

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 513

Banks and Thrift Institutions Committee Substitute Adopted 4/26/93

Short Title: Banking Amendments.

(Public)

Sponsors:

Referred to:

March 22, 1993

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE BANKING LAWS.

3 The General Assembly of North Carolina enacts:

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

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

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

17 Sec. 2. G.S. 53-7 reads as rewritten:

18 "**§ 53-7. Statement filed before beginning business.**

19 Before such company shall begin the business of banking, banking and trust,  
20 fiduciary, or surety business, there shall be filed with the Commissioner of Banks a  
21 statement under oath by the ~~president, cashier, or secretary,~~ president or secretary  
22 containing the names of all the directors and officers, with the date of their election or  
23 appointment, term of office, residence, and post-office address of each, the amount of

1 capital stock of which each is the owner in good faith and the amount of money paid in  
2 on account of the capital stock. Nothing shall be received in payment of capital stock  
3 but money."

4 Sec. 3. G.S. 53-12 reads as rewritten:

5 "**§ 53-12. Merger or consolidation of ~~banks.~~ banks and savings associations.**

6 A bank may merge or consolidate with or transfer its assets and liabilities to another  
7 ~~bank.~~ bank or to a savings association, or a savings association may transfer its assets  
8 and liabilities to a bank. Before such merger or consolidation or transfer shall become  
9 effective, each bank or savings association concerned in such merger or consolidation or  
10 transfer shall file, or cause to be filed, with the Commissioner of Banks, certified copies  
11 of all proceedings had by its directors and stockholders, or in the case of a mutual  
12 savings association, its membership, which said stockholders' or memberships'  
13 proceedings shall set forth that (i) holders of at least two thirds of the stock of the bank  
14 voted in the affirmative on the proposition of merger or consolidation ~~or transfer.~~ or, (ii)  
15 in the case of a stock or mutual savings association, such percentage of the stock or of  
16 the membership as the laws applicable to such institutions require. Such stockholders' or  
17 memberships' proceedings shall also contain a complete copy of the agreement made  
18 and entered into between said ~~banks,~~ banks or savings associations, with reference to  
19 such merger or consolidation or transfer. Upon the filing of such stockholders' or  
20 memberships' and directors' proceedings as aforesaid, the Commissioner of Banks ~~shall~~  
21 may cause to be made an investigation of each bank or savings association, or both, to  
22 determine whether the interests of the depositors, creditors, and stockholders or  
23 members of each bank or savings association are protected, and find such merger or  
24 consolidation is in the public interest, and that such merger or consolidation or transfer  
25 is made for legitimate purposes, and his consent to or rejection of such merger or  
26 consolidation or transfer shall be based upon such investigation. No such merger or  
27 consolidation or transfer shall be made without the consent of the Commissioner of  
28 Banks. The expense of such investigation shall be paid by ~~such banks.~~ the banks or  
29 savings associations, or both, involved in the proposed merger or consolidation or  
30 transfer. Notice of such merger or consolidation or transfer shall be published once a  
31 week for four consecutive weeks before or after the same is to become effective, at the  
32 discretion of the Commissioner of Banks, in a newspaper published in ~~a city, town, or~~  
33 ~~county~~ the county in which each of said banks or savings associations, or both, is  
34 located, ~~and a~~ or if no newspaper is published in such county, then in a newspaper  
35 having a general circulation in such county. A certified copy thereof shall be filed with  
36 the Commissioner of Banks. In case of either transfer or merger or consolidation the  
37 rights of creditors shall be preserved unimpaired, and the respective companies deemed  
38 to be in existence to preserve such rights for a period of three years. For the purposes of  
39 this section, the term 'savings association' shall be construed to include a savings and  
40 loan association or a savings bank, whether organized under the laws of North Carolina  
41 or the United States."

42 Sec. 4. G.S. 53-13 reads as rewritten:

43 "**§ 53-13. Merged or consolidated banks and savings associations deemed one ~~bank.~~**  
44 **bank or savings association.**

1 In case of merger or consolidation when the agreement of merger or consolidation is  
2 made, and a duly certified copy thereof is filed with the Secretary of State, together with  
3 a certified copy of the approval of the Commissioner of Banks to such merger or  
4 consolidation, the ~~banks, parties thereto,~~ parties thereto shall be held to be one company,  
5 possessed of the rights, privileges, powers, and franchises of the several companies, but  
6 subject to all the provisions of law under which it is created. The directors and other  
7 officers named in the agreement of consolidation shall serve until the first annual  
8 meeting for election of officers and directors, the date for which shall be named in the  
9 agreement. On filing such agreement, all and singular, the property and rights of every  
10 kind of the several companies shall thereby be transferred and vested in such surviving  
11 company in the case of merger or in such new company in the case of consolidation,  
12 and be as fully its property as they were of the companies parties to the agreement."

13 Sec. 5. G.S. 53-17 reads as rewritten:

14 "**§ 53-17. Fiduciary powers and liabilities of ~~banks or banks,~~ trust companies**  
15 **companies, savings associations or savings banks merging or transferring**  
16 **assets and liabilities.**

17 Whenever any ~~bank or trust company, bank, trust company, savings association, or~~  
18 savings bank, organized under the laws of North Carolina or the acts of Congress, and  
19 doing business in this State, shall consolidate or merge with or shall sell to and transfer  
20 its assets and liabilities to any other ~~bank or trust company, bank, trust company, savings~~  
21 association, or savings bank doing business in this State, as provided by the laws of  
22 North Carolina or the acts of Congress, all the then existing fiduciary rights, powers,  
23 duties and liabilities of such consolidating or merging or transferring ~~bank or banks~~  
24 and/or trust companies, institution, including the rights, powers, duties and liabilities as  
25 executor, administrator, guardian, trustee, and/or any other fiduciary capacity, whether  
26 under appointment by order of court, will, deed, or other instrument, shall, upon the  
27 effective date of such consolidation or merger or sale and transfer, vest in, devolve  
28 upon, and thereafter be performed by, the transferee ~~bank~~ institution or the consolidated  
29 or merged ~~bank or trust company, institution,~~ and such latter ~~bank or trust company~~  
30 institution shall be deemed substituted for and shall have all the rights and powers of the  
31 transferring ~~bank or trust company, institution.~~"

32 Sec. 6. G.S. 53-17.2 reads as rewritten:

33 "**§ 53-17.2. Conversion of savings association or savings bank to a State bank.**

34 (a) Any association, as defined in G.S. 54B-4, or any savings bank as defined in  
35 G.S. 54C-4(b), may convert to a State bank as provided in this section. A mutual  
36 association or mutual savings bank must first convert to a stock association or stock  
37 savings bank before applying for conversion to a bank as provided in this section. As  
38 used in this section, the term 'conversion' includes (i) a transaction in which a State bank  
39 assumes all or substantially all of the liabilities and purchases all or substantially all of  
40 the assets of an association or savings bank and (ii) any other transaction that results in a  
41 change of identity of an association or savings bank to a State bank. A transaction in  
42 which the resulting bank is a subsidiary or an affiliate of a bank holding company or  
43 bank which has been in existence for at least two years shall not be subject to the

1 provisions of this section but shall be subject to the approval of the Commissioner of  
2 Banks.

3 (b) Any ~~association~~, association or savings bank, upon a majority vote of its board  
4 of directors, may apply to the Commissioner of Banks for permission to convert to a  
5 bank and for certification of appropriate amendments to ~~the association's~~ its certificate of  
6 incorporation to effect the conversion.

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

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

24 (d) Any action taken by the Commissioner of Banks pursuant to this section shall  
25 be subject to review by the State Banking Commission which may approve, modify, or  
26 disapprove any action taken or recommended by the Commissioner of Banks. The State  
27 Banking Commission may promulgate rules to govern conversions undertaken pursuant  
28 to this section. The requirements for a converting association or savings bank shall be  
29 no more stringent than those provided by rule or regulation applicable to other FDIC-  
30 insured commercial banks. The requirements for a converting association or savings  
31 bank shall be no less stringent than those provided by rule or regulation applicable to  
32 other FDIC-insured commercial banks, except as may be allowed during transition  
33 periods permitted by subdivisions (e)(4) and (h)(2) of this section.

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

- 37 (1) Condition. The applicant's general condition must reflect adequate  
38 capital, liquidity, reserves, earnings, and asset composition necessary  
39 for safe and sound operation of the resulting bank.
- 40 (2) Management. The management and the board of directors must be  
41 capable of supervising a sound banking operation and overseeing the  
42 changes that must be accomplished in the conversion from an  
43 association or savings bank to a bank.

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

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

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

16 (f) If the State Banking Commission approves the plan of conversion, then the  
17 association or savings bank shall submit the plan to the stockholders as provided in  
18 subsection (g). After approval of the plan of conversion, the Commissioner of Banks  
19 shall supervise and monitor the conversion process and shall ensure that the conversion  
20 is conducted pursuant to law and the association's or savings bank's approved plan of  
21 conversion.

22 (g) After lawful notice to the stockholders of the association or savings bank and  
23 full and fair disclosure of the plan of conversion, the plan must be approved by a  
24 majority of the total votes that stockholders of the association or savings bank are  
25 eligible and entitled to cast. The vote by the stockholders may be in person or by proxy.  
26 Following the vote of the stockholders, the association or savings bank shall file with  
27 the Commissioner of Banks the results of the vote certified by an appropriate ~~officer of~~  
28 ~~the association.~~ officer. The Commissioner of Banks shall then approve the requested  
29 conversion and the association or savings bank shall file with the Secretary of State  
30 amended articles of incorporation with the certificate of the Commissioner of Banks  
31 attached. The conversion of the association or savings bank to a bank shall be effective  
32 upon this filing.

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

35 (1) Wind up any activities legally engaged in by the association or savings  
36 bank at the time of conversion but not permitted to State banks.

37 (2) Retain for a transitional period any assets and deposit liabilities legally  
38 held by the association or savings bank at the effective date of the  
39 conversion that may not be held by State banks.

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

42 (i) Upon conversion of an association or savings bank to a bank, the legal  
43 existence of ~~the association~~ such institution does not terminate, and the resulting bank is  
44 a continuation of the ~~association.~~ same. The conversion shall be a mere change in

1 identity or form of organization. All rights, liabilities, obligations, interest, and  
2 relations of whatever kind of the association or savings bank shall continue and remain  
3 in the resulting bank. Except as may be authorized during a transitional period by the  
4 Commissioner of Banks pursuant to subsection (h), a bank resulting from the  
5 conversion of an association or savings bank shall have only those rights, powers and  
6 duties which are authorized for banks by the laws of this State and the United States.  
7 All actions and legal proceedings to which the association or savings bank was a party  
8 prior to conversion shall be unaffected by the conversion and shall proceed as if the  
9 conversion had not taken place."

10 Sec. 7. G.S. 53-18 reads as rewritten:

11 **"§ 53-18. Voluntary liquidation.**

12 A bank may go into voluntary liquidation and be closed, and may surrender its  
13 charter and franchise as a corporation of this State by the affirmative votes of its  
14 stockholders owning two thirds of its stock, such vote to be taken at a meeting of the  
15 stockholders duly called by resolution of the board of directors, written notice of which,  
16 stating the purpose of the meeting, shall be mailed to each stockholder, or in case of his  
17 death, to his legal representative or heirs at law, addressed to his last known residence  
18 10 days previous to the date of said meeting. Whenever stockholders shall by such vote  
19 at a meeting regularly called for the purpose, notice of which shall be given as herein  
20 provided, decide to liquidate such bank, a certified copy of all proceedings of the  
21 meeting at which said action shall have been taken, verified by the oath of the president  
22 and ~~cashier, secretary,~~ shall be transmitted to the Commissioner of Banks for his  
23 approval. If the Commissioner of Banks shall approve the same, he shall issue to the  
24 said bank, under his seal, a permit for such purpose. No such permit shall be issued by  
25 the Commissioner of Banks until said Commissioner of Banks shall be satisfied that  
26 provision has been made by such bank to satisfy and pay off all depositors and all  
27 creditors of such bank. If not so satisfied, the Commissioner of Banks shall refuse to  
28 issue a permit, and shall be authorized to take possession of said bank and its assets and  
29 business, and hold the same and liquidate said bank in the manner provided in this  
30 Chapter. When the Commissioner of Banks shall approve the voluntary liquidation of a  
31 bank, the directors of said bank shall cause to be published in a newspaper in the ~~city,~~  
32 ~~town, or county~~ in which such bank is located, or if no newspaper is published in the  
33 county, then in a newspaper having a general circulation in the county, a notice that the  
34 bank is closing up its affairs and going into liquidation, and notify its depositors and  
35 creditors to present their claims for payment. The notice shall be published once a week  
36 for four consecutive weeks. When any bank shall be in process of voluntary liquidation,  
37 it shall be subject to examination by the Commissioner of Banks, and shall furnish such  
38 reports from time to time as may be called for by the Commissioner of Banks. All  
39 unclaimed deposits and dividends remaining in the hands of such bank shall be subject  
40 to the provisions of Chapter 116B. Whenever the Commissioner of Banks shall approve  
41 it, any bank may sell and transfer to any other bank, either State bank or national bank,  
42 all of its assets of every kind upon such terms as may be agreed upon and approved by  
43 the Commissioner of Banks and by two-thirds vote of its board of directors. A certified  
44 copy of the minutes of any meeting at which such action is taken, under the oath of the

1 president and ~~cashier, secretary,~~ together with a copy of the contract of sale and transfer,  
 2 shall be filed with the Commissioner of Banks. Whenever voluntary liquidation shall be  
 3 approved by the Commissioner of Banks or the sale and transfer of the assets of any  
 4 bank shall be approved by the Commissioner of Banks, a certified copy of such  
 5 approval under seal of the Commissioner of Banks, filed in the office of the Secretary of  
 6 State, shall authorize the cancellation of the charter of such bank, subject, however, to  
 7 its continued existence, as provided by this Chapter and the general law relative to  
 8 corporations."

9 Sec. 8. G.S. 53-19 reads as rewritten:

10 **"§ 53-19. When Commissioner of Banks may take charge.**

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

- 14 (1) Has violated its charter or any laws applicable thereto;
- 15 (2) Is conducting its business in an unauthorized or unsafe manner;
- 16 (3) Is in an unsafe or unsound condition to transact its business;
- 17 (4) Has an impairment of its capital stock;
- 18 (5) Has refused to pay its depositors in accordance with the terms on  
 19 which such deposits were received, or has refused to pay its holders of  
 20 certificates of indebtedness or investment in accordance with the terms  
 21 upon which such certificates of indebtedness or investment were sold;
- 22 (6) Has become otherwise insolvent;
- 23 (7) Has neglected or refused to comply with the terms of a duly issued  
 24 lawful order of the Commissioner of Banks;
- 25 (8) Has refused, upon proper demand, to submit its records, affairs, and  
 26 concerns for inspection and examination of a duly appointed or  
 27 authorized examiner of the Commissioner of Banks;
- 28 (9) Its officers have refused to be examined upon oath regarding its  
 29 affairs; or
- 30 (10) Has made a voluntary assignment of its assets to trustees.

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

32 Sec. 9. G.S. 53-20(a) reads as rewritten:

33 "(a) When Commissioner of Banks to Take Possession. – Whenever any State  
 34 bank shall neglect or refuse for a period of 60 days to make a report to the  
 35 Commissioner of Banks, as he may demand, or shall, after demand under seal of the  
 36 Commissioner of Banks, fail, neglect or refuse to comply with any of the rules,  
 37 regulations or requirements of the State Banking Commission, or the provisions of the  
 38 banking law, or if at any time the Commissioner of Banks shall find a bank subject to  
 39 the supervision of the Commissioner of Banks, in an insolvent, unsafe or unsound  
 40 condition to transact the business for which it was organized, or in an unsafe, or  
 41 unsound condition to continue its business, or if such institution shall neglect or refuse  
 42 to correct any irregularity which may be called to the attention of the ~~president, cashier~~  
 43 president or board of directors, by the Commissioner of Banks, or any of his assistants,  
 44 then, in either of such events, the Commissioner of Banks, or any duly authorized agent

1 of the Commissioner of Banks appointed under seal of the Commissioner of Banks,  
2 shall forthwith take possession of such bank, and all of its assets and business and shall  
3 retain possession thereof until such bank shall be authorized by the Commissioner of  
4 Banks to resume business, or its affairs shall be fully liquidated as herein provided, or  
5 possession thereof shall have been surrendered under order of a judge of the superior  
6 court under the provisions of this section."

7 Sec. 10. G.S. 53-20(j) reads as rewritten:

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

18 Sec. 11. G.S. 53-20(r) reads as rewritten:

19 "(r) Action by Commissioner of Banks after Full Settlement. – Whenever the  
20 Commissioner of Banks shall have paid all the expenses of liquidation and shall have  
21 paid to each and every depositor and creditor of such bank, whose claims shall have  
22 been duly proven and allowed, the full amount of such claims, and shall have made  
23 proper provision for unclaimed and unpaid deposits and disputed claims and deposits,  
24 and shall have in hand other assets of said bank, he shall call a meeting of the  
25 stockholders of said bank by giving notice thereof by publication once a week for  
26 consecutive four weeks in a newspaper published in said county, or if no newspaper is  
27 published in said county, then in a newspaper having general circulation in said county,  
28 and by mailing a copy of such notice to each stockholder addressed to him at his address  
29 as the same shall appear upon the books of the bank. Affidavit of the officer mailing the  
30 notice herein required and of the printer as to the publication shall be conclusive  
31 evidence of notice hereunder. At such meeting any stockholders may be represented by  
32 proxy and the stockholders shall elect, by a majority vote of the stock present, an agent  
33 or agents who shall be authorized to receive from the Commissioner of Banks all the  
34 assets of said bank then remaining in his hands; and the Commissioner of Banks shall  
35 cause to be transferred and delivered to the said agent, or agents, all such assets of said  
36 bank. The Commissioner of Banks shall thereupon cause to be filed in the office of the  
37 clerk of the superior court in the pending actions a full and complete report of all his  
38 transactions, showing the assets of said bank so transferred, together with the name of  
39 the agent or agents receipting for the same; and the filing of such report shall act as a  
40 full and complete discharge of the Commissioner of Banks from all further liabilities by  
41 reason of the liquidation of the bank. Such agent, or agents, shall convert the assets  
42 coming into his hands, or their hands, into cash, and shall make distribution to the  
43 stockholders of said bank as herein provided. Said agent, or agents, shall file  
44 semiannually a report of all transactions with the superior court of the county in which



1 the bank is located, and with the Commissioner of Banks, and shall be allowed for such  
2 services such fees not in excess of five percent (5%), as may be fixed by the court. In  
3 case of death, removal or refusal to act, of any agent or agents elected by the  
4 stockholders, the Commissioner of Banks shall, upon report of such action on the part of  
5 such agent or agents to the superior court of the county in which the bank is located,  
6 turn over to said superior court for the stockholders of said bank, all the remaining  
7 assets of the bank, file his report and be discharged from any and all further liability to  
8 the stockholders as herein provided. Said assets, when turned over to the superior court  
9 hereunder, shall remain in the hands of the superior court until such time as, by order of  
10 court or by action of the stockholders, distribution shall be provided for."

11 Sec. 12. G.S. 53-24 reads as rewritten:

12 **"§ 53-24. Destruction of records of liquidated insolvent banks.**

13 After the expiration of 10 years from the date of filing in the office of the clerk of  
14 the superior court of a final order approving the liquidation by the banking department  
15 of any insolvent bank and the delivery to the clerk or into his custody of the records of  
16 such bank, the said records may be destroyed by the clerk of the superior court holding  
17 said records ~~by burning the same~~ in the presence of the register of deeds and the sheriff of  
18 said county, who shall join with the clerk in the execution of a certificate as to the  
19 destruction of said records. The certificate shall be filed by the clerk in the court records  
20 of the liquidation of the bank whose records are thus destroyed.

21 After 10 years from the filing by the Commissioner of Banks of a final report of  
22 liquidation of any insolvent bank, the said Commissioner, by and with the consent of the  
23 State Banking Commission or its successor, may destroy by burning the records of any  
24 insolvent bank held in the Department of the Commissioner of Banks in connection  
25 with the liquidation of such bank: Provided, that in connection with any unpaid  
26 dividends the Commissioner of Banks shall preserve the deposit ledger or other  
27 evidence of indebtedness of the bank with reference to the unpaid dividend until the  
28 dividend shall have been paid.

29 Nothing in this section shall be construed to authorize the destruction by the clerk of  
30 the superior court of any county or by the Commissioner of Banks of any of the formal  
31 records of liquidation, nor shall the Commissioner of Banks have authority under this  
32 section to destroy any of the records made in his office with reference to the liquidation  
33 of any insolvent bank."

34 Sec. 13. G.S. 53-26 reads as rewritten:

35 **"§ 53-26. Petition for new trustee; service upon parties interested.**

36 In all cases of such insolvency and liquidation mentioned in G.S. 53-25, the clerk of  
37 the superior court of any county in which such indenture, deed of trust or other  
38 instrument of like character is recorded shall, upon the verified petition of any person  
39 interested in any such trust, either as trustee, beneficiary or otherwise, which interest  
40 shall be set out in said petition, enter an order directing service on all interested parties  
41 either personally or by the publication in ~~some a~~ newspaper published in the county, or  
42 ~~in some adjoining county~~ if no newspaper is published in the county where such  
43 application is made, then in a newspaper having a general circulation in the county, of a  
44 notice directed to all persons concerned, commanding and requiring all persons having

1 any interest in said trust, to be and appear at his office at a day designated in said order  
2 and notice, not less than 30 days from the date thereof, and show cause why a new  
3 trustee shall not be appointed."

4 Sec. 14. G.S. 53-35 reads as rewritten:

5 **"§ 53-35. Foreclosures and execution of deeds by Commissioner of Banks**  
6 **validated.**

7 Whereas, the Commissioner of Banks, created by Chapter 243 of the Public Laws of  
8 1931, was given general supervision over the banks of this State; and

9 Whereas, the Commissioner of Banks, under authority of Chapter 385 of the Public  
10 Laws of 1931, succeeded to all the property of banks in liquidation, including fiduciary  
11 powers under the mortgages and deeds of trust; and

12 Whereas, the Commissioner of Banks, in his own name and in the name of a number  
13 of conservators or liquidating agents of banks in the process of liquidation under his  
14 supervision, has foreclosed a large number of deeds of trust in which such banks were  
15 the named trustee, and has executed under the powers contained therein a large number  
16 of trustee's deeds under authority thereof: Now, therefore, all the deeds and acts of the  
17 Commissioner of Banks and/or conservators or liquidating agents of such banks in the  
18 process of liquidation, as in the preamble to this section described, are hereby in all  
19 respects ratified, validated and confirmed.

20 ~~This section shall not affect litigation pending April 3, 1939."~~

21 Sec. 15. G.S. 53-37 reads as rewritten:

22 **"§ 53-37. Conditions under which banks may reopen.**

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

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

39 Sec. 16. G.S. 53-42 reads as rewritten:

40 **"§ 53-42. Impairment of capital; assessments, etc.**

41 The Commissioner of Banks shall notify every bank whose capital shall have  
42 become impaired from losses or any other cause, and the surplus and undivided profits  
43 of such bank are insufficient to make good such impairment, to make the impairment  
44 good within 60 days of such notice by an assessment upon the stockholders thereof, and

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

21 Sec. 17. G.S. 53-46 reads as rewritten:

22 **"§ 53-46. Limitations on investments in securities.**

23 The investment in any bonds or other debt obligations of any one firm, individual, or  
24 corporation, unless it be the obligations of the United States, or agency thereof, or other  
25 obligations guaranteed by the United States Government, State of North Carolina, or  
26 other state of the United States, ~~or of some city, town, township, county, school district, or~~  
27 ~~other political subdivision of such state or the State of North Carolina, shall at no time~~  
28 ~~be more than twenty percent (20%) of the unimpaired capital fund of any bank to an amount~~  
29 ~~not in excess of two hundred fifty thousand dollars (\$250,000); and not more than ten percent~~  
30 ~~(10%) of the unimpaired capital fund in excess of two hundred fifty thousand dollars~~  
31 ~~(\$250,000). exceed fifty thousand dollars (\$50,000) plus ten percent (10%) of all~~  
32 amounts in excess of two hundred fifty thousand dollars (\$250,000) of the banks'  
33 unimpaired capital fund."

34 Sec. 18. G.S. 53-47 reads as rewritten:

35 **"§ 53-47. Limitations on investment in stocks.**

36 No bank shall make any investment in the capital stock of any other state or national  
37 ~~bank, bank or bank holding company.~~ Provided, that nothing herein shall be construed to  
38 prevent banks doing business under this Chapter from subscribing to or purchasing,  
39 upon such terms as may be agreed upon, the capital stock of clearing corporations as  
40 defined in G.S. 25-8-102(3), the capital stock of banks organized under that act of  
41 Congress known as the 'Edge Act', the capital stock of central reserve banks whose  
42 capital stock exceeds one million dollars (\$1,000,000), or capital stock of the Federal  
43 Home Loan Bank. To constitute a central reserve bank as contemplated by this Chapter,  
44 at least fifty percent (50%) of the capital stock of such bank shall be owned by other

1 banks. The investment of any bank in the capital stock of such central reserve bank or  
2 bank organized under the act of Congress commonly known as the 'Edge Act,' shall at  
3 no time exceed ten percent (10%) of the paid-in capital and permanent surplus of the  
4 bank making same. No bank shall invest more than seventy-five percent (75%) of its  
5 unimpaired capital fund in the stocks of other corporations, firms, partnerships, or  
6 companies, unless such stock is purchased to protect the bank from loss. The foregoing  
7 limitation shall not apply to stock or ownership interests acquired in corporations, firms,  
8 partnerships or companies which hold banking premises or which are bank operating  
9 subsidiaries of such bank. The term 'invest' shall be deemed to include operating a  
10 business entity acquired by the bank, provided, however, that no bank shall make any  
11 such investment resulting in operations which are not closely related to banking without  
12 the prior written approval of the Commissioner of Banks. The seventy-five percent  
13 (75%) limitation shall be cumulative and the Commissioner of Banks shall monitor the  
14 impact of investment activities of banks under this section on the safety and soundness  
15 of such banks. Any stocks owned or hereafter acquired in excess of the limitations  
16 herein imposed shall be disposed of at public or private sale within six months after the  
17 date of acquiring the same, and if not so disposed of they shall be charged to profit and  
18 loss account, and no longer carried on the books as an asset. The limit of time in which  
19 said stocks shall be disposed of or charged off the books of the bank may be extended  
20 by the Commissioner of Banks if in his judgment it is for the best interest of the bank  
21 that such extension be granted; provided that the limitations imposed in this section on  
22 the ownership of stock in or securities of corporations is suspended to the extent (and to  
23 that extent only) that any bank operating under the supervision of the Commissioner of  
24 Banks may subscribe for and purchase shares of stock in or debentures, bonds or other  
25 types of securities of any corporation organized under the laws of the United States of  
26 America for the purpose of insuring to depositors a part or all of their funds on deposit  
27 in banks where and to such extent as such stock or security ownership is required in  
28 order to obtain the benefits of such deposit insurance for its depositors."

29 Sec. 19. G.S. 53-54 reads as rewritten:

30 **"§ 53-54. Transactions not performed during banking hours.**

31 Nothing in any law of this State shall in any manner whatsoever affect the validity  
32 of, or render void or voidable, the payment, certification, or acceptance of a check or  
33 other negotiable instrument or any other transaction by a bank in this State, because  
34 done or performed during any time other than regular banking hours: ~~Provided, that~~  
35 ~~nothing herein shall be construed to compel any bank in this State, which by law or custom is~~  
36 ~~entitled to close at 12 noon on any Saturday, or for the whole part day of any legal holiday, to~~  
37 ~~keep open for the transaction of business, or to perform any of the acts or transactions~~  
38 ~~aforsaid on any Saturday after such hour or on any legal holiday, except at its option.~~ hours.  
39 Nothing herein shall be construed to require a bank doing business in this State to be  
40 open when it may otherwise lawfully be closed or to prohibit a bank from conducting a  
41 transaction at times other than its regularly scheduled hours of operation."

42 Sec. 20. G.S. 53-62(e) reads as rewritten:

43 "(e) ~~A bank may discontinue a branch office upon resolution of its board of~~  
44 ~~directors or board of managers. Upon the adoption of such a resolution, the bank shall~~

1 ~~file a certification with the Commissioner of Banks specifying the location of the branch~~  
 2 ~~office to be discontinued and the date upon which it is proposed that the discontinuance~~  
 3 ~~shall be effective. This certificate must state the reasons for the closing of such branch~~  
 4 ~~and indicate that the needs and conveniences of the community would still be~~  
 5 ~~adequately met. Notice stating the intention to discontinue said branch shall be~~  
 6 ~~published in a newspaper serving such community once a week for four consecutive~~  
 7 ~~weeks before any certificate requesting discontinuance is filed with the Commissioner~~  
 8 ~~of Banks. No such branch may be discontinued until approved by the Commissioner of~~  
 9 ~~Banks, who shall first hold a public hearing thereon, if so requested by any interested~~  
 10 ~~party. A bank may, upon resolution by the board of directors, discontinue a branch~~  
 11 ~~office subject to the following:~~

12       (1) The bank shall notify the Commissioner in writing of its intent to close  
 13 a branch not later than 90 days prior to the proposed closing date.  
 14 Such notice shall include a detailed statement of the reasons for the  
 15 decision to close a branch and statistical or other information in  
 16 support of such reasons.

17       (2) The bank shall provide a notice of its intent to close a branch to its  
 18 customers. Such notice shall be posted in a conspicuous manner on  
 19 the branch premises for a period of 30 days prior to the proposed  
 20 closing date and shall either be included in at least one of any regular  
 21 account statement mailed to customers of such branch or in a separate  
 22 mailing to such customers. The latter notice shall be given at least 90  
 23 days prior to the proposed closing date.

24 No branch shall be closed until approved by the Commissioner of Banks."

25       Sec. 21. G.S. 53-63 reads as rewritten:

26 **"§ 53-63. Unlawful issuing of certificate of deposit.**

27       It shall be unlawful for any bank to issue any certificate of deposit or other  
 28 negotiable instrument of its indebtedness to the holder thereof except for lawful money  
 29 of the United States, checks, drafts, or bills of exchange which are the actual equivalent  
 30 of such money; ~~nor shall such moneys, checks, drafts, or bills of exchange be the proceeds of~~  
 31 ~~any note given in payment of the purchase price of any stock.~~ money. Any officer or  
 32 employee of any bank violating the provisions of this section shall be guilty of a  
 33 misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the  
 34 discretion of the court."

35       Sec. 22. G.S. 53-77.1A reads as rewritten:

36 **"§ 53-77.1A. Days and hours of operation.**

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

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

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

3       ~~(d) A bank shall give such notice of the days and hours during which it and its~~  
4 ~~branches and limited service facilities shall operate as required by the Commissioner of~~  
5 ~~Banks.~~

6       Except as provided in G.S. 53-77.2A, a bank as defined in G.S. 53-1 or G.S. 53-136,  
7 including national banking associations and Federal Reserve banks, or any branch or  
8 limited service facility of the foregoing, located in this State, may operate on such days  
9 and during such hours as the board of directors shall designate."

10       Sec. 23. G.S. 53-78 reads as rewritten:

11       "**§ 53-78. Appointment of executive and loan committees by directors.**

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

20       The board of directors may appoint, in addition to the executive committee or  
21 committees, a general loan committee, the membership of which shall include at least  
22 three directors and such officers of the bank as may be appointed, with such duties and  
23 powers with respect to making loans and investments as are defined in the bylaws or by  
24 resolution of the board of directors, the members of such general loan committee to  
25 serve until their successors are appointed. Such general loan committee, if appointed,  
26 shall meet as often as the bylaws or resolution of the board of directors may require,  
27 which shall not be less frequently than once each month, and approve or disapprove all  
28 such loans and investments as may be required by the bylaws or by resolution of the  
29 board of directors to be submitted to the general loan committee. The board of directors  
30 of any bank, which has branches, may appoint, in addition to a general loan committee,  
31 a loan committee for the parent bank and for any branch, each of which committees  
32 shall include at least three members who are officers or members of the ~~board of~~  
33 ~~managers~~ local advisory board for such parent bank or branch, with such duties and  
34 powers with respect to approving or disapproving loans and investments as may be  
35 defined in the bylaws or by resolution of the board of directors, and under such rules  
36 and regulations as the board of directors may prescribe. Such loans and investments as  
37 are authorized or approved by a general loan committee or either of the other loan  
38 committees hereinabove provided for may, but need not, be approved or disapproved by  
39 the executive committee or committees. All loans and investments made, however, shall  
40 be authorized or approved by either the executive committee or committees, a general  
41 loan committee, or one of the other loan committees herein provided for."

42       Sec. 24. G.S. 53-80 is rewritten to read:

43       "**§53-80. Qualifications of directors.**

1 Every director of a bank doing business under this Chapter shall be the owner and  
2 holder of shares of stock in the bank representing not less than one thousand dollars  
3 (\$1,000) book value as of the last business day of the calendar year immediately prior to  
4 the election of such director. For the purpose of this section, book value shall consist of  
5 common capital stock, unimpaired surplus, undivided profits, and reserves for  
6 contingencies if any such reserves are segregations of capital. Where directors are  
7 appointed during the interval between stockholders' meetings pursuant to the provisions  
8 of G.S. 53-67, such directors shall hold the required qualifying shares as of the time of  
9 their appointment. Notwithstanding the proviso at the end of this section, where the  
10 bank is a wholly owned subsidiary, the required qualifying shares shall be shares in the  
11 parent corporation, whether or not the bank was doing business before February 18,  
12 1921. And every such director shall hold such shares in his own name unpledged and  
13 unencumbered in any way. The office of any director at any time violating any of the  
14 provisions of this section shall immediately become vacant, and the remaining directors  
15 shall declare his office vacant and proceed to fill such vacancy forthwith. Not less than  
16 three fourths of the directors of every bank doing business under this Chapter shall be  
17 residents of the State of North Carolina: Carolina. Provided, that as to banks doing  
18 business before February 18, 1921, the requirements as to amount of stock owned by a  
19 director shall not apply unless the Commissioner of Banks shall rule that such director is  
20 not bona fide discharging his duties."

21 Sec. 25. G.S. 53-83 reads as rewritten:

22 **"§ 53-83. Examining committee of directors.**

23 A committee of at least three directors ~~or stockholders~~ shall be appointed annually to  
24 examine, or to superintend the examination of the assets and the liabilities of the bank,  
25 and to report to the board of directors the result of such examination. The committee,  
26 with the approval of the board of directors, ~~may~~ shall provide for such examinations by  
27 a certified public accountant ~~or clearinghouse examiner in any city where such examination~~  
28 ~~is provided for by the rules of such clearinghouse association.~~ A copy of such report of  
29 examination, which is herein required to be made, attested, and verified under oath by  
30 the signature of at least three members of such committee, shall forthwith be filed with  
31 the Commissioner of Banks."

32 Sec. 26. G.S. 53-84 reads as rewritten:

33 **"§ 53-84. Depositories designated by directors.**

34 By resolution of the board of directors, ~~other banks organized under the laws of this~~  
35 ~~State, or of another state, or under the laws of the United States, shall be designated as~~  
36 ~~depositories or reserve banks in which a part of such bank's reserve shall be deposited,~~  
37 ~~subject to payment on demand.~~ a Federal Reserve Bank, a Federal Home Loan Bank, or  
38 any federally insured depository financial institution organized under the laws of this  
39 State, or of another state, or of the United States, may be designated as a depository in  
40 which part of a bank's funds may be deposited subject to withdrawal on demand. A  
41 copy of such resolution shall, upon its adoption, be forthwith certified to the  
42 Commissioner of Banks and the depository so designated shall be subject to the  
43 approval of the Commissioner of Banks. For causes which he may deem adequate, the  
44 Commissioner of Banks shall have authority at any time to withdraw such approval.

1 Designation of a Federal Reserve Bank or a Federal Home Loan Bank as a depository  
2 shall not be subject to the approval of the Commissioner of Banks.

3 A bank may deposit funds in a bank of a foreign country, but such deposits shall not  
4 constitute any part of its reserve as defined in G.S. 53-51."

5 Sec. 27. G.S. 53-91 is repealed.

6 Sec. 28. Chapter 53 of the General Statutes is amended by adding the  
7 following new sections to read:

8 **"§ 53-91.1. Loans to executive officers.**

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

19 **"§ 53-91.2. Directors defined; appointment of advisory directors.**

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

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

27 Sec. 29. G.S. 53-92 reads as rewritten:

28 **"§ 53-92. Appointment of Commissioner of Banks; State Banking Commission.**

29 On or before April 1, 1983, and quadrennially thereafter, the Governor shall appoint  
30 a Commissioner of Banks subject to confirmation by the General Assembly by joint  
31 resolution. The name of the Commissioner of Banks shall be submitted to the General  
32 Assembly on or before February 1, of the year in which the term of his office begins.  
33 The term of office for the Commissioner of Banks shall be four years. In case of a  
34 vacancy in the office of Commissioner of Banks for any reason prior to the expiration of  
35 his term of office, the name of his successor shall be submitted by the Governor to the  
36 General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises  
37 in the office when the General Assembly is not in session, the Commissioner of Banks  
38 shall be appointed by the Governor to serve on an interim basis pending confirmation by  
39 the General Assembly.

40 ~~The State Banking Commission, which has heretofore been created, Commission~~ shall  
41 consist of the State Treasurer, who shall serve as an ex officio member thereof, ~~12-13~~  
42 members appointed by the Governor, one member appointed by the Lieutenant  
43 Governor, and two members appointed by the General Assembly under G.S. 120-121,  
44 one of whom shall be appointed upon the recommendation of the President Pro



1 Tempore of the Senate and one of whom shall be appointed upon the recommendation  
2 of the Speaker of the House of Representatives. The Governor shall appoint five  
3 practical bankers and ~~seven-eight~~ persons selected primarily as representatives of the  
4 borrowing public. The person appointed by the Lieutenant Governor shall be a practical  
5 banker. The person appointed by the General Assembly upon the recommendation of  
6 the President Pro Tempore of the Senate shall be a practical banker. The person  
7 appointed by the General Assembly upon the recommendation of the Speaker of the  
8 House shall be a person selected primarily as a representative of the borrowing public.  
9 ~~The persons selected primarily as representatives of the borrowing public shall not be~~  
10 ~~employees or directors of any financial institution nor shall they have any interest in any~~  
11 ~~regulated financial institution other than as a result of being a depositor or borrower. Under this~~  
12 ~~section, no person shall be considered to have an interest in a financial institution whose~~  
13 ~~interest in any financial institution does not exceed one-half of one percent (1/2 of 1%) of the~~  
14 ~~capital stock of that financial institution. These members of the Commission shall be selected~~  
15 ~~so as to fully represent the consumer, industrial, manufacturing, professional, business and~~  
16 ~~farming interests of the State. No person shall serve on the Commission for more than two~~  
17 ~~complete consecutive terms. As the terms of office of the appointive members of the~~  
18 ~~Commission expire, their successors shall be appointed by the person appointing them, for~~  
19 ~~terms of four years each. Any vacancy occurring in the membership of the Commission shall be~~  
20 ~~filled by the appropriate appointing officer for the unexpired term, except that vacancies among~~  
21 ~~members appointed by the General Assembly shall be filled in accordance with G.S. 120-122.~~  
22 ~~The appointed members of the Commission shall receive as compensation for their services the~~  
23 ~~same per diem and expenses as is paid to the members of the Advisory Budget Commission.~~  
24 ~~This compensation shall be paid from the fees collected from the examination of banks as~~  
25 ~~provided by law. One person selected by the Governor as primarily a representative of~~  
26 the borrowing public may be a director of a financial institution. The balance of such  
27 members of the Banking Commission shall not be employees or directors of any  
28 financial institution nor shall they have any interest in any regulated financial institution  
29 other than as a depositor or borrower. The public members who may be a director of a  
30 financial institution shall not have an interest in any regulated financial institution  
31 except as hereinafter provided.

32 For purposes of this section, no person shall be considered to have an interest in any  
33 financial institution whose interest in any financial institution does not exceed one-half  
34 of one percent (1/2 of 1%) of the capital stock of that financial institution.

35 Except as otherwise provided, members of the Commission who shall be  
36 representatives of the borrowing public shall be selected so as to fully represent the  
37 consumer, industrial, manufacturing, professional, business, and farming interests of the  
38 State. No person shall serve on the Commission for more than two complete  
39 consecutive terms.

40 As the terms of office of the appointive members of the Commission expire, their  
41 successors shall be appointed by the person appointing them for terms of four years  
42 each. Any vacancy occurring in the membership of the Commission shall be filled by  
43 the appropriate appointing officer for the unexpired term, except that vacancies among  
44 members appointed by the General Assembly shall be filled in accordance with G.S.  
45 120-122. The appointed members of the Commission shall receive as compensation for

1 their services the same per diem and expenses as is paid to the members of the Advisory  
2 Budget Commission. This compensation shall be paid from the fees collected from the  
3 examination of banks as provided by law.

4 The Banking Commission shall meet at such time or times, and not less than once  
5 every three months, as the Commission shall, by resolution, prescribe, and the  
6 Commission may be convened in special session at the call of the Governor, or upon the  
7 request of the Commissioner of Banks. The State Treasurer shall be chairman of the  
8 said Commission.

9 No member of said Commission shall act in any matter affecting any bank in which  
10 he is financially interested, or with which he is in any manner connected. No member of  
11 said Commission shall divulge or make use of any information coming into his  
12 possession as a result of his service on such Commission, and shall not give out any  
13 information with reference to any facts coming into his possession by reason of his  
14 services on such Commission in connection with the condition of any State banking  
15 institution, unless such information shall be required of him at any hearing at which he  
16 is duly subpoenaed, or when required by order of a court of competent jurisdiction.

17 A quorum shall consist of a majority of the total membership of the Banking  
18 Commission. A majority vote of the members qualified with respect to a matter under  
19 review present at that meeting shall constitute valid action of the Banking Commission.  
20 The State Treasurer and all disqualified members who are present shall be counted to  
21 determine whether a quorum is present at a meeting.

22 The Commissioner of Banks shall act as the executive officer of the Banking  
23 Commission, but the Commission shall provide, by rules and regulations, for hearings  
24 before the Commission upon any matter or thing which may arise in connection with the  
25 banking laws of this State upon the request of any person interested therein, and review  
26 any action taken or done by the Commissioner of Banks.

27 The Banking Commission is hereby vested with full power and authority to  
28 supervise, direct and review the exercise by the Commissioner of Banks of all powers,  
29 duties, and functions now vested in or exercised by the Commissioner of Banks under  
30 the banking laws of this State; any party to a proceeding before the Banking  
31 Commission may, within 20 days after final order of said Commission and by written  
32 notice to the Commissioner of Banks, appeal to the Superior Court of Wake County for  
33 a final determination of any question of law which may be involved. The cause shall be  
34 entitled 'State of North Carolina on Relation of the Banking Commission against (here  
35 insert name of appellant).' It shall be placed on the civil issue docket of such court and  
36 shall have precedence over other civil actions. In the event of an appeal the  
37 Commissioner shall certify the record to the Clerk of Superior Court of Wake County  
38 within 15 days thereafter."

39 Sec. 30. G.S. 53-92.1 reads as rewritten:

40 **"§ 53-92.1. Commission bound by requirements imposed on Commissioner as to**  
41 **certification of new banks, establishment of branches, etc.**

42 Notwithstanding any other provisions of this Chapter, the State Banking  
43 Commission, in the exercise of its authority to review the action of the Commissioner of  
44 Banks, shall be bound by the requirements, conditions and limitations imposed in this

1 Chapter on ~~said~~ the Commissioner as to the certification of new banks or the  
2 establishments of branch banks or ~~teller's windows~~ limited service facilities."

3 Sec. 31. G.S. 53-93.1 reads as rewritten:

4 **"§ 53-93.1. Deputy commissioner.**

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

10 Irrespective of the conditions under which the deputy commissioner may exercise  
11 the powers and perform the duties of the Commissioner of Banks, pursuant to the  
12 preceding paragraph, such deputy commissioner, in addition thereto, is hereby  
13 authorized and empowered at any and all times, at the discretion of the Commissioner  
14 of Banks, to perform such duties and exercise such powers of the Commissioner of  
15 Banks in the name of and on behalf of the Commissioner as the Commissioner, in his  
16 discretion, may direct.

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

18 Sec. 32. G.S. 53-99 is amended by adding the following new subsection to  
19 read:

20 "(d) Nothing in this section shall prohibit a bank, upon approval by the  
21 Commissioner, from disclosing to an insurance carrier, for purposes of obtaining  
22 insurance coverage required by this Chapter, the bank's regulatory rating prepared by  
23 the Commissioner's office provided that the insurance underwriter agrees in writing to  
24 maintain the confidentiality of such information and to not disclose the information in  
25 any manner."

26 Sec. 33. G.S. 53-105 reads as rewritten:

27 **"§ 53-105. Reports of condition.**

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

43 Sec. 34. G.S. 53-106 reads as rewritten:

44 **"§ 53-106. Special reports.**

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

8 Sec. 35. G.S. 53-114 reads as rewritten:

9 **"§ 53-114. Other powers of State Banking Commission.**

10 In addition to all other powers conferred upon and vested in the State Banking  
11 Commission, the said Commission, with the approval of the Governor, is hereby  
12 authorized, empowered and directed, whenever in its judgment the circumstances  
13 warrant it:

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

32 Sec. 36. G.S. 53-125 reads as rewritten:

33 **"§ 53-125. Examiners disclosing confidential information.**

34 If any bank examiner or other employee of the Commissioner of Banks fails to keep  
35 secret the facts and information obtained in the course of an examination of a bank,  
36 except when the public duty of such examiner or employee requires him to report upon  
37 or take official action regarding the affairs of such bank, he shall be guilty of a  
38 misdemeanor, and upon conviction thereof shall be fined not more than five hundred  
39 dollars (\$500.00) or imprisoned not more than 12 months, or both, in the discretion of  
40 the court. Nothing in this section shall prevent the proper exchange of information with  
41 the representatives of the banking departments of other states, with the federal reserve  
42 bank or national bank examiners, or other authorities, with the creditors of such bank or  
43 others with whom a proper exchange of information is wise or ~~necessary, or with the~~  
44 clearinghouse officials and examiners, necessary."

1 Sec. 37. G.S. 53-141(3) reads as rewritten:

2 "(3) To establish branch offices or places of business within the county in  
3 which its principal office is located, and elsewhere in the State, after  
4 having first obtained the written approval of the Commissioner of  
5 Banks, which approval may be given or withheld by the Commissioner  
6 of Banks in his discretion. The Commissioner of Banks, in exercising  
7 such discretion, shall take into account, but not by way of limitation,  
8 such factors as the financial history and condition of the applicant  
9 bank, the adequacy of its capital structure, its future earnings  
10 prospects, and the general character of its management. Such approval  
11 shall not be given until he shall find

- 12 a. That the establishment of such branch or ~~teller's window-limited~~  
13 service facility will meet the needs and promote the  
14 convenience of the community to be served by the bank, and  
15 b. That the probable volume of business and reasonable public  
16 demand in such community are sufficient to assure and  
17 maintain the solvency of said branch or ~~teller's window-limited~~  
18 service facility and of the existing bank or banks in said  
19 community.

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

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

42 Sec. 38. G.S. 53-145 reads as rewritten:

43 "**§ 53-145. Sections of general law applicable.**

44 Sections 53-1, 53-3, 53-4, 53-5, 53-6, 53-7, 53-8, 53-9, 53-10, 53-11, 53-12, 53-13,  
45 53-18, 53-20, 53-22, 53-23, 53-42, 53-42.1, 53-47, 53-50, 53-51, 53-54, 53-63, 53-64,

1 53-67, 53-68, 53-70, 53-71, 53-72, 53-73, 53-74, 53-78, 53-79, 53-80, 53-81, 53-82, 53-  
2 83, 53-85, 53-87, 53-88, 53-90, ~~53-91, 53-91.1, 53-91.2,~~ 53-105, 53-106, 53-107, 53-  
3 108, 53-109, 53-110, 53-111, 53-112, 53-117, 53-118, 53-119, 53-120, 53-121, 53-122,  
4 53-123, 53-124, 53-125, 53-126, 53-128, 53-129, 53-132, 53-133, 53-134, relating to  
5 the supervision and examination of commercial banks, shall be construed to be  
6 applicable to industrial banks, insofar as they are not inconsistent with the provisions of  
7 this Article. Sections 53-19, 53-24, 53-37, 53-39, 53-40, 53-41, 53-44, 53-45, ~~53-58, 53-~~  
8 ~~59,~~ 53-61, 53-66, 53-75, 53-76, 53-77, 53-86, 53-113, 53-114, 53-115, 53-116, 53-135,  
9 53-146, and 53-148 through 53-158, relating to commercial banks, shall be construed to  
10 be applicable to industrial banks."

11 Sec. 39. G.S. 53-153 reads as rewritten:

12 **"§ 53-153. Segregation of recent deposits not effective after bank turned back to**  
13 **officers; notice of turning bank back to officers.**

14 After 15 days after the affairs of a bank shall have been turned back to its board of  
15 directors by the conservator, either with or without a reorganization as provided in G.S.  
16 53-152 hereof, the provisions of G.S. 53-151 with respect to the segregation of deposits  
17 received while it is in the hands of the conservator, and with respect to the use of such  
18 deposits to liquidate the indebtedness of such bank, shall no longer be effective:  
19 Provided, that before the conservator shall turn back the affairs of the bank to its board  
20 of directors, he shall cause to be published in a newspaper published in the ~~city, town or~~  
21 ~~county~~ in which such bank is located, and if no newspaper is published in such ~~city,~~  
22 ~~town or county,~~ in a newspaper ~~to be selected by the Commissioner of Banks,~~ having a  
23 general circulation in the county, a notice in form approved by the Commissioner of  
24 Banks, stating the date on which the affairs of the bank will be returned to its board of  
25 directors, and that the said provisions of G.S. 53-151 will not be effective after 15 days  
26 after such date; and on the date of publication of such notice, the conservator shall  
27 immediately send to every person who is a depositor in such bank under G.S. 53-151, a  
28 copy of such notice by registered mail, addressing it to the last known address of such  
29 persons shown by the records of the bank; and the conservator shall send similar notice  
30 in like manner to every person making deposit in such bank under G.S. 53-151, after the  
31 date of such newspaper publication and before the time when the affairs of the bank are  
32 returned to its directors."

33 Sec. 40. G.S. 53-193 reads as rewritten:

34 **"§ 53-193. Definitions.**

35 The following definitions apply in this Article:

36 (1) Check. – A check, draft, money order, or other instrument for the  
37 transmission or payment of money, including any instrument  
38 transmitted by wire or any other means.

39 (1a) Commission. – The State Banking Commission.

40 (2) Commissioner. – The Commissioner of Banks of the State of North  
41 Carolina.

42 (3) Licensee. – A person duly licensed by the Commissioner under this  
43 Article.

- 1           (3a) Outstanding Checks. – Any unpaid check sold anywhere in the United  
 2           States the sale of which has been reported to the licensee.
- 3           (4) Permissible Investment. – An investment in any of the following:
- 4           a. ~~Unenumbered cash.~~ Cash.
- 5           b. ~~Unenumbered investment securities that are obligations of the~~  
 6           United States, its agencies, or instrumentalities. Interest-bearing  
 7           bills, notes, bonds, debentures, or other obligations issued or  
 8           guaranteed by the United States or any state or other local  
 9           governmental entity or any agent or instrumentality thereof,  
 10           bearing a rating of one of the three highest grades by a  
 11           nationally recognized investment service organization that has  
 12           been engaged regularly in rating state and municipal issues for a  
 13           period of not less than five years.
- 14           c. ~~Unenumbered obligations fully guaranteed as to principal and~~  
 15           interest by the United States. Certificates of deposit or other  
 16           debt instruments of a commercial bank.
- 17           d. ~~Unenumbered obligations of any state, municipality, or any political~~  
 18           subdivision thereof. Bills of exchange or time drafts drawn on  
 19           and accepted by a commercial bank, otherwise known as  
 20           bankers acceptances, which are eligible for purchase by  
 21           member banks of the Federal Reserve System.
- 22           e. ~~Any other investments approved by the Commissioner.~~ Commercial  
 23           paper of prime quality as defined by a nationally recognized  
 24           organization which rates such securities.
- 25           f. Interest-bearing bills, notes, bonds, debentures, or preferred  
 26           stock traded on any national securities exchange or on a  
 27           national over-the-counter market or bearing a rate of one of the  
 28           three highest grades by a nationally recognized investment  
 29           service organization that has been engaged regularly in rating  
 30           corporate debt or equity issues for a period of not less than five  
 31           years.
- 32           g. If the Commissioner finds that any type of investment not  
 33           enumerated herein has sufficient liquidity and quality to be a  
 34           permissible investment, the Commissioner may by regulation or  
 35           order declare such investment to be permissible.
- 36           (5) Person. – An individual, a partnership, an association, a joint stock  
 37           company, a trust, or a corporation."

38           Sec. 41. G.S. 53-199.1 reads as rewritten:

39           **"§ 53-199.1. Required investments; permissible investments.**

40           Every licensee under this Article shall have on hand permissible investments in an  
 41           amount equal to the aggregate face value of all outstanding checks sold by the licensee  
 42           for which the licensee is liable for payment. shall at all times maintain permissible  
 43           investments having (i) a market value, computed in accordance with generally  
 44           accepted accounting principles, at least equal to the aggregate of the amount of all of its

1 outstanding checks or (ii) a net carrying value, computed in accordance with generally  
2 accepted accounting principles, at least equal to the aggregate of the amount of all of its  
3 outstanding checks so long as the market value of such permissible investments is at  
4 least eighty percent (80%) of the net carrying value. The requirements of this section  
5 may be waived by the Commissioner if a finding is made, upon examination of audited  
6 financial statements and other appropriate analysis, that the surety bond required by  
7 G.S. 53-198 is sufficient to cover the aggregate face value of all outstanding checks sold  
8 by the licensee."

9 Sec. 42. G.S. 53-206 reads as rewritten:

10 **"§ 53-206. Notice of denial or revocation of license; hearing; appeal.**

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

16 (b) The Commission shall have full authority to review any rule, regulation,  
17 order, or act of the Commissioner done pursuant to or with respect to the provisions of  
18 this Article, and any person aggrieved by any such rule, regulation, order, or act may  
19 appeal to the Commission for review upon giving notice in writing within 20 days after  
20 such rule, regulation, order, or act complained of is adopted, issued, or done."

21 Sec. 43. G.S. 53-211(d) reads as rewritten:

22 "(d) The Commissioner, within 30 days of receiving the complete application for  
23 acquisition, shall publish notice of the intent of a regional bank holding company to  
24 acquire a North Carolina bank or North Carolina bank holding company under  
25 subsection (a) or (b) of this section. The notice shall be published in newspapers ~~servi~~  
26 ~~the communities in~~ the counties in which the principal offices of the North Carolina bank  
27 or North Carolina bank holding company and of the regional bank holding company are  
28 ~~located.~~ located; if no newspapers are published in the counties, then in newspapers  
29 having a general circulation in such counties. Notwithstanding any other provision of  
30 this section, the application for acquisition shall not be approved until the requirement  
31 for publication has been met."

32 Sec. 44. G.S. 53-215 reads as rewritten:

33 **"§ 53-215. Appeal of Commissioner's decision.**

34 Any aggrieved party in a proceeding under G.S. 53-211, G.S. 53-212(2) or G.S. 53-  
35 227.1 may, within 30 days after final decision of the Commissioner, appeal his decision  
36 to the State Banking Commission. The State Banking Commission, within 30 days of  
37 receipt of the notice of appeal, shall approve, disapprove or modify the Commissioner's  
38 decision. Failure of the State Banking Commission to act within 30 days of receipt of  
39 notice of appeal shall constitute a final decision of the State Banking Commission  
40 approving the decision of the Commissioner. Notwithstanding any other provision of  
41 law, any aggrieved party to a decision of the State Banking Commission, within 30 days  
42 after final decision of the Commission, may appeal ~~directly to the North Carolina Court of~~  
43 Appeals for judicial review on the record. ~~the decision pursuant to G.S. 53-92."~~

44 Sec. 45. G.S. 53-231 reads as rewritten:



1 **"§ 53-231. Appeal of Commissioner's decision.**

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

23 Sec. 46. G.S. 53-232.17 reads as rewritten:

24 **"§ 53-232.17. Appeal of Commissioner's decision.**

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

1           Sec. 47. G.S. 53-247 is amended by adding the following new subsection to  
2 read:

3           "(d) A person registered as a facilitator under this Article is, for the purpose of  
4 facilitating refund anticipation loans, exempt from Article 20 of Chapter 66."

5           Sec. 48. G.S. 53-248 reads as rewritten:

6 "**§ 53-248. Registration ~~procedure.~~ procedure; informal hearing.**

7           (a) Initial Registration. An application to become registered as a facilitator shall  
8 be in writing, under oath, and in a form prescribed by the Commissioner. The  
9 application shall contain all information prescribed by the Commissioner. Each  
10 application for registration shall be accompanied by a nonrefundable application fee,  
11 payable to the Commissioner, of two hundred fifty dollars (\$250.00) together with a fee  
12 of one hundred dollars (\$100.00) for each office where the registrant intends to facilitate  
13 refund anticipation loans.

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

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

26           (b) Renewal. Each registration as a facilitator of refund anticipation loans shall  
27 expire on December 31 following the date it was issued, unless it is renewed for the  
28 succeeding year. Before the registration expires, the registrant may renew the  
29 registration by filing with the Commissioner an application for renewal in the form and  
30 containing all information prescribed by the Commissioner. Each application for  
31 renewal of registration shall be filed on or before November 30 in the year issued and  
32 shall be accompanied by a nonrefundable fee of one hundred dollars (\$100.00) for each  
33 office where the registrant intends to facilitate refund anticipation loans during the  
34 succeeding year.

35           Upon the filing of an application for renewal of registration under this Article, the  
36 Commissioner shall renew the registration unless the Commissioner determines that the  
37 fitness of the registrant or the operations of the registrant would not support an initial  
38 registration of the registrant under subsection (a)-(a) of this section. ~~If the Commissioner~~  
39 ~~makes such a determination, he shall so~~ this determination is made, the Commissioner shall  
40 notify the registrant, by certified mail, return receipt requested, stating the reasons for  
41 the determination.

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

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

5 Sec. 49. G.S. 53-252 reads as rewritten:

6 **"§ 53-252. Appeal of Commissioner's decision.**

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

23 Sec. 50. G.S. 53-253 reads as rewritten:

24 **"§ 53-253. Rules; enforcement.**

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

31 Sec. 51. G.S. 53-272 reads as rewritten:

32 **"§ 53-272. Appeals.**

33 ~~Notwithstanding any other provision of law, an aggrieved party may, within 30 days~~  
34 ~~after final decision of the Commissioner, and by written notice to the Commissioner,~~  
35 ~~appeal directly to the North Carolina Court of Appeals for judicial review of the record.~~  
36 ~~In the event of an appeal the Commissioner shall certify the record to the Clerk of the~~  
37 ~~Court of Appeals no later than 30 days after receipt of the notice of appeal. The record~~  
38 ~~shall include all memoranda, briefs, and any other documents, data, information, or~~  
39 ~~evidence submitted by any party to the proceeding. All factual information contained in~~  
40 ~~a report of examination or investigation submitted to or otherwise obtained by the~~  
41 ~~Commissioner or the Commissioner's staff shall be made a part of the record unless the~~  
42 ~~information is deemed confidential by the Commissioner. The Commission may review~~  
43 ~~any rule, regulation, order, or act of the Commissioner done pursuant to or with respect~~  
44 ~~to the provisions of this Article, and any person aggrieved by any such rule, regulation,~~

1 order, or act may appeal to the Commission for review upon giving notice in writing  
2 within 20 days after such rule, regulation, order, or act complained of is adopted, issued,  
3 or done."

4           Sec. 52. This act is effective upon ratification.