

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

**SESSION LAW 2005-269  
SENATE BILL 519**

AN ACT TO PROVIDE FOR INTERSTATE SERVICES ON A RECIPROCAL BASIS AND TO MAKE TECHNICAL CORRECTIONS TO ARTICLE 24 AND ARTICLE 13 OF CHAPTER 53 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 53-301(a)(34) reads as rewritten:

"(34) "Office" with respect to a trust institution means its principal office, a trust office, or a representative trust office, but not a branch. With respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the term "office" also means the registered office."

**SECTION 2.** G.S. 53-301(a) is amended by adding the following new subdivision to read:

"(39a) "Registered office" means a registered office as described in G.S. 55D-30."

**SECTION 3.** G.S. 53-301(a)(54) reads as rewritten:

"(54) "Trust office" means an office, other than the principal office, at through which a trust institution acts as a ~~fiduciary~~. fiduciary, including, with respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the registered office."

**SECTION 4.** G.S. 53-306 reads as rewritten:

**"§ 53-306. Trust business of out-of-state trust institution.**

An out-of-state trust institution that establishes or acquires and maintains one or more trust offices or representative trust offices in this State under the provisions of this Part or that maintains one or more branches in this State may, subject to the provisions of this Part, conduct any activity ~~at~~ through such a trust office, representative trust office, or branch that a State trust company or a State bank is authorized to conduct ~~at~~ through a trust office, representative trust office, or branch under the laws of this State."

**SECTION 5.** G.S. 53-307 reads as rewritten:

**"§ 53-307. Trust business of foreign trust institution.**

A foreign trust institution that establishes or acquires and maintains one or more trust offices in this State under the provisions of this Part may, subject to the provisions of this Part, also establish or acquire one or more representative trust offices and conduct any activity ~~at~~ through the trust offices or representative trust offices that a

State trust company is authorized to conduct ~~at~~through trust offices or representative trust offices under the laws of this State."

**SECTION 6.** G.S. 53-310 reads as rewritten:

**"§ 53-310. Offices of State trust companies.**

(a) A State trust company may engage in trust business or trust marketing ~~at~~through its principal office and ~~at~~through each trust office as permitted by this Part.

(b) A State trust company may engage in trust marketing ~~at~~through a representative trust office as permitted by this Part.

(c) A State trust company may engage in trust business and trust marketing ~~in~~through out-of-state trust offices or representative trust offices to the same extent permitted for trust institutions located in the host state ~~in~~through which those out-of-state trust offices or representative trust offices are located, subject to the laws of this State and as provided by rules, orders, or declaratory rulings of the Commissioner."

**SECTION 7.** G.S. 53-314 reads as rewritten:

**"§ 53-314. Trust business ~~at~~through a branch or trust office.**

An out-of-state trust institution may engage in trust business in this State only if it (i) maintains a trust office in this State as permitted by this Subpart, (ii) was allowed to maintain a trust office in this State under laws, or rules or orders of the Commissioner in effect prior to the date of enactment of this Article, but only to the extent allowed and subject to all limitations and conditions imposed under those laws, rules, or orders, or (iii) is a depository institution that maintains a branch in this State."

**SECTION 8.** G.S. 53-317 reads as rewritten:

**"§ 53-317. Requirement of notice.**

Before establishing or acquiring and maintaining a trust office in this State, an out-of-state trust institution shall provide, or cause its home state regulator to provide, notice to the Commissioner, in the form required by the Commissioner, along with copies of any applications, notices, or similar filings made with the home state regulator regarding the trust office. The notice shall be preceded or accompanied by:

- (1) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with ~~any~~all applicable requirements of Article 15 of Chapter 55 of the General Statutes;
- (2) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with any applicable requirements of its home state regulator for maintenance of capital, for expansion within the borders of the home state, and for acquiring or establishing and maintaining each trust office in this State;
- (3) Evidence satisfactory to the Commissioner that the out-of-state trust institution is not in a hazardous condition;
- (4) ~~A~~Unless waived by the Commissioner, a copy of the resolution adopted by the board of directors of the out-of-state trust institution (or similar governing body or a duly-authorized committee thereof) authorizing the trust office; and
- (5) Payment of any fee set by rule."

**SECTION 9.** G.S. 53-318(a) reads as rewritten:

"(a) The out-of-state trust institution may commence business in this State ~~at~~ through the trust office on the sixty-first day following the date the Commissioner receives the notice described in G.S. 53-317 unless the Commissioner, within 60 days of receiving the notice:

- (1) Specifies an earlier or later date for commencing business,
- (2) Extends the period of review on a determination that the notice raises issues that require additional information or additional time for analysis; or
- (3) Disapproves the proposed trust office."

**SECTION 10.** G.S. 53-319(b) reads as rewritten:

"(b) An out-of-state trust institution that does not maintain a trust office in this State shall file a notice with the Commissioner, in the form required by the Commissioner, before establishing or acquiring a representative trust office in this State. The notice shall be preceded or accompanied by:

- (1) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with ~~any~~all applicable requirements of Article 15 of Chapter 55 of the General Statutes;
- (2) Evidence satisfactory to the Commissioner of compliance by the out-of-state trust institution with any applicable requirements of its home state regulator for maintenance of capital, for expansion within the borders of the home state, and for acquiring or establishing and maintaining each representative trust office in this State;
- (3) Evidence satisfactory to the Commissioner that the out-of-state trust institution is not in a hazardous condition;
- (4) ~~A~~Unless waived by the Commissioner, a copy of the resolution adopted by the board of directors of the out-of-state trust institution (or similar governing body or a duly authorized committee thereof) authorizing the representative trust office;
- (5) The proposed location of each proposed representative trust office; and
- (6) Payment of any fee set by rule."

**SECTION 11.** G.S. 53-320(a) reads as rewritten:

"(a) The Commissioner may examine any activity conducted through a trust office or representative trust office maintained in this State by an out-of-state trust institution to determine whether these activities are being conducted ~~the trust office or representative trust office is being operated~~ in compliance with the laws of this State and in accordance with safe and sound practices. The pertinent provisions of Part 4 of this Article shall apply to these examinations."

**SECTION 12.** G.S. 53-321(a) reads as rewritten:

"(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

- (1) That activities of a trust office maintained by an out-of-state trust institution in this State ~~is being operated~~ are being conducted in violation of the laws of this State or any rule, order, or declaratory ruling issued by the Commissioner, or in an unsafe and unsound

manner, or that the out-of-state trust institution does not meet or no longer meets the requirements of this Subpart for maintaining a trust office in this State; or

- (2) That an out-of-state trust institution is engaged in unauthorized trust activity.

In either event, the Commissioner may take any enforcement actions the Commissioner would be authorized to take if the trust office or the out-of-state trust institution were a State trust company and may issue an order temporarily or permanently prohibiting the out-of-state trust institution from engaging in trust business in this State."

**SECTION 13.** G.S. 53-322 reads as rewritten:

**"§ 53-322. Notice of transactions that cause a change in control.**

Each out-of-state trust institution that maintains a trust office or representative trust office in this State, or the home state regulator of the trust institution, shall give at least 30 days' notice or, in the case of an emergency ~~transaction,~~ transaction or the cessation of trust activity in this State by an out-of-state trust institution or foreign trust institution whose only office in this State is a registered office, as much notice as practicable, to the Commissioner of:

- (1) Any merger, consolidation, share exchange, or other transaction that would cause a change in control of an out-of-state trust institution (i) that would be subject to Subpart D of Part 3 of this Article if the out-of-state trust institution were a State trust company or (ii) is required to be filed with any bank supervisory agency;
- (2) Any transfer of all or substantially all of the accounts or account assets of the out-of-state trust institution to another person; or
- (3) The ~~closing or transfer~~ closing, transfer, or discontinuance of any trust office or representative trust office in this State."

**SECTION 14.** G.S. 53-323 reads as rewritten:

**"§ 53-323. Foreign trust institution application for trust office or representative trust office.**

Before establishing or acquiring and maintaining a trust office in this State, a foreign trust institution shall make application to the Commissioner for permission to do so in the English language and in the form required by the Commissioner. The application shall be preceded or accompanied by:

- (1) Evidence satisfactory to the Commissioner of compliance with ~~any~~ all applicable requirements of Article 15 of Chapter 55 of the General Statutes;
- (2) Evidence satisfactory to the Commissioner of compliance by the foreign trust institution with any applicable requirements of its home country regulator for maintenance of capital, for expansion within the borders of its home country or within a political subdivision of its home country, and for acquiring or establishing and maintaining the trust office in this State;

- (3) Evidence satisfactory to the Commissioner that the foreign trust institution is not in a hazardous condition;
- (4) ~~A~~ Unless waived by the Commissioner, a copy of the resolution adopted by the board of directors of the foreign trust institution, or similar governing body or a duly-authorized committee thereof, authorizing the trust office; and
- (5) Payment of any fee set by rule.

The Commissioner may require any materials not written in the English language to be translated, and the translation certified in a manner satisfactory to the Commissioner, at the expense of the foreign trust institution."

**SECTION 15.** G.S. 53-324(a) reads as rewritten:

"(a) A foreign trust institution may engage in trust business in this State only on approval by the Commissioner of an application described in G.S. 53-323, which may be given upon conditions required by the ~~the~~ Commissioner for prudential reasons consistent with any applicable international agreements to which the United States is a party."

**SECTION 16.** G.S. 53-326(a) reads as rewritten:

"(a) The Commissioner may examine any activity conducted through a trust office or representative trust office maintained in this State by a foreign trust institution to determine whether ~~the trust office or representative trust office is being operated these activities are being conducted~~ in compliance with the laws of this State and in accordance with safe and sound practices. The pertinent provisions of Part 4 of this Article shall apply to these examinations."

**SECTION 17.** G.S. 53-327(a) reads as rewritten:

"(a) Consistent with Article 3A of Chapter 150B of the General Statutes, after notice and opportunity for hearing, the Commissioner may determine:

- (1) That activities of a trust office or representative trust office maintained by a foreign trust institution in this State ~~is being operated~~ are being conducted in violation of the laws of this State or any rule, order, or declaratory ruling issued by the Commissioner, or in an unsafe and unsound manner, or that the foreign trust institution does not meet or no longer meets the requirements of this Subpart for maintaining a trust office or representative trust office in this State; or
- (2) That a foreign trust institution is engaged in unauthorized trust activity.

In either event, the Commissioner may take any enforcement actions the Commissioner would be authorized to take if the foreign trust institution were a State trust company and may issue an order temporarily or permanently prohibiting the foreign trust institution from engaging in trust business or trust marketing in this State."

**SECTION 18.** G.S. 53-328 reads as rewritten:

**"§ 53-328. Notice of transactions that cause a change in control.**

Each foreign trust institution that maintains a trust office or representative trust office in this State, or the home country regulator of the foreign trust institution, shall give at least 30 days' notice (or, in the case of an emergency ~~transaction, transaction or~~ the cessation of trust activity in this State by an out-of-state trust institution or foreign

trust institution whose only office in this State is a registered office, as much notice as practicable) to the Commissioner, in the form required by the Commissioner, of:

- (1) Any merger, consolidation, share exchange, or other transaction that would cause a change of control of a foreign trust institution:
  - a. That would be subject to Subpart D of Part 3 of this Article if the foreign trust institution were a State trust company; or
  - b. Is required to be filed with any bank supervisory agency;
- (2) Any transfer of all or substantially all of the accounts or account assets of the foreign trust institution to another person; or
- (3) The ~~closing or transfer~~ closing, transfer, or discontinuance of any trust office or representative trust office in this State."

**SECTION 19.** Article 13 of Chapter 53 of the General Statutes is amended by adding a new section to read:

**"§ 53-158.1. Scope of preferred stock provisions.**

All provisions of this Article relating to preferred stock apply only to the emergency issuance of preferred stock, pursuant to the provisions of G.S. 53-154, by a bank in conservatorship. The provisions of this Article do not affect the issuance or treatment of preferred stock, or other shares authorized by Chapter 55 of the General Statutes in accordance with G.S. 53-10(a) and G.S. 53-135, provided the issuance of preferred stock or any shares other than common capital stock shall have been approved by the Commissioner of Banks."

**SECTION 20.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3<sup>rd</sup> day of August, 2005.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 4:09 p.m. this 12<sup>th</sup> day of August, 2005