

## Article 12.

### Mutual Deposit Guaranty Associations.

#### **§ 54B-236. Definitions.**

The term "institution" as used in this Article shall mean savings and loan associations organized or operated under the provisions of this Chapter, or credit unions organized or operated under the provisions of Articles 14A to 14L of Chapter 54 of the General Statutes, or any institution that is eligible for insurance by the Federal Deposit Insurance Corporation or the National Credit Union Administration. (1981, c. 282, s. 3; 1983, c. 144, s. 23; 1985, c. 659, s. 15; 1989 (Reg. Sess., 1990), c. 806, s. 15.)

#### **§ 54B-237. Organization of a mutual deposit guaranty association.**

(a) Any number of institutions, not less than 25, may become incorporated as a mutual deposit guaranty association without capital stock subject to the limitations prescribed in this Article. A mutual deposit guaranty association shall be governed by a board of directors or board of trustees of which a majority shall be representatives of the public and shall not be employees or directors of any insured member institution or have an interest in any insured member institution other than as a result of being a depositor or borrower.

(b) Articles of incorporation of a guaranty association shall be filed in the office of the Secretary of State. The Secretary of State shall, upon receipt of such articles, transmit a copy of them to the Secretary of Commerce and shall not record them until authorized to do so by the Secretary of Commerce. (1981, c. 282, s. 3; 1983, c. 719, s. 2; 1989, c. 751, s. 9(c); 1991 (Reg. Sess., 1992), c. 959, s. 7.)

#### **§ 54B-238. Examination and certification by Secretary of Commerce.**

(a) Upon receipt from the Secretary of State of a copy of the articles of incorporation of a proposed guaranty association, the Secretary of Commerce shall at once examine all the facts connected with the formation of the proposed corporation. If the articles of incorporation are correct in form and substance and the examination shows that such corporation, if formed, would be entitled to commence the business of a guaranty association, the Secretary of Commerce shall so certify to the Secretary of State.

(b) The Secretary of Commerce may refuse to make such certification if upon examination he has reason to believe the proposed corporation is to be formed for any business other than assuring the liquidity of member institutions and guaranteeing deposits therein, if upon examination he has reason to believe that the character and general fitness of the incorporators are not such as to command the confidence of the general public or if the best interests of the public will not be promoted by its establishment. (1981, c. 282, s. 3; 1983, c. 719, s. 2; 1989, c. 751, s. 8(3); 1991 (Reg. Sess., 1992), c. 959, s. 8.)

#### **§ 54B-239. Recordation of articles of incorporation.**

Upon receipt of the certification provided for in G.S. 54B-238, the Secretary of State shall record the articles of incorporation of such guaranty association and furnish a certified copy thereof to the incorporators and to the Secretary of Commerce. Upon such recordation, such association shall be deemed a corporation. All papers thereafter filed in the office of the Secretary of State relating to such corporation shall be recorded as provided by law and a certified copy forwarded to the Secretary of Commerce. (1981, c. 282, s. 3; 1983, c. 719, s. 2; 1989, c. 751, s. 9(c); 1991 (Reg. Sess., 1992), c. 959, s. 9.)

**§ 54B-240. Proposed amendments submitted to Secretary of Commerce.**

Any proposed amendments to the articles of incorporation of a mutual deposit guaranty association shall be filed in the office of the Secretary of State, who shall forward a copy thereof to the Secretary of Commerce, and shall not record the amendments until authorized to do so by certification of the Secretary of Commerce. (1981, c. 282, s. 3; 1983, c. 719, s. 2; 1989, c. 751, s. 8(4); 1991 (Reg. Sess., 1992), c. 959, s. 10.)

**§ 54B-241. Examination and certification of amendments.**

(a) Upon receipt from the Secretary of State of a copy of proposed amendments to the articles of incorporation of a mutual deposit guaranty association, the Secretary of Commerce shall at once examine the proposed amendments to determine their effect on the operation of the guaranty association.

(b) In the event the proposed amendments are correct in form and substance and the examination shows that if adopted they would not change the character or principal business of the guaranty association, the Secretary of Commerce shall so certify to the Secretary of State.

(c) The Secretary of Commerce may refuse to make certification if upon examination he has reason to believe that the proposed amendments would change the character of the business of the guaranty association or that the best interests of the public will not be promoted by their adoption. (1981, c. 282, s. 3; 1983, c. 719, s. 2; 1989, c. 751, s. 8(5); 1991 (Reg. Sess., 1992), c. 959, s. 11.)

**§ 54B-242. Recordation of amendments.**

Upon receipt of the certification provided for in G.S. 54B-241, the Secretary of State shall record the amendments to the articles of incorporation and furnish a certified copy thereof to the mutual deposit guaranty association and to the Secretary of Commerce. (1981, c. 282, s. 3; 1983, c. 719, s. 2; 1989, c. 751, s. 9(c); 1991 (Reg. Sess., 1992), c. 959, s. 12.)

**§ 54B-243. Reserve for losses.**

A mutual deposit guaranty association shall maintain at all times an amount of funds equal to no less than one percent (1%) of its insured liability to cover losses of its members. These funds may include cash, investments, and reinsurance. (1981, c. 282, s. 3.)

**§ 54B-244. Purposes and powers of mutual deposit guaranty associations.**

(a) The purposes of a mutual deposit guaranty association incorporated in accordance with the provisions of this Article are to:

- (1) Assure the liquidity of a member institution;
- (2) Guarantee the withdrawable accounts, shares of deposits of member institutions;
- (3) Serve, when appointed, as receiver of a member institution.

(b) A mutual deposit guaranty association incorporated in accordance with the provisions of this Article may:

- (1) Lend money to a member institution for the purpose of assuring its liquidity and withdrawable accounts, shares or deposits therein;
- (2) Purchase any assets owned by a member institution for the purpose of assuring its liquidity and withdrawable accounts, shares or deposits therein;

- (3) Invest any of its funds in:
  - a. Bonds or interest-bearing obligations of the United States or for which the faith and credit of the United States are pledged for the payment of principal and interest;
  - b. Bonds or interest-bearing obligations of this State;
  - c. Farm loans issued under the Federal Farm Loan Act and amendments thereto;
  - d. Notes, debentures, and bonds of a federal home loan bank issued under the Federal Home Loan Bank Act and any amendments thereto;
  - e. Bonds or other securities issued under the Home Owners' Loan Act of 1933 and any amendments thereto;
  - f. Securities acceptable to the United States to secure government deposits in national banks;
  - g. Deposits in any financial institution that is subject to examination and supervision by the United States or by this State;
  - h. Bonds or other evidences of indebtedness of counties and municipalities of the State of North Carolina, provided, that said bonds or other evidences of indebtedness of the counties and municipalities shall have a rating by Moody's Investors Services, Inc., of not less than AA, and a rating by the North Carolina Municipal Council, Inc., of not less than 90 points out of 100 points;
  - i. Stock in banking institutions licensed to do business in this State;
  - j. Securities and other investments authorized as liquid investments for any financial institution that is subject to examination and supervision by the United States or by this State;
  - k. Notes, bonds, debentures or securities rated in one of the four highest grades by a nationally recognized investment rating service.
  - l. Stock in banking institutions not licensed to do business in this State provided such investment is made in conjunction with any merger or other fundamental change approved by the Commissioner of Banks under the provisions of G.S. 54B-44.
- (4) Issue its capital notes or debentures to member institutions, provided the holders of these capital notes or debentures shall not be individually responsible for any debts, contracts, or engagements of the guaranty association issuing the notes or debentures;
- (5) Borrow money;
- (6) Exercise any corporate power or powers not inconsistent with, and which may be necessary or convenient to, the accomplishment of its purposes of assuring liquidity of member institutions and guaranteeing withdrawable accounts, shares or deposits therein;
- (7) Serve as receiver of a member institution;
- (8) Make or cause to be made examinations or audits of member institutions. (1981, c. 282, s. 3; 1983, c. 144, s. 24; 2001-193, s. 16.)

**§ 54B-245. Filing of semiannual financial reports; fees.**

Each mutual deposit guaranty association shall on the 30th day of June and the 31st day of December of each year, or within 40 days thereafter, file with the Secretary of Commerce a report for the preceding half year, showing its financial condition at the end thereof. Such reports shall be in such form and contain such information as may be prescribed by the Secretary of Commerce. Each guaranty association doing business in this State shall pay to the Secretary of Commerce, at the time of filing each semiannual report required by this section, the sum of five dollars (\$5.00). All such fees shall be paid into the State treasury to the credit of the general fund. (1981, c. 282, s. 3; 1983, c. 719, s. 2; 1989, c. 751, s. 9(c); 1991 (Reg. Sess., 1992), c. 959, s. 13.)

#### **§ 54B-246. Supervision by Secretary of Commerce.**

(a) In addition to any and all other powers, duties and functions vested in the Secretary of Commerce under the provisions of this Article, and for the protection of member institutions and the general public, the Secretary of Commerce shall have general control and supervision over all mutual deposit guaranty associations doing business in this State. Mutual deposit guaranty associations shall be subject to the control and supervision of the Secretary of Commerce as to their conduct, organization, management, business practices, reserve requirements and their financial and fiscal matters. The grant of general control and supervision over mutual deposit guaranty associations to the Secretary of Commerce by this Article shall in no way be deemed to affect the existing powers, duties and responsibilities of the Credit Union Commission, the Commissioner of Banks, or the State Banking Commission except for the removal herein of general control and supervision over mutual deposit guaranty associations from the Administrator of the Savings Institutions Division to the Secretary of Commerce.

(b) The Secretary of Commerce shall have the right, and is hereby empowered to issue rules and regulations whenever he deems it necessary for the administration of this Article as well as rules and regulations with respect to:

- (1) Types of financial records to be maintained by mutual deposit guaranty associations;
- (2) Retention periods of various financial records;
- (3) Internal control procedures of mutual deposit guaranty associations;
- (4) Conduct and management of mutual deposit guaranty associations;
- (5) Additional reports which may be required by the Secretary of Commerce.

It shall be the duty of the board of directors or board of trustees of the mutual deposit guaranty association to put into effect and to carry out such rules and regulations.

(c) At least once each year the Secretary of Commerce shall make or cause to be made an examination into the affairs of each mutual deposit guaranty association doing business in this State. The Administrator of the Credit Union Division of this State, in his capacity as supervisor of state-chartered credit unions, if he deems it necessary, may designate agents to participate in such examination. The Commissioner of Banks, in his capacity as supervisor of State chartered savings and loan associations, may designate agents to participate in such examination. The expenses of such yearly examination shall be paid by the mutual deposit guaranty association so examined. (1981, c. 282, s. 3; 1983, c. 719, s. 2; 1989, c. 76, s. 23; c. 751, s. 8(6); 1991 (Reg. Sess., 1992), c. 959, s. 14; 2001-193, ss. 13, 16.)

#### **§ 54B-247. Special examinations.**

Whenever the Secretary of Commerce deems it necessary, he may make or cause to be made a special examination or audit of any mutual deposit guaranty association doing business in this

State, in addition to the regular examination provided for by this Article. The expenses of such a special examination or audit shall be paid by the mutual deposit guaranty association so examined. (1981, c. 282, s. 3; 1983, c. 719, s. 2; 1989, c. 751, s. 8(7); 1991 (Reg. Sess., 1992), c. 959, s. 15.)

**§ 54B-248. Right to enter and to conduct investigations.**

The Secretary of Commerce or any examiner appointed by him shall have access to and may compel the production of all books, papers, securities, moneys, and other property of a mutual deposit guaranty association under examination by him. He may administer oaths to and examine the officers and agents of such association as to its affairs. (1981, c. 282, s. 3; 1983, c. 719, s. 2; 1989, c. 751, s. 8(8); 1991 (Reg. Sess., 1992), c. 959, s. 16.)

**§ 54B-249. Removal of officers or employees.**

The Secretary of Commerce shall have the right, and is hereby empowered, to require the board of directors or board of trustees of any guaranty association to immediately remove from office any officer, director, trustee or employee of any mutual deposit guaranty association doing business in this State, who shall be found by the Secretary of Commerce to be dishonest, incompetent, or reckless in the management of the affairs of the mutual deposit guaranty association, or in violation of the lawful orders, rules and regulations issued by the Secretary of Commerce, or who violates any of the laws set forth in Chapter 54B of the General Statutes. (1981, c. 282, s. 3; 1983, c. 719, s. 2; 1989, c. 751, s. 8(9); 1991 (Reg. Sess., 1992), c. 959, s. 17.)

**§§ 54B-250 through 54B-260. Reserved for future codification purposes.**