published once a week for four consecutive weeks. When any bank shall be in process of voluntary liquidation, it shall be subject to examination by the Commissioner of Banks, and shall furnish such reports from time to time as may be called for by the Commissioner of Banks. All unclaimed deposits and dividends remaining in the hands of such bank shall be subject to the provisions of Chapter 116B. Whenever the Commissioner of Banks shall approve it, any bank may sell and transfer to any other bank, either State bank or national bank, all of its assets of every kind upon such terms as may be agreed upon and approved by the Commissioner of Banks and by two-thirds vote of its board of directors. A certified copy of the minutes of any meeting at which such action is taken, under the oath of the president and ~~cashier~~, secretary, together with a copy of the contract of sale and transfer, shall be filed with the Commissioner of Banks. Whenever voluntary liquidation shall be approved by the Commissioner of Banks or the sale and transfer of the assets of any bank shall be approved by the Commissioner of Banks, a certified copy of such approval under seal of the Commissioner of Banks, filed in the office of the Secretary of State, shall authorize the cancellation of the charter of such bank, subject, however, to its continued existence, as provided by this Chapter and the general law relative to corporations."

Sec. 3. G.S. 53-19 reads as rewritten:

"§ 53-19. When Commissioner of Banks may take charge.

The Commissioner of Banks may forthwith take possession of the business and property of any bank to which this Chapter is applicable whenever it shall appear that such bank:

- (1) Has violated its charter or any laws applicable thereto;
- (2) Is conducting its business in an unauthorized or unsafe manner;
- (3) Is in an unsafe or unsound condition to transact its business;
- (4) Has an impairment of its capital stock;
- (5) Has refused to pay its depositors in accordance with the terms on which such deposits were received, or has refused to pay its holders of certificates of indebtedness or investment in accordance with the terms upon which such certificates of indebtedness or investment were sold;
- (6) Has become otherwise insolvent;
- (7) Has neglected or refused to comply with the terms of a duly issued lawful order of the Commissioner of Banks;
- (8) Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination of a duly appointed or authorized examiner of the Commissioner of Banks;

(9) Its officers have refused to be examined upon oath regarding its affairs; or

(10) Has made a voluntary assignment of its assets to trustees.

Such banks may resume business as provided in G.S. 53-37."

Sec. 4. G.S. 53-20(j) reads as rewritten:

"(j) Notice and Time for Filing Claims; Copies Mailed. – Notice shall be given by advertisement once a week for four consecutive weeks in a newspaper published in said county; if no newspaper is published in said county, then in some newspaper having a general circulation in said county, calling on all persons who may have claims against the bank to present the same to the Commissioner of Banks at the office of the bank, and within the time to be specified in the notice, not less, however, than 90 days from the date of the first publication. A copy of this notice shall be mailed to all persons whose names appear as creditors upon the books of the bank. Affidavit by the Commissioner of Banks, or agent mailing the notice, to the effect that said notice was mailed shall be conclusive evidence thereof."

Sec. 5. G.S. 53-20(r) reads as rewritten:

"(r) Action by Commissioner of Banks after Full Settlement. – Whenever the Commissioner of Banks shall have paid all the expenses of liquidation and shall have paid to each and every depositor and creditor of such bank, whose claims shall have been duly proven and allowed, the full amount of such claims, and shall have made proper provision for unclaimed and unpaid deposits and disputed claims and deposits, and shall have in hand other assets of said bank, he shall call a meeting of the stockholders of said bank by giving notice thereof by publication once a week for four consecutive weeks in a newspaper published in said county, or if no newspaper is published in said county, then in a newspaper having general circulation in said county, and by mailing a copy of such notice to each stockholder addressed to him at his address as the same shall appear upon the books of the bank. Affidavit of the officer mailing the notice herein required and of the printer as to the publication shall be conclusive evidence of notice hereunder. At such meeting any stockholders may be represented by proxy and the stockholders shall elect, by a majority vote of the stock present, an agent or agents who shall be authorized to receive from the Commissioner of Banks all the assets of said bank then remaining in his hands; and the Commissioner of Banks shall cause to be transferred and delivered to the said agent, or agents, all such assets of said bank. The Commissioner of Banks shall thereupon cause to be filed in the office of the clerk of the superior court in the pending actions a full and complete report of all his transactions, showing the assets of said bank so transferred, together with the name of the agent or agents receipting for the same; and the filing of such report shall act as a full and complete discharge of the Commissioner of Banks from all further liabilities by reason of the liquidation of the bank. Such agent, or agents, shall convert the assets coming into his hands, or their hands, into cash, and shall make distribution to the stockholders of said bank as herein provided. Said agent, or agents, shall file semiannually a report of all transactions with the superior court of the county in which the bank is located, and with the Commissioner of Banks, and shall be allowed for such services such fees not in excess of five percent (5%), as may be fixed by the court. In

case of death, removal or refusal to act, of any agent or agents elected by the stockholders, the Commissioner of Banks shall, upon report of such action on the part of such agent or agents to the superior court of the county in which the bank is located, turn over to said superior court for the stockholders of said bank, all the remaining assets of the bank, file his report and be discharged from any and all further liability to the stockholders as herein provided. Said assets, when turned over to the superior court hereunder, shall remain in the hands of the superior court until such time as, by order of court or by action of the stockholders, distribution shall be provided for."

Sec. 6. G.S. 53-26 reads as rewritten:

"§ 53-26. Petition for new trustee; service upon parties interested.

In all cases of such insolvency and liquidation mentioned in G.S. 53-25, the clerk of the superior court of any county in which such indenture, deed of trust or other instrument of like character is recorded shall, upon the verified petition of any person interested in any such trust, either as trustee, beneficiary or otherwise, which interest shall be set out in said petition, enter an order directing service on all interested parties either personally or by the publication in ~~some a~~ newspaper published in the county, or ~~in some adjoining county~~—if no newspaper is published in the county where such application is made, then in a newspaper having a general circulation in such county, of a notice directed to all persons concerned, commanding and requiring all persons having any interest in said trust, to be and appear at his office at a day designated in said order and notice, not less than 30 days from the date thereof, and show cause why a new trustee shall not be appointed."

Sec. 7. G.S. 53-37 reads as rewritten:

"§ 53-37. Conditions under which banks may reopen.

Whenever the Commissioner of Banks has taken in possession any bank, such bank may, with the consent of the Commissioner of Banks, resume business upon such terms and conditions as may be approved by the State Banking Commission. When such banks have been taken in possession under the provisions of G.S. 53-20, subsections (a) or (b), such conditions shall be fully stated in writing and a copy thereof shall be filed with the clerk of the superior court in the action required to be commenced in such cases against said bank under the provisions of G.S. 53-20, subsection (c): Provided, however, no bank or banking institution which has been taken in possession by the Commissioner of Banks under the provisions of the State banking laws shall be reopened to receive deposits or for the transaction of a banking business unless and until:

- (1) The bank has been completely restored to solvency;
- (2) The capital stock, if impaired, has been entirely restored in cash; or
- (3) It shall clearly appear to the Commissioner of Banks that such bank may be reopened with safety to the public and such reopening is necessary to serve the business interests of the community."

Sec. 8. G.S. 53-42 reads as rewritten:

"§ 53-42. Impairment of capital; assessments, etc.

The Commissioner of Banks shall notify every bank whose capital shall have become impaired from losses or any other cause, and the surplus and undivided profits

of such bank are insufficient to make good such impairment, to make the impairment good within 60 days of such notice by an assessment upon the stockholders thereof, and it shall be the duty of the officers and directors of the bank receiving such notice to immediately call a special meeting of the stockholders for the purpose of making an assessment upon its stockholders sufficient to cover the impairment of the capital, payable in cash, at which meeting such assessment shall be made: Provided, that such bank may reduce its capital to the extent of the impairment, as provided in G.S. 53-11. If any stockholder of such bank neglects or refuses to pay such assessment as herein provided, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder or stockholders to be sold at public auction, upon 30 days' notice given by posting such notice of sale in the office of the bank and by publishing such notice in a newspaper in the ~~place~~ county where the bank is located, and if none therein, a newspaper ~~circulating~~ having general circulation in the county in which the bank is located, to make good the deficiency, and the balance, if any, shall be returned to the delinquent shareholder or shareholders. If any such bank shall fail to cause to be paid in such deficiency in its capital stock for three months after receiving such notice from the Commissioner of Banks, the Commissioner of Banks may forthwith take possession of the property and business of such bank until its affairs be finally liquidated as provided by law. A sale of stock, as provided in this section, shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall make the certificate null and void, and a new certificate shall be issued by the bank to the purchaser of such stock."

Sec. 9. G.S. 53-43(3) reads as rewritten:

"(3) To purchase, hold, and convey real estate for the following purposes:

- a. Such as shall be necessary for the convenient transaction of its business, including furniture and fixtures, with its banking offices and other spaces to rent as a source of income, which investment shall not exceed fifty percent (50%) of its unimpaired capital fund: Provided, that this fifty percent (50%) limitation shall not apply to banking houses, furniture and fixtures leased for the purposes set forth in this subdivision. Provided, further, that if any bank shall demonstrate to the satisfaction of the Commissioner of Banks that an investment of more than fifty percent (50%) of its unimpaired capital fund in its banking houses, furniture and fixtures, would promote the convenience of the general public in transacting its banking business and would not adversely affect the financial stability of the bank, the Commissioner of Banks may, in his discretion, authorize any bank to invest more than fifty percent (50%) of its unimpaired capital fund in its banking houses, furniture and fixtures.
- b. Such as is mortgaged to it in good faith by way of security for loans made or moneys due to such banks.

- c. Such as has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or in settlements affecting security of such debts. All real property referred to in this subdivision shall be sold by such bank within ~~one year~~ five years after it is acquired unless, upon application by the board of directors, the Commissioner of Banks extends the time within which such sale shall be made. Any and all powers and privileges heretofore granted and given to any person, firm, or corporation doing a banking business in connection with a fiduciary and insurance business, or the right to deal to any extent in real estate, inconsistent with this Chapter, are hereby repealed."

Sec. 10. G.S. 53-46 reads as rewritten:

"§ 53-46. Limitations on investments in securities.

The investment in any bonds or other debt obligations of any one firm, individual, or corporation, unless it be the obligations of the United States, or agency thereof, or other obligations guaranteed by the United States Government, State of North Carolina, or other state of the United States, ~~or of some city, town, township, county, school district,~~ or other political subdivision of the State of North Carolina, or other state of the United States in which the bank maintains a branch, shall at no time ~~be more than twenty percent (20%) of the unimpaired capital fund of any bank to an amount not in excess of two hundred fifty thousand dollars (\$250,000); and not more than ten percent (10%) of the unimpaired capital fund in excess of two hundred fifty thousand dollars (\$250,000).~~ exceed fifty thousand dollars (\$50,000) plus ten percent (10%) of all amounts in excess of two hundred fifty thousand dollars (\$250,000) of the bank's unimpaired capital fund."

Sec. 11. Article 6 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ 53-46.1. Investments in mutual funds.

Subject to rules adopted by the Banking Commission, a bank may invest a portion of its unimpaired capital in mutual funds. Any limitation imposed by rule on the amount of such investment shall be in addition to a bank's limitations on investment in stocks provided in G.S. 53-47."

Sec. 12. G.S. 53-54 reads as rewritten:

"§ 53-54. Transactions not performed during banking hours.

Nothing in any law of this State shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank in this State, because done or performed during any time other than regular banking hours: ~~Provided, that nothing herein shall be construed to compel any bank in this State, which by law or custom is entitled to close at 12 noon on any Saturday, or for the whole part day of any legal holiday, to keep open for the transaction of business, or to perform any of the acts or transactions aforesaid on any Saturday after such hour or on any legal holiday, except~~

at its option. hours. Nothing herein shall be construed to require a bank doing business in this State to be open when it may otherwise lawfully be closed or to prohibit a bank from conducting a transaction at times other than its regularly scheduled hours of operation."

Sec. 13. G.S. 53-62(e) reads as rewritten:

~~"(e) A bank may discontinue a branch office upon resolution of its board of directors or board of managers. Upon the adoption of such a resolution, the bank shall file a certification with the Commissioner of Banks specifying the location of the branch office to be discontinued and the date upon which it is proposed that the discontinuance shall be effective. This certificate must state the reasons for the closing of such branch and indicate that the needs and conveniences of the community would still be adequately met. Notice stating the intention to discontinue said branch shall be published in a newspaper serving such community once a week for four consecutive weeks before any certificate requesting discontinuance is filed with the Commissioner of Banks. No such branch may be discontinued until approved by the Commissioner of Banks, who shall first hold a public hearing thereon, if so requested by any interested party.~~

A bank may, upon resolution by the board of directors, discontinue a branch office subject to the following:

- (1) The bank shall notify the Commissioner in writing of its intent to close a branch not later than 90 days prior to the proposed closing date. Such notice shall include a detailed statement of the reasons for the decision to close a branch and statistical or other information in support of such reasons.
- (2) The bank shall provide a notice of its intent to close a branch to its customers. Such notice shall be posted in a conspicuous manner on the branch premises for a period of 30 days prior to the proposed closing date, and shall either be included in at least one of any regular account statements mailed to customers of such branch, or in a separate mailing to such customers. The later notice shall be given at least 90 days prior to the proposed closing date.

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

Sec. 14. G.S. 53-63 reads as rewritten:

"§ 53-63. Unlawful issuing of certificate of deposit.

It shall be unlawful for any bank to issue any certificate of deposit or other negotiable instrument of its indebtedness to the holder thereof except for lawful money of the United States, checks, drafts, or bills of exchange which are the actual equivalent of such money; ~~nor shall such moneys, checks, drafts, or bills of exchange be the proceeds of any note given in payment of the purchase price of any stock. money.~~ Any officer or employee of any bank violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

Sec. 15. G.S. 53-77.1A reads as rewritten:

"§ 53-77.1A. Days and hours of operation.

~~(a) A bank as defined at G.S. 53-1 or G.S. 53-136, including national banking associations and Federal Reserve banks, or any branch of the foregoing, located in this State, shall operate not less than five days per week. On one day of the week each bank and its branches shall remain open for not less than seven hours, three of which shall be after 3 o'clock p.m.~~

~~(b) In addition to the minimum hours required of a bank and its branches in subsection (a), a bank and its branches may operate on such days and during such hours as the bank deems appropriate.~~

~~(c) A limited service facility may operate on such days of the week and during such hours as the bank deems appropriate.~~

~~(d) A bank shall give such notice of the days and hours during which it and its branches and limited service facilities shall operate as required by the Commissioner of Banks. Except as provided in G.S. 53-77.2A, a bank as defined in G.S. 53-1 or G.S. 53-136, including national banking associations and federal reserve banks, or any branch or limited service facility of the foregoing located in this State, may operate on such days and during such hours as the board of directors shall designate.~~

Sec. 16. G.S. 53-78 reads as rewritten:

"§ 53-78. Appointment of executive and loan committees by directors.

The board of directors shall appoint an executive committee or committees, each of which shall be composed of at least three of its members with such duties and powers as are defined by the regulations or bylaws, who shall serve until their successors are appointed. Such executive committee or committees shall meet as often as the board of directors may require, except that the executive committee or committees shall meet at least once during each month in which there is no meeting of the board of directors, and approve or disapprove all loans and investments. All loans and investments shall be made under such rules and regulations as the board of directors may prescribe.

The board of directors may appoint, in addition to the executive committee or committees, a general loan committee, the membership of which shall include at least three directors and such officers of the bank as may be appointed, with such duties and powers with respect to making loans and investments as are defined in the bylaws or by resolution of the board of directors, the members of such general loan committee to serve until their successors are appointed. Such general loan committee, if appointed, shall meet as often as the bylaws or resolution of the board of directors may require, which shall not be less frequently than once each month, and approve or disapprove all such loans and investments as may be required by the bylaws or by resolution of the board of directors to be submitted to the general loan committee. The board of directors of any bank, which has branches, may appoint, in addition to a general loan committee, a loan committee for the parent bank and for any branch, each of which committees shall include at least three members who are officers or members ~~of the board of managers of the local advisory board~~ for such parent bank or branch, with such duties and powers with respect to approving or disapproving loans and investments as may be defined in the bylaws or by resolution of the board of directors, and under such rules and regulations as the board of directors may prescribe. Such loans and investments as

are authorized or approved by a general loan committee or either of the other loan committees hereinabove provided for may, but need not, be approved or disapproved by the executive committee or committees. All loans and investments made, however, shall be authorized or approved by either the executive committee or committees, a general loan committee, or one of the other loan committees herein provided for."

Sec. 17. G.S. 53-91 is repealed.

Sec. 18. Article 7 of Chapter 53 of the General Statutes is amended by adding two new sections to read:

"§ 53-91.2. Loans to executive officers.

No bank may extend credit to any of its executive officers nor a firm or partnership of which such executive officer is a member, nor a company in which such executive officer owns a controlling interest, unless the extension of credit is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with persons who are not employed by the bank, and provided further that the extension of credit does not involve more than the normal risk of repayment. For the purposes of this section, the term 'executive officer' shall mean an officer who has authority to participate in major policy-making functions of the bank. Provided further, the maximum amount of such loans shall be that as prescribed by applicable federal banking regulations.

"§ 53-91.3. Directors defined; appointment of advisory directors.

(a) Unless otherwise expressly provided, reference to 'director' or 'board of directors' shall mean a director of the banking corporation as elected by the shareholders pursuant to North Carolina corporation law.

(b) The board of directors so elected by the shareholders may, consistent with a bank's articles of incorporation or bylaws, appoint advisory directors to perform such duties as prescribed by the board with respect to local offices and branches of any bank chartered under Chapter 53 of the General Statutes."

Sec. 19. G.S. 53-92.1 reads as rewritten:

"§ 53-92.1. Commission bound by requirements imposed on Commissioner as to certification of new banks, establishment of branches, etc.

Notwithstanding any other provisions of this Chapter, the State Banking Commission, in the exercise of its authority to review the action of the Commissioner of Banks, shall be bound by the requirements, conditions and limitations imposed in this Chapter on said Commissioner as to the certification of new banks or the establishments of branch banks or ~~teller's windows~~. limited service facilities."

Sec. 20. G.S. 53-93.1 reads as rewritten:

"§ 53-93.1. Deputy commissioner.

The Commissioner of Banks shall appoint, with approval of the Governor, and may remove at his discretion a deputy commissioner, who, in the event of the absence, death, resignation, disability or disqualification of the Commissioner of Banks, or in case the office of Commissioner shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Commissioner of Banks.

Irrespective of the conditions under which the deputy commissioner may exercise the powers and perform the duties of the Commissioner of Banks, pursuant to the

preceding paragraph, such deputy commissioner, in addition thereto, is hereby authorized and empowered at any and all times, at the discretion of the Commissioner of Banks, to perform such duties and exercise such powers of the Commissioner of Banks in the name of and on behalf of the Commissioner as the Commissioner, in his discretion, may direct.

~~This section is not to be construed to modify the provisions of G.S. 53-97."~~

Sec. 21. G.S. 53-99 is amended by adding a new subsection to read:

"(d) Nothing in this section of the law shall prohibit a bank, upon approval of the Commissioner of Banks, from disclosing to an insurance carrier, for the purpose of obtaining insurance coverage required by Chapter 53 of the General Statutes, the bank's regulatory rating prepared by the Commissioner's office. Provided however, the insurance underwriter must agree in writing to maintain the confidentiality of such information and to not disclose the same in any manner whatsoever."

Sec. 22. G.S. 53-105 reads as rewritten:

"§ 53-105. Reports of condition.

Every bank shall make to the Commissioner of Banks not less than four reports during each year in the manner and form prescribed by the Commission by regulation. Each such report shall exhibit in detail and under appropriate heads the resources, assets, and liabilities of such bank at the close of business on any past day by the Commissioner of Banks specified, and shall be transmitted to the Commissioner of Banks within 10 days after the receipt of a request or requisition therefor from the Commissioner of Banks; provided, however, the Commissioner of Banks may extend the time for a period not to exceed 30 days for any bank to transmit the reports heretofore required whenever in his judgment such extension is necessary; and in a form prescribed by the Commissioner of Banks; a summary of ~~such report~~ the report for the quarter ending December 31, shall if required by the Commissioner of Banks, be published in a newspaper published in the place-county where the bank is located, or if there is no newspaper in the place-county, then in the nearest one published thereto-a newspaper having a general circulation in the county in which such bank is established. Proof of such publication shall be furnished the Commissioner of Banks in such form as may be prescribed by him."

Sec. 23. G.S. 53-106 reads as rewritten:

"§ 53-106. Special reports.

The Commissioner of Banks may call for special reports whenever in his judgment it is necessary to inform him of the condition of any bank, or to obtain a full and complete knowledge of its affairs. Said reports shall be in and according to the form prescribed by the Commissioner of Banks, ~~and shall be verified in the manner provided in G.S. 53-105, Banks~~ and shall be published ~~as therein provided, as provided in G.S. 53-105, if so required by the Commissioner of Banks so to be. Banks.~~ The Commissioner of Banks may extend the time for filing special reports for a period not to exceed 30 days."

Sec. 24. G.S. 53-114 reads as rewritten:

"§ 53-114. Other powers of State Banking Commission.

In addition to all other powers conferred upon and vested in the State Banking Commission, the said Commission, with the approval of the Governor, is hereby

authorized, empowered and directed, whenever in its judgment the circumstances warrant it:

- (1) To authorize, permit, and/or direct and require all banking corporations under its supervision, to extend for such period and upon such terms as it deems necessary and expedient, payment of any demand and/or time deposits.
- (2) To direct, require or permit, upon such terms as it may deem advisable, the issuance of ~~clearinghouse certificates or other evidences~~ evidence of claims against assets of such banking institutions.
- (3) To authorize and direct the creation, in such banking institutions, of special trust accounts for the receipt of new deposits, which deposits shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separate in cash or on deposit in such banking institutions as it shall designate or invested in such obligations of the United States and/or the State of North Carolina as it shall designate.
- (4) To adopt for such banking institutions such regulations as are necessary in its discretion to enable such banking institutions to comply fully with the federal regulations prescribed for national or state banks."

Sec. 25. G.S. 53-125 reads as rewritten:

"§ 53-125. Examiners disclosing confidential information.

If any bank examiner or other employee of the Commissioner of Banks fails to keep secret the facts and information obtained in the course of an examination of a bank, except when the public duty of such examiner or employee requires him to report upon or take official action regarding the affairs of such bank, he shall be guilty of a Class 1 misdemeanor. Nothing in this section shall prevent the proper exchange of information with the representatives of the banking departments of other states, with the federal reserve bank or national bank examiners, or other authorities, with the creditors of such bank or others with whom a proper exchange of information is wise or ~~necessary, or with the clearinghouse officials and examiners necessary.~~

Sec. 26. G.S. 53-141 reads as rewritten:

"§ 53-141. Powers.

Industrial banks shall have the powers conferred by paragraphs 1, 2, 3, 5 and 7 of G.S. 55-17 [subdivisions (1), (2), (3), (5) and (7) of subsection (a) of G.S. 55-17], and subdivision (3) of G.S. 53-43, such additional powers as may be necessary or incidental for the carrying out of their corporate purposes, and in addition thereto the following powers:

- (1) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of indebtedness, and to loan money on real or personal security, and to purchase notes, bills of exchange, acceptances or other choses in action, and to take and receive interest or discounts subject to G.S. 53-43(1).

- (2) To make loans and charge and receive interest at rates not exceeding the rates of interest provided in G.S. 24-1.1 and 24-1.2.
- (3) To establish branch offices or places of business within the county in which its principal office is located, and elsewhere in the State, after having first obtained the written approval of the Commissioner of Banks, which approval may be given or withheld by the Commissioner of Banks in his discretion. The Commissioner of Banks, in exercising such discretion, shall take into account, but not by way of limitation, such factors as the financial history and condition of the applicant bank, the adequacy of its capital structure, its future earnings prospects, and the general character of its management. Such approval shall not be given until he shall find
 - a. That the establishment of such branch or ~~teller's window~~ limited service facility will meet the needs and promote the convenience of the community to be served by the bank, and
 - b. That the probable volume of business and reasonable public demand in such community are sufficient to assure and maintain the solvency of said branch or ~~teller's window~~ limited service facility and of the existing bank or banks in said community.

Provided, that the Commissioner of Banks shall not authorize the establishment of any branch the paid-in capital of whose parent bank is not sufficient in amount to provide for capital in an amount equal to that required with respect to the establishment of branches of commercial banks under the provisions of G.S. 53-62. For the purposes of this paragraph, the provisions of G.S. 53-62 as to the meaning of the word 'capital' shall be applicable.

A bank may discontinue a branch office upon resolution of its board of ~~directors or board of managers.~~ directors. Upon the adoption of such a resolution, the bank shall ~~file a certification with the Commissioner of Banks specifying the location of the branch office to be discontinued and the date upon which it is proposed that the discontinuance shall be effective. This certificate must state the reasons for the closing of such branch and indicate that the needs and convenience of the community would still be adequately met. Notice stating the intention to discontinue the said branch shall be published in a newspaper serving said community once a week for four consecutive weeks before a certificate requesting a discontinuance is filed with the Commissioner of Banks. No such branch may be discontinued until approved by the Commissioner of Banks, who shall first hold a public hearing thereon, if so requested by any interested party.~~ follow the procedures for closing a branch as set forth at G.S. 53-62(e). No branch shall be closed until approved by the Commissioner of Banks.

- (4) Subject to the approval of the Commissioner of Banks and on the authority of its board of directors, or a majority thereof, to enter into such contract, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be available or inure to banking institutions, or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of section eight of the Federal Banking Act of 1933 (section twelve B of the Federal Reserve Act as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or any other act or resolution of Congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporations.
- (5) To solicit, receive and accept money or its equivalent on deposit both in savings accounts and upon certificates of deposit.
- (6) Subject to the approval of the State Banking Commission, to solicit, receive and accept money or its equivalent on deposit subject to check; provided, however, no such approval shall be given unless and until such industrial bank meets the capital requirements of a commercial bank as set forth in G.S. 53-2."

Sec. 27. G.S. 53-145 reads as rewritten:

"§ 53-145. Sections of general law applicable.

Sections 53-1, 53-3, 53-4, 53-5, 53-6, 53-7, 53-8, 53-9, 53-10, 53-11, 53-12, 53-13, 53-18, 53-20, 53-22, 53-23, 53-42, 53-42.1, 53-47, 53-50, 53-51, 53-54, 53-63, 53-64, 53-67, 53-68, 53-70, 53-71, ~~53-72, 53-73, 53-74, 53-78, 53-79, 53-80, 53-81, 53-82, 53-83, 53-85, 53-87, 53-88, 53-90, 53-91, 53-91.2, 53-91.3,~~ 53-105, 53-106, 53-107, 53-108, 53-109, 53-110, 53-111, 53-112, 53-117, 53-118, 53-119, 53-120, 53-121, 53-122, 53-123, 53-124, 53-125, 53-126, 53-128, 53-129, 53-132, 53-133, 53-134, relating to the supervision and examination of commercial banks, shall be construed to be applicable to industrial banks, insofar as they are not inconsistent with the provisions of this Article. Sections 53-19, 53-24, 53-37, 53-39, 53-40, 53-41, 53-44, 53-45, ~~53-58, 53-59, 53-61, 53-66, 53-75, 53-76, 53-77, 53-86, 53-113, 53-114, 53-115, 53-116, 53-135, 53-146, and 53-148 through 53-158,~~ relating to commercial banks, shall be construed to be applicable to industrial banks."

Sec. 28. G.S. 53-153 reads as rewritten:

"§ 53-153. Segregation of recent deposits not effective after bank turned back to officers; notice of turning bank back to officers.

After 15 days after the affairs of a bank shall have been turned back to its board of directors by the conservator, either with or without a reorganization as provided in G.S. 53-152 hereof, the provisions of G.S. 53-151 with respect to the segregation of deposits received while it is in the hands of the conservator, and with respect to the use of such deposits to liquidate the indebtedness of such bank, shall no longer be effective: Provided, that before the conservator shall turn back the affairs of the bank to its board of directors, he shall cause to be published in a newspaper published in the ~~city, town or~~ county in which such bank is located, and if no newspaper is published in such ~~city, town or~~ county, in a newspaper ~~to be selected by the Commissioner of Banks,~~ having a general circulation in such county, a notice in form approved by the Commissioner of Banks, stating the date on which the affairs of the bank will be returned to its board of directors, and that the said provisions of G.S. 53-151 will not be effective after 15 days after such date; and on the date of publication of such notice, the conservator shall immediately send to every person who is a depositor in such bank under G.S. 53-151, a copy of such notice by registered mail, addressing it to the last known address of such persons shown by the records of the bank; and the conservator shall send similar notice in like manner to every person making deposit in such bank under G.S. 53-151, after the date of such newspaper publication and before the time when the affairs of the bank are returned to its directors."

Sec. 29. G.S. 53-188 reads as rewritten:

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

The Commission shall have full authority to review any rule, regulation, order or act of the Commissioner done pursuant to or with respect to the provisions of this Article and any person aggrieved by any such rule, regulation, order or act may appeal to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order or act complained of is adopted, issued or done. Notwithstanding any other provision of law to the contrary, any aggrieved party to a decision of the Commission shall be entitled to an appeal pursuant to G.S. 53-92."

Sec. 30. G.S. 53-206 reads as rewritten:

"§ 53-206. Notice of denial or revocation of license; hearing; appeal.

(a) No license shall be denied or revoked except on 10 days' notice to the applicant or licensee. Upon receipt of such notice the applicant or licensee may, within five days of such receipt, make written demand for a hearing. The hearing before the Commissioner shall be an informal hearing and shall be held with reasonable promptness. ~~The decision of the Commissioner may be appealed to the Banking Commission.~~

(b) The Banking Commission shall have full authority to review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article; and any person aggrieved by any such rule, regulation, order, or act may appeal to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92."

Sec. 31. G.S. 53-229 is repealed.

Sec. 32. G.S. 53-230 reads as rewritten:

"§ 53-230. Rules.

~~Notwithstanding the provision of G.S. 53-95, the Commissioner~~ The Banking Commission may promulgate adopt such reasonable rules as may be necessary to effectuate the purposes of this Article."

Sec. 33. G.S. 53-231 reads as rewritten:

"§ 53-231. Appeal of Commissioner's decision.

~~Notwithstanding any other provision of law, any aggrieved party may, within 30 days after final decision of the Commissioner and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days thereafter. Such record shall include all memoranda, briefs and any other documents, data, information or evidence submitted by any party to such proceeding except for material such as trade secrets normally not available through commercial publication for which such party has made a claim of confidentiality and requested exclusion from the record which the Commissioner deems confidential. All factual information contained in any report of examination or investigation submitted to or obtained by the Commissioner's staff shall also be made a part of the record unless deemed confidential by the Commissioner. Any aggrieved party in a proceeding under this Article may, within 30 days after final decision of the Commissioner, appeal such decision to the Banking Commission. The Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the Banking Commission approving the decision of the Commissioner. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92."~~

Sec. 34. G.S. 53-232.17 reads as rewritten:

"§ 53-232.17. Appeal of Commissioner's decision.

~~Notwithstanding any other law, an aggrieved party may, within 30 days after final decision of the Commissioner and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days thereafter. The record shall include all memoranda, briefs, and any other documents, data, information, or evidence submitted by any party to the proceeding, except for material such as trade secrets normally not available through commercial publication of which the party has made a claim of confidentiality and requested exclusion from the record which the Commissioner deems confidential. All factual information contained in any report of examination or investigation submitted to or obtained by the Commissioner's staff is also made a part of the record unless deemed confidential by the Commissioner. Any aggrieved party in a proceeding under this Article may, within 30 days after final decision of the Commissioner, appeal such decision to the Banking Commission. The Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's~~

decision. Failure of the Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the Banking Commission approving the decision of the Commissioner. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92."

Sec. 35. G.S. 53-234(6) reads as rewritten:

"(6) 'Exempt person or organization' means:

- (a) Any lender authorized to engage in business as a bank, a farm credit system, life insurance company, savings institution, ~~or~~ credit union, or HUD-approved mortgagee under the laws of the United States or the State of North Carolina and subsidiaries and affiliates of such lenders, which subsidiaries and affiliates are subject to the general supervision or regulation of the lender or subject to audit or examination by a regulatory body or agency of the United States or the State of North Carolina; the entities listed in this sub-subdivision, and their officers and employees, are not subject to any of the provisions of this Article; or
- (b) Any licensed real estate agent or broker, who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives direct compensation or income in connection with the placement of a mortgage loan; or
- (c) Any person who, as seller, receives in one calendar year no more than ten mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation; or
- (d) The North Carolina Housing Finance Agency as established by Chapter 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Chapter 122D of the General Statutes; or
- (e) Any agency of the federal government or any state or municipal government granting first mortgage loans under specific authority of the laws of any state or the United States."

Sec. 36. G.S. 53-235(b) reads as rewritten:

"(b) No mortgage broker, as defined in G.S. 53-234(4), shall engage in the business of processing, placing or negotiating a mortgage loan or offering to process, place or negotiate a mortgage loan in this State without first being registered with the Commissioner in accordance with the registration procedure provided in this Article and such regulations as may be promulgated by the ~~Commissioner~~. Commissioner; provided, however, any person or entity registered as a mortgage banker pursuant to subsection (a) of this section shall not be required to separately register as a mortgage broker to engage in such activity."

Sec. 37. G.S. 53-240 reads as rewritten:

"§ 53-240. Appeal of Commissioner's decision.

~~Notwithstanding any other provision of law, any aggrieved party may, within 30 days after final decision of the Commissioner and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days thereafter. Such record shall include all memoranda, briefs and any other documents, data, information or evidence submitted by any party to such proceeding except for material such as trade secrets normally not available through commercial publication for which such party has made a claim of confidentiality and requested exclusion from the record which the Commissioner deems confidential. All factual information contained in any report of examination or investigation submitted to or obtained by the Commissioner's staff shall also be made a part of the record unless deemed confidential by the Commissioner. The Banking Commission shall have full authority to review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article; and any person aggrieved by any such rule, regulation, order, or act may appeal to the Banking Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92."~~

Sec. 38. G.S. 53-241 reads as rewritten:

"§ 53-241. Rules and regulations.

~~Notwithstanding the provision of G.S. 53-95, the Commissioner~~ The Banking Commission may promulgate-adopt such reasonable rules and regulations as may be necessary to effectuate the purpose of this Article, to provide for the protection of the borrowing public, and to instruct mortgage lenders in interpreting this Article."

Sec. 39. G.S. 53-248 reads as rewritten:

"§ 53-248. Registration ~~procedure~~-procedure; informal hearing.

(a) Initial Registration. An application to become registered as a facilitator shall be in writing, under oath, and in a form prescribed by the Commissioner. The application shall contain all information prescribed by the Commissioner. Each application for registration shall be accompanied by a fee, payable to the Commissioner, of two hundred fifty dollars (\$250.00) for each office where the registrant intends to facilitate refund anticipation loans.

Upon the filing of an application for registration, if the Commissioner finds that the responsibility and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business of facilitating refund anticipation loans will be operated within the purposes of this Article, the Commissioner shall register the applicant as a facilitator of refund anticipation loans and shall issue and transmit to the applicant a certificate attesting to the registration. If the Commissioner does not so find, he shall not register the applicant and shall notify the applicant of the reasons for the denial.

Upon receipt of a certificate of registration, the applicant is registered under this Article and may engage in the business of facilitating refund anticipation loans at the offices identified on the application for registration.

(b) **Renewal.** Each registration as a facilitator of refund anticipation loans shall expire on December 31 following the date it was issued, unless it is renewed for the succeeding year. Before the registration expires, the registrant may renew the registration by filing with the Commissioner an application for renewal in the form and containing all information prescribed by the Commissioner. Each application for renewal of registration shall be accompanied by a fee of one hundred dollars (\$100.00) for each office where the registrant intends to facilitate refund anticipation loans during the succeeding year.

Upon the filing of an application for renewal of registration under this Article, the Commissioner shall renew the registration unless the Commissioner determines that the fitness of the registrant or the operations of the registrant would not support registration of the registrant under subsection (a). If the Commissioner makes such a determination, he shall so notify the registrant, stating the reasons for the determination.

(c) **Display of Certificate.** Each registrant shall prominently display a certificate issued under this Article in each place of business in the State where the registrant facilitates the making of refund anticipation loans.

(d) Within five days of receipt of the Commissioner's notice, as required by subsections (a) and (b) of this section, the applicant may make written demand of the Commissioner for a hearing. The hearing before the Commissioner shall be an informal hearing and shall be held with reasonable promptness."

Sec. 40. G.S. 53-252 reads as rewritten:

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

~~Notwithstanding any other provision of law, an aggrieved party may, within 30 days after a final decision of the Commissioner and with written notice to the Commissioner, appeal the decision directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days after receipt of notice of appeal. The record shall include all memoranda and briefs, and any other documents, data, information, or evidence submitted by any party to the proceeding except for material such as trade secrets normally not available through commercial publication for which a party has made a claim of confidentiality and requested exclusion from the record. All factual information contained in any report submitted to or obtained by the Commissioner's staff shall also be made a part of the record unless deemed confidential by the Commissioner. The Commission shall have full authority to review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article; and any person aggrieved by any such rule, regulation, order, or act may appeal to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92."~~

Sec. 41. G.S. 53-253 reads as rewritten:

"§ 53-253. Rules; enforcement.

~~Notwithstanding the provisions of G.S. 53-95, the Commissioner~~The Banking Commission may promulgate~~adopt~~ reasonable rules as necessary to effectuate the purpose of this Article, to provide for the protection of the borrowing public, and to assist registrants in interpreting this Article. In order to enforce this Article, the Commissioner may make investigations, subpoena witnesses, require audits and reports, and conduct hearings regarding possible violations of its provisions."

Sec. 42. G.S. 53-272 reads as rewritten:

"§ 53-272. (Expires October 1, 1995) Appeals.

~~Notwithstanding any other provision of law, an aggrieved party may, within 30 days after final decision of the Commissioner, and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review of the record. In the event of an appeal the Commissioner shall certify the record to the Clerk of the Court of Appeals no later than 30 days after receipt of the notice of appeal. The record shall include all memoranda, briefs, and any other documents, data, information, or evidence submitted by any party to the proceeding. All factual information contained in a report of examination or investigation submitted to or otherwise obtained by the Commissioner or the Commissioner's staff shall be made a part of the record unless the information is deemed confidential by the Commissioner. The Banking Commission shall have full authority to review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article; and any person aggrieved by any such rule, regulation, order, or act may appeal to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92."~~

Sec. 43. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of May, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives