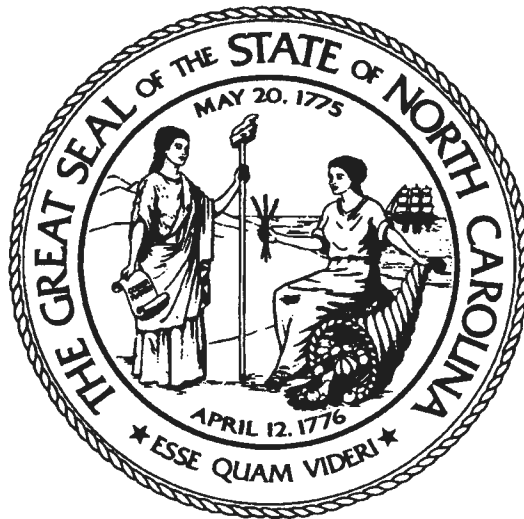


**REPORT OF THE
DEPOSITORY INSTITUTIONS STUDY
COMMISSION**



**REPORT TO THE
1989 GENERAL ASSEMBLY
OF NORTH CAROLINA
1990 SESSION**

A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY.

ROOMS 2126, 2226
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-7778

OR

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-9390

TABLE OF CONTENTS

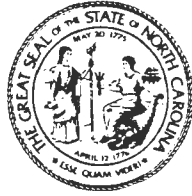
Letter of Transmittal	1
Preface	2
Commission Proceedings	3
Recommendations and Legislative Proposals	11
1. AN ACT TO CLARIFY USE OF THE TERM "BANK," "BANKING," "BANKER," OR "TRUST" IN CONNECTION WITH A BUSINESS	12
2. AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE SAVINGS INSTITUTIONS LAW.....	16
3. AN ACT TO REGULATE REFUND ANTICIPATION LOANS.....	28
4. AN ACT TO REDUCE FROM FIVE YEARS TO THREE YEARS THE MORATORIUM ON ACQUISITION OF A NORTH CAROLINA BANK OR SAVINGS INSTITUTION BY AN OUT- OF-STATE INSTITUTION.....	41
5. AN ACT TO COMPLY WITH TITLE XI OF THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989 BY GRANTING CERTAIN REGULATORY AUTHORITY TO THE NORTH CAROLINA REAL ESTATE COMMISSION REAL ESTATE APPRAISAL COMMITTEE AND TO ADD A NEW CLASSIFICATION OF VOLUNTARY APPRAISER CERTIFICATION	49
6. AN ACT TO MAKE TECHNICAL CHANGES RELATING TO JOINT, TRUST, AND PERSONAL AGENCY ACCOUNTS AT FINANCIAL INSTITUTIONS.....	65
7. AN ACT TO PROVIDE FOR DIRECT CONVERSION OF A SAVINGS INSTITUTION TO A BANK AND A BANK TO A SAVINGS INSTITUTION	81
Appendices	
A. Authorizing Legislation	
Part XV, Chapter 802, 1989 Session Laws	A-1
Senate Bill 1037, 1989 Session	A-2

B. Membership and Staff of the North Carolina Depository Institutions
Study CommissionB-1

C. Speakers at Commission Meetings.....C-1

D. FFIEC Appraisal Subcommittee Guidelines Regarding State Certification
and Licensing of Appraisers.....D-1

NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH 27611

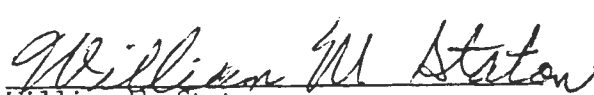



May 21, 1990

TO THE MEMBERS OF THE 1990 GENERAL ASSEMBLY:

The North Carolina Depository Institutions Study Commission submits to you for your consideration its interim report on the impact on North Carolina depository institutions of national developments within the depository institution industry. This report was prepared by the Depository Institutions Study Commission pursuant to Part XV of Chapter 802 of the 1989 Session Laws.

Respectfully submitted,


William W. Staton


Harold J. Brubaker

Cochairmen

Depository Institutions Study Commission

PREFACE

The North Carolina Depository Institutions Study Commission was established by Part XV of Chapter 802 of the 1989 Session Laws. The Commission consists of eighteen members: five members of the Senate and three public members were appointed by the President Pro Tempore of the Senate; five members of the House of Representatives and two public members were appointed by the Speaker of the House of Representatives; and three members serve ex officio: the North Carolina Commissioner of Banks and the Administrators of the Savings Institution and Credit Union Divisions of the North Carolina Department of Community and Economic Development. Senator William W. Staton and Representative Harold J. Brubaker were appointed as co-chairs of the Commission.

Chapter 802 instructed the Commission to study "national developments within the depository institutions industry and what effect, if any, these developments will have upon North Carolina depository institutions." The Commission was also directed to recommend any administrative actions or legislative actions it deemed desirable. Funding for the Commission is drawn from amounts appropriated to the State Banking Commission. Part XV of Chapter 802 is set out in Appendix A to this report. The full membership of the Commission and the staff assigned to the Commission are listed in Appendix B of this report.

COMMITTEE PROCEEDINGS

The North Carolina Depository Institutions Study Commission has met six times: on November 28, 1989; December 14, 1989; January 18, 1990; February 27, 1990; March 28, 1990; and April 30, 1990. When the Commission began work, it found that its legislation grants it broad authority with regard to the topics it may study. The co-chairs of the Commission, Senator William W. Staton and Representative Harold J. Brubaker, determined that an important part of its mission is to recommend any action necessary to preserve the strength of the financial institutions industry in North Carolina. To provide the necessary information to form the basis for these decisions, the Commission made an extensive study of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and invited numerous experts to testify regarding the health of the banking, thrift, and credit union industries in North Carolina. The results of this course of study are summarized below.

The Commission recommended four proposals directly relating to the amendments made by FIRREA and the resulting changes in the banking and thrift industries: Legislative Proposal 2, AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE SAVINGS INSTITUTIONS LAW; Legislative Proposal 4, AN ACT TO REDUCE FROM FIVE YEARS TO THREE YEARS THE MORATORIUM ON ACQUISITION OF A NORTH CAROLINA BANK OR SAVINGS INSTITUTION BY AN OUT-OF-STATE INSTITUTION; Legislative Proposal 5, AN ACT TO COMPLY WITH TITLE XI OF THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989 BY GRANTING CERTAIN REGULATORY AUTHORITY TO THE NORTH CAROLINA REAL ESTATE COMMISSION REAL ESTATE APPRAISAL COMMITTEE AND TO ADD A NEW CLASSIFICATION OF VOLUNTARY APPRAISER CERTIFICATION; and Legislative Proposal 7, AN ACT TO PROVIDE FOR DIRECT CONVERSION OF A SAVINGS INSTITUTION TO A BANK AND A BANK TO A SAVINGS INSTITUTION. Background information and the Commission's findings with regard to these proposals are contained in the explanations that follow each proposal.

The Depository Institutions Study Commission also proved to be an excellent forum for financial institution regulators, other government officials, and representatives of industry and consumers to propose changes in the financial institution laws. The

Commission adopted three legislative proposals based on concerns brought to its attention in this manner: Legislative Proposal 1, AN ACT TO CLARIFY USE OF THE TERM "BANK," "BANKING," "BANKER," OR "TRUST" IN CONNECTION WITH A BUSINESS; Legislative Proposal 3, AN ACT TO REGULATE REFUND ANTICIPATION LOANS; and Legislative Proposal 6, AN ACT TO MAKE TECHNICAL CHANGES RELATING TO JOINT, TRUST, AND PERSONAL AGENCY ACCOUNTS AT FINANCIAL INSTITUTIONS. Background information and the Commission's findings with regard to these proposals are contained in the explanations that follow each proposal.

The Commission initiated study and debate of three additional issues: whether North Carolina's Regional Reciprocal Banking Act should be expanded to allow nationwide interstate reciprocal banking beginning in 1993; whether North Carolina should combine the State Banking Commission, the Savings Institutions Division, and the Credit Union Division into one regulatory agency for all depository institutions; and whether to revise the law regulating assumption fees for real estate loans. The Commission decided that these complex and controversial issues merit further deliberation in the fall before the Commission can make a final decision regarding any recommendations.

A. Financial Institutions Reform, Recovery, and Enforcement Act.

The Depository Institutions Study Commission studied extensively the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The final version of FIRREA, enacted on August 9, 1989, was 700 pages long. In order to familiarize itself with the intricacies of this comprehensive revision of the laws governing depository institutions, the Commission heard testimony from a number of experts, studied written summaries and analyses of the law, and held question and answer sessions with persons familiar with FIRREA.

The Commission learned that FIRREA will have a dramatic effect on the financial services industry nationwide. It represents the most significant regulatory reform of the industry since the passage of the Federal Reserve Act, the Federal Deposit Insurance Act, and other depression measures in the 1930s. Popularly referred to as the "Savings and Loan Bailout Bill," FIRREA deals principally with restoring the safety and soundness of deposit insurance funds by (i) restructuring and realigning regulation and deposit insurance responsibilities, (ii) strengthening enforcement powers of regulators,

and (iii) eliminating certain practices determined to pose unacceptable risks to deposit insurance funds.

The act is designed to ensure that federal regulators may no longer permit insolvent institutions to continue operating. The Commission heard testimony that the practice of federal regulators during the 1980s of allowing insolvent savings institutions to remain in business multiplied the ultimate cost of the bailout many times. Most of the additional cost due to this practice--hundreds of millions, even billions of dollars--will be borne by taxpayers and the healthy portion of the thrift industry. A representative of the Federal Deposit Insurance Corporation (FDIC) testified that, with its new enforcement powers provided by FIRREA, the FDIC will be firm, fast, and fair in dealing with troubled institutions.

FIRREA reorganized two of the federal deposit insurance agencies. The Federal Savings and Loan Insurance Corporation was eliminated and the FDIC was given the duty of insuring deposits of savings institutions as well as banks. The newly created Savings Association Insurance Fund (SAIF) and Bank Insurance Fund (BIF) will be administered by the FDIC, which was granted additional enforcement powers. Premiums paid by savings institutions to the SAIF were increased in order to generate additional funds to help cover the cost of the bailout; bank premiums to BIF will also rise. FIRREA also provides that all deposits will now be backed by the full faith and credit of the United States. Regulatory functions were also restructured: the Federal Home Loan Bank Board was abolished and the Office of Thrift Supervision (OTS) was created to regulate, with strengthened enforcement powers, savings institutions. FIRREA established a new body, the Resolution Trust Corporation (RTC), to manage and resolve thrifts that have failed.

FIRREA did not reorganize the federal agencies that regulate and insure deposits of credit unions. The National Credit Union Administration (NCUA) was granted a modest increase in regulatory power and the National Credit Union Share Insurance Fund (NCUSIF) remains autonomous--independent of the FDIC which administers the insurance funds for banks and savings institutions. The Commission heard testimony that FIRREA made few changes affecting credit unions because of their track record of safe, sound financial performance.

Strong capital standards are essential to protect the safety of the deposit insurance system and provide an incentive for owners of institutions to limit the risks taken with depositors' funds. FIRREA phases in new, stiffer capital requirements for the thrift industry. A savings institution that does not meet the requirements must raise capital,

merge with another institution, or be liquidated. After January 1, 1991, the OTS will not have the discretion to make exceptions to the capital standards, even if the savings institution has submitted an acceptable business plan.

FIRREA attempted to assure the future health of American savings institutions by eliminating practices that Congress felt contributed to the industry crisis of the 1980s. In an effort to return the orientation of savings institutions to single family home financing, FIRREA raises from 60% to 70% the percentage of an institution's assets that must be in certain mortgage-related instruments. This requirement should reduce thrift investment in riskier real estate developments and commercial ventures. FIRREA also prohibits a savings institution from investing in high-risk "junk" bonds and from lending more than a small percentage of its capital to a single borrower. While these restrictions were designed to help restore the health of the failing thrift industry, the Commission heard testimony that they may also cause additional failures by limiting an institution's flexibility in seeking to become profitable enough to survive.

The Commission also studied possible future legislation arising out of FIRREA. One attorney who had been involved in the enactment of FIRREA testified that FIRREA is interim legislation only and is not the final solution. FIRREA sets the stage for further consolidation and realignment of the regulatory function. FIRREA is pushing the thrift industry toward integration with the banking industry. New federal depository institution legislation can be expected in 1991. FIRREA also authorized a study of whether changes such as those made for savings institutions should also be made for credit unions. The Commission learned that there is a movement in Washington to place the NCUSIF under the FDIC and to give the Treasury responsibility for regulating credit unions. The Commission also heard testimony predicting that thrift institutions will be reduced in number due to the higher insurance premiums, stringent lending regulations, and new capital requirements.

B. Health of North Carolina Depository Institutions

During the course of its study, the Depository Institutions Study Commission made an extensive inquiry into the health of North Carolina's depository institutions in light of the changes made by FIRREA and the failure of numerous institutions nationwide. The Commission also explored ideas for action that could enhance the health of North Carolina's financial services industry.

The Commission's inquiry focused on the thrift industry. The Commission found that, in general, North Carolina savings institutions are in good health. Of the 133 savings institutions in North Carolina, only about 9 federally chartered and 6 State-chartered institutions are likely to fail to meet the new capital requirements imposed by FIRREA. These institutions will probably be merged with or purchased by other financial institutions.

Robert Jacobsen, Administrator of the Savings Institutions Division, informed the Commission that historically, savings and loans were highly regulated by the federal government; they attracted small savers and provided money for family homes. In 1982, the financial services industry was deregulated. Thrifts were given broader powers and, at the same time, federal supervision became inadequate. This combination of factors led to the many problems facing the American thrift industry today. For example, many thrifts took advantage of their ability to invest in riskier real estate projects and commercial development; when a downturn in the real estate market occurred, these institutions experienced financial crises. In addition, reports indicate that 25-35% of the savings institution failures nationwide may be attributable to fraud or insider dealings. Stricter regulation by the federal government might have prevented some of these fraudulent practices.

North Carolina's savings institutions are not experiencing the crisis that is creating havoc in the industry nationwide. Experts assured the Study Commission that the thrift industry in North Carolina is profitable as a whole, in contrast to the industry in the rest of the country. North Carolina savings institutions are among the nation's strongest and best managed; North Carolina's thrift industry shows more profit than that of any other Southeastern state.

The relative health of savings institutions in North Carolina is due to a number of factors: the predominance of smaller, community-oriented thrifts in the State; the conservative, prudent practices of North Carolina managers; the general health of the North Carolina economy; and the close supervision provided by the Savings Institutions Division of the North Carolina Department of Economic and Community Development. The Division, working jointly with the federal Office of Thrift Supervision, keeps a close watch on the conditions of the State chartered thrifts and, as soon as it perceives a problem, swiftly takes action to solve the problem and prevent future problems. North Carolina law grants the administrator substantial power and flexibility in dealing with ailing institutions. The strength and flexibility of the administrator are very important to maintaining the health of North Carolina savings institutions. The Commission

learned that good supervision allows the industry to innovate in serving the needs of the community within the constraints of safety and soundness.

The Commission heard conflicting testimony as to the future of the savings institution industry. Some commentators felt that FIRREA is pushing the industry toward integration with the banking industry. The Commission was advised that FIRREA spells the real end of the savings institution industry and that, in order to facilitate the transition, the Commission should consider legislation making it easier for thrifts to become banks.

On the other hand, some commentators asserted that savings institutions will survive as an industry. The recent trend toward variable, rather than fixed, rate mortgages will help thrifts weather economic changes. The proliferation of independent, community-oriented institutions will strengthen the industry. The ability of these institutions to survive can be enhanced by granting them the flexibility to respond to changing conditions. Retaining the ability of the administrator to regulate on a case-by-case basis is important in this regard. In addition, North Carolina should consider increasing salaries of State regulatory personnel and adding more positions as a means to preserve the thrift industry and the dual banking system. The Commission was advised that the public's negative perception of the industry, based on problems nationwide, makes it more difficult for savings institutions to attract customers. The Commission heard testimony that a publicity campaign, assuring the public that North Carolina savings and loans are not costing taxpayers any money, could help solve this problem.

In March 1990, the Commission learned that the North Carolina thrift industry lost \$23,000,000 in 1989. As a result of this news, the Commission sought an updated report on the health of the industry from Robert Jacobsen, Administrator of the Savings Institutions Division. The Commission learned that most North Carolina savings institutions remained healthy. While 20 institutions showed a total loss of \$113,000,000, the remaining 90+ institutions gained \$90,000,000, yielding the industry-wide net loss of \$23,000,000. Of those institutions that made a profit, the return on assets was .64%, a strong return, and the rate of tangible capital as a percentage of assets was also high.

Most of the North Carolina institutions that recorded losses were large institutions that had veered recently from single-family home loans to real estate development. Only one North Carolina institution was closed in 1989 due to fraudulent insider transactions. The disappointing results for 1989 are due to the facts that (i) many

preexisting problems were not disclosed until 1989, leading to a cumulative effect in 1989, (ii) economic problems, such as the overbuilding in the real estate market in the Triangle, arose in 1989, and (iii) a rate of inflation that would otherwise offset weak investments did not occur.

Mr. Jacobsen advised that some North Carolina savings institutions will have to be resolved (closed). The industry as a whole will experience another loss in 1990, although not as great as that in 1989. The North Carolina thrift industry will be composed of fewer, smaller institutions but will remain profitable into the next century.

The Study Commission also looked into the health of North Carolina banks and credit unions. The Commission learned that the banking industry is quite healthy; North Carolina banks are growing in size and number. William T. Graham, North Carolina Commissioner of Banks, pointed out that as of March 1990, there were 62 State chartered banks, with 7 more institutions in the process of getting a charter. The State Banking Commission uses a "CAMEL" rating system for banks, based on Capital, Asset quality, Management, Earnings, and Liquidity. In March 1990, of the 55 State banks old enough to have a CAMEL rating, twenty were rated one (the highest rating), twenty-nine were rated two, four were rated three, and two were rated four. None received the lowest rating, five. The Commission concluded that North Carolina banks are among the nation's strongest and best managed. Credit has become tighter due to stricter scrutiny of real estate loans and efforts to increase capitalization and establish adequate loan loss reserves, but the system as a whole is healthy.

The Commission heard glowing reports of the health of North Carolina's credit union industry. The Administrator of the Credit Union Division of the Department of Economic and Community Development, J. Phillips L. Johnston, informed the Commission that the Division has been named the number one credit union division in the United States for the past two years. There are 162 State-chartered and 96 federally chartered credit unions in North Carolina with four billion dollars in assets. These credit unions serve 15% of North Carolina's citizens. Credit unions are unique in that they are small and entirely consumer oriented. They do not make commercial loans. As Mr. Johnston pointed out, "We don't make loans to Brazil; we don't even speak Spanish!"

Other commentators agreed that North Carolina's current system of credit union regulation is extremely effective. The Commission was informed that keys to the health of the credit union industry nationwide are: aggressive supervision by regulators; use of

generally accepted accounting principles (GAAP) in accounting; swift disclosure of examination reports; and early intervention in troubled institutions.

Overall, the Depository Institutions Study Commission found that North Carolina's strong financial base and conservative regulators have been vital to maintaining the health of depository institutions in this State. While the thrift industry is experiencing losses, most of North Carolina's savings institutions are profitable and the problems facing troubled institutions are being solved. If North Carolina is to maintain its excellent track record in the financial services industry, it is important that State regulatory agencies have adequate staff with adequate salaries to attract and retain qualified personnel.

RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Depository Institutions Study Commission recommends the following legislation to the 1990 Session of the 1989 General Assembly. The Committee's legislative proposals consist of seven bills. Each proposed bill is followed by a discussion of the Commission's findings relating to the bill and an explanation of the proposal.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H/S

D

Proposal 1 (89-LC-318)(3.28)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Use of "Bank" in Business Name. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY USE OF THE TERM "BANK," "BANKING," "BANKER," OR
3 "TRUST" IN CONNECTION WITH A BUSINESS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G. S. 53-127 reads as rewritten:
6 ~~"§ 53-127. Use of "bank," "banking," or "trust" in corporate~~
7 ~~name. Unlawful use of terms indicating that business is bank or~~
8 ~~trust company.~~
9 (a) Definitions. The following definitions apply in this
10 section.
11 (1) Banking. The business of receiving or soliciting
12 money on deposit.
13 (2) Banking entity. A person, partnership, corporation,
14 or other entity that is engaged in the banking or
15 trust business in North Carolina and is (i) subject
16 to the supervision of the Commissioner of Banks
17 under this Chapter, (ii) subject to supervision by
18 the Administrator of Savings Institutions under
19 Chapter 54B or (iii) a banking or savings
20 institution authorized to transact a banking or
21 trust business in this state under federal law.
22 (3) Nonbanking entity. A person, partnership,
23 corporation, or other entity that is not a banking
24 entity.

1 (b) Restrictions. No nonbanking entity may use any sign or
2 written or printed paper indicating that it is a bank, savings
3 bank, trust company, or place of banking. No entity may use the
4 word 'bank,' 'savings bank,' 'banking,' 'banker,' or 'trust
5 company,' or the equivalent or plural of any of these words in
6 connection with any business other than that of banking. This
7 section does not prohibit an individual from acting in a trust
8 capacity.

9 (c) Exceptions.

10 (1) A nonbanking entity may use any of the terms listed
11 above in its name if the context or remaining words
12 show clearly that the business is not a bank or
13 trust company and is not engaged in the banking or
14 trust business.

15 (2) A nonbanking entity may use any of the terms listed
16 above where the term is the proper name of a
17 principal or former principal in the entity and the
18 use of the name is made in good faith and not in an
19 effort to deceive the public.

20 (3) A corporation that is a bank holding company as
21 defined in G.S. 53-226(2) or a savings and loan
22 holding company as defined in G.S. 54B-261(d) may
23 use the words 'bank,' 'banker,' and 'trust
24 company,' and the equivalent and plural of these
25 words in its name and may use a name similar to
26 that of any of its subsidiary banks or stock
27 associations.

28 (4) A corporation incorporated before January 1, 1905,
29 may retain the word 'trust' in its name, although
30 it does not transact a business that requires
31 examination by the Commissioner of Banks.

32 (d) Penalty. Violation of this section is a misdemeanor,
33 punishable by a fine of up to five hundred dollars (\$500.00).

34 ~~Except for savings and loan associations acting pursuant to the~~
35 ~~authority granted in G.S. 54B-26, no corporation shall hereafter~~
36 ~~be chartered under the laws of this State with the words "bank,"~~
37 ~~"banking," or "trust" as a part of its name except corporations~~
38 ~~reporting to and under the supervision of the Commissioner of~~
39 ~~Banks, or corporations under the supervision of the Commissioner~~
40 ~~of Insurance; nor shall any corporate name be amended so as to~~
41 ~~include the words "bank," "banking," "banker," or "trust," unless~~
42 ~~the corporation be under such supervision. Except for savings and~~
43 ~~loan associations acting pursuant to the authority granted in~~
44 ~~G.S. 54B-26, no person, association, firm or corporation~~

~~1 domiciled within the State of North Carolina except corporations,
2 persons, associations, or firms reporting to and under the
3 supervision of the Commissioner of Banks or under the supervision
4 of the Commissioner of Insurance, shall therein advertise or put
5 forth any sign as bank, banking, banker or trust company, or use
6 the word "bank," "banking," "banker," or "trust," as a part of
7 its name and title, or in any way solicit or receive deposits or
8 transact business as a trust company: Provided, that this Chapter
9 shall not be held to prevent any individual as such from acting
10 in any trust capacity as heretofore: Provided, further, that it
11 shall be lawful for any corporation incorporated prior to January
12 1, 1905, to retain the word "trust" in the name of said
13 corporation, though it does not transact a banking business or
14 such other business as requires its examination by the
15 Commissioner of Banks or the Commissioner of Insurance.~~

~~16 Any violation of the provisions of this section shall be a
17 misdemeanor, and upon conviction thereof the offender shall be
18 fined in a sum not exceeding five hundred dollars (\$500.00) for
19 each offense."~~

20 Sec. 2. This act is effective upon ratification.

Explanation of Proposal 1

Legislative Proposal 1 provides for the use of the words "bank", "savings bank", "banking", "banker", and "trust company" by nonbanking entities under certain circumstances. The current law, G.S. 53-127, prohibits the use of these terms by businesses other than banks, savings and loans, and corporations incorporated prior to January 1, 1905. The law created problems for certain businesses, such as real estate company Coldwell Banker and clothing retailer Joseph Bank Clothiers.

Legislative Proposal 1 would provide several exceptions to the current restrictions. These exceptions are:

1. The name of the nonbanking entity clearly shows that it is not a bank or trust;
2. The term used is the proper name of a principal in the entity and is not used with the intent to deceive the public;
3. The entity is a bank or savings and loan holding company; or
4. The entity was incorporated prior to January 1, 1905.

Violation of G.S. 53-127 would be a misdemeanor punishable by a fine of up to \$500.00. The act is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

Proposal 2 (89-LC-323)(3.28)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Savings Inst'n Conforming Changes. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE SAVINGS
3 INSTITUTIONS LAW.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 54B-30(5) reads as rewritten:
6 "(5) Within 60 days after approval of the proceedings by
7 the Administrator, the association shall file an
8 application, in the manner prescribed or authorized
9 by the laws and regulations of the United States,
10 to consummate the conversion to a federal
11 association. A copy of the charter or
12 authorization issued to such association by the
13 ~~Federal Home Loan Bank Board~~, federal regulatory
14 authority, or a certificate showing the
15 organization or conversion of such association into
16 a federal savings and loan association, and upon
17 such filing with the Administrator the association
18 shall cease to be a State association and shall be
19 a federal association."
20 Sec. 2. G.S. 54B-33(f) reads as rewritten:
21 "(f) The administrator may promulgate such rules and
22 regulations as may be necessary to govern conversions; provided,
23 however, that such rules and regulations as may be promulgated by
24 the Administrator shall be equal to or exceed the requirements

1 for conversion imposed by the rules and regulations governing
2 conversions of federal chartered mutual savings and loan
3 ~~associations of the Federal Home Loan Bank Board as set forth in~~
4 ~~the Federal Register, Vol. 44, No. 62, Thursday, March 29, 1979,~~
5 ~~entitled 'Part 563b Conversion From Mutual to Stock Form' as~~
6 ~~these may be amended from time to time and other applicable rules~~
7 ~~and regulations effective as of the date of ratification,~~
8 associations."

9 Sec. 3. G.S. 54B-48.2 reads as rewritten:

10 "§ 54B-48.2. Definitions.

11 Notwithstanding the provisions of G.S. 54B-4, as used in this
12 Article, unless the context requires otherwise:

13 (1) 'Acquire', as applied to an association or a
14 savings and loan holding company, means any of the
15 following actions or transactions:

16 a. The merger or consolidation of an association
17 with another association or savings and loan
18 holding company or a savings and loan holding
19 company with another savings and loan holding
20 company.

21 b. The acquisition of the direct or indirect
22 ownership or control of voting shares of an
23 association or savings and loan holding
24 company if, after the acquisition, the
25 acquiring association or savings and loan
26 holding company will directly or indirectly
27 own or control more than five percent (5%) of
28 any class of voting shares of the acquired
29 association or savings and loan holding
30 company.

31 c. The direct or indirect acquisition of all or
32 substantially all of the assets of an
33 association or savings and loan holding
34 company.

35 d. The taking of any other action that would
36 result in the direct or indirect control of an
37 association or savings and loan holding
38 company.

39 (2) 'Administrator' means the Administrator of the
40 Savings Institutions Division.

41 (3) 'Association' means a mutual or capital stock
42 savings and loan association, building and loan
43 association or savings bank chartered under the
44 laws of any one of the states or ~~by the Federal~~

- 1 ~~Home Loan Bank Board, pursuant to the 'Home Owners'~~
2 ~~Loan Act of 1933', 12 U.S.C. Section 1464, as~~
3 ~~amended, under the laws of the United States.~~
- 4 (4) 'Branch office' means any office at which an
5 association accepts deposits. The term branch
6 office does not include:
- 7 a. Unmanned automatic teller machines,
8 point-of-sale terminals, or similar unmanned
9 electronic banking facilities at which
10 deposits may be accepted;
- 11 b. Offices located outside the United States; and
- 12 c. Loan production offices, representative
13 offices, service corporation offices, or other
14 offices at which deposits are not accepted.
- 15 (5) 'Company' means that which is set forth in the
16 Federal Savings and Loan Holding Company Act, 12
17 U.S.C. Section 1730a(a)(1)(C), as amended.
- 18 (6) 'Control' means that which is set forth in the
19 Federal Savings and Loan Holding Company Act, 12
20 U.S.C. Section 1730a(a)(2), as amended.
- 21 (7) 'Deposits' means all demand, time, and savings
22 deposits, without regard to the location of the
23 depositor: Provided, however, that 'deposits' shall
24 not include any deposits by associations. For
25 purposes of this Article, determination of deposits
26 shall be made with reference to regulatory reports
27 of condition or similar reports made by or to State
28 and federal regulatory authorities.
- 29 (8) 'Federal association' means an association
30 chartered ~~by the Federal Home Loan Bank Board~~
31 ~~pursuant to the 'Home Owners' Loan Act of 1933', 12~~
32 ~~U.S.C. Section 1464, as amended, under the laws of~~
33 ~~the United States.~~
- 34 (9) 'North Carolina association' means an association
35 organized under the laws of the State of North
36 Carolina or under the laws of the United States and
37 that:
- 38 a. Has its principal place of business in the
39 State of North Carolina;
- 40 b. Which if controlled by an organization, the
41 organization is either a North Carolina
42 association, Southern Region association,
43 North Carolina savings and loan holding

- 1 company, or a Southern Region savings and loan
2 holding company; and
- 3 c. More than eighty percent (80%) of its total
4 deposits, other than deposits located in
5 branch offices acquired pursuant to Section
6 123 of the Garn-St Germain Depository
7 Institutions Act of 1982 (12 U.S.C. 1730a(m))
8 or comparable state law, are in its branch
9 offices located in one or more of the Southern
10 Region states.
- 11 (10) 'North Carolina Savings and Loan Holding Company'
12 means a savings and loan holding company that:
- 13 a. Has its principal place of business in the
14 State of North Carolina;
- 15 b. Has total deposits of its Southern Region
16 association subsidiaries and North Carolina
17 association subsidiaries that exceed eighty
18 percent (80%) of the total deposits of all
19 association subsidiaries of the savings and
20 loan holding company other than those
21 association subsidiaries held pursuant to
22 Section 123 of the Garn-St Germain Depository
23 Institutions Act of 1982 (12 U.S.C. 1730a(m))
24 or comparable state law.
- 25 (11) 'Principal place of business' of an association
26 means the state in which the aggregate deposits of
27 the association are the largest. For the purposes
28 of this Article, the principal place of business of
29 a savings and loan holding company is the state
30 where the aggregate deposits of the association
31 subsidiaries of the holding company are the
32 largest.
- 33 (12) 'Savings and loan holding company' means any
34 company which directly or indirectly controls an
35 association or controls any other company which is
36 a savings and loan holding company.
- 37 (13) 'Service Corporation' means any corporation, the
38 majority of the capital stock of which is owned by
39 one or more associations and which engages,
40 directly or indirectly, in any activities which may
41 be engaged in by a service corporation in which an
42 association may invest under the laws of one of the
43 states or under the laws of the United States.

- 1 (14) 'Southern Region association' means an association
2 other than a North Carolina association organized
3 under the laws of one of the Southern Region states
4 or under the laws of the United States and that:
5 a. Has its principal place of business only in a
6 Southern Region state other than North
7 Carolina;
8 b. Which if controlled by an organization, the
9 organization is either a Southern Region
10 association or a Southern Region savings and
11 loan holding company; and
12 c. More than eighty percent (80%) of its total
13 deposits, other than deposits located in
14 branch offices acquired pursuant to Section
15 123 of the Garn-St Germain Depository
16 Institutions Act of 1982 (12 U.S.C. 1730a(m))
17 or comparable state law, are in its branch
18 offices located in one or more of the Southern
19 Region states.
- 20 (15) 'Southern Region savings and loan holding company'
21 means a savings and loan holding company that:
22 a. Has its principal place of business in a
23 Southern Region state other than the State of
24 North Carolina;
25 b. Has total deposits of its Southern Region
26 association subsidiaries and North Carolina
27 association subsidiaries that exceed eighty
28 percent (80%) of the total deposits of all
29 association subsidiaries of the savings and
30 loan holding company other than those
31 association subsidiaries held pursuant to
32 Section 123 of the Garn-St Germain Depository
33 Institutions Act of 1982 (12 U.S.C. 1730a(m))
34 or comparable state law.
- 35 (16) 'Southern Region states' means the states of
36 Alabama, Arkansas, Florida, Georgia, Kentucky,
37 Louisiana, Maryland, Mississippi, North Carolina,
38 South Carolina, Tennessee, Virginia, West Virginia,
39 and the District of Columbia.
- 40 (17) 'State' means any state of the United States and
41 the District of Columbia.
- 42 (18) 'State association' means an association organized
43 under the laws of one of the states.

1 (19) 'Subsidiary' means that which is set forth in the
2 Federal Savings and Loan Holding Company Act, 12
3 U.S.C. Section 1730a(a)(1)(H), as amended."

4 Sec. 4. G.S. 54B-48.3 is amended by adding a new
5 subsection to read:

6 "(b1) A North Carolina savings and loan holding company or a
7 North Carolina association may acquire any Southern Region
8 association or Southern Region savings and loan holding company
9 with the approval of the Administrator. The North Carolina
10 savings and loan holding company or North Carolina association
11 shall submit to the Administrator an application for approval of
12 the acquisition, which application shall be approved only if the
13 application includes a business plan extending for an initial
14 period of at least three years from the date of the acquisition
15 which shall be renewed thereafter for as long as may be required
16 by the Administrator. The association may not deviate without
17 the prior written approval of the Administrator from the business
18 plan which shall address such matters as the Administrator may
19 deem appropriate for the protection of the depositors and members
20 of the North Carolina association and the general public. The
21 business plan shall address, without limitation:

- 22 (1) Insurance of depositors' accounts.
23 (2) Conversion of corporate form or other fundamental
24 changes.
25 (3) Closing, selling, or divesting any or all North
26 Carolina branches."

27 Sec. 5. G.S. 54B-56(b) reads as rewritten:

28 "(b) The Administrator shall furnish a copy of the report to
29 the association examined and may, upon request, furnish a copy of
30 or excerpts from the report to the ~~Federal Home Loan Bank Board,~~
31 ~~a Federal Home Loan Bank, any mutual deposit guaranty association~~
32 ~~organized and operated under the provisions of Article 12 of this~~
33 ~~Chapter, or the Federal Savings and Loan Insurance Corporation or~~
34 ~~its successor, appropriate federal regulatory authorities."~~

35 Sec. 6. G.S. 54B-61(b) reads as rewritten:

36 "(b) In lieu of causing such appraisals to be made, the
37 Administrator may accept an appraisal caused to be made by a
38 ~~Federal Home Loan Bank, the Federal Home Loan Bank Board or by~~
39 ~~the Federal Savings and Loan Insurance Corporation or any mutual~~
40 ~~deposit guaranty association organized and operating under the~~
41 ~~provisions of Article 12 of this Chapter. the appropriate federal~~
42 regulatory authority."

43 Sec. 7. G.S. 54B-77(a) reads as rewritten:

1 "(a) In addition to the powers granted under this Chapter, any
2 savings and loan association incorporated or operated under the
3 provisions of this Chapter is herein authorized to:

- 4 (1) Establish off the premises of any principal office
5 or branch a customer communications terminal,
6 point-of-sale terminal, automated teller machine,
7 automated or other direct or remote
8 information-processing device or machine, whether
9 manned or unmanned, through or by means of which
10 funds or information relating to any financial
11 service or transaction rendered to the public is
12 stored and transmitted, instantaneously or
13 otherwise to or from an association terminal or
14 terminals controlled or used by or with other
15 parties; and the establishment and use of such a
16 device or machine shall not be deemed to constitute
17 a branch office and the capital requirements and
18 standards for approval of a branch office as set
19 forth in the statutes and regulations, shall not be
20 applicable to the establishment of any such
21 off-premises terminal, device or machine; and
22 associations may through mutual consent share
23 on-premises unmanned automated teller machines and
24 cash dispensers. The Administrator may prescribe
25 rules and regulations with regard to the
26 application for permission for use, maintenance and
27 supervision of said terminals, devices and
28 machines;
- 29 (2) Subject to such regulations as the Administrator
30 may prescribe, a state-chartered association is
31 authorized to issue credit cards, extend credit in
32 connection therewith, and otherwise engage in or
33 participate in credit card operations;
- 34 (3) Subject to such regulations as the Administrator
35 may prescribe, a state-chartered association may
36 act as a trustee, executor, administrator, guardian
37 or in any other fiduciary capacity permitted for
38 federal savings and loan associations by the
39 Congress of the United States, Federal Home Loan
40 Bank Board and the Federal Savings and Loan
41 Insurance Corporation; associations;
- 42 (4) a. In accordance with rules and regulations
43 issued by the Administrator, mutual capital
44 certificates may be issued by state-chartered

1 associations and sold directly to subscribers
2 or through underwriters, and such certificates
3 shall constitute part of the general reserve
4 and net worth of the issuing association. The
5 Administrator, in the rules and regulations
6 relating to the issuance and sale of mutual
7 capital certificates, shall provide that such
8 certificates:

- 9 1. Shall be subordinate to all savings
10 accounts, savings certificates, and debt
11 obligations;
- 12 2. Shall constitute a claim in liquidation
13 on the general reserves, surplus and
14 undivided profits of the association
15 remaining after the payment of all
16 savings accounts, savings certificates,
17 and debt obligations;
- 18 3. Shall be entitled to the payment of
19 dividends; and
- 20 4. May have a fixed or variable dividend
21 rate.

22 b. The Administrator shall provide in the rules
23 and regulations for charging losses to the
24 mutual capital certificate, reserves, and
25 other net worth accounts."

26 Sec. 8. G.S. 54B-109(b) reads as rewritten:

27 "(b) An association which employs collection agents, who for
28 any reason are not covered by the bond as hereinabove required,
29 shall provide for the bonding of each such agent in an amount
30 equal to at least twice the average monthly collections of such
31 agent. Such agents shall be required to make settlement with the
32 association at least once monthly. No such coverage by bond will
33 be required of any agent which is a ~~bank insured by the Federal~~
34 ~~Deposit Insurance Corporation or an association insured by the~~
35 ~~Federal Savings and Loan Insurance Corporation or a mutual~~
36 ~~deposit guaranty association.~~ federally insured depository
37 institution. The amount and form of such bonds and the
38 sufficiency of the surety thereon shall be approved by the board
39 of directors and the Administrator before such is valid. All
40 such bonds shall provide that a cancellation thereof either by
41 the surety or by the insured shall not become effective unless
42 and until 30 days' notice in writing shall have been given to the
43 Administrator."

1 Sec. 9. G.S. 54B-121(c) is amended by adding a new
2 subdivision to read:

3 "(3) An association may establish demand deposit
4 accounts as a class of withdrawable accounts. The
5 association shall not permit any overdraft,
6 including an intraday overdraft, on behalf of an
7 affiliate or incur any overdraft in the
8 association's account at a Federal reserve bank or
9 Federal home loan bank on behalf of an affiliate."

10 Sec. 10. G.S. 54B-154 reads as rewritten:

11 "**§ 54B-154. Insider loans.**

12 The Administrator ~~shall~~ may promulgate rules and regulations
13 ~~consistent with this section, no less stringent than the~~
14 requirements of the appropriate federal regulatory authority, and
15 as he deems necessary, to govern the making of loans to officers
16 and directors, and their associates, and companies or other
17 business entities controlled by them.

18 ~~Such loans shall be in the ordinary business of the~~
19 ~~association, which do not involve more than normal risk of~~
20 ~~collectibility, or pose other unfavorable features. Such loans~~
21 ~~shall be made only when approved by a majority of the directors,~~
22 ~~by resolution upon which no director interested in the loan~~
23 ~~proceeds may vote, and only upon a full disclosure of the~~
24 ~~transaction to the board. Full disclosure must include whether~~
25 ~~the loan is made on substantially the same terms, including~~
26 ~~interest rate and collateral, as those prevailing at the time for~~
27 ~~comparable loans to other persons. Departure from the terms of~~
28 ~~loans made to others must be justified and approved as a part of~~
29 ~~the resolution. The Administrator's rules shall clearly state~~
30 ~~that no officer, director, or their associates, or companies or~~
31 ~~other business entities controlled by them, shall enjoy an~~
32 ~~improper advantage with respect to loan transactions beyond those~~
33 ~~advantages enjoyed by other loan applicants."~~

34 Sec. 11. G.S. 54B-194(d) reads as rewritten:

35 "(d) The permitted activities of a service corporation shall be
36 described in the rules and regulations as promulgated by the
37 Administrator. In addition, a service corporation may engage in
38 those activities which are approved by ~~the Federal Home Loan Bank~~
39 ~~Board~~ for service corporations owned solely by federal
40 associations who have their principal offices in this State,
41 unless such activities are prohibited by the Administrator."

42 Sec. 12. G.S. 54B-195 reads as rewritten:

43 "**§ 54B-195. Any loan or investment permitted for federal**
44 **associations.**

1 Subject to such limitations and restrictions as the
2 Administrator may prescribe through rules and regulations, any
3 State association is authorized and permitted to make any loan or
4 investment, or engage in any activity, which may be permitted by
5 ~~the Federal Home Loan Bank Board, the Federal Savings and Loan~~
6 ~~Insurance Corporation, and the United States Congress~~ for federal
7 associations whose principal offices are located within this
8 State. Every loan or investment made by a State association
9 prior to the enactment of this Chapter shall for all purposes be
10 considered to have been permitted loans or investments if federal
11 associations were authorized to make such loans or investments at
12 the time they were made by the State association."

13 Sec. 13. G.S. 54B-210 reads as rewritten:

14 **"§ 54B-210. Components of liquidity fund.**

15 (a) Every State association shall establish and maintain a
16 regulatory capital account in an amount and in such funds and
17 investments that comply with the requirements of ~~its federal~~
18 ~~insurer of withdrawable accounts.~~ the appropriate federal
19 regulatory authorities.

20 (b) The failure of a State association to maintain the required
21 level and type of regulatory capital may be grounds for
22 supervisory action by the Administrator.

23 (c) The Administrator may adopt rules to implement this
24 section."

25 Sec. 14. G.S. 54B-216 reads as rewritten:

26 **"§ 54B-216. General reserve.**

27 (a) Every State association shall establish and maintain
28 general valuation allowances and specific loss reserves in
29 compliance with the requirements of ~~its federal insurer of~~
30 ~~withdrawable accounts.~~ the appropriate federal regulatory
31 authorities.

32 (b) The failure of a State association to maintain the required
33 level of general valuation allowances or specific loss reserves
34 may be grounds for supervisory action by the Administrator.

35 (c) The Administrator may adopt rules to implement this
36 section."

37 Sec. 15. G.S. 54B-236 reads as rewritten:

38 **"§ 54B-236. Definitions.**

39 The term 'institution' as used in this Article shall mean
40 savings and loan associations organized or operated under the
41 provisions of this Chapter, or credit unions organized or
42 operated under the provisions of Articles 14A to 14L of Chapter
43 54 of the General Statutes, or any institution that is eligible
44 for insurance by ~~the Federal Savings and Loan Insurance~~

1 ~~Corporation,~~ the Federal Deposit Insurance Corporation or the
2 National Credit Union Administration."

3 Sec. 16. This act is effective upon ratification.

Explanation of Proposal 2

Legislative Proposal 2 amends the current law governing savings institutions to conform to the changes made by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Because FIRREA abolished the Federal Home Loan Bank Board, references to that Board have been changed to refer to a general federal regulatory authority.

The proposal also adds a new provision to the Regional Reciprocal Savings and Loan Acquisition Act to give the Administrator of the Savings Institutions Division the authority to review the acquisition of an out-of-state association by a North Carolina association. This new authority will protect North Carolina investors from FIRREA provisions that allow the FDIC to recover losses from sibling associations in the same holding company as a failed bank.

FIRREA authorizes federal savings associations to offer non-interest bearing demand deposit accounts. Section 9 of Legislative Proposal 2 would authorize state associations to offer demand deposit accounts. FIRREA imposes strict requirements regarding affiliate and insider transactions. Section 10 of the proposal provides that the Administrator may promulgate rules governing affiliate and insider transactions of state savings institutions no less stringent than the federal rules.

The act is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

Proposal 3 (89-LC-324)(3.28)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Regulate Tax Refund Loans.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE REFUND ANTICIPATION LOANS.
3 The General Assembly of North Carolina enacts:
4 Section 1. G.S. 53-166 reads as rewritten:
5 "§ 53-166. Scope of Article; evasions; penalties; loans in
6 violation of Article void.
7 (a) Scope. -- No person shall engage in the business of lending
8 in amounts of ten thousand dollars (\$10,000) or less and contract
9 for, exact, or receive, directly or indirectly, on or in
10 connection with any such loan, any charges whether for interest,
11 compensation, consideration, or expense, or any other purpose
12 whatsoever, which in the aggregate are greater than permitted by
13 Chapter 24, except as provided in and authorized by this Article,
14 and without first having obtained a license from the
15 ~~Commissioner. Provided further, no person shall in the course of~~
16 ~~any business service individually or in conjunction or~~
17 ~~cooperation with any bank or other lender process or accept for~~
18 ~~delivery to any bank or other lender any loan application, or~~
19 ~~receive or accept for delivery any loan proceed checks or in any~~
20 ~~manner facilitate the extension of credit the purpose of which is~~
21 ~~to fund a loan in anticipation of any sums of money due by reason~~
22 ~~of a tax refund without first having obtained a license from the~~
23 ~~Commissioner.~~ Commissioner. The word 'lending' as used in this

1 section, shall include, but shall not be limited to, endorsing or
2 otherwise securing loans or contracts for the repayment of loans.

3 (b) Evasions. -- The provisions of subsection (a) of this
4 section shall apply to any person who seeks to avoid its
5 application by any device, subterfuge or pretense whatsoever.

6 (c) Penalties; Commissioner to Provide and Testify as to Facts
7 in His Possession. -- Any person not exempt from this Article, or
8 any officer, agent, employee or representative thereof, who fails
9 to comply with or who otherwise violates any of the provisions of
10 this Article, or any regulation of the Banking Commission adopted
11 pursuant to this Article, shall be guilty of a misdemeanor and
12 upon conviction shall be fined not less than five hundred dollars
13 (\$500.00) nor more than twenty-five hundred dollars (\$2,500) or
14 imprisoned not less than four months nor more than two years, or
15 both, in the discretion of the court. Each such violation shall
16 be considered a separate offense. It shall be the duty of the
17 Commissioner of Banks to provide the district attorney of the
18 court having jurisdiction of any such offense with all facts and
19 evidence in his actual or constructive possession, and to testify
20 as to such facts upon the trial of any person for any such
21 offense.

22 (d) Additional Penalties. -- Any contract of loan, the making
23 or collecting of which violates any provision of this Article, or
24 regulation thereunder, except as a result of accidental or bona
25 fide error of computation shall be void and the licensee or any
26 other party in violation shall have no right to collect, receive
27 or retain any principal or charges whatsoever with respect to
28 such loan. If an affiliate operating in the same office or
29 subsidiary operating in the same office of a licensee makes a
30 loan in violation of G.S. 53-180(i) such affiliate or subsidiary
31 may recover only its principal on such loan."

32 Sec. 2. Chapter 53 of the General Statutes is amended
33 by adding at the end a new Article to read:

34 "Article 20.

35 "Refund Anticipation Loan Act.

36 "§ 53-245. Title and scope.

37 (a) Title. This Article shall be known and cited as the
38 'Refund Anticipation Loan Act'.

39 (b) Scope. No person may individually or in conjunction or
40 cooperation with another person process, receive, or accept for
41 delivery an application for a refund anticipation loan or a check
42 in payment of refund anticipation loan proceeds or in any other
43 manner facilitate the making of a refund anticipation loan unless
44 the person has complied with the provisions of this Article.

1 "§ 53-246. Definitions.

2 The following definitions apply in this Article:

- 3 (1) Applicant. A person who applies for registration
4 as a facilitator of refund anticipation loans.
- 5 (2) Commission. The State Banking Commission.
- 6 (3) Commissioner. The Commissioner of Banks.
- 7 (4) Creditor. A person who makes a refund anticipation
8 loan.
- 9 (5) Debtor. A person who receives the proceeds of a
10 refund anticipation loan.
- 11 (6) Facilitator. A person who individually or in
12 conjunction or cooperation with another person
13 processes, receives, or accepts for delivery an
14 application for a refund anticipation loan or a
15 check in payment of refund anticipation loan
16 proceeds or in any other manner facilitates the
17 making of a refund anticipation loan.
- 18 (7) Person. An individual, a firm, a partnership, an
19 association, a corporation, or another entity.
- 20 (8) Refund anticipation loan. A loan that the creditor
21 arranges to be repaid directly from the proceeds of
22 the debtor's income tax refund.
- 23 (9) Refund anticipation loan fee. The charges, fees.
24 or other consideration charged or imposed by the
25 creditor or facilitator for the making of a refund
26 anticipation loan. This term does not include any
27 charge, fee, or other consideration usually charged
28 or imposed by the facilitator in the ordinary
29 course of business for nonloan services, such as
30 fees for tax return preparation and fees for
31 electronic filing of tax returns.
- 32 (10) Registrant. A person who is registered as a
33 facilitator of refund anticipation loans under this
34 Article.

35 "§ 53-247. Registration requirement.

36 (a) Registration Requirement. No person may individually or
37 in conjunction or cooperation with another person process,
38 receive, or accept for delivery an application for a refund
39 anticipation loan or a check in payment of refund anticipation
40 loan proceeds without first being registered with the
41 Commissioner in accordance with the registration procedure
42 provided in this Article.

1 (b) Criminal Penalty. Violation of this section is a
2 misdemeanor, punishable by imprisonment up to sixty days, a fine
3 of up to two thousand dollars (\$2,000), or both.

4 (c) Exemption. This section does not apply to a person doing
5 business as a bank, savings association, or credit union, under
6 the laws of this State or the United States.

7 "§ 53-248. Registration procedure.

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

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

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

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

41 Upon the filing of an application for renewal of registration
42 under this Article, the Commissioner shall renew the registration
43 unless the Commissioner determines that the fitness of the
44 registrant or the operations of the registrant would not support

1 registration of the registrant under subsection (a). If the
2 Commissioner makes such a determination, he shall so notify the
3 registrant, stating the reasons for the determination.

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

8 "§ 53-249. Filing and posting of loan fees; disclosures.

9 (a) Filing of Fee Schedule. On or before January 2 of each
10 year, each registrant shall file with the Commissioner a schedule
11 of the refund anticipation loan fees for refund anticipation
12 loans to be facilitated by the registrant during the succeeding
13 year. Immediately upon learning of any change in the refund
14 anticipation loan fee for that year, the registrant shall file an
15 amendment with the Commissioner setting out the change. Filing
16 is effective upon receipt by the Commissioner.

17 (b) Notice of Unconscionable Fee. If the Commissioner finds
18 that a refund anticipation loan fee filed pursuant to subsection
19 (a) is unconscionable, he shall notify the registrant that (i) in
20 his opinion the fee is unconscionable and (ii) the consequences
21 of charging a refund anticipation loan fee in an amount that the
22 Commissioner has notified the registrant is unconscionable
23 include liability to the debtor for three times the amount of
24 that fee and possible revocation of registration as a facilitator
25 after notice and a hearing.

26 (c) Posting of Fee Schedule. Every registrant shall
27 prominently display at each office where the registrant is
28 facilitating refund anticipation loans a schedule showing the
29 current refund anticipation loan fees for refund anticipation
30 loans facilitated at the office and the current electronic filing
31 fees for the electronic filing of the taxpayer's tax return.
32 Every registrant shall also prominently display on each fee
33 schedule a statement to the effect that the taxpayer may have the
34 tax return filed electronically without also obtaining a refund
35 anticipation loan. No registrant may facilitate a refund
36 anticipation loan unless (i) the schedule required by this
37 subsection is displayed and (ii) the refund anticipation loan fee
38 actually charged is the same as the fee displayed on the schedule
39 and the fee filed with the Commissioner pursuant to subsection
40 (a).

41 (d) Disclosures. At the time a debtor applies for a refund
42 anticipation loan, the registrant shall disclose to the debtor on
43 a form separate from the application:

44 (1) The fee for the loan.

- 1 (2) The fee for electronic filing of a tax return.
2 (3) The time within which the proceeds of the loan will
3 be paid to the debtor if the loan is approved.
4 (4) That the debtor is responsible for repayment of the
5 loan and related fees in the event the tax refund
6 is not paid or is not paid in full.
7 (5) The availability of electronic filing of the
8 taxpayer's tax return, along with the average time
9 announced by the appropriate taxing authority
10 within which a taxpayer can expect to receive a
11 refund if the taxpayer's return is filed
12 electronically and the taxpayer does not obtain a
13 refund anticipation loan.
14 (6) Examples of the annual percentage rates, as defined
15 by the Truth In Lending Act, 15 U.S.C. § 1607 and
16 12 C.F.R. Section 226.22, for refund anticipation
17 loans of \$500.00, \$750.00, \$1,000, \$1,500, \$2,000,
18 and \$3,000. Regardless of disclosures of the
19 annual percentage rate required by the Truth In
20 Lending Act, if the debtor is required to establish
21 or maintain a deposit account with the creditor for
22 receipt of the debtor's tax refund to offset the
23 amount owed on the loan, the maturity of the loan
24 for the purpose of determining the annual
25 percentage rate disclosure under this section shall
26 be assumed to be the estimated date when the tax
27 refund will be deposited in the debtor's account.

28 "§ 53-250. Prohibited activities.

29 A facilitator of a refund anticipation loan may not engage in
30 any of the following activities:

- 31 (1) Misrepresenting a material factor or condition of a
32 refund anticipation loan.
33 (2) Failing to arrange for a refund anticipation loan
34 promptly after the debtor applies for the loan.
35 (3) Engaging in any transaction, practice, or course of
36 business that operates a fraud upon any person in
37 connection with a refund anticipation loan.
38 (4) Facilitating a refund anticipation loan for which
39 the refund anticipation loan fee is (i) different
40 from the fee posted or the fee filed with the
41 Commissioner or (ii) in an amount that the
42 Commissioner has notified the facilitator is
43 unconscionable.

1 (5) Directly or indirectly arranging for payment of any
2 portion of the refund anticipation loan for check
3 cashing, credit insurance, or any other good or
4 service unrelated to (i) preparing and filing tax
5 returns or (ii) facilitating refund anticipation
6 loans.

7 (6) Arranging for a creditor to take a security
8 interest in any property of the debtor other than
9 the proceeds of the debtor's tax refund to secure
10 payment of the loan.

11 "§ 53-251. Cease and desist; revocation of registration;
12 penalties.

13 (a) Cease and Desist Order. Upon the finding that any action
14 of a registrant may be in violation of this Article or that the
15 registrant has engaged in an unfair or deceptive act or practice,
16 the Commissioner shall give reasonable notice to the registrant
17 of the suspected violation or unfair or deceptive act or
18 practice, and an opportunity for the registrant to be heard. If,
19 following the hearing, the Commissioner finds that an action of
20 the registrant is in violation of this Article or that the
21 registrant has engaged in an unfair or deceptive act or practice,
22 the Commissioner shall order the registrant to cease and desist
23 from the action.

24 If the registrant fails to appeal a cease and desist order of
25 the Commissioner in accordance with G.S. 53-252 and continues to
26 engage in an action in violation of the Commissioner's order to
27 cease and desist the action, the registrant shall be subject to a
28 penalty of one thousand dollars (\$1,000) for each action it takes
29 in violation of the Commissioner's order.

30 (b) Revocation of Registration. After notice and hearing, and
31 upon the finding that a registrant has (i) engaged in a course of
32 conduct that is in violation of this Article or (ii) continued to
33 engage in an action in violation of a cease and desist order of
34 the Commissioner that has not been stayed upon application of the
35 registrant, the Commissioner may revoke the registration of the
36 registrant temporarily or permanently in the discretion of the
37 Commissioner.

38 (c) Civil Penalties. Except in the case of a refund
39 anticipation loan that is not approved by the creditor, a
40 facilitator who fails to deliver to the debtor the proceeds of a
41 refund anticipation loan within 48 hours after the time period
42 promised by the facilitator when the debtor applied for the loan
43 shall pay to the debtor an amount equal to the refund
44 anticipation loan fee. A facilitator who engages in an activity

1 prohibited under G.S. 53-250 in connection with a refund
2 anticipation loan is liable to the debtor for damages of three
3 times the amount of the refund anticipation loan fee or other
4 unauthorized charge plus a reasonable attorney's fee.

5 **"§ 53-252. Appeal of Commissioner's decision.**

6 Notwithstanding any other provision of law, an aggrieved party
7 may, within 30 days after a final decision of the Commissioner
8 and with written notice to the Commissioner, appeal the decision
9 directly to the North Carolina Court of Appeals for judicial
10 review on the record. In the event of an appeal, the
11 Commissioner shall certify the record to the Clerk of the Court
12 of Appeals within 30 days after receipt of notice of appeal. The
13 record shall include all memoranda and briefs, and any other
14 documents, data, information, or evidence submitted by any party
15 to the proceeding except for material such as trade secrets
16 normally not available through commercial publication for which a
17 party has made a claim of confidentiality and requested exclusion
18 from the record. All factual information contained in any report
19 submitted to or obtained by the Commissioner's staff shall also
20 be made a part of the record unless deemed confidential by the
21 Commissioner.

22 **"§ 53-253. Rules; enforcement.**

23 Notwithstanding the provisions of G.S. 53-95, the Commissioner
24 may promulgate reasonable rules as necessary to effectuate the
25 purpose of this Article, to provide for the protection of the
26 borrowing public, and to assist registrants in interpreting this
27 Article. In order to enforce this Article, the Commissioner may
28 make investigations, subpoena witnesses, require audits and
29 reports, and conduct hearings regarding possible violations of
30 its provisions.

31 **"§ 53-254. Exemption.**

32 This Article does not apply to a person who does not deal
33 directly with debtors but who acts solely as an intermediary by
34 processing or transmitting, electronically or otherwise, tax or
35 credit information or by preparing for a facilitator refund
36 anticipation loan checks to be delivered by the facilitator to
37 the debtor."

38 Sec. 3. G.S. 53-99 reads as rewritten:

39 **"§ 53-99. Official records.**

40 (a) The Commissioner of Banks shall keep a record in his office
41 of his official acts, rulings, and transactions which, except as
42 hereinafter provided, shall be open to inspection, examination
43 and copying by any person.

- 1 (b) Notwithstanding any laws to the contrary, the following
2 records of the Commissioner of Banks shall be confidential and
3 shall not be disclosed or be subject to public inspection:
- 4 (1) Records compiled during or in connection with an
5 examination, audit or investigation of any bank,
6 banking office, bank holding company or its nonbank
7 subsidiary, or trust department which operates or
8 has applied to operate under the provisions of this
9 Chapter;
- 10 (2) Records containing information compiled in
11 preparation or anticipation of litigation,
12 examination, audit or investigation;
- 13 (3) Records containing the names of any borrowers from
14 a bank or revealing the collateral given by any
15 such borrower: Provided, however, that every report
16 of insider transactions made by a bank which report
17 is required to be filed with the appropriate State
18 or federal regulatory agency by either State or
19 federal statute or regulation shall be filed with
20 the Commissioner of Banks in a form prescribed by
21 him and shall be open to inspection, examination
22 and copying by any person;
- 23 (4) Records prepared during or as a result of an
24 examination, audit or investigation of any bank,
25 bank affiliate, bank holding company or its nonbank
26 subsidiary, data service center or banking practice
27 by an agency of the United States, or jointly by
28 such agency and the Commissioner of Banks, if such
29 records would be confidential under federal law or
30 regulation;
- 31 (4a) Records prepared during or as a result of an
32 examination, audit or investigation of any bank,
33 bank affiliate, bank holding company or its nonbank
34 subsidiary, data service center or banking practice
35 by a regulatory agency of jurisdiction of the
36 region defined in G.S.53-210(11) if these records
37 would be confidential under that jurisdiction's law
38 or regulation;
- 39 (5) Records of information and reports submitted by
40 banks to federal regulatory agencies, if such
41 records would be confidential under federal law or
42 regulation;
- 43 (6) Records of complaints from the public received by
44 the banking department and concerning banks under

- 1 its supervision if such complaints would or could
2 result in an investigation;
- 3 (7) Records of examinations and investigations of
4 consumer finance licensees;
- 5 (7a) Records of examinations and investigations of
6 licensees under the Sale of Checks Act, Article 16
7 of this Chapter;
- 8 (7b) Records of examinations and investigations of
9 registrants under the Mortgage Bankers and Brokers
10 Act, Article 19 of this Chapter;
- 11 (7c) Records of applications and investigations of
12 registrants under the Refund Anticipation Loan Act,
13 Article 20 of this Chapter;
- 14 (8) Records of pre-need burial contracts maintained
15 pursuant to ~~Article 7A of Chapter 65~~ Article 13B of
16 Chapter 90 of the General Statutes including
17 investigations of such contracts and related credit
18 inquiries;
- 19 (9) Any letters, reports, memoranda, recordings,
20 charts, or other documents which would disclose any
21 information set forth in any of the confidential
22 records referred to in subdivisions (1) through
23 (8).
- 24 (c) Notwithstanding the provisions of subsection (b), the
25 Commissioner of Banks may, by written agreement with any state or
26 federal regulatory agency, share with that agency any
27 confidential information set out in subsection (b) on the
28 condition that the information shared shall be treated as
29 confidential under the applicable laws and regulations governing
30 the recipient agency."
- 31 Sec. 4. This act shall become effective October 1,
32 1990.

Explanation of Proposal 3

In 1989, North Carolina became the first state to enact legislation regulating Refund Anticipation Loan (RAL) programs in conjunction with electronically filed tax returns. An RAL program is a program in which a person who has his or her federal income tax return filed electronically can obtain a loan from a national bank in the amount of the anticipated federal tax refund, less charges for the preparation and filing of the return and for the loan. Refund anticipation loans involving North Carolina income tax refunds are prohibited by G.S. 143-3.3.

If a customer wishes to obtain an RAL, the tax preparer will electronically file the tax return with the Internal Revenue Service and the credit application with a bank. If the loan is approved, the bank transmits a loan check to the tax preparer who then delivers the check to the customer. The tax preparer does not make the loan. The tax preparer merely facilitates the loan, which is made by the bank. When the Internal Revenue Service processes the customer's tax return, it will issue the refund check directly to the bank that made the loan.

North Carolina has been a test state for the Internal Revenue Service's electronic filing program, and tax preparers have been offering RAL's in conjunction with electronic filing since 1988. In 1988 and 1989, concerns arose about the need for some regulatory authority over refund anticipation loans. The Attorney General's Office had received complaints from consumers about processing delays and difficulty in cashing RAL checks. In response to concerns such as these, the 1989 General Assembly enacted legislation requiring tax preparers who facilitate RAL's to obtain a Consumer Finance License from the Commissioner of Banks.

The Depository Institutions Study Commission heard from government officials, consumer representatives, tax preparers, national banks, small loan company representatives, and the Internal Revenue Service regarding the need to revise the 1989 legislation. Because RAL facilitators do not actually make the loans, the restrictions provided for consumer lenders under the Consumer Finance Act are not appropriate and could prohibit small tax preparation companies from offering RAL's. All parties concerned agreed that a different law was needed requiring the Banking Commission to regulate facilitators of RAL's. Commentators urged the Study Commission to assure that such legislation would protect the consumer by requiring disclosure of material

facts and by providing a mechanism to prevent lenders from charging unconscionable fees. The Commission was also asked to provide fair, reasonable requirements and procedures for RAL facilitators and lenders, and to avoid restrictions that might hamper the success of the Internal Revenue Service's electronic filing program. The Commission developed Legislative Proposal 3 to balance the concerns of all parties.

Legislative Proposal 3 deletes the reference to refund anticipation loans from the Consumer Finance Act and enacts in its place the "Refund Anticipation Loan Act." The act applies to a "facilitator," any person who processes, receives, or accepts an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds, or who otherwise facilitates such a loan. "Refund Anticipation Loan" is defined as a loan that the lender (bank) arranges to be repaid directly from the proceeds of the borrower's income tax refund.

All facilitators of refund anticipation loans are required to register with the Commissioner of Banks and pay a fee of \$250.00. Failure to register is a misdemeanor punishable by imprisonment up to sixty days and/or a fine of up to \$2,000. Registration must be renewed annually; the fee for renewal is \$100.00. A facilitator that is a bank, savings and loan, or credit union is not required to register under this act, as these institutions are already regulated by the Department of Economic and Community Development.

Registrants are required to file a schedule of refund anticipation loan fees with the Commissioner of Banks and post that schedule at each office. If the Commissioner finds the fee schedule to be unconscionable, the registrant must be notified.

At the time a person applies for a refund anticipation loan, the registrant must disclose the following information:

1. The fee for the loan;
2. The fee for electronic filing of a tax return;
3. The time within which the proceeds of the loan will be paid if approved;
4. That the debtor is responsible for repayment if the tax refund is not paid;
5. The availability of electronic filing and the average time announced by the appropriate taxing authority in which a taxpayer can expect to receive a refund if the return is filed electronically and the taxpayer does not receive a refund anticipation loan; and
6. Examples of annual percentage rates for average RAL's.

Facilitators of refund anticipation are prohibited from engaging in the following activities:

1. Misrepresentation of a material factor or condition;
2. Failing to arrange for the loan promptly;
3. Fraud;
4. Charging a fee that is different from the posted fee or is in an amount that the Commissioner has notified the facilitator is unconscionable;
5. Arranging for payment of any portion of the loan for an unrelated service;
or
6. Arranging for a lender to take a security interest in property other than the proceeds of the tax refund.

Engaging in a prohibited activity or an unfair or deceptive practice may result in entry of a cease and desist order, revocation of registration, and various civil penalties. Appeals may be taken directly from the Commissioner of Banks to the North Carolina Court of Appeals.

The Commissioner is authorized to promulgate rules to administer the act. The act does not apply to persons who are not facilitators but act solely as intermediaries by transmitting returns or checks.

Legislative Proposal 3 provides that records relating to registrants under the Refund Anticipation Loan Act must be kept confidential by the Commissioner of Banks; the same will be true of similar records under the Sale of Checks Act and the Mortgage Bankers and Brokers Act. Confidential information may, by written agreement, be shared with other state and federal agencies on the condition that each agency keep the information confidential. The act would become effective October 1, 1990.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S OR H

D

Proposal 4 (89-LG-471)(4.6)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Sale of New Bank/S&L.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE FROM FIVE YEARS TO THREE YEARS THE MORATORIUM ON
3 ACQUISITION OF A NORTH CAROLINA BANK OR SAVINGS ASSOCIATION BY
4 AN OUT-OF-STATE INSTITUTION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 53-211(a) reads as rewritten:
7 "(a) A regional bank holding company that does not have a North
8 Carolina bank subsidiary (other than a North Carolina bank
9 subsidiary that was acquired either pursuant to Section 116 or
10 Section 123 of the Garn-St. Germain Depository Institutions Act
11 of 1982 (12 U.S.C. 1730a(m), 1823(f)) or in the regular course of
12 securing or collecting a debt previously contracted in good
13 faith, as provided in Section 3(a) of the Bank Holding Company
14 Act of 1956 as amended (12 U.S.C. 1842(a)) may acquire a North
15 Carolina bank holding company or a North Carolina bank with the
16 approval of the Commissioner. The regional bank holding company
17 shall submit to the Commissioner an application for approval of
18 such acquisition, which application shall be approved only if:
19 (1) The Commissioner determines that the laws of the
20 state in which the regional bank holding company
21 making the acquisition has its principal place of
22 business permit North Carolina bank holding
23 companies to acquire banks and bank holding
24 companies in that state;

- 1 (2) The Commissioner determines that the laws of the
2 state in which the regional bank holding company
3 making the acquisition has its principal place of
4 business permit such regional bank holding company
5 to be acquired by the North Carolina bank holding
6 company or North Carolina bank sought to be
7 acquired. For the purposes of this subsection, a
8 North Carolina bank shall be treated as if it were
9 a North Carolina bank holding company;
- 10 (3) The Commissioner determines either that the North
11 Carolina bank sought to be acquired has been in
12 existence and continuously operating for more than
13 ~~five~~ three years or that all of the bank
14 subsidiaries of the North Carolina bank holding
15 company sought to be acquired have been in
16 existence and continuously operating for more than
17 ~~five~~ three years: Provided, that the Commissioner
18 may approve the acquisition by a regional bank
19 holding company of all or substantially all of the
20 shares of a bank organized solely for the purpose
21 of facilitating the acquisition of a bank that has
22 been in existence and continuously operating as a
23 bank for more than ~~five~~ three years: Provided
24 further, where the Commissioner after examination
25 or other investigation has determined that it is
26 necessary to approve an interstate acquisition
27 under this Article in order to protect the public
28 and to prevent the possible failure of a bank or
29 banking subsidiary of a bank holding company, then
30 the time limitations of this subdivision do not
31 apply; in that event the period of existence and
32 continuous operation of the bank or banking
33 subsidiary may be reduced from five to three years;
34 and
- 35 (4) The Commissioner makes the acquisition subject to
36 any conditions, restrictions, requirements or other
37 limitations that would apply to the acquisition by
38 a North Carolina bank holding company of a bank or
39 bank holding company in the state where the
40 regional bank holding company making the
41 acquisition has its principal place of business but
42 that would not apply to the acquisition of a bank
43 or bank holding company in such state by a bank

1 holding company all the bank subsidiaries of which
2 are located in that state."

3 Sec. 2. G.S. 54B-48.3 reads as rewritten:

4 "§ 54B-48.3. Acquisitions by Southern Region savings and loan
5 holding companies and Southern Region associations.

6 (a) A Southern Region savings and loan holding company or a
7 Southern Region association that does not have a North Carolina
8 association subsidiary (other than a North Carolina association
9 subsidiary that was acquired either pursuant to Section 123 of
10 the Garn-St Germain Depository Institutions Act of 1982 (12
11 U.S.C. 1730a(m)), or comparable provisions in state law, or in
12 the regular course of securing or collecting a debt previously
13 contracted in good faith) may acquire a North Carolina savings
14 and loan holding company or a North Carolina association with the
15 approval of the Administrator. The Southern Region savings and
16 loan holding company or Southern Region association shall submit
17 to the Administrator an application for approval of such
18 acquisition, which application shall be approved only if:

- 19 (1) The Administrator determines that the laws of the
20 state in which the Southern Region savings and loan
21 holding company or Southern Region association
22 making the acquisition has its principal place of
23 business permit North Carolina savings and loan
24 holding companies and North Carolina associations
25 to acquire associations and savings and loan
26 holding companies in that state;
- 27 (2) The Administrator determines that the laws of the
28 state in which the Southern Region savings and loan
29 holding company or Southern Region association
30 making the acquisition has its principal place of
31 business permit such Southern Region savings and
32 loan holding company or Southern Region association
33 to be acquired by the North Carolina savings and
34 loan holding company or North Carolina association
35 sought to be acquired;
- 36 (3) The Administrator determines either that the North
37 Carolina association sought to be acquired has been
38 in existence and continuously operating for more
39 than ~~five~~ three years or that all of the
40 association subsidiaries of the North Carolina
41 savings and loan holding company sought to be
42 acquired have been in existence and continuously
43 operating for more than ~~five~~ three years: Provided,
44 that the Administrator may approve the acquisition

- 1 by a Southern Region savings and loan holding
2 company or Southern Region association of all or
3 substantially all of the shares of an association
4 organized solely for the purpose of facilitating
5 the acquisition of an association that has been in
6 existence and continuously operating as an
7 association for more than ~~five~~ three years; and
- 8 (4) The Administrator makes the acquisition subject to
9 any conditions, restrictions, requirements or other
10 limitations that would apply to the acquisition by
11 a North Carolina savings and loan holding company
12 or North Carolina association of an association or
13 savings and loan holding company in the state where
14 the Southern Region savings and loan holding
15 company or Southern Region association making the
16 acquisition has its principal place of business but
17 that would not apply to the acquisition of an
18 association or savings and loan holding company in
19 such state by an association or a savings and loan
20 holding company all the association subsidiaries of
21 which are located in that state;
- 22 (5) With respect to acquisitions involving the merger
23 or consolidation of two associations resulting in a
24 Southern Region association, the application
25 includes a business plan extending for an initial
26 period of at least three years from the date of the
27 acquisition which shall be renewed thereafter for
28 as long as may be required by the Administrator.
29 The association may not deviate without the prior
30 written approval of the Administrator from the
31 business plan which shall address such matters as
32 the Administrator may deem appropriate for the
33 protection of the depositors and members of the
34 acquired North Carolina association and the general
35 public. The business plan shall address, without
36 limitation:
- 37 a. Insurance of depositors' accounts.
38 b. Limitation of services and activities to those
39 permitted under this Chapter to North Carolina
40 associations.
41 c. Conversion of corporate form or other
42 fundamental changes.
43 d. Closing, selling or divesting any or all North
44 Carolina branches.

1 e. Protection of the voting rights of North
2 Carolina members.

3 (b) A Southern Region savings and loan holding company or
4 Southern Region association that has a North Carolina association
5 subsidiary (other than a North Carolina association subsidiary
6 that was acquired either pursuant to Section 123 of the Garn-St
7 Germain Depository Institutions Act of 1982 (12 U.S.C. 1730a(m)),
8 or comparable provisions in North Carolina law, or in the regular
9 course of securing or collecting a debt previously contracted in
10 good faith) may acquire any North Carolina association or North
11 Carolina savings and loan holding company with the approval of
12 the Administrator. The Southern Region savings and loan holding
13 company shall submit to the Administrator an application for
14 approval of such acquisition, which application shall be approved
15 only if:

- 16 (1) The Administrator determines either that the North
17 Carolina association sought to be acquired has been
18 in existence and continuously operating for more
19 than ~~five~~ three years or that all of the
20 association subsidiaries of the North Carolina
21 savings and loan holding company sought to be
22 acquired have been in existence and continuously
23 operating for more than ~~five~~ three years: Provided,
24 that the Administrator may approve the acquisition
25 by a Southern Region savings and loan holding
26 company or Southern Region association of all or
27 substantially all of the shares of an association
28 organized solely for the purpose of facilitating
29 the acquisition of an association that has been in
30 existence and continuously operating as an
31 association for more than ~~five~~ three years; and
32 (2) The Administrator makes the acquisition subject to
33 any conditions, restrictions, requirements or other
34 limitations that would apply to the acquisition by
35 the North Carolina savings and loan holding company
36 or North Carolina association of an association or
37 savings and loan holding company in the State where
38 the Southern Region savings and loan holding
39 company or Southern Region association making the
40 acquisition has its principal place of business but
41 that would not apply to the acquisition of an
42 association or savings and loan holding company in
43 such state by a savings and loan holding company

- 1 all the association subsidiaries of which are
2 located in that state.
- 3 (3) With respect to acquisitions involving the merger
4 or consolidation of two associations resulting in a
5 Southern Region association, the application
6 includes a business plan extending for an initial
7 period of at least three years from the date of the
8 acquisition which shall be renewed thereafter for
9 as long as may be required by the Administrator.
10 The association may not deviate without the prior
11 written approval of the Administrator from the
12 business plan which shall address such matters as
13 the Administrator may deem appropriate for the
14 protection of the depositors and members of the
15 acquired North Carolina association and the general
16 public. The business plan shall address, without
17 limitation:
- 18 a. Insurance of depositors' accounts.
 - 19 b. Limitation of services and activities to those
20 permitted under this Chapter to North Carolina
21 associations.
 - 22 c. Conversion of corporate form or other
23 fundamental changes.
 - 24 d. Closing, selling or divesting any or all North
25 Carolina branches.
 - 26 e. Protection of the voting rights of North
27 Carolina members.
- 28 (c) The Administrator shall rule on any application submitted
29 under this section not later than 90 days following the date of
30 submission of a complete application. If the Administrator fails
31 to rule on the application within the requisite 90-day period,
32 the failure to rule shall be deemed a final decision of the
33 Administrator approving the application."
- 34 Sec. 3. This act is effective upon ratification.

Explanation of Proposal 4

Legislative Proposal 4 reduces from five years to three years the moratorium on acquisition of a North Carolina bank or savings association by an out-of-state institution. Current law provides that an out-of-state bank holding company that does not have a North Carolina bank subsidiary may not acquire a North Carolina bank or bank holding company unless the North Carolina institution has been in existence for at least five years. Similarly, an out-of-state savings institution or holding company may not acquire a North Carolina savings institution or holding company unless the North Carolina institution has been in existence for at least five years. This proposal would change the five-year limitation to three years.

Current law already provides a partial exception to the five-year requirement for banks. G.S. 53-211(a)(3) provides that where an interstate acquisition is necessary to protect the public or to prevent possible failure of a bank, the five-year period may be reduced to three years. Legislative Proposal 4 would amend this provision to state that no time limitation applies where an interstate acquisition is necessary to protect the public or to prevent possible failure of a bank.

Speakers before the Depository Institutions Study Commission stated that the current law does not benefit or protect North Carolina institutions and creates an economic hardship for North Carolina investors. The Commission learned that with new start-up banks, most of the investors are North Carolina citizens. The purpose of starting a new bank is generally not the desire to sell the bank to an out-of-state institution but to supply the economic needs of the local community and to provide personalized services to depositors. The investors, who take business risks in investing in the new bank stock, find that the stock is immediately devalued because the five-year rule takes potential bidders out of the market. The Commission learned that the identical problem will occur with new savings institutions.

The Depository Institutions Study Commission also heard testimony that the current rule that provides a three-year period for troubled banks fails to serve its purpose. If a bank is truly in a failing position and no North Carolina investors, bank, or bank holding company is willing to take it, then the only way to save the troubled bank is by attracting an out-of-state holding company to acquire it. The need is the

same whether the troubled bank is one or three years old. Eliminating any time limitation in this situation would give the Commissioner of Banks a free hand to help failing banks.

Legislative Proposal 4 would be effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S OR H

D

Proposal 5 (89-LG-464)(3.28)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Appraiser Licensing Changes. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO COMPLY WITH TITLE XI OF THE FINANCIAL INSTITUTIONS
3 REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989 BY GRANTING
4 CERTAIN REGULATORY AUTHORITY TO THE NORTH CAROLINA REAL ESTATE
5 COMMISSION REAL ESTATE APPRAISAL COMMITTEE AND TO ADD A NEW
6 CLASSIFICATION OF VOLUNTARY APPRAISER CERTIFICATION.
7 The General Assembly of North Carolina enacts:
8 PART I.
9 Section 1. G.S. 93A-72 reads as rewritten:
10 "§ 93A-72. Definitions.
11 When used in this Article, unless the context otherwise
12 requires, the term:
13 (1) 'Appraisal' or 'real estate appraisal' means an
14 analysis, opinion or conclusion as to the value of
15 identified real estate or specified interests
16 therein.
17 (2) 'Appraisal assignment' means an engagement for
18 which an appraiser is employed or retained to act,
19 or would be perceived by third parties or the
20 public as acting, as a disinterested third party in
21 rendering an unbiased appraisal.
22 (3) 'Appraisal Foundation' or 'Foundation' means the
23 Appraisal Foundation established on November 20,

- 1 1987, as a not-for-profit corporation under the
2 laws of Illinois.
- 3 (4) 'Appraisal report' means any communication, written
4 or oral, of an appraisal.
- 5 (5) 'Certificate' means that document issued by the
6 North Carolina Real Estate Commission evidencing
7 that the person named therein has satisfied the
8 requirements for certification as a State-certified
9 real estate appraiser and bearing a certificate
10 number assigned by the Commission.
- 11 (6) 'Certificate holder' means a person certified by
12 the Commission under the provisions of this
13 Article.
- 14 (7) 'Certified appraisal' means any appraisal performed
15 by a State-certified real estate appraiser and
16 represented as being 'certified'.
- 17 (8) 'Certified appraisal report' means any
18 communication, written or oral, of an appraisal by
19 a State-certified real estate appraiser which is
20 represented as being 'certified'.
- 21 (9) 'Commission' means the North Carolina Real Estate
22 Commission.
- 23 (10) 'License' means that document issued by the North
24 Carolina Real Estate Commission evidencing that the
25 person named therein has satisfied the requirements
26 for licensure as a State-licensed real estate
27 appraiser and bearing a license number assigned by
28 the Commission.
- 29 (11) 'Licensee' means a person licensed by the
30 Commission under the provisions of this Article.
- 31 (12) 'Real estate' or 'real property' means land,
32 including the air above and ground below and all
33 appurtenances and improvements thereto, as well as
34 any interest or right inherent in the ownership of
35 land.
- 36 (13) 'Real Estate Appraisal Committee', 'Appraisal
37 Committee' or 'Committee' means the body
38 established by the Commission pursuant to the
39 provisions of this Article.
- 40 (14) 'Real estate appraiser' or 'appraiser' means a
41 person who for a fee or valuable consideration
42 develops and communicates real estate appraisals or
43 otherwise gives an opinion of the value of real
44 estate or any interest therein.

- 1 (15) 'Real estate appraising' means the practice of
2 developing and communicating real estate
3 appraisals.
- 4 (16) 'Residential real estate' means any parcel of real
5 estate, improved or unimproved, that is exclusively
6 residential in nature and that includes or is
7 intended to include a residential structure
8 containing not more than four dwelling units and no
9 other improvements except those which are typical
10 residential improvements that support the
11 residential use for the location and property type.
12 A residential unit in a condominium, townhouse, or
13 cooperative complex or a planned unit development
14 is considered to be residential real estate.
- 15 (16a) 'State-certified general real estate appraiser'
16 means a person who holds a current, valid
17 certificate as a State-certified general real
18 estate appraiser issued under the provisions of
19 this Article.
- 20 (17) 'State-certified residential real estate appraiser'
21 means a person who holds a current, valid
22 certificate as a State-certified residential real
23 estate appraiser issued under the provisions of
24 this Article.
- 25 (18) 'State-licensed residential real estate appraiser'
26 means a person who holds a current, valid license
27 as a State-licensed residential real estate
28 appraiser issued under the provisions of this
29 Article."

30 Sec. 2. G.S. 93A-73 reads as rewritten:

31 "§ 93A-73. Qualifications for State licensure and certification;
32 applications; application fees; examinations.

33 (a) Any person desiring to obtain licensure as a State-
34 licensed real estate appraiser or certification as a State-
35 certified real estate appraiser shall make written application to
36 the Commission on such forms as are prescribed by the Commission
37 setting forth the applicant's qualifications for licensure or
38 certification. Each applicant shall satisfy the following
39 qualification requirements:

40 (1) Each applicant for licensure as a State-licensed
41 residential real estate appraiser shall have
42 demonstrated to the satisfaction of the Commission
43 that he possesses the knowledge and competence
44 necessary to perform appraisals of residential and

1 other real estate as the Commission may prescribe
2 by having satisfactorily completed, within the
3 five-year period immediately preceding the date
4 application is made, through a school approved by
5 the Commission, a course of instruction in real
6 estate appraisal principles and practices
7 consisting of at least 90 hours of classroom
8 instruction in subjects determined by the
9 Commission, and shall satisfy such additional
10 qualifications as may be required to render North
11 Carolina State-licensed residential real estate
12 appraisers eligible to perform appraisals in
13 connection with federally-related transactions
14 requiring the use of a State-licensed residential
15 real estate appraiser; or the applicant shall
16 possess education or experience which is found by
17 the Commission to be equivalent to the above
18 requirements.

19 (1b) Each applicant for certification as a State-
20 certified residential real estate appraiser shall
21 have demonstrated to the satisfaction of the
22 Commission that he possesses the knowledge and
23 competence necessary to perform appraisals of
24 residential and other real estate as the Commission
25 may prescribe by having satisfied all education
26 requirements for licensure as a State-licensed
27 residential real estate appraiser; shall present
28 evidence satisfactory to the Commission of at least
29 two years of full-time experience in real estate
30 appraising within the five-year period immediately
31 preceding the date application is made; and shall
32 satisfy such additional qualifications criteria as
33 may be promulgated by the Appraiser Qualifications
34 Board of The Appraisal Foundation for residential
35 real estate appraisers.

36 (2) Each applicant for certification as a State-
37 certified general real estate appraiser shall have
38 demonstrated to the satisfaction of the Commission
39 that he possesses the knowledge and competence
40 necessary to perform appraisals of all types of
41 real estate by having satisfactorily completed,
42 within the five-year period immediately preceding
43 the date application is made, through a school
44 approved by the Commission, a course of instruction

1 in general real estate appraisal practices
2 consisting of at least 90 hours of classroom
3 instruction in subjects determined by the
4 Commission, such course of instruction to be in
5 addition to the education required for licensure as
6 a State-licensed residential real estate ~~appraiser,~~
7 appraiser; ~~and~~ shall present evidence satisfactory
8 to the Commission of at least two years of full-
9 time experience in real estate appraising within
10 the five-year period immediately preceding the date
11 application is ~~made,~~ made; and shall satisfy such
12 additional qualifications criteria as may be
13 ~~required to render North Carolina State-certified~~
14 ~~real estate appraisers eligible to perform~~
15 ~~appraisals in connection with federally related~~
16 ~~transactions requiring the use of a State-certified~~
17 ~~real estate appraiser;~~ promulgated by the Appraiser
18 Qualifications Board of The Appraisal Foundation
19 for general real estate appraisers; or the
20 applicant shall possess education or experience
21 which is found by the Commission to be equivalent
22 to the above requirements.

23 (b) Each application for State licensure or certification as a
24 real estate appraiser shall be accompanied by a fee fixed by the
25 Commission but not to exceed one hundred fifty dollars (\$150.00).

26 (c) Any person who files with the Commission an application
27 for State licensure or certification as a real estate appraiser
28 shall be required to ~~take pass an oral or written~~ examination to
29 demonstrate his competence. The Commission may also make such
30 investigation as it deems necessary into the ethical background
31 of the applicant to determine his qualifications with due regard
32 to the paramount interests of the public as to his honesty,
33 truthfulness and integrity. If the results of the examination
34 and investigation shall be satisfactory to the Commission, then
35 the Commission shall issue to ~~such person~~ the applicant a license
36 or certificate authorizing ~~such person~~ the applicant to act as a
37 State-licensed real estate appraiser or a State-certified real
38 estate appraiser in this State."

39 Sec. 3. G.S. 93A-78(b) reads as rewritten:

40 "(b) The Committee shall advise the Commission on the
41 implementation and operation of this Article and any other
42 applicable provisions of this Chapter relating to standards and
43 operations of real estate appraiser education programs. The
44 Committee shall propose to the Commission for its adoption rules

- 1 a State-licensed residential real estate appraiser;
2 or ~~the applicant~~ shall possess education or
3 experience which is found by the ~~Commission~~
4 Appraisal Committee to be equivalent to the above
5 requirements.
- 6 (1b) Each applicant for certification as a State-
7 certified residential real estate appraiser shall
8 have demonstrated to the satisfaction of the
9 ~~Commission~~ Real Estate Appraisal Committee that he
10 possesses the knowledge and competence necessary to
11 perform appraisals of residential and other real
12 estate as the Commission may prescribe by having
13 satisfied all education requirements for licensure
14 as a State-licensed residential real estate
15 appraiser; shall present evidence satisfactory to
16 the ~~Commission~~ Appraisal Committee of at least two
17 years of full-time experience in real estate
18 appraising within the five-year period immediately
19 preceding the date application is made; and shall
20 satisfy such additional qualifications criteria as
21 may be promulgated by the Appraiser Qualifications
22 Board of The Appraisal Foundation for residential
23 real estate appraisers.
- 24 (2) Each applicant for certification as a State-
25 certified general real estate appraiser shall have
26 demonstrated to the satisfaction of the ~~Commission~~
27 Real Estate Appraisal Committee that he possesses
28 the knowledge and competence necessary to perform
29 appraisals of all types of real estate by having
30 satisfactorily completed, within the five-year
31 period immediately preceding the date application
32 is made, through a school approved by the
33 Commission, a course of instruction in general real
34 estate appraisal practices consisting of at least
35 90 hours of classroom instruction in subjects
36 determined by the ~~Commission~~, Appraisal Committee,
37 such course of instruction to be in addition to the
38 education required for licensure as a State-
39 licensed residential real estate appraiser; shall
40 present evidence satisfactory to the ~~Commission~~
41 Appraisal Committee of at least two years of full-
42 time experience in real estate appraising within
43 the five-year period immediately preceding the date
44 application is made; and shall satisfy such

1 additional qualifications criteria as may be
2 promulgated by the Appraiser Qualifications Board
3 of The Appraisal Foundation for general real estate
4 appraisers; or the applicant shall possess
5 education or experience which is found by the
6 ~~Commission~~ Appraisal Committee to be equivalent to
7 the above requirements.

8 (b) Each application for State licensure or certification as a
9 real estate appraiser shall be accompanied by a fee fixed by the
10 Commission but not to exceed one hundred fifty dollars (\$150.00).

11 (c) Any person who files with the Commission an application
12 for State licensure or certification as a real estate appraiser
13 shall be required to pass an examination to demonstrate his
14 competence. The Commission ~~may~~ shall also make such
15 investigation as ~~it deems~~ deemed necessary by the Real Estate
16 Appraisal Committee into the ethical background of the applicant
17 to determine his qualifications with due regard to the paramount
18 interests of the public as to his honesty, truthfulness and
19 integrity. If the results of the ~~examination and~~ investigation
20 shall be satisfactory to the ~~Commission,~~ Committee and the
21 applicant is otherwise qualified, then the Commission shall issue
22 to the applicant a license or certificate authorizing the
23 applicant to act as a State-licensed real estate appraiser or a
24 State-certified real estate appraiser in this State. If, based
25 upon the results of the investigation, the moral character of the
26 applicant is in question, action on the application will be
27 deferred pending a hearing before the Appraisal Committee."

28 Sec. 6. G.S. 93A-74(b) reads as rewritten:

29 "(b) The Commission may by rule require, as a prerequisite to
30 license or certificate renewal, the completion of Commission-
31 approved education courses ~~approved by the Commission in subject~~
32 matters determined by the Appraisal Committee, or courses
33 determined by the Commission to be equivalent to such
34 instruction, provided that the continuing education requirements
35 do not exceed 24 hours of classroom instruction during any two-
36 year period, except as may be required to maintain State-
37 certified and State-licensed real estate appraisers' eligibility
38 to perform real estate appraisals in connection with federally-
39 related transactions requiring their use."

40 Sec. 7. G.S. 93A-78, as amended by Part I of this act,
41 reads as rewritten:

42 "**§ 93A-78. Real Estate Appraisal Committee.**

43 (a) ~~The Commission shall appoint~~ There is created a Real
44 Estate Appraisal Committee for the purpose of rendering advice

1 and assistance to the ~~Commission.~~ Commission and for the other
2 purposes set forth in this Article. To the extent possible, the
3 membership of the Committee shall be representative of the
4 members of the real estate appraisal business. The Committee
5 shall consist of ~~five members,~~ seven members. The Governor shall
6 appoint four members of the Committee. The General Assembly
7 shall appoint three members in accordance with G.S. 120-121, one
8 upon recommendation of the President of the Senate, one upon
9 recommendation of the President Pro Tempore of the Senate, and
10 one upon recommendation of the Speaker of the House of
11 Representatives. ~~three of whom~~ The appointee recommended by the
12 President of the Senate, the appointee recommended by the Speaker
13 of the House of Representatives, and at least two of the
14 appointees of the Governor shall be persons who have been engaged
15 in the business of real estate appraising in this State for not
16 less than at least five years immediately preceding their
17 appointment, and, if appointed to the Committee after January 1,
18 1991, shall also be appointment and are also State-licensed or
19 State-certified real estate appraisers. The appointee
20 recommended by the President Pro Tempore of the Senate and at
21 least one of the appointees of the Governor shall be persons who
22 are not involved directly or indirectly in the real estate, real
23 estate appraisal, or real estate lending industry. Members of
24 the Committee shall serve three-year terms, so staggered that the
25 term of one member expires in one year, the terms of ~~two~~ three
26 members expire in the next year, and the terms of ~~two~~ three
27 members expire in the third year of each three-year period. The
28 members of the Committee shall elect one of their members to
29 serve as chairman of the Committee for a term of one year. The
30 ~~Commission~~ Governor may remove any member of the Committee
31 appointed by him for misconduct, incompetency, or neglect of
32 duty. ~~The Commission shall have the power to fill all Successors~~
33 shall be appointed by the appointing authority making the
34 original appointment. All vacancies occurring on the Committee.
35 Committee shall be filled, for the unexpired term, by the
36 appointing authority making the original appointment. Vacancies
37 in appointments made by the General Assembly shall be filled in
38 accordance with G.S. 120-122.

39 (b) The Committee shall advise the Commission on the
40 implementation and operation of this Article and any other
41 applicable provisions of this Chapter relating to standards and
42 operations of real estate appraiser education programs. The
43 Committee shall propose to the Commission for its adoption rules
44 to implement, administer, and enforce this Article and any other

1 applicable provisions of this Chapter relating to standards and
2 operations of real estate appraiser education programs. In
3 proposing rules to the Commission regarding the qualification
4 requirements and standards of practice for State-licensed and
5 State-certified real estate appraisers, the Committee shall
6 consider the qualifications criteria issued by the Appraiser
7 Qualification Board of the Appraisal Foundation and the Uniform
8 Standards of Professional Appraisal Practice promulgated by the
9 Appraisal Standards Board of the Appraisal Foundation.

10 (b1) The Committee is an occupational licensing agency
11 governed by Chapter 150B; its decisions are final agency
12 decisions subject to judicial review under Article 4 of Chapter
13 150B.

14 (c) Members of the Committee shall be paid ~~the~~ per diem
15 allowances at the rates set forth in G.S. 93B-5; provided that
16 none of the expenses of the Committee shall be payable out of the
17 Treasury of the State of North Carolina."

18 Sec. 8. G.S. 93A-80 reads as rewritten:

19 "**§ 93A-80. Disciplinary action by Commission.**

20 (a) The Commission ~~may~~ shall take disciplinary action against
21 State-licensed or State-certified real estate ~~appraisers-~~
22 appraisers, only as directed by the Real Estate Appraisal
23 Committee. Upon its own motion, the motion of the Appraisal
24 Committee, or ~~on~~ the verified complaint of any person, the
25 Commission may investigate the actions of any person licensed or
26 certified under this Article or any other person who shall assume
27 to act in such capacity. If the ~~Commission~~ Appraisal Committee
28 finds probable cause that a person licensed or certified under
29 this Article has violated any of the provisions of this Chapter,
30 the ~~Commission~~ Appraisal Committee may hold a hearing on the
31 allegations of misconduct.

32 The ~~Commission~~ Appraisal Committee shall have the power to
33 direct the Commission to suspend or revoke at any time the
34 licensure license or certification privileges granted to any
35 person under the provisions of this Article or to reprimand or
36 censure any licensee or certificate holder if, following a
37 hearing, the ~~Commission~~ Appraisal Committee finds the licensee or
38 certificate holder to have:

- 39 (1) Procured licensure or certification pursuant to
40 this Article by making a false or fraudulent
41 representation;
- 42 (2) Made any willful or negligent misrepresentation or
43 any willful or negligent omission of material fact;

- 1 (3) Accepted an appraisal assignment when the
2 employment is contingent upon the appraiser
3 reporting a predetermined result, analysis, or
4 opinion, or when the fee to be paid for the
5 performance of the appraisal assignment is
6 contingent upon the opinion, conclusion, or
7 valuation reached or upon consequences resulting
8 from the appraisal assignment;
- 9 (4) Acted or held oneself out as a State-licensed or
10 State-certified real estate appraiser when not so
11 licensed or certified;
- 12 (5) Failed as a State-licensed or State-certified real
13 estate appraiser to actively and personally
14 supervise any person not licensed or certified
15 under this Article who assists the State-licensed
16 or State-certified real estate appraiser in
17 performing real estate appraisals;
- 18 (6) Failed to retain for three years and to make
19 available to the Commission for its inspection
20 without prior notice, originals or true copies of
21 all written contracts engaging his services to
22 appraise real property, and all reports and
23 supporting data assembled and formulated by the
24 appraiser in preparing the reports;
- 25 (7) Paid a fee or valuable consideration to any person
26 for acts or services performed in violation of this
27 Article;
- 28 (8) Acted as a real estate appraiser in such an
29 unworthy or incompetent manner as to endanger the
30 interest of the public;
- 31 (9) Violated any of the standards for the development
32 or communication of real estate appraisals or any
33 other rule promulgated by the Commission;
- 34 (10) Performed any other act which constitutes improper,
35 fraudulent, or dishonest conduct; or
- 36 (11) Violated any of the provisions of this Chapter.
- 37 (b) Following a hearing, the ~~Commission Appraisal Committee~~
38 shall also have power to direct the Commission to suspend or
39 revoke any license or certificate issued under the provisions of
40 this Article or to reprimand or censure any licensee or
41 certificate holder when:
- 42 (1) The licensee or certificate holder has been
43 convicted of, or has entered a plea of guilty or no
44 contest upon which final judgment is entered by a

1 court of competent jurisdiction in this State, or
2 any other state, to an offense involving moral
3 turpitude which would reasonably affect the
4 performance of the licensee or certificate holder
5 in the real estate appraisal business; or
6 (2) A final civil judgment has been entered against the
7 licensee or certificate holder on grounds of fraud,
8 misrepresentation or deceit in the making of any
9 appraisal of real estate.

10 (c) When a person licensed or certified under this Article is
11 accused of any act, omission, or misconduct which would subject
12 him to disciplinary action, the licensee or certificate holder,
13 with the consent and approval of the ~~Commission,~~ Appraisal
14 Committee, may surrender his license or certificate and all the
15 rights and privileges pertaining to it for a period of time
16 established by the ~~Commission.~~ Appraisal Committee. A person who
17 surrenders his license or certificate shall not thereafter be
18 eligible for or submit any application for licensure or
19 certification as a real estate appraiser during the period that
20 the license or certificate is surrendered."

21 Sec. 9. G.S. 93A-81(b) reads as rewritten:

22 "(b) The Commission ~~may~~ may, on its own motion or at the
23 request of the Real Estate Appraisal Committee, appear in its own
24 name in superior court in actions for injunctive relief to
25 prevent any person from violating the provisions of this Article
26 or rules promulgated by the Commission. The superior court shall
27 have the power to grant these injunctions whether or not criminal
28 prosecution has been or may be instituted as a result of the
29 violations, and whether or not the person is the holder of a
30 license or certificate issued by the Commission under this
31 Article."

32 Sec. 10. Article 6 of Chapter 146 of the General
33 Statutes is amended by adding a new section to read:

34 "§ 146-22.2. Appraisal of property to be acquired by State.

35 Where an appraisal of real estate or an interest in real estate
36 is required by law to be made before acquisition of the property
37 by the State or an agency of the State, the appraisal shall be
38 made by a real estate appraiser licensed or certified by the
39 State under Article 5 of Chapter 93A of the General Statutes."

40 Sec. 11. Notwithstanding the provisions of G.S. 93A-78,
41 on July 1, 1991, the terms of all members of the Real Estate
42 Appraisal Committee shall expire. Effective for terms to begin
43 July 1, 1991, the new members of the Committee shall be appointed
44 as provided in G.S. 93A-78, as amended by this act.

1 Notwithstanding the provisions of G.S. 93A-78, the terms
2 beginning July 1, 1991, shall be staggered as follows: the
3 appointee recommended by the President Pro Tempore shall serve
4 for two years; the appointee recommended by the President of the
5 Senate and two of the appointees of the Governor shall serve for
6 three years; and the appointee recommended by the Speaker of the
7 House of Representatives and the remaining appointees of the
8 Governor shall serve for four years. When the term of a member
9 beginning July 1, 1991, expires, the next term of that member
10 shall be a three-year term as provided in G.S. 93A-78, as amended
11 by this act.

12 Sec. 12. G.S. 120-123 is amended by adding at the end a
13 new subdivision to read:

14 "(58) The Real Estate Appraisal Committee of the Real Estate
15 Commission created in G.S. 93A-78."

16 Sec. 13. Part I and Section 11 of this act are
17 effective upon ratification. The remainder of this act shall
18 become effective July 1, 1991.

Explanation of Proposal 5

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) attempted to assure quality appraisals by establishing minimum appraisal standards and identifying qualified appraisers. FIRREA provides that, beginning July 1, 1991, in all federally related real estate transactions, the property must be appraised by a State-certified or State-licensed appraiser. It is estimated that 80 - 90% of all real estate transactions in North Carolina are federally related transactions. FIRREA established an Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) to monitor state appraiser certification and licensing systems.

In 1989, while FIRREA was still pending, the General Assembly enacted legislation to establish under the North Carolina Real Estate Commission a voluntary program for licensing and certifying real estate appraisers. The program was based on the provisions of FIRREA; it provided a procedure for appraisers to seek licensure or certification, required the Real Estate Commission to establish educational requirements and other qualifications criteria, provided for disciplinary actions to be taken by the Real Estate Commission, and created an advisory board, the Appraisal Committee, to be appointed by the Real Estate Commission.

In January 1990, the Appraisal Subcommittee of FFIEC issued guidelines for states to follow in establishing certification and licensing procedures for appraisers involved in federally related transactions. The guidelines, which appear in Appendix D of this report, direct states to promote the independence of the appraisal regulatory agency, reduce conflicts of interest, and assure that appraisers are qualified and adhere to an appropriate code of professional responsibility.

When the guidelines were issued, it became clear that North Carolina's program might not meet the requirements of the FFIEC Appraisal Subcommittee. The guidelines recommended that the licensing agency be totally independent of an organization (such as the Real Estate Commission) whose members have a direct or indirect financial interest in the outcome of the agency's decisions. If the agency could not be completely separate, the guidelines advised that it should be structured so as to eliminate the influence of the affected industry (real estate). In addition, the guidelines require that decisions regarding licensure, certification, and disciplinary action should

not be made by real estate regulators, but should be subject to direct review from the licensing body to the courts.

The Depository Institutions Study Commission decided that North Carolina's new real estate appraiser licensing and certification law needed to be amended to meet the federal requirements before the July 1, 1991, deadline. The Commission asked Phillip T. Fisher, Executive Director of the Real Estate Commission, to recommend a proposal to amend North Carolina's appraiser law to bring it into compliance with the FFIEC guidelines. Based on Mr. Fisher's recommendations, the Study Commission adopted Legislative Proposal 5.

Legislative Proposal 5 provides that the Real Estate Commission's Appraisal Committee, formerly an advisory committee, would have responsibility for licensing and certifying appraisers. The Committee would decide whether applicants are qualified, establish education and experience requirements, determine whether an applicant has a satisfactory ethical background, and make disciplinary decisions. The Committee's final decisions would not be reviewable by the Real Estate Commission but would be subject to judicial review. These changes should provide adequate insulation of the licensing and certification program from the real estate regulatory function.

The FFIEC guidelines also provide that members of the licensing body should represent the broad public interest and should be appointed by the Governor or another impartial body. The original guidelines stated that the statute should not permit a majority of the licensing body to be composed of one industry or profession, but the guidelines were later amended to provide that "an appraiser board that is comprised of a majority of individuals from the appraisal industry would not likely result in disapproval." The Appraisal Subcommittee did add, however, that it would not be appropriate for the board to be dominated by representatives of the real estate sales/brokerage, promotion, development, or financing industries. Legislative Proposal 5 expands the Appraisal Committee from five to seven members and provides that four members would be appointed by the Governor and one member each by the Lieutenant Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. Of the seven members, four would be real estate appraisers and at least two would be persons who are not involved in a business related to real estate.

The guidelines of the FFIEC Appraisal Subcommittee state that the standards for State-licensed appraisers should include testing, experience, and educational requirements. North Carolina's law currently requires experience as a prerequisite to

becoming a State-certified appraiser but not a State-licensed appraiser. In order to assure that North Carolina appraisers will be eligible for federally related transactions and to promote the reciprocal exchange of appraisal privileges with other states, Part I of Legislative Proposal 5 would amend the appraiser law to provide three levels of appraiser licensing:

1. State-licensed residential real estate appraiser. To qualify for this license, the appraiser must meet the testing and educational requirements currently provided for State-licensed real estate appraisers, but would need no prior experience.
2. State-certified residential real estate appraiser. This category includes State-licensed appraisers who also possess at least two years of experience.
3. State-certified general real estate appraiser. The conditions for general certification include more stringent educational, experience, and testing requirements relating to all types of real estate.

Finally, Sections 4 and 10 of the Legislative Proposal 5 rewrite, recodify, and delay the effective date of a provision requiring appraisal by certified or licensed appraisers of property acquired by the State.

Part I of the bill, providing for three levels of licensure, would be effective upon ratification. The remainder of the bill is to become effective July 1, 1991.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S OR H

D

Proposal 6 (89-LG-463)(3.28)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Deposit Account Changes.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CHANGES RELATING TO JOINT, TRUST, AND
3 PERSONAL AGENCY ACCOUNTS AT FINANCIAL INSTITUTIONS.
4 The General Assembly of North Carolina enacts:
5 Part I.
6 Savings Institution Accounts
7 Section 1. G.S. 54B-129 reads as rewritten:
8 "§ 54B-129. Joint accounts.
9 (a) Any two or more persons may open or hold a withdrawable
10 account or accounts. The withdrawable account and any balance
11 thereof shall be held by them as joint tenants, with or without
12 right of survivorship, as the contract shall provide; the account
13 may also be held pursuant to G.S. 41-2.1 and have incidents set
14 forth in that section, provided, however, if the account is held
15 pursuant to G.S. 41-2.1 the contract shall set forth that fact as
16 well. Unless the persons establishing the account have agreed
17 with the association that withdrawals require more than one
18 signature, payment by the association to, or on the order of, any
19 persons holding an account authorized by this section shall be a
20 total discharge of the association's obligation as to the amount
21 so paid. Funds in a joint account established with right of
22 survivorship shall belong to the surviving joint tenant or
23 tenants upon the death of a joint tenant, and the funds shall be
24 subject only to the personal representative's right of collection

1 as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S.
 2 41-2.1 if the account is established pursuant to the provisions
 3 of that section. Payment by the association of funds in the
 4 joint account to a surviving joint tenant or tenants shall
 5 terminate the personal representative's authority under G.S. 28A-
 6 15-10(a)(3) to collect against the association for the funds so
 7 paid, but the personal representative's authority to collect such
 8 funds from the surviving joint tenant or tenants is not
 9 terminated. A pledge of such account by any holder or holders
 10 shall, unless otherwise specifically agreed upon, be a valid
 11 pledge and transfer of such account, or of the amount so pledged,
 12 and shall not operate to sever or terminate the joint ownership
 13 of all or any part of the account. Persons establishing an
 14 account under this section shall sign a statement showing their
 15 ~~decision in regard to election of~~ the right of survivorship in
 16 the account, and containing ~~the following~~ language in a
 17 ~~conspicuous manner:~~ set forth in a conspicuous manner and
 18 substantially similar to the following:

19 'SAVINGS AND LOAN (or name of institution)

20 JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP

21 G.S. 54B-129

22 We understand that by establishing a joint account under the
 23 provisions of North Carolina General Statute 54B-129 that:

- 24 1. The savings and loan association (or name of
 25 institution) may pay the money in the account to,
 26 or on the order of, any person named in the account
 27 unless we have agreed with the association that
 28 withdrawals require more than one signature; and
- 29 2. ~~If we elect to create the right of survivorship in~~
 30 ~~the account, that upon~~ Upon the death of one joint
 31 owner the money remaining in the account will
 32 belong to the surviving joint owners and will not
 33 ~~be inherited by~~ pass by inheritance to the heirs of
 34 the deceased joint owner or be controlled by the
 35 deceased joint owner's will.

36 We _____ [write in "do" or "do not"] We DO elect to
 37 create the right of survivorship in this account.

38 _____
 39 _____
 40 (a1) This section shall not be deemed exclusive. Deposit
 41 accounts not conforming to this section shall be governed by
 42 other applicable provisions of the General Statutes or the common
 43 law as appropriate.

1 (b) Nothing herein contained shall be construed to repeal or
2 modify any of the provisions of G.S. 105-24, relating to the
3 administration of the estate tax laws of this State, or
4 provisions of law relating to estate taxes; the provisions herein
5 shall regulate, govern and protect the association in its
6 relationships with such joint owners of deposit accounts as
7 herein provided.

8 (c) No addition to such account, nor any ~~withdrawal,~~
9 ~~withdrawal or payment or revocation~~ shall affect the nature of
10 the account as a joint ~~account,~~ account, or affect the right of
11 any tenant to terminate the account."

12 Sec. 2. G.S. 54B-130 reads as rewritten:

13 "§ 54B-130. Trust accounts.

14 (a) If any person ~~holding or opening~~ establishing a
15 withdrawable account shall execute a written agreement with the
16 association containing a statement that it is executed pursuant
17 to the provisions of this subsection and providing for the
18 account to be held in the name of such person as trustee for not
19 more than one person designated as beneficiary, the account and
20 any balance thereof shall be held as a trust account ~~and~~ with
21 the following incidents:

- 22 (1) The trustee during the trustee's lifetime may
23 change the designated beneficiary by a written
24 direction to the association. ~~association; and~~
25 (2) The trustee may withdraw or funds by writing checks
26 or otherwise, as set forth in the account contract,
27 and receive payment in cash or check payable to the
28 trustee's personal order, and such order. Such
29 payment or withdrawal shall constitute a revocation
30 of the trust agreement as to the amount withdrawn.
31 ~~withdrawn; and~~
32 (3) ~~Upon the death of the trustee, the person~~
33 ~~designated as beneficiary, if such person~~ If the
34 beneficiary is living and of legal age at the death
35 of the trustee, the beneficiary shall be the holder
36 of the account, and payment by the association to
37 the holder shall be a total discharge of the
38 association's obligation as to the amount paid.
39 (4) If the beneficiary predeceases the trustee, the
40 account shall become an individual account of the
41 trustee and shall have the legal incidents of an
42 individual account.
43 (5) If the named beneficiary is not of legal age at the
44 death of the trustee, the association shall

1 transfer the funds in the account to the general
2 guardian or guardian of the estate, if any, of the
3 minor beneficiary. If no guardian of the minor
4 beneficiary has been appointed, the association
5 shall hold the funds in a similar interest bearing
6 account in the name of the minor until the minor
7 reaches the age of majority or until a duly
8 appointed guardian withdraws the funds.

9 (6) Funds in a trust account established pursuant to
10 this subsection shall belong to the beneficiary
11 upon the death of the trustee and the funds shall
12 be subject only to the personal representative's
13 right of collection as set forth in G.S. 28A-
14 15-10(a)(1). Payment by the association of funds
15 in the trust account to the beneficiary shall
16 terminate the personal representative's authority
17 under G.S. 28A-15-10(a)(1) to collect against the
18 association for the funds so paid, but the personal
19 representative's authority to collect such funds
20 from the beneficiary is not terminated.

21 The person establishing an account under this subsection shall
22 sign a statement containing ~~the following~~ language set forth in a
23 conspicuous manner and substantially similar to the following:
24 ~~in a conspicuous manner:~~

25 'SAVINGS AND LOAN (or name of institution)

26 TRUST ACCOUNT

27 G.S. 54B-130(a)

28 I understand that by establishing a trust account under the
29 provisions of North Carolina General Statute 54B-130(a) that:

- 30 1. During my lifetime I may withdraw the money in the
31 account; and
- 32 2. By written direction to the savings and loan
33 association (or name of institution) I may change
34 the beneficiary; and
- 35 3. Upon my death the money remaining in the account
36 will belong to the beneficiary, and the money will
37 not be inherited by my heirs or be controlled by my
38 will.

39
40 (a1) This section shall not be deemed exclusive. Deposit
41 accounts not conforming to this section shall be governed by
42 other applicable provisions of the General Statutes or the common
43 law, as appropriate.

1 (b) Whenever the beneficiary of a trust account does not
 2 survive the trustee then the account and any balance thereof
 3 which exists shall be held by the trustee in the trustee's own
 4 right and for the trustee's own use and benefit.

5 (c) No addition to such accounts, nor any withdrawal, payment,
 6 ~~evocation~~ or change of beneficiary shall affect the nature of
 7 such accounts as trust ~~accounts~~, accounts, or affect the right of
 8 a trustee to terminate the account.

9 (d) Nothing herein contained shall be construed to repeal or
 10 modify any of the provisions of G.S. 105-24, relating to the
 11 administration of the estate tax laws of this State, or
 12 provisions of laws relating to estate taxes."

13 Sec. 3. G.S. 54B-139(a) reads as rewritten:

14 "(a) A person may open a personal agency account by written
 15 contract containing a statement that it is executed pursuant to
 16 the provisions of this section. A personal agency account may be
 17 a checking account, savings account, time deposit, or any other
 18 type of withdrawable account or certificate. The written
 19 contract shall name an agent who shall have authority to act on
 20 behalf of the depositor in regard to the account as set out in
 21 this subsection. The agent shall have the authority to:

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

29 A person establishing an account under this section shall sign a
 30 statement containing ~~the following~~ language substantially similar
 31 to the following in a conspicuous manner:

32 'SAVINGS AND LOAN (or name of institution)
 33 PERSONAL AGENCY ACCOUNT
 34 G.S. 54B-139

35 I understand that by establishing a personal agency account
 36 under the provisions of North Carolina General Statute 54B-139
 37 that the agent named in the account may:

- 38 1. Sign checks drawn on the account; and
 39 2. Make deposits into the account.

40 I also understand that upon my death the money remaining in the
 41 account will be controlled by my will or inherited by my heirs.

42 _____, "

43 Part II.
 44 Bank Accounts

1 Sec. 4. G.S. 53-146.1 reads as rewritten:

2 "§ 53-146.1. Joint accounts.

3 (a) Any two or more persons may establish a deposit account or
4 accounts by written contract. The deposit account and any
5 balance thereof shall be held for them as joint tenants, with or
6 without right of survivorship, as the contract shall provide; the
7 account may also be held pursuant to G.S. 41-2.1 and have the
8 incidents set forth in that section, provided, however, if the
9 account is held pursuant to G.S. 41-2.1 the contract shall set
10 forth that fact as well. Unless the persons establishing the
11 account have agreed with the bank that withdrawals require more
12 than one signature, payment by the bank to, or on the order of,
13 any persons designated in the contract authorized by this section
14 shall be a total discharge of the bank's obligation as to the
15 amount so paid. Funds in a joint account established with right
16 of survivorship shall belong to the surviving joint tenant or
17 tenants upon the death of a joint tenant, and the funds shall be
18 subject only to the personal representative's right of collection
19 as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S.
20 41-2.1 if the account is established pursuant to the provisions
21 of that section. Payment by the bank of funds in the joint
22 account to a surviving joint tenant or tenants shall terminate
23 the personal representative's authority under G.S. 28A-
24 15-10(a)(3) to collect against the bank for the funds so paid,
25 but the personal representative's authority to collect such funds
26 from the surviving joint tenant or tenants is not terminated. A
27 pledge of such account by any owner or owners, unless otherwise
28 specifically agreed upon, shall be a valid pledge and transfer of
29 such account, or of the amount so pledged, and shall not operate
30 to sever or terminate the joint ownership of all or any part of
31 the account. Persons establishing an account under this section
32 shall sign a statement showing their ~~decision in regard to~~
33 ~~election of the right of survivorship in the account, and~~
34 ~~containing the following language in a conspicuous manner: set~~
35 ~~forth in a conspicuous manner and substantially similar to the~~
36 following:

37 'BANK (or name of institution)
38 JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP
39 G.S. 53-146.1

40 We understand that by establishing a joint account under the
41 provisions of North Carolina General Statute 53-146.1 that:

42 1. The bank (or name of institution) may pay the money
43 in the account to, or on the order of, any person
44 named in the account unless we have agreed with the

1 bank that withdrawals require more than one
 2 signature; and
 3 2. ~~If we elect to create the right of survivorship in~~
 4 ~~the account, that upon~~ Upon the death of one joint
 5 owner the money remaining in the account will
 6 belong to the surviving joint owners and will not
 7 ~~be inherited by~~ pass by inheritance to the heirs of
 8 the deceased joint owner or be controlled by the
 9 deceased joint owner's will.

10 We _____ (write in 'do' or 'do not') We DO elect to
 11 create the right of survivorship in this account.

12

13

14

15 (a) This section shall not be deemed exclusive. Deposit
 16 accounts not conforming to this section shall be governed by
 17 other common law provisions of the General Statutes or the common
 18 law as appropriate.

19 (b) Nothing herein contained shall be construed to repeal or
 20 modify any of the provisions of G.S. 105-24, relating to the
 21 administration of the estate tax laws of this State, or
 22 provisions of laws relating to estate taxes; the provisions
 23 herein shall regulate, govern and protect the bank in its
 24 relationship with such joint owners of deposit accounts as herein
 25 provided.

26 (c) No addition to such deposit account, nor any ~~withdrawal,~~
 27 ~~withdrawal or payment or revocation~~ shall affect the nature of
 28 the account as a joint ~~account,~~ account, or affect the right of
 29 any tenant to terminate the account."

30 Sec. 5. G.S. 53-146.2 reads as rewritten:

31 "§ 53-146.2. Trust accounts.

32 (a) If any person establishing a deposit account shall execute
 33 a written agreement with the bank containing a statement that it
 34 is executed pursuant to the provisions of this subsection and
 35 providing for the account to be held in the name of such person
 36 as trustee for not more than one person designated as
 37 beneficiary, the account and any balance thereof shall be held as
 38 a trust account, ~~and:~~ with the following incidents:

39 (1) The trustee during the trustee's lifetime may
 40 change the designated beneficiary by a written
 41 direction to the bank ~~bank;~~ and

42 (2) The trustee may ~~or~~ withdraw funds by writing checks
 43 or otherwise, as set forth in the account contract,
 44 and receive payment in cash or check payable to the

- 1 trustee's personal order, and such order. Such
2 payment or withdrawal shall constitute a revocation
3 of the trust agreement as to the amount withdrawn.
4 withdrawn; and
- 5 (3) Upon the death of the trustee, the person
6 designated as beneficiary, if such person If the
7 beneficiary is living and of legal age at the death
8 of the trustee, the beneficiary shall be the owner
9 of the account, and payment by the bank to such
10 owner shall be a total discharge of the bank's
11 obligation as to the amount paid.
- 12 (4) If the beneficiary predeceases the trustee, the
13 account shall become an individual account of the
14 trustee and shall have the legal incidents of an
15 individual account.
- 16 (5) If the named beneficiary is not of legal age at the
17 death of the trustee, the bank shall transfer the
18 funds in the account to the general guardian or
19 guardian of the estate, if any, of the minor
20 beneficiary. If no guardian of the minor
21 beneficiary has been appointed, the bank shall hold
22 the funds in a similar interest bearing account in
23 the name of the minor until the minor reaches the
24 age of majority or until a duly appointed guardian
25 withdraws the funds.
- 26 (6) Funds in a trust account established pursuant to
27 this subsection shall belong to the beneficiary
28 upon the death of the trustee and the funds shall
29 be subject only to the personal representative's
30 right of collection as set forth in G.S. 28A-
31 15-10(a)(1). Payment by the bank of funds in the
32 trust account to the beneficiary shall terminate
33 the personal representative's authority under G.S.
34 28A-15-10(a)(1) to collect against the bank for the
35 funds so paid, but the personal representative's
36 authority to collect such funds from the
37 beneficiary is not terminated.
- 38 The person establishing an account under this subsection shall
39 sign a statement containing the following language set forth in a
40 conspicuous manner and substantially similar to the following: in
41 a conspicuous manner:
- 42 'BANK (or name of institution)
43 TRUST ACCOUNT
44 G.S. 53-146.2

1 I understand that by establishing a trust account under the
2 provisions of North Carolina General Statute 53-146.2 that:

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

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

17 (b) Whenever the beneficiary of a trust account does not
18 survive the trustee, then the account and any balance thereof
19 which exists shall be owned by the trustee in the trustee's own
20 right and for the trustee's own use and benefit.

21 (c) No addition to such accounts, nor any withdrawal, payment,
22 ~~revocation~~ or change of beneficiary shall affect the nature of
23 such accounts as trust ~~accounts~~, accounts, or affect the right of
24 a trustee to terminate the account.

25 (d) Nothing herein contained shall be construed to repeal or
26 modify any of the provisions of G.S. 105-24, relating to the
27 administration of the estate tax laws of this State, or
28 provisions of laws relating to estate taxes."

29 Sec. 6. G.S. 54-146.3(a) reads as rewritten:

30 "(a) Any person may establish a personal agency account by
31 written contract containing a statement that it is executed
32 pursuant to the provisions of this section. A personal agency
33 account may be a checking account, savings account, time deposit,
34 or any other type of withdrawable account or certificate. The
35 written contract shall name an agent who shall have authority to
36 act on behalf of the depositor in regard to the account in the
37 actions set out in this subsection. The agent shall have the
38 authority to:

- 39 (1) Make, sign or execute checks drawn on the account
40 or otherwise make withdrawals from the account;
- 41 (2) Endorse checks made payable to the principal for
42 deposit only into the account; and

1 (3) Deposit cash or negotiable instruments, including
2 instruments endorsed by the principal, into the
3 account.

4 A person establishing an account under this section shall sign a
5 statement containing ~~the following~~ language substantially similar
6 to the following in a conspicuous manner:

7 'BANK (or name of institution)

8 PERSONAL AGENCY ACCOUNT

9 G.S. 53-146.3

10 I understand that by establishing a personal agency account
11 under the provisions of North Carolina General Statute 53-146.3
12 that the agent named in the account may:

13 1. Sign checks drawn on the account; and

14 2. Make deposits into the account.

15 I also understand that upon my death the money remaining in the
16 account will be controlled by my will or inherited by my heirs.

17

18

19

Part III.

20

Credit Union Accounts

21

Sec. 7. G.S. 54-109.58 reads as rewritten:

22

"§ 54-109.58. Joint accounts.

23

(a) Shares may be issued to and deposits received from any two
24 or more persons opening or holding an account or accounts, but no
25 joint tenant, unless a member in his own right, shall be
26 permitted to vote, obtain loans, or hold office or be required to
27 pay an entrance or membership fee. The account and any balance
28 thereof shall be held by them as joint tenants, with or without
29 right of survivorship, as the contract shall provide; the account
30 may also be held pursuant to G.S. 41-2.1 and have the incidents
31 set forth in that section, provided, however, if the account is
32 held pursuant to G.S. 41-2.1 the contract shall set forth that
33 fact as well. Unless the persons establishing the account have
34 agreed with the credit union that withdrawals require more than
35 one signature, payment by the credit union to, or on the order
36 of, any persons holding an account authorized by this section
37 shall be a total discharge of the credit union's obligations as
38 to the amount so paid. Funds in a joint account established with
39 right of survivorship shall belong to the surviving joint tenant
40 or tenants upon the death of a joint tenant, and the funds shall
41 be subject only to the personal representative's right of
42 collection as set forth in G.S. 28A-15-10(a)(3), or as provided
43 in G.S. 41-2.1 if the account is established pursuant to the
44 provisions of that section. Payment by the credit union of funds

1 in the joint account to a surviving joint tenant or tenants shall
 2 terminate the personal representative's authority under G.S. 28A-
 3 15-10(a)(3) to collect against the credit union for the funds so
 4 paid, but the personal representative's authority to collect such
 5 funds from the surviving joint tenant or tenants is not
 6 terminated. A pledge of such account by any holder or holders
 7 shall, unless otherwise specifically agreed upon, be a valid
 8 pledge and transfer of such account, or of the amount so pledged,
 9 and shall not operate to sever or terminate the joint ownership
 10 of all or any part of the account. Persons establishing an
 11 account under this section shall sign a statement showing their
 12 ~~decision in regard to election of~~ the right of survivorship in
 13 the account, and containing ~~the following language in a~~
 14 ~~conspicuous manner:~~ set forth in a conspicuous manner and
 15 substantially similar to the following:

16 'CREDIT UNION (or name of institution)
 17 JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP
 18 G.S. 54-109.58

19 We understand that by establishing a joint account under the
 20 provisions of North Carolina General Statute 54-109.58 that:

- 21 1. The credit union (or name of institution) may pay
 22 the money in the account to, or on the order of,
 23 any person named in the account unless we have
 24 agreed with the credit union that withdrawals
 25 require more than one signature; and
- 26 2. ~~If we elect to create the right of survivorship in~~
 27 ~~the account, that upon~~ Upon the death of one joint
 28 owner the money remaining in the account will
 29 belong to the surviving joint owners and will not
 30 ~~be inherited by~~ pass by inheritance to the heirs of
 31 the deceased joint owner or be controlled by the
 32 deceased joint owner's will.

33 We _____ [write in 'do' or 'do not'] We DO elect to
 34 create the right of survivorship in this account.

35
 36
 37 _____,
 38 (a1) This section shall not be deemed exclusive. Deposit
 39 accounts, not conforming to this section shall be governed by
 40 other applicable provisions of the General Statutes or the common
 41 law as appropriate.

42 (b) Nothing herein contained shall be construed to repeal or
 43 modify any of the provisions of G.S. 105-24, relating to the
 44 administration of the estate tax laws of this State, or

1 provisions of laws relating to estate taxes; the provisions
2 herein shall regulate, govern and protect the credit union in its
3 relationship with such joint owners of accounts as herein
4 provided.

5 (c) No addition to such account, nor any ~~withdrawal,~~
6 ~~withdrawal or payment or revocation~~ shall affect the nature of
7 the account as a joint ~~account.~~ account, or affect the right of
8 any tenant to terminate the account."

9 Sec. 8. G.S. 54-109.57 reads as rewritten:

10 "§ 54-109.57. Trusts accounts.

11 (a) Shares may be issued to and deposits received from any
12 person ~~holding or opening~~ establishing an account who shall
13 execute a written agreement with the credit union containing a
14 statement that it is executed pursuant to the provisions of this
15 subsection and providing for the account to be held in the name
16 of such person as trustee for not more than one person designated
17 as beneficiary, the account and any balance thereof shall be held
18 as a trust account, ~~and:~~ with the following incidents:

- 19 (1) The trustee during the trustee's lifetime may
20 change the designated beneficiary by a written
21 direction to the ~~credit union; and~~ credit union.
- 22 (2) The trustee may withdraw ~~or funds by writing checks~~
23 or otherwise, as set forth in the account contract,
24 and receive payment in cash or check payable to the
25 trustee's personal order, and such order. Such
26 payment or withdrawal shall constitute a revocation
27 of the trust agreement as to the amount withdrawn.
28 withdrawn; and
- 29 (3) ~~Upon the death of the trustee, the person~~
30 ~~designated as beneficiary, if such person~~ If the
31 beneficiary is living and of legal age at the death
32 of the trustee, the beneficiary shall be the holder
33 of the account, and payment by the credit union to
34 the holder shall be a total discharge of the credit
35 union's obligation as to the amount paid.
- 36 (4) If the beneficiary predeceases the trustee, the
37 account shall become an individual account of the
38 trustee and shall have the legal incidents of an
39 individual account.
- 40 (5) If the named beneficiary is not of legal age at the
41 death of the trustee, the credit union shall
42 transfer the funds in the account to the general
43 guardian or guardian of the estate, if any, of the
44 minor beneficiary. If no guardian of the minor

1 beneficiary has been appointed, the credit union
2 shall hold the funds in a similar interest bearing
3 account in the name of the minor until the minor
4 reaches the age of majority or until a duly
5 appointed guardian withdraws the funds.

6 (6) Funds in a trust account established pursuant to
7 this subsection shall belong to the beneficiary
8 upon the death of the trustee and the funds shall
9 be subject only to the personal representative's
10 right of collection as set forth in G.S. 28A-
11 15-10(a)(1). Payment by the credit union of funds
12 in the trust account to the beneficiary shall
13 terminate the personal representative's authority
14 under G.S. 28A-15-10(a)(1) to collect against the
15 credit union for the funds so paid, but the
16 personal representative's authority to collect such
17 funds from the beneficiary is not terminated.

18 The person establishing an account under this subsection shall
19 sign a statement containing the following language set forth in a
20 conspicuous manner and substantially similar to the following: ~~in~~
21 a conspicuous manner:

22 'CREDIT UNION (or name of institution)
23 TRUST ACCOUNT
24 G.S. 54-109.57

25 I understand that by establishing a trust account under the
26 provisions of North Carolina General Statute 54-109.57 that:

- 27 1. During my lifetime I may withdraw the money in the
28 account; and
- 29 2. By written direction to the credit union (or name
30 of institution) I may change the beneficiary; and
- 31 3. Upon my death the money remaining in the account
32 will belong to the beneficiary, and the money will
33 not be inherited by my heirs or be controlled by my
34 will.

35
36
37 (a1) This section shall not be deemed exclusive. Deposit
38 accounts not conforming to this section shall be governed by
39 other applicable provisions of the General Statutes or the common
40 law, as appropriate.

41 (b) Whenever the beneficiary of a trust account does not
42 survive the trustee, then the account and any balance thereof
43 which exists shall be held by the trustee in the trustee's own
44 right and for the trustee's own use and benefit.

1 (c) No addition to such accounts, nor any withdrawal, payment,
 2 ~~revocation~~ or change of beneficiary shall affect the nature of
 3 such accounts as trust ~~accounts~~, accounts, or affect the right of
 4 a trustee to terminate the account.

5 (d) Nothing herein contained shall be construed to repeal or
 6 modify any of the provisions of G.S. 105-24, relating to the
 7 administration of the estate tax laws of this State, or
 8 provisions of law relating to estate taxes."

9 Sec. 9. G.S. 54-109.63(a) reads as rewritten:

10 "(a) A person may open a personal agency account by written
 11 contract containing a statement that it is executed pursuant to
 12 the provisions of this section. A personal agency account may be
 13 a checking account, savings account, time deposit, or any other
 14 type of withdrawable account or certificate. The written
 15 contract shall name an agent who shall have authority to act on
 16 behalf of the depositor in regard to the account as set out in
 17 this subsection. The agent shall have the authority to:

- 18 (1) Make, sign or execute checks drawn on the account
 19 or otherwise make withdrawals from the account;
 20 (2) Endorse checks made payable to the principal for
 21 deposit only into the account; and
 22 (3) Deposit cash or negotiable instruments, including
 23 instruments endorsed by the principal, into the
 24 account.

25 A person establishing an account under this section shall sign a
 26 statement containing ~~the following~~ language substantially similar
 27 to the following in a conspicuous manner:

28 'CREDIT UNION (or name of institution)
 29 PERSONAL AGENCY ACCOUNT
 30 G.S. 54-109.63

31 I understand that by establishing a personal agency account
 32 under the provisions of North Carolina General Statute 54-109.63
 33 that the agent named in the account may:

- 34 1. Sign checks drawn on the account; and
 35 2. Make deposits into the account.

36 I also understand that upon my death the money remaining in the
 37 account will be controlled by my will or inherited by my heirs.

38

39

40

Part IV.

41

Effective Date

42

Sec. 10. This act shall become effective Janaury 1,

43 1991.

Explanation of Proposal 6

Legislative Proposal 6 amends the statutes governing joint accounts, trust accounts, and personal agency accounts of banks, savings institutions, and credit unions. There are actually three sets of statutes -- one for savings and loans, one for banks, and one for credit unions. Part I of the bill applies to savings institutions, Part II applies to banks, and Part III applies to credit unions.

Enactment of new provisions on joint and trust accounts in 1988 and 1989 left an apparent conflict between provisions authorizing payment of the entire balance to the survivor of an account with right of survivorship, and G.S. 28A-15-10(a) which authorizes the personal representative of the decedent's estate to collect funds from joint accounts and trusts under certain circumstances. Legislative Proposal 6 makes it clear that a financial institution has no liability to the personal representative once it releases the funds to the surviving joint tenant or beneficiary, but that the personal representative may seek the funds from the surviving joint tenant or beneficiary.

The joint account statutes currently allow the customer to elect a joint account with or without the right of survivorship, which election is made as part of the disclosure statement. Unfortunately, entirely different contract language is appropriate for a joint account without right of survivorship than for one with that right. In addition, many financial institutions do not offer a joint account without right of survivorship. The purpose of the original provision was to be certain that the customer understood that property rights were affected by placing funds in a joint account with right of survivorship. The proposal still accomplishes that purpose through the disclosure, but requires only that the customer elect the right of survivorship without giving him or her the ability to have the joint account without the right of survivorship.

Current law requires exact language in the disclosures for joint, trust, and agency accounts and does not accommodate slight differences among accounts offered by different institutions. The proposal would permit language "substantially similar" to that set forth in the statutes.

Legislative Proposal 6 also addresses the problem that arises with a trust account when the trustee dies and the beneficiary is a minor. If the minor has no guardian, the account remains with the institution until the minor reaches the age of majority or until a guardian is appointed and withdraws the funds.

Other amendments included in the proposal are stylistic changes or for purposes of clarification. In order to allow financial institutions time to amend their forms to comply with the new law, Legislative Proposal 6 would become effective January 1, 1991.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S or H

D

Proposal 7 (89-LC-344)(3.28)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Bank/Savings Assn Conversion.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR DIRECT CONVERSION OF A SAVINGS INSTITUTION
3 TO A BANK AND A BANK TO A SAVINGS INSTITUTION.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article 2 of Chapter 53 of the General
6 Statutes is amended by adding at the end a new section to read:
7 "§ 53-17.2. Conversion of savings association to a State bank.
8 (a) Any association, as defined in G.S. 54B-4, may convert to
9 a State bank as provided in this section. A mutual association
10 must first convert to a stock association before applying for
11 conversion to a bank as provided in this section. As used in
12 this section, the term 'conversion' includes (i) a transaction in
13 which a State bank assumes all or substantially all of the
14 liabilities and purchases all or substantially all of the assets
15 of an association and (ii) any other transaction that results in
16 a change of identity of an association to a State bank; however,
17 the term does not include a transaction in which the resulting
18 bank is a subsidiary or an affiliate of a bank holding company or
19 a bank if the bank holding company or bank has been in existence
20 for at least two years as of the date the transaction is
21 approved.
22 (b) Any association, upon a majority vote of its board of
23 directors, may apply to the Commissioner of Banks for permission
24 to convert to a bank and for certification of appropriate

1 amendments to the association's certificate of incorporation to
2 effect the conversion.

3 (c) The association shall submit a plan of conversion as a
4 part of the application to the Commissioner of Banks. The
5 Commissioner of Banks may recommend approval of the plan of
6 conversion with or without amendment. The Commissioner of Banks
7 shall recommend approval of the plan of conversion if upon
8 examination and investigation he finds that:

- 9 (1) The resulting bank will operate in a safe, sound,
10 and prudent manner with adequate capital,
11 liquidity, and earnings prospects;
12 (2) The directors, officers, and other managerial
13 officials of the association are qualified by
14 character and financial responsibility to control
15 and operate in a legal and proper manner the bank
16 proposed to be formed as a result of the
17 conversion;
18 (3) The interest of the depositors, the creditors, and
19 the public generally will not be jeopardized by the
20 proposed conversion; and
21 (4) The proposed name will not mislead the public as to
22 the character or purpose of the resulting bank, and
23 the proposed name is not the same as one already
24 adopted or appropriated by an existing bank in this
25 State or so similar as to be likely to mislead the
26 public.

27 (d) Any action taken by the Commissioner of Banks pursuant to
28 this section shall be subject to review by the State Banking
29 Commission which may approve, modify, or disapprove any action
30 taken or recommended by the Commissioner of Banks. The State
31 Banking Commission may promulgate rules to govern conversions
32 undertaken pursuant to this section. The requirements for
33 converting associations shall be no more stringent than those
34 provided by rule or regulation applicable to other FDIC-insured
35 commercial banks.

36 (e) In the absence of the promulgation of rules under
37 subsection (d), the conditions to be met for approval of the
38 application for conversion should include the following:

- 39 (1) Condition. The applicant's general condition must
40 reflect adequate capital, liquidity, reserves,
41 earnings, and asset composition necessary for safe
42 and sound operation of the resulting bank.
43 (2) Management. The management and the board of
44 directors must be capable of supervising a sound

1 banking operation and overseeing the changes that
2 must be accomplished in the conversion from an
3 association to a bank.

4 (3) Public Convenience. The Commission must determine
5 that the conversion will have a positive impact on
6 the convenience of the public and will not
7 substantially reduce the services available to the
8 public in the market area.

9 (4) Transition. Within a reasonable time after the
10 effective date of the conversion, the resulting
11 bank must divest itself of all assets and
12 liabilities that do not conform to State banking
13 law or rules. The length of this transition period
14 shall be determined by the Commissioner and shall
15 be specified when the application for conversion is
16 approved.

17 In evaluating each of these conditions, the Commission shall
18 consider a comparison of the relevant financial ratios of the
19 applicant with the average ratios of North Carolina banks of
20 similar asset size. The Commission may not approve a conversion
21 where the applicant presents an undue supervisory concern or has
22 not been operated in a safe and sound manner.

23 (f) If the State Banking Commission approves the plan of
24 conversion, then the association shall submit the plan to the
25 stockholders as provided in subsection (g). After approval of
26 the plan of conversion, the Commissioner of Banks shall supervise
27 and monitor the conversion process and shall ensure that the
28 conversion is conducted pursuant to law and the association's
29 approved plan of conversion.

30 (g) After lawful notice to the stockholders of the association
31 and full and fair disclosure of the plan of conversion, the plan
32 must be approved by a majority of the total votes that
33 stockholders of the association are eligible and entitled to
34 cast. The vote by the stockholders may be in person or by proxy.
35 Following the vote of the stockholders, the association shall
36 file with the Commissioner of Banks the results of the vote
37 certified by an appropriate officer of the association. The
38 Commissioner of Banks shall then approve the requested conversion
39 and the association shall file with the Secretary of State
40 amended articles of incorporation with the certificate of the
41 Commissioner of Banks attached. The conversion of the
42 association to a bank shall be effective upon this filing.

43 (h) The Commissioner of Banks may authorize the resulting bank
44 to do the following:

1 (1) Wind up any activities legally engaged in by the
2 association at the time of conversion but not
3 permitted to State banks.

4 (2) Retain for a transitional period any assets and
5 deposit liabilities legally held by the association
6 at the effective date of the conversion that may
7 not be held by State banks.

8 The length, terms, and conditions of the transitional periods
9 under subdivisions (1) and (2) are subject to the discretion of
10 the Commissioner of Banks.

11 (i) Upon conversion of an association to a bank, the legal
12 existence of the association does not terminate, and the
13 resulting bank is a continuation of the association. The
14 conversion shall be a mere change in identity or form of
15 organization. All rights, liabilities, obligations, interest,
16 and relations of whatever kind of the association shall continue
17 and remain in the resulting bank. All actions and legal
18 proceedings to which the association was a party prior to
19 conversion shall be unaffected by the conversion and shall
20 proceed as if the conversion had not taken place."

21 Sec. 2. Article 3 of Chapter 54B of the General
22 Statutes is amended by adding a new section to read:

23 "§ 54B-46. Conversion of bank to stock association.

24 (a) Any bank, as defined in G.S. 53-1, may convert to a stock
25 association as provided in this section.

26 (b) Any bank, upon a majority vote of its board of directors,
27 may apply to the Administrator for permission to convert to a
28 stock association and for certification of appropriate amendments
29 to the bank's certificate of incorporation to effect the
30 conversion.

31 (c) The bank shall submit a plan of conversion as a part of
32 the application to the Administrator. The Administrator may
33 recommend approval of the plan of conversion with or without
34 amendment. The Administrator shall recommend approval of the
35 plan of conversion if upon examination and investigation he finds
36 that:

37 (1) The resulting stock association will operate in a
38 safe, sound, and prudent manner with adequate
39 capital, liquidity and earnings prospects;

40 (2) The directors, officers and other managerial
41 officials of the bank are qualified by character
42 and financial responsibility to control and operate
43 in a legal and proper manner the stock association

- 1 proposed to be formed as a result of the
2 conversion;
- 3 (3) The interest of the depositors, the creditors, and
4 the public generally will not be jeopardized by the
5 proposed conversion; and
- 6 (4) The proposed name will not mislead the public as to
7 the character or purpose of the resulting stock
8 association, and the proposed name is not the same
9 as one already adopted or appropriated by an
10 existing association in this State or so similar as
11 to be likely to mislead the public.
- 12 (d) Any action taken by the Administrator pursuant to this
13 section shall be subject to review by the Commission which may
14 approve, modify, or disapprove any action taken or recommended by
15 the Administrator. The Commission may promulgate rules to govern
16 conversions undertaken pursuant to this section. The
17 requirements for converting banks shall be no more stringent than
18 those provided by rule or regulation applicable to other FDIC-
19 insured commercial stock associations.
- 20 (e) In the absence of the promulgation of rules under
21 subsection (d), the conditions to be met for approval of the
22 application for conversion should include the following:
- 23 (1) Condition. The applicant's general condition must
24 reflect adequate capital, liquidity, reserves,
25 earnings, and asset composition necessary for safe
26 and sound operation of the resulting stock
27 association.
- 28 (2) Management. The management and the board of
29 directors must be capable of supervising a sound
30 stock association operation and overseeing the
31 changes that must be accomplished in the conversion
32 from a bank to a stock association.
- 33 (3) Public Convenience. The Commission must determine
34 that the conversion will have a positive impact on
35 the convenience of the public and will not
36 substantially reduce the services available to the
37 public in the market area.
- 38 (4) Transition. Within a reasonable time after the
39 effective date of the conversion, the resulting
40 stock association must divest itself of all assets
41 and liabilities that do not conform to State
42 banking law or rules. The length of this
43 transition period shall be determined by the

1 Administrator and shall be specified when the
2 application for conversion is approved.

3 In evaluating each of these conditions, the Commission shall
4 consider a comparison of the relevant financial ratios of the
5 applicant with the average ratios of North Carolina stock
6 associations of similar asset size. The Commission may not
7 approve a conversion where the applicant presents an undue
8 supervisory concern or has not been operated in a safe and sound
9 manner.

10 (f) If the Administrator approves the plan of conversion, then
11 the bank shall submit the plan to the stockholders as provided in
12 subsection (g). After approval of the plan of conversion, the
13 Administrator shall supervise and monitor the conversion process
14 and shall ensure that the conversion is conducted pursuant to law
15 and the bank's approved plan of conversion.

16 (g) After lawful notice to the stockholders of the bank and
17 full and fair disclosure of the plan of conversion, the plan must
18 be approved by a majority of the total votes that stockholders of
19 the bank are eligible and entitled to cast. The vote by the
20 stockholders may be in person or by proxy. Following the vote of
21 the stockholders, the bank shall file with the Administrator the
22 results of the vote certified by an appropriate officer of the
23 bank. The Administrator shall approve the requested conversion
24 and the bank shall file with the Secretary of State amended
25 articles of incorporation with the certificate of the
26 Administrator attached. The conversion of the bank to a stock
27 association shall be effective upon this filing.

28 (h) The Administrator may authorize the resulting stock
29 association to do the following:

30 (1) Wind up any activities legally engaged in by the
31 bank at the time of conversion but not permitted to
32 stock associations.

33 (2) Retain for a transitional period any assets and
34 deposit liabilities legally held by the bank at the
35 effective date of the conversion that may not be
36 held by stock associations.

37 The length, terms, and conditions of the transitional periods
38 under subdivisions (1) and (2) are subject to the discretion of
39 the Administrator, but may not exceed five years after the
40 effective date of the conversion.

41 (i) Upon conversion of a bank to a stock association, the
42 legal existence of the bank does not terminate, and the resulting
43 stock association is a continuation of the bank. The conversion
44 shall be a mere change in identity or form of organization. All

1 rights, liabilities, obligations, interest, and relations of
2 whatever kind of the bank shall continue and remain in the
3 resulting stock association. All actions and legal proceedings
4 to which the bank was a party prior to conversion shall be
5 unaffected by the conversion and proceed as if the conversion had
6 not taken place."

7 Sec. 3. This act does not affect the validity of (i)
8 any bank/savings institution conversion accomplished through a
9 purchase and assumption or otherwise or (ii) the reorganization
10 of a bank into a bank holding company, where the conversion or
11 reorganization was completed before the effective date of this
12 act.

13 Sec. 4. This act is effective upon ratification and
14 applies to applications for conversion approved on or after that
15 date.

Explanation of Proposal 7

As a result of the savings and loan crisis nationwide and the changes made by the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, more savings institutions are exploring the possibility of becoming a bank. While North Carolina law does not explicitly provide for a charter switch, conversions of savings institutions to State chartered banks are not new. In the past twenty years, the Banking Commission has approved the conversion of seventeen savings institutions to banks through a procedure known as purchase and assumption. In this procedure, a savings institution applies for a de novo bank charter. After the new bank charter is granted, the new bank purchases the assets and assumes the liabilities of the savings institution, which is then dissolved. This two-step process has been used because a 1981 Attorney General's opinion states that, in the absence of statutory authorization, a savings institution may not merge directly with a bank.

The Depository Institutions Study Commission considered a proposal to provide explicit statutory authority for a conversion, either directly or indirectly, of a savings institution to a bank and a bank to a savings institution. Government officials and members of the public testified that such a direct procedure would be simpler and less expensive for converting institutions. In addition, the General Assembly could provide guidance to the Banking Commission as to what factors should be considered in allowing a direct conversion. Facilitating conversion would also encourage savings institutions to become State-chartered banks rather than federally chartered banks.

Legislative Proposal 7 would add two new statutes to the law establishing a procedure for conversions of savings associations to banks and vice versa. G.S. 53-17.2 would apply to savings associations converting to banks and G.S. 54B-46 would apply to banks converting to savings associations.

Subsection (a) of each statute provides specific authority for conversions. A mutual savings association must first convert to a stock association before applying for conversion to a bank. Subsection (b) authorizes the converting financial institution to apply to the appropriate regulatory authority after a vote of its board of directors approving conversion. Subsection (c) requires the converting institution to submit a plan of conversion to the appropriate State regulator. The regulator will then make a recommendation for or against the conversion based upon whether (i) the capital, liquidity, earnings prospects, and management are such that the resulting institution will operate in a safe and sound manner and (ii) the conversion will be in the best interest of the public.

Under subsection (e), the recommendation of the regulator is then subject to the approval of the appropriate regulatory body: the Savings Institutions Commission in the case of a bank converting to a savings association and the Banking Commission in the case of a savings association converting to a bank. Each Commission may promulgate rules governing conversions and, in the absence of such rules, the Commission is to consider the factors listed in subsection (e) of each statute: condition, management, public convenience, and transition. The Commission is to specify a transitional period during which the resulting institution shall divest itself of all assets and liabilities that do not conform with the law governing such institutions.

Subsection (f) requires the converting institution to submit the plan of conversion to its stockholders and then convert. The appropriate regulator is to supervise the conversion process and may provide for winding up of nonconforming activities during

a transition period. Finally, subsection (i) of each statute provides that the resulting entity is a continuation of the converting entity and the conversion is a mere change of organization form.

Legislative Proposal 7 would be effective upon ratification.

Appendix A

PART XV.—DEPOSITORY INSTITUTIONS STUDY COMMISSION

Sec. 15.1. The North Carolina Depository Institutions Study Commission is hereby created. The Commission shall consist of 15 voting members and 3 nonvoting members: five Senators appointed by the President Pro Tempore of the Senate; five Representatives appointed by the Speaker of the House; one representative of the North Carolina commercial banking industry appointed by the President Pro Tempore of the Senate; one representative of the North Carolina savings institution industry appointed by the Speaker of the House; one representative of the credit union industry appointed by the President Pro Tempore of the Senate; one representative of the small and minority business community appointed by the Speaker of the House; and one representative of the low-income consumer community appointed by the President Pro Tempore of the Senate. The North Carolina Commissioner of Banks, the Administrators of the Savings and Loan and Credit Union Divisions of the North Carolina Department of Economic and Community Development shall serve as ex officio nonvoting members. All replacement appointments shall be filled in the same manner as initial appointments.

Sec. 15.2. The President Pro Tempore of the Senate shall designate one Senator as cochairman and the Speaker of the House of Representatives shall designate one Representative as cochairman. The cochairmen shall call the initial meeting of the Commission.

Sec. 15.3. The Commission shall study the impact of national developments within the depository institutions industry and what effect, if any, these developments will have upon North Carolina depository institutions. The scope of the study shall include, but not be limited to:

- (1) The effect on North Carolina depository institutions, if any, resulting from action by the federal government to restructure the Federal Savings and Loan Insurance Corporation;
- (2) The effect on North Carolina depository institutions, if any, resulting from any increased authority which may be granted to the Federal Deposit Insurance Corporation;
- (3) The effect on the North Carolina public, if any, if savings institutions were permitted to convert into commercial banks and commercial banks allowed to convert into savings institutions;
- (4) The level of competition between financial institutions in North Carolina;
- (5) The cost and availability of financial services available through North Carolina financial institutions; and
- (6) The desirability, if any, of consolidating North Carolina financial institution regulatory agencies into a single agency.

Sec. 15.4. The Commission may submit an interim report to the General Assembly on or before the convening of its 1990 Session, and shall submit a final report of its findings and recommendations to the General Assembly on or before the first day of the 1991 Session of the General Assembly by the filing of a report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Upon filing its final report, the Commission shall terminate. The report of the Commission shall summarize the information obtained in the course of its inquiry, set forth any findings and conclusions, and recommend such administrative actions or legislative actions that may be necessary. If legislation is recommended, the Commission shall prepare and submit with its report or reports appropriate bills.

Sec. 15.5. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the Offices of House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Commission may also, subject to the provisions of G.S. 120-32.02(b), enter into contracts for the provision of technical assistance it finds necessary for the performance of its responsibilities under this Part.

Sec. 15.6. Members of the Commission who are also members of the General Assembly shall be paid subsistence and travel expenses at the rate set forth in G.S. 120-3.1. Members of the Commission who are officials or employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other members of the Commission shall be paid the per diem and allowance at the rate set forth in G.S. 138-5.

Sec. 15.7. There is transferred from the funds appropriated to the Banking Commission for the 1989-90 fiscal year to the Legislative Services Commission for the Depository Institutions Study Commission \$25,000. The Legislative Services Commission may allocate to the Commission additional funds necessary to enable the Commission to complete its study.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 1037

Short Title: Depository Institutions Study.

(Public)

Sponsors: Senator Staton.

Referred to: Rules.

April 27, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE DEPOSITORY INSTITUTIONS STUDY
3 COMMISSION.

4 Whereas, North Carolina has overall experienced financially sound
5 depository institutions benefiting greatly the people of this State; and

6 Whereas, nationally there has been an increased number of depository
7 institution failures, prompting the federal government to restructure the entire
8 depository insurance mechanism and the regulations applicable thereto; and

9 Whereas, North Carolina savings and other depository institutions may
10 potentially be negatively impacted by the number of depository institution failures
11 nationally; and

12 Whereas, the degree of consolidation and change within the federal
13 regulatory agencies and their ultimate and immediate effect upon North Carolina
14 depository institutions cannot be known at this time; and

15 Whereas, some proposed actions by Congress would as a practical matter
16 require study of North Carolina financial regulatory agencies and their assigned
17 functions; and

18 Whereas, it is the intention of the legislature to encourage and foster the
19 safe and sound development of all of its depository institutions and to protect this

1 State from the financial loss and adversity suffered by other regions in the United
2 States; Now, therefore,

3 The General Assembly of North Carolina enacts:

4 Section 1. The North Carolina Depository Institutions Study Commission
5 is hereby created. The Commission shall consist of 18 members: five Senators
6 appointed by the President of the Senate; five Representatives appointed by the
7 Speaker of the House; one representative of the North Carolina commercial banking
8 industry appointed by the President of the Senate; one representative of the North
9 Carolina savings institution industry appointed by the Speaker of the House; one
10 representative of the credit union industry appointed by the President Pro Tempore
11 of the Senate; one representative of the small and minority business community
12 appointed by the Speaker of the House; and one representative of the low-income
13 consumer community appointed by the President of the Senate. The North Carolina
14 Commissioner of Banks, the Administrators of the Savings and Loan and Credit
15 Union Divisions of the North Carolina Department of Commerce shall serve as ex
16 officio nonvoting members. All initial appointments shall be filled in the same
17 manner as initial appointments.

18 Sec. 2. The President of the Senate shall designate one Senator as
19 cochairman and the Speaker of the House of Representatives shall designate one
20 Representative as cochairman. The cochairmen shall call the initial meeting of the
21 Commission.

22 Sec. 3. The Commission shall study the impact of national developments
23 within the depository institutions industry and what effect, if any, these developments
24 will have upon North Carolina depository institutions. The scope of the study shall
25 include, but not be limited to:

- 26 (1) The effect on North Carolina depository institutions, if any,
27 resulting from action by the federal government to restructure the
28 Federal Savings and Loan Insurance Corporation;
- 29 (2) The effect on North Carolina depository institutions, if any,
30 resulting from any increased authority which may be granted to the
31 Federal Deposit Insurance Corporation;
- 32 (3) The effect on the North Carolina public, if any, if savings
33 institutions were permitted to convert into commercial banks and
34 commercial banks allowed to convert into savings institutions;

1 (4) The level of competition between financial institutions in North
2 Carolina;

3 (5) The cost and availability of financial services available through
4 North Carolina financial institutions; and

5 (6) The desirability, if any, of consolidating North Carolina financial
6 institution regulatory agencies into a single agency.

7 Sec. 4. The Commission shall submit a final report of its findings and
8 recommendations to the General Assembly on or before the first day of the 1990
9 Session of the General Assembly by the filing of a report with the President of the
10 Senate and the Speaker of the House of Representatives. Upon filing its final report,
11 the Commission shall terminate. The report of the Commission shall summarize the
12 information obtained in the course of its inquiry, set forth any findings and
13 conclusions, and recommend such administrative actions or legislative actions that
14 may be necessary. If legislation is recommended, the Commission shall prepare and
15 submit with its report appropriate bills.

16 Sec. 5. With prior approval of the Legislative Services Commission,
17 necessary professional and clerical assistance shall be provided by the Legislative
18 Services Office. The Commission may hold its meetings in legislative buildings with
19 the prior approval from the Legislative Services Commission. The Commission may
20 also enter into contracts for the provision of technical assistance it finds necessary for
21 the performance of its responsibilities under this Part.

22 Sec. 6. Members of the Commission who are also members of the
23 General Assembly shall be paid subsistence and travel expenses at the rate set forth
24 in G.S. 120-3.1. Members of the Commission who are officials or employees of the
25 State shall receive travel allowances at the rate set forth in G.S. 138-6. All other
26 members of the Commission shall be paid the per diem and allowance at the rate set
27 forth in G.S. 138-5.

28 Sec. 7. There is appropriated from the General Fund to the Legislative
29 Services Commission for the Depository Institutions Study Commission \$25,000 for
30 fiscal year 1989-90. The Legislative Services Commission may allocate to the
31 Commission additional funds necessary to enable the Commission to complete its
32 study.

33 Sec. 8. This act shall become effective July 1, 1989.

APPENDIX B

MEMBERSHIP OF THE NORTH CAROLINA DEPOSITORY INSTITUTIONS STUDY COMMISSION

The Hon. William W. Staton, Cochair.
P. O. Box 1320
Sanford, NC 27330

The Hon. W. W. Dickson
718 Avondale Road
Gastonia, NC 28054

The Hon. Aaron W. Plyler, Sr.
2170 Concord Avenue
Monroe, NC 28110

The Hon. John C. Hasty
P. O. Box 945
Maxton, NC 28364

The Hon. Robert C. Carpenter
180 Georgia Road
Franklin, NC 28734

The Hon. Eugene Rogers
908 Woodlawn Drive
Williamston, NC 27892

The Hon. J. Richard Conder
P. O. Box 1627
Rockingham, NC 28379

Mr. Theo Pitt
318 Gravely Drive
Rocky Mount, NC 27801

The Hon. Wanda H. Hunt
P. O. Box 1335
Pinehurst, NC 28374

Mr. Andy McCall
P. O. Box 1387
Fayetteville, NC 28302

Mr. Richard Marvin
Wachovia Bank & Trust Co.
Winston-Salem, NC 27102

Ex-Officio Members

Mr. William T. Graham
Commissioner of Banks
Dobbs Building

Mr. James Blaine
201 Hawthorne Road
Raleigh, NC 27605

Mr. J. Phillips L. Johnston
Administrator
Credit Union Division
Dobbs Building

Mr. James H. Carney
308 S. Leslie Street
Goldsboro, NC 27530

Mr. Robert Jacobsen
Administrator
Savings & Loan Division
Dobbs Building

The Hon. Harold J. Brubaker, Cochair.
138 Scarboro Street
Asheboro, NC 27203

The Hon. George M. Holmes
Rt. 1, Box 14
Hamptonville, NC 27020

Staff:

Ms. Martha H. Harris, Commission Counsel
Ms. Kristin Godette, Assistant Counsel
Ms. Cathy Fitzner, Backup Counsel
Mr. Warren Plonk, Fiscal Analyst
Ms. Jerry Batchelor, Commission Clerk

APPRAISAL SUBCOMMITTEE

GUIDELINES REGARDING

STATE CERTIFICATION AND LICENSING OF APPRAISERS

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) establishes an Appraisal Subcommittee of the Federal Financial Institutions Examination Council. The responsibilities of the Appraisal Subcommittee include, among other things, monitoring the appraiser certifying and licensing agencies, which states may establish to carry out the purposes of Title XI. Section 1116 (d) of this Title instructs the Subcommittee not to recognize appraiser certifications and licenses from states whose appraisal policies, practices or procedures are found to be inconsistent with Title XI.

The legislative history accompanying Title XI indicates that states should adopt an organizational structure for implementing their appraiser licensing, certification and supervision functions that avoids potential conflicts of interest. Recognizing that each state has fiscal constraints or other factors that could influence the structure and location of the agency charged with licensing and certifying appraisers, the legislative history also indicates a desire to avoid imposing any particular organizational structure upon the states. However, while this suggests that a state could choose to locate the appraisal regulatory function in the same department as the regulation of real estate licensing, promotion, development or financing functions (hereinafter "realty related activities"), the organizational structure of the department must provide adequate safeguards to ensure that the appraisal regulatory function is independent of realty related activities.

In response to numerous requests from states and other interested parties, the Subcommittee is issuing these guidelines to assist the states, territories and the District of Columbia in the establishment of appropriate organizational structures for licensing and certifying appraisers. The guidelines are intended to facilitate the implementation of Title XI, promote the independence of the appraisal regulatory function, reduce conflicts of interest, and address the grandfathering and dual licensing of appraisers. Given the importance of these objectives, the Subcommittee will accept and consider public comments on the issues addressed by these guidelines.

GUIDELINES

LOCATION OF THE AGENCY

The Subcommittee believes it is preferable that the certification and licensing function be established as a totally independent regulatory agency answerable to the governor or a cabinet level officer who has no regulatory responsibility for realty related activities. (In these guidelines, the appraisal regulatory body will be referred to as the "agency", although it may also be a board, commission, or individual). Such a structure would provide maximum insulation for the agency from influences of any industry or organization whose members have a direct or indirect financial interest in the outcome of the agency's decisions (hereinafter "affected industry").

If, due to fiscal or other constraints, a separate agency is not feasible, the appraisal certification and licensing function should be located within a state regulatory body which is structured to adequately eliminate the influences of an affected industry over the appraisal function.

APPOINTMENT OF THE AGENCY HEAD

The appointment of the agency head or members of the appraisal board should be made by an individual or committee not associated or affiliated with an affected industry. (An individual would be affiliated or associated with an affected industry if the individual had a direct or indirect pecuniary interest in the industry).

To illustrate:

An autonomous agency head, appointed by the governor and subject to confirmation by the legislature would generally be considered to be properly appointed.

An individual or board chosen by or answerable to a committee or commission comprised of a majority of real estate appraisers, real estate brokers, financial institution executives or other members of an affected industry would not meet the criteria for being independently appointed.

INDEPENDENCE FROM AFFECTED INDUSTRIES

If the agency is directed by an individual, that person should not be actively engaged in the appraisal business or any other affected industry for the term of appointment or employment, and for a reasonable period thereafter.

If the agency is directed by a board or commission, the members of that board should represent the broad public interest, and the statute, regulation, or order creating that body should not permit a majority of the board to come from or be dominated by any one industry or profession. Moreover, after its initial establishment, the composition of the board should continue to remain free from domination by any one industry or profession.

INDEPENDENCE OF DECISION MAKING

Decisions as to whether to license and certify, to discipline or to de-license or de-certify appraisers should not be made by the same state officials whose responsibilities include realty related activities.

Decisions of the state appraiser regulatory agency regarding whether to license or certify, to discipline or to de-license or de-certify appraisers should be final administrative action subject only to appropriate judicial review.

QUALIFICATION CRITERIA

All appraisers subject to the licensing or certification provisions of Title XI must be qualified through appropriate testing and experience requirements established by state law.

Certified: Individuals designated as certified real estate appraisers shall have, at a minimum, 1) satisfied the criteria for certification issued by the Appraisal Qualifications Board of the Appraisal Foundation, and, 2) passed a state administered examination which is consistent with the Uniform State Certification Examination issued or endorsed by the Appraisal Qualifications Board of the Appraisal Foundation.

Licensed: States should establish meaningful qualification standards for licensed appraisers, including testing, experience and educational requirements that are adequate to demonstrate knowledge and competency.

Additional qualifications for licensing and certification may be required by any state or federal agency that considers such qualifications necessary to carry out responsibilities under Title XI.

EXEMPTIONS AND GRANDFATHERING

No individual or group of individuals shall be deemed exempt from meeting the criteria established for licensing or certification, or be otherwise "grandfathered" into the system. This is not meant to preclude states from recognizing existing licenses or certification designations of individuals who currently meet existing state licensing or certification requirements, provided those requirements are fully consistent with the provisions of Title XI.

MANDATORY DUAL LICENSING

Consistent with the spirit and intent of Title XI, state laws may not require any applicant for appraisal certification or licensing to hold other occupational licenses as a condition of obtaining a license or certification designation as a real estate appraiser.

OTHER

States should ensure that an appropriate code of professional responsibility is incorporated into their certification and licensing requirements.

To ensure that their licensing and certification procedures are not disapproved by the Subcommittee, states should adhere to the provisions set forth in Title XI and adopt policies, practices and procedures that are consistent with the purposes of the law. The Subcommittee will exercise the authority granted by Title XI to ensure the independence of the appraisal regulatory function within the state systems. The Subcommittee will meet its oversight responsibilities by reviewing each state's compliance with the intent of Title XI in its entirety.

Additional policy guidance may be provided by the Subcommittee, as necessary, to further assist in the effective implementation of Title XI.

APPRAISAL SUBCOMMITTEE
Federal Financial Institutions Examination Council
1776 C Street, NW, Suite 701
Washington, DC 20006

February 28, 1990

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council today clarified and expanded aspects of its guidelines for state licensing and certification of real estate appraisers.

Since January 18, when the guidelines were released, the Subcommittee has received numerous comments and inquiries from states and other interested parties concerning the guidelines' limitations on the composition of state appraiser boards. The legislative history of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act indicates that states should adopt an organizational structure for implementing state appraiser licensing, certification and supervision functions that avoids potential conflicts of interest. With this objective in mind, the guidelines indicated that a state appraisal regulatory board should not be dominated by any industry or profession.

The Appraisal Subcommittee recognizes that a significant representation on the appraisal boards by members of the appraisal industry can help to ensure that the Boards have adequate expertise and knowledge to carry out their critical functions. The Subcommittee also notes that other regulatory boards of many states are comprised of a majority of practitioners from their respective fields. In response to comments and inquiries received, and because many states are currently in process of enacting legislation to establish appraiser certification and licensing agencies, the Subcommittee has determined that an appraiser board that is comprised of a majority of individuals from the

appraisal industry would not likely result in disapproval or rejection of a state's appraisal regulatory system based solely on that fact.

Rather, the Subcommittee has indicated that it intends to evaluate a state's system for certifying and licensing appraisers in its entirety, including the adequacy of safeguards to prevent conflicts of interest, before considering any adverse action against a particular state's appraisal regulatory system.

The Appraisal Subcommittee continues to believe that as a matter of sound public policy, state appraisal boards or commissions should adequately represent the broad public interest and that they should have meaningful public representation. In this regard, domination or majority control of appraisal boards by representatives of the real estate sales/brokerage, promotion, development, or financing industries -- or by their licensing or regulatory agencies -- would not be appropriate or consistent with the principles outlined in the Appraisal Subcommittee's guidelines and the legislative history of Title XI.