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[Article 1. Definitions.]		
§ 53-1. "Bank," "surplus," "undivided profits," and other words defined. Except as otherwise specifically provided in this Chapter, the following definitions shall be applied to the terms used in this Chapter: (1) Bank. – The term "bank" shall be construed to mean any corporation, other than savings and loan associations, savings banks, industrial banks, and credit unions, receiving, soliciting or accepting money or its equivalent on deposit as a business. (1a) Branch. – The term "branch" means an office of any bank in which deposits are received, monies are paid, and loans are made. Any of the functions or services authorized to be engaged in by a bank may be carried out in a branch. (2) Demand Deposits. – The term "demand deposits" means all deposits, the payment of which can be legally required within 30 days. (3) Insolvency. – The term "insolvency" means: a. When a bank cannot meet its deposit liabilities as they become due in the regular course of business; b. When the actual cash market value of its assets is insufficient to pay its liabilities to depositors and other creditors; c. When its reserve shall fall under the amount required by this Chapter, and it shall fail to make good such reserve within 30 days after being required to do so by the Commissioner of Banks; or d. Whenever the undivided profits and surplus shall be inadequate to cover losses of the bank, whereby an impairment of the capital stock is created. (3a) Limited Service Facility. – The term "limited service facility" means an office of a bank in which deposits are received, monies are paid, or other duties and functions of a teller are performed. Loan applications shall be taken in a limited	**§ 53C-1-4. Definitions and application of terms.** Unless the context requires otherwise, the following definitions apply in this Chapter: (1) Acquire. – To obtain the right or power to vote or to direct the voting of voting securities of a bank or holding company as follows: a. Through a purchase of or share exchange for shares. b. By reason of an issuance of shares or the exercise of a right under a warrant, option, or convertible security or instrument to acquire shares. c. Pursuant to an agreement or trust or through any similar transaction, event, or contractual right. (2) Acting in concert. – Knowing participation in a joint activity or interdependent conscious parallel action toward the common goal of obtaining control of a bank or holding company, whether or not pursuant to an express agreement, including participation in a combination or pooling of voting securities of a bank holding company for such common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise. (3) Affiliate. – A person that, directly or indirectly, controls, is controlled by, or is under common control with another person. Each member of a group of persons acting in concert shall be deemed an affiliate of the group. (4) Bank. – Any corporation, other than a credit union, savings institution, or trust company, that is organized under the laws of this State and is engaged in the business of receiving deposits (other than trust funds), paying monies, and making loans. (5) Bank operating subsidiary. – A subsidiary that is under the control of a bank and engages only in activities in which a bank may engage pursuant to G.S. 53C-5-1.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-1-4.** Staff agrees. Staff also notes that G.S. 53-1.1 (Banking definitions applicable to this Chapter) currently provides: "Except as otherwise provided by law, the definitions contained in G.S. 53C-1-4 shall apply to terms used in this Chapter."

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service facility but notes may not be executed nor loan proceeds disbursed in a limited service facility. (4) Net Earnings. – The term "net earnings" means the excess of the gross earnings of any bank over the expenses and losses chargeable against such earnings during any dividend period. (5) Practical Banker. – The term "practical banker" means an officer or employee of a bank actively engaged in performing duties in managing or supervising or assisting in managing or supervising the conducting of a banking business, including any such banker who is in a retired status from such duties. (6) Surplus. – The term "surplus" means a fund created pursuant to the provisions of this Chapter by a bank from payments by stockholders or from its net earnings or undivided profits which, to the amount specified and by any additions thereto set apart and designated as such, is not available for the payment of dividends, and cannot be used for the payment of expenses or losses so long as such bank has undivided profits. (7) Time Deposits. – The term "time deposits" means all deposits, the payment of which cannot be legally required within 30 days. (8) Undivided Profits. – The term "undivided profits" means the credit balance of the profit and loss account of any bank. (9) Unimpaired Capital Fund. – The term "unimpaired capital fund" means the total of the amount of unimpaired common stock, preferred stock, surplus, undivided profits, reserve for contingencies and other capital reserves (excluding accrued dividends on preferred stock and limited life preferred stock), mandatory convertible instruments, allowance for possible loan losses, and the amount of capital debentures or notes, convertible or otherwise, having an average original maturity of at least seven years, which have been specifically designated as part of the bank's unimpaired capital fund by resolution duly adopted by the board of directors of the bank; provided, that upon payment of such capital debentures or notes or upon accumulation of funds in a sinking fund for amortization of such debentures or notes, unimpaired capital fund shall be reduced by the amount of such payment or accumulation. The terms and conditions of any issue of or	(6) Bank premises. – Any improved or unimproved real estate, whether or not open to the public, that is utilized or intended to be utilized by a bank, including additional space to rent as a source of income. (7) Bank supervisory agency. – Any of the following agencies: a. The CFPB, FDIC, Federal Reserve Board, OCC, and any successor to these agencies. b. Any agency of another state with primary responsibility for chartering and supervising depository institutions organized under the laws of that state. c. Any agency of a sovereign nation with primary responsibility for chartering and supervising depository institutions organized under the laws of that nation. (8) Bankers' bank. – As defined in Regulation D of the Federal Reserve Board, 12 C.F.R. § 204.121. (9) Banking laws. – All laws which the Commissioner or the OCOB is authorized to enforce under any applicable statute. (10) Board of directors. – A governing board of a company that is responsible for policy, oversight, and compliance. (11) Branch. – An office of any bank or a depository institution organized under the banking laws of the United States, another state, or another sovereign nation, other than that depository institution's principal office, in which deposits are received. A branch may also engage in any of the functions or services authorized to be engaged in by the bank of which it is a branch. The term "branch" does not include a non-branch bank business office, automated teller machine, remote deposit facility, remote service unit, customer-bank communications terminal, point-of-sale terminal, automated banking facility or other direct or remote information processing device or machine, whether manned or unmanned, by means of which information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank terminal.	

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prepayment of capital debentures or notes must have the prior written approval of the Commissioner of Banks affirming that in his opinion such issue or prepayment is in the best interest of the depositors, creditors and stockholders of the bank.	(12) Capital. – An amount equal to the bank's "total capital" as that term is used by the FDIC in 12 C.F.R. Part 325; provided, that if the term "total capital" is replaced by a term including substantially the same elements as "total capital," the term "capital" as used in this Chapter shall mean an amount equal to the amount calculated by application of the definition of such replacement term. (13) Capital impairment. – The reduction of a bank's capital at any time below its required capital. (14) Central reserve bank. – A depository institution of which at least fifty percent (50%) of its shares are owned by other depository institutions. (15) CFPB. – The Consumer Financial Protection Bureau or its successor. (16) Charter. – A document issued by the Commissioner in accordance with Article 3 of this Chapter permitting a bank to conduct banking business. (17) Combination. – A merger, share exchange, or transfer or acquisition of all or substantially all assets and liabilities of a person undertaken in compliance with such federal laws and laws of this State or other states as may be applicable. (18) Commission. – The State Banking Commission provided for in G.S. 53C-2-1. (19) Commissioner. – The Commissioner of Banks provided for in G.S. 53C-2-2. (20) Company. – A corporation, limited liability company, partnership, joint venture, business trust, trust, syndicate, association, unincorporated organization, or other form of business entity. (20a) Consumer finance licensee. – An individual associated with a "licensee," as that term is defined in G.S. 53-165(h). (21) Control. – The possession, directly or indirectly, of the power or right to direct or to cause the direction of the management or policies of a person by reason of an agreement, understanding, proxy, or power of attorney or through the ownership of or voting power over ten percent (10%) or more of any class of the voting securities of the person.	

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	(22) Control transaction. – The acquisition of control over a bank or a holding company other than pursuant to a combination. (23) Credit union. – A credit union as defined in G.S. 54-109.1. (24) De novo branch. – A branch of a bank or of an out-of-state bank within this State that is established as a branch, and not (i) by virtue of an acquisition of the existing branch of another bank or out-of-state bank, (ii) by a combination involving the bank or out-of-state bank, or (iii) by the conversion of a non-branch bank business office to a branch. (25) Deposit. – A "deposit" as defined in Section 3(*l*) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(*l*). (26) Deposit insurance. – Insurance of a bank's deposit accounts where the beneficiaries are the holders of the insured accounts. (27) Depository institution. – A bank, out-of-state bank, savings institution, or federally chartered institution, the deposits of which are insured by the FDIC. (28) Deputy commissioner. – An individual appointed by the Commissioner to such office as provided by G.S. 53C-2-3. (29) Distribution. – With respect to a bank, "distribution" has the same meaning as set forth in Chapter 55. (30) DPC subsidiary. – A debt previously contracted subsidiary of a bank that acquires in good faith an equity ownership interest through foreclosure or other realization on collateral, by way of a compromise of a disputed or contested claim, or to avoid a loss in connection with a debt previously contracted or to which the bank transfers an equity ownership interest so acquired by the bank. (31) Equity ownership interest. – Any beneficial equity or similar interest, whether direct or indirect, including shares, limited or general partnership interests, and membership interests in a limited liability company.	

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	(32) Examination. – A supervisory inspection of a bank, a proposed bank, a holding company, or a branch of an out-of-state bank operating in this State that may include inspection of all relevant information, including information of or about the subsidiaries and affiliates of the bank, proposed bank holding company, or branch. "Examination" also includes an investigation of any person with respect to any violation or suspected violation of any provision of this Chapter by such person, or a review of facts and circumstances relevant to the Commissioner's consideration of the issuance of an order pursuant to this Chapter. (33) Farm credit system institution. – A lending institution regulated by the Farm Credit Administration. (34) FDIC. – The Federal Deposit Insurance Corporation or its successor. (35) Federal Reserve Board. – The Board of Governors of the Federal Reserve System or its successor. (36) Federal savings association. – A federal savings association or federal savings bank chartered under Section 5 of the Home Owners' Loan Act, 12 U.S.C. § 1464. (37) Federally chartered institution. – A national bank or federal savings association. (38) Financial subsidiary. – A "financial subsidiary" as defined in 12 U.S.C. § 24a(g). (39) Holding company. – A company that controls a depository institution or that controls a company that directly or indirectly controls a depository institution. (40) Immediate family. – An individual's spouse, father, mother, children, brothers, sisters, and grandchildren; the father, mother, brothers and sisters of the individual's spouse; and the spouse of the individual's child, brother, or sister. (41) Inadequate capital. – An amount of capital equal to at least seventy-five percent (75%) but less than one hundred percent (100%) of required capital. (42) Individual. – A human being.	

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	(43) Insufficient capital. – An amount of capital less than seventy-five percent (75%) of required capital. (44) Lower-tier subsidiary. – Any company which is controlled by a subsidiary. (45) National bank. – A banking association organized under 12 U.S.C. § 21. (46) Non-branch bank business office. – Any staffed physical location open to the public, at which any of the following institutions offers one or more banking or banking-related products or services, but does not take deposits: a. Bank. b. Out-of-state bank. c. Depository institution established under the laws of another state. d. Federally chartered institution. e. Separately organized subsidiary of a bank, out-of-state bank, depository institution established under the laws of another state, or federally chartered institution. f. Holding company of a bank, out-of-state bank, depository institution established under the laws of another state, or federally chartered institution. The provision of remote deposit capture facilities or services by a non-branch bank business office does not constitute a taking of deposits. Non-branch bank business offices include loan production offices, mortgage loan offices, and insurance agency offices, or a combination thereof. (47) North Carolina financial institution. – A bank, savings institution, or trust company organized under the laws of this State. For purposes of the Securities Act of 1933 and the Securities Exchange Act of 1934, any North Carolina financial institution is a banking institution. (48) OCC. – The Office of the Comptroller of the Currency or its successor.	

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	(49) OCOB. – The Office of the Commissioner of Banks as provided in G.S. 53C-2-3. (50) Organizational documents. – The charter, certificate of organization, articles of incorporation, articles of association, certificate of limited partnership, bylaws, operating agreement, partnership agreement, and any other similar documents required to be prepared or adopted by a company in connection with its organization, and as thereafter amended from time to time. (51) Organizational law. – The laws of the jurisdiction of organization of a company applicable to the organization of the company and its governance, including approval of transactions by its board of directors, shareholders, partners, members, or beneficiaries, as applicable. (52) Organizers. – One or more individuals who are the organizers of a proposed bank responsible for the business of the proposed bank from the filing of the application to the Commission's final decision on the application. (53) Out-of-state bank. – A bank that is organized, chartered, or created under the laws of a state other than this State and the deposits of which are insured by the FDIC. (54) Person. – An individual, a company, or a group of persons who are acting in concert. (55) Plan of conversion. – A detailed outline of the procedure of the conversion of a depository institution from one to another charter. (56) Practical banker. – An individual who at the time of appointment to the Commission is, or has been during the five years preceding the appointment, a president, chief executive officer, director, or holder of five percent (5%) or more of any class of voting securities of a North Carolina financial institution. (57) Principal office. – The office that houses the headquarters of a bank. (58) Public member. – A member of the Commission who is not a practical banker or a consumer finance licensee and who is not at the time of appointment to the	

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	Commission, nor was within the five years preceding the appointment, an employee of a North Carolina financial institution. (59) Public notice. – Notice to the public of the applicable information specified in this Chapter by (i) a single publication in a newspaper of general circulation in the county in which the bank that is the subject of the publication has its principal office or in such other county as may be directed by the Commissioner to best meet the purposes for which the notice is required and (ii) a posting in the notices section of the Commissioner's Web site for at least 15 days. (60) Record. – Information, reports, memoranda, charts, letters, messages, extracts, summaries, analyses, compilations, transaction documentation, account statements, financial statements, and other documents, including customer financial and other information, whether created, transmitted, distributed, retained, or stored in tangible or digital form. (61) Registered agent. – The person named in the organizational documents of a company upon whom service of legal process is deemed binding upon the company. (62) Required capital. – Required capital means either of the following: a. In the case of a proposed bank, the amount of capital required by the Commissioner as a prerequisite to the commencement of the business of banking. b. In all other cases, an amount of capital equal to at least the amount of capital required for a bank to be deemed "adequately capitalized" under applicable federal regulatory capital standards. (63) Savings institution. – A savings and loan association or a savings bank organized under the laws of this State or of another state, or a federal savings association or savings bank. (64) Shareholder. – Any person in whose name shares are registered in the records of a corporation, or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.	

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	(65) Shares. – The units into which the equity ownership interests of a corporation are divided. (66) State. – Any state of the United States, the District of Columbia, or any territory of the United States other than this State. (67) State trust company. – A company organized under the provisions of Article 24 of Chapter 53 of the General Statutes and a trust company previously organized under other provisions of this Chapter to operate only as a trust company and not as a commercial bank. (68) Subsidiary. – A company over which a bank has control, including a lower-tier subsidiary. (69) This State. – The State of North Carolina. (70) Trust business. – Acting as a fiduciary or in other capacities permissible for a trust institution under G.S. 53-331. (71) Trust company. – A trust institution that is neither a depository institution nor a foreign bank, as defined in 12 U.S.C. § 1813(s)(1), but not including a bank organized under the laws of a territory of the United States. (72) Trust funds. – Trust funds as defined in Section 3(p) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(p). (73) Trust institution. – Any company lawfully acting as a fiduciary in a state or in a foreign country. (74) Voting securities. – A security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the company or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. (75) Well-capitalized. – The term "well-capitalized" has the same meaning as defined in Regulation Y of the Federal Reserve Board, 12 C.F.R. § 225.2(r).	

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	(76) Well-managed. – Except as otherwise provided in this Chapter, a company or depository institution is well-managed if the following apply: a. At its most recent examination, the company or institution received at least a satisfactory composite rating and at least a satisfactory rating for management, if such rating is given. b. In the case of a company or depository institution that has not received an inspection or examination rating, a company or depository institution is well-managed if the Commissioner has determined, after a review of the managerial and other resources of the company or depository institution and after consulting with any other appropriate bank supervisory agency for the company or institution, that the company or institution is well-managed. A depository institution that results from the merger of two or more depository institutions that are well-managed shall be considered to be well-managed unless the Commissioner determines otherwise after consulting with any other appropriate bank supervisory agency for each depository institution involved in the merger. A depository institution that results from the merger of a depository institution that is well-managed with one or more depository institutions that are not well-managed or have not been examined shall be considered to be well-managed if the Commissioner determines, after a review of the managerial and other resources of the resulting depository institution and after consulting with any other appropriate bank supervisory agency for the institutions involved in the merger, as applicable, that the resulting institution is well-managed.	
[Article 2. Creation.]		
§ 53-2. How incorporated. Any number of persons, not less than five, who may be desirous of forming a company and engaging in the business of establishing, maintaining, and operating banks of discount and deposit to be known as commercial banks, shall be incorporated in the manner following and in no other way; that is to say, such persons shall, by a certificate of incorporation under their hands and seals set forth:	**§ 53C-3-4. Commissioner's approval of charter issuance.** (a) The Commissioner may approve a charter for a proposed bank only when the Commissioner has determined that all the following requirements have been satisfied or are reasonably probable to be satisfied within a reasonable period of time specified by the Commissioner in the order of approval: (1) The proposed bank has solicited or will solicit subscriptions for purchases of shares sufficient to provide an amount of required capital satisfactory to the Commissioner for the commencement of the business of banking.	Referenced in G.S. 53-139 and G.S. 53-141(6). G.S. 53-139 (Capital stock) provides: "The amount of capital stock with which any industrial bank shall commence business

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(1) The name of the corporation; no name shall be used already in use by another existing corporation organized under the laws of this State or of the Congress, or so nearly similar thereto as to lead to uncertainty or confusion. (2) The location of its principal office in this State. (3) Whether it will do trust business as well as the business of a commercial bank. (4) The amount of its authorized common capital stock, the number of shares into which it is divided, the par value of each share; and the amount of common capital stock with which it will commence business. The amount of capital required to charter a bank shall be determined as herein set forth by the Commissioner of Banks who shall give due consideration to (i) the population of the proposed bank's trade area, (ii) the total deposits of those depository financial institutions already operating in the proposed bank's trade area, (iii) the economic conditions and outlook within the proposed bank's trade area, (iv) the business experience and reputation of the proposed bank's management, (v) the business experience and reputation of the proposed bank's incorporators and proposed directors, (vi) the type and nature of business activities proposed to be engaged in, and (vii) the proposed bank's projected deposit growth and profitability. Except as otherwise provided, the amount of common capital stock required to charter a bank shall not be less than two million dollars ($2,000,000); provided, however, such amount of capital may be increased or decreased in the discretion of the Commissioner of Banks who, after considering the above enumerated criteria, determines that a greater capital requirement is necessary or that a smaller capital requirement will provide a sufficient capital base. In addition to the required capital, every bank shall have a paid in surplus of at least fifty percent (50%) of its common capital stock. The capital and paid in surplus required to charter a bank shall be exclusive of any organizational expenses. This subdivision shall not apply to banks organized and doing business prior to its adoption or amendment; provided, however, the Banking Commission is hereby authorized and directed to adopt rules to keep any original required minimum capital funds intact to the end that they remain in and with the bank as a protection for depositors. (5) The names and post-office addresses of subscribers for stock, and the number of shares subscribed by each; the aggregate of such subscriptions shall be the amount of the capital with which the company will commence business.	(2) All prior public solicitations for purchases of shares and all future solicitations will be solicited with appropriate disclosure, taking into account all the circumstances of the public solicitation, including a prominent statement in any solicitation document to the effect that the solicitation has not been approved by the Commissioner or the Commission and that a representation to the contrary is a criminal offense. (3) All payments for purchases of shares in a bank in organization are made in United States currency. (4) The proposed bank has an operational expense fund from which to pay organizational expenses, in an amount determined by the Commissioner to be sufficient for the safe and sound operation of the proposed bank while the charter application is pending. (5) The proposed bank has been formed for legitimate and lawful business purposes. (6) The character, competence, and experience of the organizers, proposed directors, proposed officers, and initial holders of more than ten percent (10%) of the voting securities of the proposed bank will command the confidence of the public. (7) The proposed officers and directors, as a group, have degrees of character, competence, and experience sufficient to justify a belief that the proposed bank will be free from improper or unlawful influence and otherwise will operate safely, soundly, and in compliance with law. (8) The anticipated volume and nature of business of the proposed bank projected in the application are reasonable and indicate a reasonable probability of safe, sound, and profitable operation of the proposed bank. (9) If the proposed bank intends to conduct "trust business," as defined by G.S. 53C-1-4(70), it appears that trust powers should be granted based on consideration of the various factors set forth in Article 24 of Chapter 53 of the General Statutes for considering applications and setting capital for a State trust company.	shall not be less than fifty percent (50%) of that which would be required of a commercial bank under the provisions of G.S. 53-2." NCCOB's draft suggests **G.S. 53C-3-4.** Staff disagrees. G.S. 53-139 no longer makes sense without a specific amount of capital stock. In the event that G.S. 53C-3-4 is included in the list in G.S. 53-145 (which both NCCOB and staff recommend), staff suggests repealing G.S. 53-139. G.S. 53-141(6) references G.S. 53-2 in the phrase "the capital requirements of a commercial bank as set forth in G.S. 53-2." NCCOB's draft suggests **G.S. 53C-1-4(62).** Staff agrees.

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(6) Period, if any, limited for the duration of the company.	(b) The Commissioner's determination that the requirements described in subsection (a) are reasonably probable of satisfaction may be based on partial satisfaction of the requirements at a level set by the Commissioner as a prerequisite for approval of the charter, and also may be based on presentation of a plan for the full satisfaction of the requirements. (c) If it appears to the Commissioner that the proposed bank has satisfied or is reasonably probable to satisfy the requirements for issuance of a charter, the Commissioner shall issue an order approving the application for a charter and such order shall be submitted to the Commission for its review at a public hearing. The Commissioner may, in the order approving the proposed bank's charter, impose other reasonable conditions or restrictions upon the proposed bank or the new bank, consistent with this Chapter. (d) If it appears to the Commissioner that the proposed bank has not satisfied and is not reasonably probable of satisfying the requirements for issuance of a charter, the Commissioner shall issue an order denying approval of the application. The applicant may, within 10 days of issuance of the order, give notice of appeal of this decision to the Commission pursuant to G.S. 53C-2-6. **§ 53C-1-4. Definitions and application of terms.** Unless the context requires otherwise, the following definitions apply in this Chapter: … (62) Required capital. – Required capital means either of the following: a. In the case of a proposed bank, the amount of capital required by the Commissioner as a prerequisite to the commencement of the business of banking. b. In all other cases, an amount of capital equal to at least the amount of capital required for a bank to be deemed "adequately capitalized" under applicable federal regulatory capital standards. ….	
§ 53-3. Certificate of incorporation; how signed, proved and filed. The certificate of incorporation shall be signed by the original incorporators, or a majority of them, and shall be proved or acknowledged before an officer duly	**§ 53C-3-2. Permission to organize a bank.** (a) With the approval of the Commissioner, the organizers may file articles of incorporation for the proposed bank with the Secretary of State. The Commissioner shall	Referenced in G.S. 53-145.

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authorized under the laws of this State to take proof or acknowledgment of deeds, and shall be filed in the office of the Secretary of State. The Secretary of State shall forthwith transmit to the Commissioner of Banks a copy of said certificate of incorporation, and shall not issue or record the same until duly authorized so to do by the Commissioner of Banks as hereinafter provided.	authorize the organization of the proposed bank if the Commissioner is satisfied that each of the following conditions is met: (1) The application is complete. (2) The Commissioner's examination as provided for in G.S. 53C-3-1 indicates that the requirements for the issuance of a charter to the applicant are reasonably probable of satisfaction. (3) The proposed name of the proposed bank is not likely to mislead the public as to its character or purpose and is not the same as a name already adopted by an existing depository institution or trust institution operating in this State. (b) If the Commissioner approves the organization of the proposed bank, the Commissioner shall issue a certificate to the Secretary of State. The Secretary of State shall transmit to the Commissioner a certified copy of the filed articles of incorporation of the proposed bank. (c) Unless and until the Commissioner issues a charter to the proposed bank: (1) The proposed bank shall not transact any business except such as is incidental and necessary to its organization or the application for a charter or preparation for commencing the business of banking. (2) All funds paid for shares of the proposed bank shall be placed in escrow under a written escrow with a third-party escrow agent satisfactory to the Commissioner. (3) All funds for shares placed into escrow, and all dividends or interest on such funds, may be removed from escrow only with the Commissioner's approval except to the extent that such funds are refunded to subscribers or as otherwise required by law. (d) A proposed bank is subject to the jurisdiction of the Commissioner. **§ 53C-3-3. Articles of incorporation of a proposed bank.** (a) The articles of incorporation of a proposed bank shall be signed and acknowledged by or on behalf of an organizer and shall contain the following:	NCCOB's chart suggests **G.S. 53C-3-2 and G.S. 53C-3-3.** Staff agrees.

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	(1) The information required to be set forth in articles of incorporation under Chapter 55 of the General Statutes. (2) Any provision consistent with Chapter 55 of the General Statutes and other applicable law that the organizers elect to set forth for the regulation of the internal affairs of the proposed bank and that the Commissioner authorizes or requires. (3) Any provision the Commissioner requires or authorizes as a substitute for a provision that otherwise would be required by Chapter 55 of the General Statutes. (b) Before the chartering of a proposed bank, the articles of incorporation filed under the provisions of G.S. 53C-3-2 shall be sufficient certification to the FDIC that the proposed bank is a legal entity.	
§ 53-4. Examination by Commissioner; when certification to be refused; review by Commission. Upon receipt of a copy of the certificate of incorporation of the proposed bank, the Commissioner of Banks shall at once examine into all the facts connected with the formation of such proposed corporation including its location and proposed stockholders, and if it appears that such corporation, if formed, will be lawfully entitled to commence the business of banking, the Commissioner of Banks shall so certify to the Secretary of State, unless upon examination and investigation he finds that (1) The proposed corporation is formed for any other than legitimate banking business; or (2) That the character, general fitness, and responsibility of the persons proposed as stockholders in such corporation and directors, officers, and other managerial officials are not such as to command the confidence of the community in which said bank is proposed to be located; or (3) That the probable volume of business and reasonable public demand in such community is not sufficient to assure and maintain the solvency of the new bank and of the then existing bank or banks in said community; or	**§ 53C-3-1. Application to organize a bank.** (a) An applicant for permission to organize a bank and for a charter must file an application with the Commissioner. The application shall be in the form required by the Commissioner and shall contain such information as the Commissioner requires, set forth in sufficient detail to enable the Commissioner to evaluate the applicant's satisfaction of the criteria set forth in G.S. 53C-3-4. The applicant shall pay a nonrefundable application fee as provided by rule at the time of filing the application. (b) Upon receipt of an application, the Commissioner shall conduct an examination of the applicant and any other matters deemed relevant by the Commissioner. The Commissioner may require additional information and may require the amendment of the application in the course of the examination. An applicant's failure to furnish all required information or to pay the required fee within 30 days after filing the application may be considered an abandonment of the application. **§ 53C-3-2. Permission to organize a bank.** (a) With the approval of the Commissioner, the organizers may file articles of incorporation for the proposed bank with the Secretary of State. The Commissioner shall authorize the organization of the proposed bank if the Commissioner is satisfied that each of the following conditions is met:	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-3-1, 53C-3-2, 53C-3-4, 53C-3-5, and 53C-3-6.** Staff agrees.

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(4) That the name of the proposed corporation is likely to mislead the public as to its character or purpose; or (5) That the proposed name is the same as the one already adopted or appropriated by an existing bank in this State, or so similar thereto as to be likely to mislead the public. Upon such certification the Secretary of State shall issue and record such certificate of incorporation. Notwithstanding any other provisions of this section, the Commissioner of Banks shall not make the certification to the Secretary of State described above until he shall have ascertained that the establishment of such bank will meet the needs and promote the convenience of the community to be served by the bank. Any action taken by the Commissioner of Banks pursuant to this section shall be subject to review by the State Banking Commission which shall have the authority to approve, modify or disapprove any action taken or recommended by the Commissioner of Banks.	(1) The application is complete. (2) The Commissioner's examination as provided for in G.S. 53C-3-1 indicates that the requirements for the issuance of a charter to the applicant are reasonably probable of satisfaction. (3) The proposed name of the proposed bank is not likely to mislead the public as to its character or purpose and is not the same as a name already adopted by an existing depository institution or trust institution operating in this State. (b) If the Commissioner approves the organization of the proposed bank, the Commissioner shall issue a certificate to the Secretary of State. The Secretary of State shall transmit to the Commissioner a certified copy of the filed articles of incorporation of the proposed bank. (c) Unless and until the Commissioner issues a charter to the proposed bank: (1) The proposed bank shall not transact any business except such as is incidental and necessary to its organization or the application for a charter or preparation for commencing the business of banking. (2) All funds paid for shares of the proposed bank shall be placed in escrow under a written escrow with a third-party escrow agent satisfactory to the Commissioner. (3) All funds for shares placed into escrow, and all dividends or interest on such funds, may be removed from escrow only with the Commissioner's approval except to the extent that such funds are refunded to subscribers or as otherwise required by law. (d) A proposed bank is subject to the jurisdiction of the Commissioner. **§ 53C-3-4. Commissioner's approval of charter issuance.** (a) The Commissioner may approve a charter for a proposed bank only when the Commissioner has determined that all the following requirements have been satisfied or are reasonably probable to be satisfied within a reasonable period of time specified by the Commissioner in the order of approval:	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(1) The proposed bank has solicited or will solicit subscriptions for purchases of shares sufficient to provide an amount of required capital satisfactory to the Commissioner for the commencement of the business of banking. (2) All prior public solicitations for purchases of shares and all future solicitations will be solicited with appropriate disclosure, taking into account all the circumstances of the public solicitation, including a prominent statement in any solicitation document to the effect that the solicitation has not been approved by the Commissioner or the Commission and that a representation to the contrary is a criminal offense. (3) All payments for purchases of shares in a bank in organization are made in United States currency. (4) The proposed bank has an operational expense fund from which to pay organizational expenses, in an amount determined by the Commissioner to be sufficient for the safe and sound operation of the proposed bank while the charter application is pending. (5) The proposed bank has been formed for legitimate and lawful business purposes. (6) The character, competence, and experience of the organizers, proposed directors, proposed officers, and initial holders of more than ten percent (10%) of the voting securities of the proposed bank will command the confidence of the public. (7) The proposed officers and directors, as a group, have degrees of character, competence, and experience sufficient to justify a belief that the proposed bank will be free from improper or unlawful influence and otherwise will operate safely, soundly, and in compliance with law. (8) The anticipated volume and nature of business of the proposed bank projected in the application are reasonable and indicate a reasonable probability of safe, sound, and profitable operation of the proposed bank. (9) If the proposed bank intends to conduct "trust business," as defined by G.S. 53C-1-4(70), it appears that trust powers should be granted based on consideration of	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	the various factors set forth in Article 24 of Chapter 53 of the General Statutes for considering applications and setting capital for a State trust company. (b) The Commissioner's determination that the requirements described in subsection (a) are reasonably probable of satisfaction may be based on partial satisfaction of the requirements at a level set by the Commissioner as a prerequisite for approval of the charter, and also may be based on presentation of a plan for the full satisfaction of the requirements. (c) If it appears to the Commissioner that the proposed bank has satisfied or is reasonably probable to satisfy the requirements for issuance of a charter, the Commissioner shall issue an order approving the application for a charter and such order shall be submitted to the Commission for its review at a public hearing. The Commissioner may, in the order approving the proposed bank's charter, impose other reasonable conditions or restrictions upon the proposed bank or the new bank, consistent with this Chapter. (d) If it appears to the Commissioner that the proposed bank has not satisfied and is not reasonably probable of satisfying the requirements for issuance of a charter, the Commissioner shall issue an order denying approval of the application. The applicant may, within 10 days of issuance of the order, give notice of appeal of this decision to the Commission pursuant to G.S. 53C-2-6. **§ 53C-3-5. Notice; public hearing.** (a) Not less than 30 days before the public hearing of the Commission to review the Commissioner's approval of an application, the applicant shall cause to be published a public notice containing the following: (1) A statement that the application has been filed with the Commissioner. (2) The name of the community where the proposed bank intends to locate its principal office. (3) A statement that a public hearing will be held to review the Commissioner's approval of the application.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(4) A statement that any interested person may file a written statement either favoring or protesting the chartering of the proposed bank. The statement shall note that, in order to be considered at the public hearing, all written statements from interested persons must be filed with the Commission within 30 days of the date of publication of the public notice. (b) At the public hearing, the Commission shall consider the findings and order of the Commissioner and shall hear such testimony as the Commissioner may wish to give or be called upon to give. To the extent that the Commission deems the information and testimony relevant to its review of the Commissioner's order, the Commission shall receive information and hear testimony from the organizers and shall hear from any other interested persons. **§ 53C-3-6. Commission decision.** (a) The Commission shall consider the findings and order of the Commissioner, oral testimony, and any other information and evidence, either written or oral, that comes before it at the public hearing to review the Commissioner's approval of an application for a charter. The Commission may adjourn and reconvene the public hearing in unusual circumstances. The Commission shall affirm or reverse the Commissioner's order. The Commission may adopt the Commissioner's recommendation with respect to conditions for issuance of a charter, or it may modify the conditions recommended by the Commissioner. The Commission shall render its decision at the public hearing, unless unusual circumstances require postponement of the decision. The Commission's review shall be limited to a determination of whether the criteria set forth in G.S. 53C-3-4 have been met and whether the provisions of this Article have been followed. (b) If the Commission denies an application for a charter or if the Commission approves an application with conditions not set forth in the Commissioner's approval, the applicant may appeal the denial or approval containing such conditions, as provided in G.S. 53C-2-6.	
§ 53-5. Certificate of incorporation, when certified. Upon receipt of such certificate from the Commissioner of Banks, the Secretary of State shall, if said certificate of incorporation be in accordance with law, cause the same to be recorded in his office in a book to be kept for that purpose, and known as	**§ 53C-3-4. Commissioner's approval of charter issuance.** (a) The Commissioner may approve a charter for a proposed bank only when the Commissioner has determined that all the following requirements have been satisfied or	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-3-4.** Staff

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
the corporation book, and he shall, upon the payment of the organization tax and fees, certify under his official seal two copies of the said certificate of incorporation and probates, one of which shall forthwith be recorded in the office of the register of deeds of the county where the principal office of said corporation in this State shall or is to be located, in a book to be known as the record of incorporations, and the other certified copy shall be filed in the office of the Commissioner of Banks, and thereupon the said persons shall be a body politic and corporate under the name stated in such certificate. The said certificate of incorporation, or a copy thereof, duly certified by the Secretary of State or the register of deeds of the county in which the same is recorded, or by the Commissioner of Banks, under their respective seals, shall be evidence in all courts and places, and shall, in all judicial proceedings, be deemed prima facie evidence of the complete organization and incorporation of the company purporting thereby to have been established. The charter of any bank which fails to complete its organization and open for business to the public within six months after the date of filing its certificate of incorporation with the Secretary of State shall be void: Provided, however, the Commissioner of Banks may for cause extend the limitation herein imposed.	are reasonably probable to be satisfied within a reasonable period of time specified by the Commissioner in the order of approval: (1) The proposed bank has solicited or will solicit subscriptions for purchases of shares sufficient to provide an amount of required capital satisfactory to the Commissioner for the commencement of the business of banking. (2) All prior public solicitations for purchases of shares and all future solicitations will be solicited with appropriate disclosure, taking into account all the circumstances of the public solicitation, including a prominent statement in any solicitation document to the effect that the solicitation has not been approved by the Commissioner or the Commission and that a representation to the contrary is a criminal offense. (3) All payments for purchases of shares in a bank in organization are made in United States currency. (4) The proposed bank has an operational expense fund from which to pay organizational expenses, in an amount determined by the Commissioner to be sufficient for the safe and sound operation of the proposed bank while the charter application is pending. (5) The proposed bank has been formed for legitimate and lawful business purposes. (6) The character, competence, and experience of the organizers, proposed directors, proposed officers, and initial holders of more than ten percent (10%) of the voting securities of the proposed bank will command the confidence of the public. (7) The proposed officers and directors, as a group, have degrees of character, competence, and experience sufficient to justify a belief that the proposed bank will be free from improper or unlawful influence and otherwise will operate safely, soundly, and in compliance with law. (8) The anticipated volume and nature of business of the proposed bank projected in the application are reasonable and indicate a reasonable probability of safe, sound, and profitable operation of the proposed bank.	disagrees and suggests instead **G.S. 53C-3-2.** This decision ultimately may not matter because both NCCOB and staff recommend that both G.S. 53C-3-2 and G.S. 53C-3-4 be included in the list in G.S. 53-145.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(9) If the proposed bank intends to conduct "trust business," as defined by G.S. 53C-1-4(70), it appears that trust powers should be granted based on consideration of the various factors set forth in Article 24 of Chapter 53 of the General Statutes for considering applications and setting capital for a State trust company. (b) The Commissioner's determination that the requirements described in subsection (a) are reasonably probable of satisfaction may be based on partial satisfaction of the requirements at a level set by the Commissioner as a prerequisite for approval of the charter, and also may be based on presentation of a plan for the full satisfaction of the requirements. (c) If it appears to the Commissioner that the proposed bank has satisfied or is reasonably probable to satisfy the requirements for issuance of a charter, the Commissioner shall issue an order approving the application for a charter and such order shall be submitted to the Commission for its review at a public hearing. The Commissioner may, in the order approving the proposed bank's charter, impose other reasonable conditions or restrictions upon the proposed bank or the new bank, consistent with this Chapter. (d) If it appears to the Commissioner that the proposed bank has not satisfied and is not reasonably probable of satisfying the requirements for issuance of a charter, the Commissioner shall issue an order denying approval of the application. The applicant may, within 10 days of issuance of the order, give notice of appeal of this decision to the Commission pursuant to G.S. 53C-2-6. *[Staff Note: Staff instead suggests G.S. 53C-3-2:* ***§ 53C-3-2. Permission to organize a bank.*** *(a) With the approval of the Commissioner, the organizers may file articles of incorporation for the proposed bank with the Secretary of State. The Commissioner shall authorize the organization of the proposed bank if the Commissioner is satisfied that each of the following conditions is met:* *(1) The application is complete.*	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(2) The Commissioner's examination as provided for in G.S. 53C-3-1 indicates that the requirements for the issuance of a charter to the applicant are reasonably probable of satisfaction. *(3) The proposed name of the proposed bank is not likely to mislead the public as to its character or purpose and is not the same as a name already adopted by an existing depository institution or trust institution operating in this State.* *(b) If the Commissioner approves the organization of the proposed bank, the Commissioner shall issue a certificate to the Secretary of State. The Secretary of State shall transmit to the Commissioner a certified copy of the filed articles of incorporation of the proposed bank.* *(c) Unless and until the Commissioner issues a charter to the proposed bank:* *(1) The proposed bank shall not transact any business except such as is incidental and necessary to its organization or the application for a charter or preparation for commencing the business of banking.* *(2) All funds paid for shares of the proposed bank shall be placed in escrow under a written escrow with a third-party escrow agent satisfactory to the Commissioner.* *(3) All funds for shares placed into escrow, and all dividends or interest on such funds, may be removed from escrow only with the Commissioner's approval except to the extent that such funds are refunded to subscribers or as otherwise required by law.* *(d) A proposed bank is subject to the jurisdiction of the Commissioner.]*	
§ 53-6. Payment of capital stock. The capital stock of every bank shall be fully paid in, in cash, before it shall be authorized by the Commissioner of Banks to commence business and the full payment in cash of the capital stock shall be certified to the Commissioner of Banks under oath by the president, cashier, or secretary of the said bank. **§ 53-7. Statement filed before beginning business.**	**§ 53C-3-7. Issuance of charter.** (a) A proposed bank shall not engage in business except as allowed under G.S. 53C-3-2(c)(1), until it receives a charter issued by the Commissioner. The Commissioner shall not issue the charter until the Commissioner is satisfied that the proposed bank has done each of the following:	G.S. 53-6, 53-7, 53-8, and 53-9 are all referenced in G.S. 53-145. G.S. 53-9.1, however, is **not**

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
Before such company shall begin the business of banking, banking and trust, fiduciary, or surety business, there shall be filed with the Commissioner of Banks a statement under oath by the president, cashier, or secretary, containing the names of all the directors and officers, with the date of their election or appointment, term of office, residence, and post-office address of each, the amount of capital stock of which each is the owner in good faith and the amount of money paid in on account of the capital stock. Nothing shall be received in payment of capital stock but money. **§ 53-8. Authorized to begin business.** Upon filing of such statement, the Commissioner of Banks shall examine into its affairs, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each director, the amount of capital stock of which each is the owner in good faith, and whether such corporation has complied with all the provisions of law required to entitle it to engage in business. If upon such examination it appears to the Commissioner of Banks that it is lawfully entitled to commence the business of banking, banking and trust, fiduciary, or surety business, he shall give to such corporation a certificate signed by the Commissioner of Banks, that such corporation has complied with all the provisions of the law required to be complied with, before commencing the business of banking, and that such corporation is authorized to commence business. **§ 53-9. Transactions preliminary to beginning business.** No such corporation shall transact any business except such as is incidental and necessarily preliminary to its organization until it has been authorized to do so by the Commissioner of Banks. *[Staff Note: G.S. 53-9.1 is not referenced in the Industrial Banks article. It provides:* ***§ 53-9.1. Deposit insurance.*** *(a) Notwithstanding any other provision of law, no bank established under this Article shall engage in the business of banking without first securing insurance on its deposits from the Federal Deposit Insurance Corporation or any successor corporation created by an act of Congress.*	(1) Received payment in United States currency for the purchase of shares and will have satisfactory required capital upon commencing business, in each case in at least the amount required by the Commission's order approving the application. (2) Elected the proposed officers and directors named in the application or other officers and directors approved by the Commissioner. (3) Secured deposit insurance from the FDIC. (4) Complied with all requirements of the Commission's order approving the application for a charter. (5) Appears to be ready to commence the business of banking in the reasonable discretion of the Commissioner upon a pre-opening examination. (b) The charter issued by the Commissioner shall set forth any trust powers of the bank that may be full or partial trust powers. (c) If a bank does not open and engage in the business of banking within six months after the date its charter is issued or within such longer period as may be permitted by the Commissioner, the Commissioner shall revoke the charter. (d) If the Commissioner determines that a charter should not be issued following Commission approval, the applicant may appeal that decision to the Commission as provided in G.S. 53C-2-6. (e) Following the exhaustion of all appeals, the Commissioner may dissolve and liquidate the proposed bank as provided in G.S. 53C-9-301, or order the organizers to dissolve and liquidate the proposed bank pursuant to G.S. 53C-9-201, if any one of the following occurs: (1) The Commissioner does not recommend the issuance of a charter. (2) The Commission denies approval of a charter. (3) The charter is revoked by the Commissioner pursuant to subsection (c) of this section or other applicable law.	referenced in the Industrial Banks article. At NCCOB's suggestion, the General Statutes Commission has included in its draft G.S. 53C-3-7, except subdivision (a)(3), the requirement to secure deposit insurance from the FDIC.

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(b) In order to secure deposit insurance as required by this section, a bank may enter into such contracts, incur such obligations, and generally do anything as may be necessary or appropriate in order to take advantage of any memberships, loans, subscriptions, contracts, grants, rights, or privileges that may at any time be available to banks or to their depositors, creditors, stockholders, conservators, receivers, or liquidators, as provided in Section 8 of the Federal Banking Act of 1933 (Section 12B of the Federal Reserve Act as amended) or in any other act or resolution of Congress, to aid, regulate, or safeguard banking institutions and their depositors. In order to secure deposit insurance as required by this section, a bank may also subscribe for and acquire stock, debentures, bonds, or any other securities of the Federal Deposit Insurance Corporation and may comply with the lawful regulations and requirements that may be imposed by the Federal Deposit Insurance Corporation.]		
§ 53-10. Increase of capital stock. (a) A corporation doing business under the provisions of this Chapter may increase its capital stock as provided by law for other corporations. (b) A bank may, with the approval of the Commissioner of Banks and by the vote of the holders of at least two thirds of the stock of the particular class or classes of stock entitled to vote on such proposal, amend its charter to authorize an increase in the common stock of the bank in the category of authorized but unissued stock in an amount not to exceed ten percent (10%) of the outstanding shares of such class or classes of stock and shares so authorized shall be deemed released from preemptive rights. Such authorized but unissued stock may be issued from time to time to officers or employees of the bank pursuant to a stock option or stock purchase plan adopted in accordance with this Chapter.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests there is no corresponding section. Staff agrees.
§ 53-11. Decrease of capital stock. A corporation doing business under the provisions of this Chapter may reduce its capital stock in the manner provided for other corporations upon a vote in favor of the decrease of two thirds in interest of each class of stockholders with voting powers: Provided, that no bank shall reduce its capital stock to an amount less than the minimum required by law. Such reduction shall not be valid or warrant the cancellation of stock certificates until it has been approved by the Commissioner of	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests there is no corresponding section. Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
Banks. Such approval shall not be given except upon a finding by the Commissioner of Banks that the security of existing creditors of the corporation will not be impaired.		
§ 53-12. Merger or consolidation of banks and savings associations. (a) A bank may merge, consolidate with, or transfer its assets and liabilities to another bank or to a savings association, or a savings association may transfer its assets and liabilities to a bank. Before such merger or consolidation or transfer shall become effective, each bank or savings association concerned in such merger or consolidation or transfer shall file, with the Commissioner of Banks, certified copies of all proceedings had by its directors and stockholders, or in the case of a mutual savings association, its directors and membership. The proceedings of the stockholders or membership shall set forth that (i) holders of at least two-thirds of the stock of the bank voted in the affirmative on the proposition of merger or consolidation or, (ii) in the case of a stock or mutual savings association, such percentage of the stock or of the membership as the laws applicable to such institutions require, voted in the affirmative on the proposition of merger or consolidation. The proceedings of the stockholders or memberships shall also contain a complete copy of the agreement made and entered into between said banks or savings associations, with reference to such merger or consolidation or transfer. Upon the filing of the proceedings as required by this section, the Commissioner of Banks may make an investigation of each bank or savings association, or both, to determine whether the interests of the depositors, creditors, and stockholders or members of each bank or savings association are protected, and if such merger or consolidation is in the public interest, and that such merger or consolidation or transfer is made for legitimate purposes. The Commissioner's consent to or rejection of such merger or consolidation or transfer shall be based upon such investigation. No merger or consolidation or transfer shall be made without the consent of the Commissioner of Banks. The expenses of any investigation shall be paid by the banks or savings associations, or both, involved in the proposed merger or consolidation or transfer. Notice of such merger or consolidation or transfer shall be published once a week for four consecutive weeks before the same is to become effective, at the discretion of the Commissioner of Banks, in a newspaper published in the county in which each of said banks or savings associations, or both, is located. If no newspaper is published in such county, then the notice shall be published in a newspaper having a general circulation in such county. A certified copy of the notice shall be filed with the Commissioner of Banks. In case of either transfer or merger or consolidation, the rights of creditors shall be preserved	**§ 53C-7-201. Combination authority.** With the approval of the Commissioner, a bank may combine with one or more depository institutions or non-depository institutions, provided that the bank is the surviving entity in any combination with a non-depository institution. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee as set forth by rule. **§ 53C-7-202. Combination application and investigation.** (a) A bank seeking approval of a combination shall file with the Commissioner an application for approval, copies of the agreement under which the bank proposes to effect the combination, and such additional information as the Commissioner shall require by rule or as is required by the Commissioner in connection with the application in order to achieve the objectives of this Chapter. (b) A bank filing an application for approval of a combination shall publish a public notice of the filing of the application not more than 30 days before nor more than 10 days after the filing of the application with the Commissioner. The public notice shall contain the following: (1) A statement that the application has been filed with the Commissioner. (2) The names of the parties to the proposed combination and the addresses of their principal offices. (3) A statement that any interested person may make written comment on the proposed combination and that comments received by the Commissioner within 14 days of the date of the publication of the public notice shall be considered. The public notice shall contain the current mailing address of the Commissioner. (c) The Commissioner shall examine the proposed combination, including the character, competency, and experience of the proposed directors and executive officers of the surviving party of the combination, to determine whether the interests of the customers	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-7-201, 53C-7-202, 53C-10-201, and 53C-10-202.** Staff agrees with G.S. 53C-7-201 and G.S. 53C-7-202 and would add the closely related provisions, G.S. 53C-7-203 and G.S. 53C-7-209. Staff, however, disagrees with G.S. 53C-10-201 and G.S. 53C-10-202, because those provisions deal with bank holding companies. One of the primary features of an industrial bank is that its parent is not required to register as a bank holding company. *See* 12 U.S.C. § 1841(c)(2)(H) (excluding industrial banks from the definition of bank in the chapter on bank holding companies). None of the provisions of former Article 18 of Chapter 53 (Banking Holding Company Act of 1984) are referenced in the

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unimpaired and the respective companies deemed to be in existence to preserve such rights for a period of three years. For the purposes of this section, the term "savings association" shall be construed to include a savings and loan association or a savings bank, whether organized under the laws of North Carolina or the United States. (b) Unless otherwise required to be maintained, a bank may merge or otherwise consolidate into itself any subsidiary organized pursuant to G.S. 53-47, or acquired as a part of any merger or reorganization with another bank or bank holding company.	of and communities served by the parties to the combination would be adversely affected by the proposed combination. (d) Notwithstanding any laws to the contrary, information about the character, competence, or experience of the directors and executive officers of the parties to a combination received by the Commissioner shall be subject to G.S. 53C-2-7(b). **§ 53C-10-201. Combination authority.** With the approval of the Commissioner, a holding company of a bank may combine with one or more other holding companies or other companies. The application for approval shall be in the form required by the Commissioner and shall be accompanied by such fee as may be required by rule. **§ 53C-10-202. Combination application and investigation.** (a) A holding company of a bank seeking approval of a combination shall file with the Commissioner an application for approval, copies of the agreement under which the holding company proposes to effect the combination, and any additional information that the Commissioner shall require by rule or as is required by the Commissioner in connection with the application in order to achieve the objectives of this Chapter. (b) A holding company filing an application for approval of a combination shall publish a public notice of the filing of the application not more than 30 days before nor more than 10 days after the filing of the application with the Commissioner. The public notice shall contain the following: (1) A statement that the application has been filed with the Commissioner. (2) The names of the parties to the proposed combination and the addresses of its principal offices. (3) A statement that any interested person may make written comment on the proposed combination and that comments received by the Commissioner within 14 days of the publication of the public notice shall be considered. The public notice shall provide the current mailing address of the Commissioner.	Industrial Banks article.

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	(c) The Commissioner shall examine the proposed combination, including the character, competency, and experience of the proposed directors and executive officers of the surviving party of the combination, to determine whether the interests of the customers and communities served by the banks controlled by the parties to the combination would be adversely affected by the proposed combination. (d) Notwithstanding any laws to the contrary, information about the character, competence, and experience of the directors and executive officers of the parties to a combination received by the Commissioner shall be deemed a confidential record of the Commissioner subject to G.S. 53C-2-7(b). *[Staff Note: In addition to G.S. 53C-7-201 and G.S. 53C-7-202, staff suggests G.S. 53C-7-203 and G.S. 53C-7-209:* ***§ 53C-7-203. Decision on application.*** *Based on the application and the Commissioner's examination, the Commissioner shall enter an order approving or denying approval of the proposed combination not later than the 60th day following the date the Commissioner notifies the parties that the application is complete, unless extraordinary circumstances require a longer period of review.* ***§ 53C-7-209. Appeal.*** *Any order of the Commissioner denying an application for approval of a combination may be appealed to the Commission by a party to the combination as provided in G.S. 53C-2-6.]*	
§ 53-13. Merged or consolidated banks and savings associations deemed one bank or savings association. In case of merger or consolidation when the agreement of merger or consolidation is made, and a duly certified copy thereof is filed with the Secretary of State, together with a certified copy of the approval of the Commissioner of Banks to such merger or consolidation, the parties thereto, shall be held to be one company, possessed of the rights, privileges, powers, and franchises of the several companies, but subject to all the provisions of law under which it is created. The directors and other officers named	**§ 53C-7-205. Fiduciary powers and liabilities in a combination or a transferring of assets and liabilities.** Whenever any depository institution or any trust institution shall combine with or shall sell to and transfer its assets and liabilities to any other depository institution, trust institution, or other company, as provided by the laws of this State or the United States, all the then existing fiduciary rights, powers, duties, and liabilities of the combining or transferring institution, including the rights, powers, duties, and liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity, whether under	G.S. 53-13 is referenced in G.S. 53-145. G.S. 53-14, 53-16, 53-17, 53-17.1, and 53-17.2 are **not** referenced in the Industrial Banks article. NCCOB's chart suggests **G.S. 53C-7-205, 53C-7-206, and 53C-7-303.**

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in the agreement of consolidation shall serve until the first annual meeting for election of officers and directors, the date for which shall be named in the agreement. On filing such agreement, all and singular, the property and rights of every kind of the several companies shall thereby be transferred and vested in such surviving company in the case of merger or in such new company in the case of consolidation, and be as fully its property as they were of the companies parties to the agreement. *[Staff Note: G.S. 53-14, 53-16, 53-17, 53-17.1, and 53-17.2, which are not referenced in the Industrial Banks article, are set out below. Please note that G.S. 53-15 was repealed prior to the 2012 rewrite of the banking laws.* ***§ 53-14. Reorganization.*** *Whenever any bank under the laws of this State or of the United States is authorized to dissolve, and shall have taken the necessary steps to effect dissolution, or upon a national bank making application to convert to a State-chartered bank, it shall be lawful for a majority of the directors of such bank, upon authority in writing of the owners of two thirds of its capital stock, with the approval of the Commissioner of Banks, to execute articles of incorporation as provided in this Chapter, which articles, in addition to the requirements of law, shall further set forth the authority derived from the stockholders of such national bank or State bank, and upon filing the same as hereinbefore provided for the organization of banks, the same shall become a bank under the laws of this State, and thereupon all assets, real and personal, of the dissolved national or State bank shall by operation of law be vested in and become the property of such State bank, subject to all liabilities of such national or State bank not liquidated under the laws of the United States or this State before such reorganization.* ***§ 53-16. Consolidation, conversion or merger of State banks or trust companies with national banks.*** *(a) Nothing in the law of this State shall restrict the right of a State bank or trust company to consolidate, convert into, or merge with a national bank. The action to be taken by such consolidating, converting, or merging State bank and its rights and liability and those of its stockholders shall be the same as those prescribed by the law of the United States for national banks at the time of the action, except that a vote of the holders of two thirds of each class of voting stock of a State bank shall be required*	appointment by order of court, will, deed, or other instrument, shall, upon the effective date of the combination or sale and transfer, vest in, devolve upon, and thereafter be performed by the surviving or transferee company, and such latter institution shall be deemed substituted for and shall have all the rights and powers of the transferring institution. **§ 53C-7-206. Combination with federally chartered institution.** A combination by a bank with a federally chartered institution in which the federally chartered institution will be the surviving party shall be subject to approval by the chartering authority of the federally chartered institution in accordance with the laws of the United States. **§ 53C-7-303. Conversion by North Carolina bank.** (a) A bank may convert to another form of depository institution under the laws of this State, of another state, or the United States in accordance with applicable law. (b) Upon the effective date of the conversion, the depository institution shall notify the Commissioner of the effective date and file with the Commissioner a copy of its authorization to operate as a depository institution certified by the applicable federal regulator or financial institution regulator. (c) Upon the effective date of the conversion, the resulting depository institution shall cease to be a bank. (d) Upon the effective date of the conversion, all rights, liabilities, and obligations of whatever kind of the bank shall continue and remain in its new form of organization as a depository institution organized under the laws of this State, another state, or the United States. All actions and proceedings to which the bank was party prior to conversion shall be unaffected by the conversion and shall proceed as if the conversion had not been effected.	Staff disagrees and suggests that there is no corresponding section, because G.S. 53-16 and G.S. 53-17, which are not referenced in the Industrial Banks article, are much more comparable to the proposed replacements.

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for the consolidation, conversion, or merger and that upon consolidation, conversion, or merger by a State bank with or into a national bank the rights of dissenting stockholders shall be those hereinafter specified. *(b) Upon consolidation, conversion, or merger the resulting national bank shall be the same business as each consolidating, converting, or merging bank with all the property rights, powers, and duties of each consolidating, converting, or merging bank, except as affected by the law of the United States and by the charter and bylaws of the resulting bank, and any reference to a consolidating, converting, or merging bank in any writing, whether executed or taking effect before or after the consolidation, conversion, or merger shall be deemed and taken a reference to the resulting bank if not inconsistent with the other provisions of such writing.* *(c) The holders of shares of the stock of a State bank which were voted against a consolidation, conversion, or merger into a national bank shall be entitled to receive their value in cash, if and when the consolidation, conversion, or merger becomes effective, upon written demand, made to the resulting national bank at any time within 30 days after the effective date of the consolidation, conversion, or merger accompanied by the surrender of the stock certificate or certificates. The value of such shares shall be determined as of the date of the stockholders' meeting approving the consolidation, conversion, or merger, by three appraisers, one to be selected by the owners of two thirds of the dissenting shares involved, one by the board of directors of the resulting national bank and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within 90 days after the consolidation, conversion, or merger becomes effective, the Comptroller of the Currency shall cause an appraisal to be made.* *(d) The amount fixed as the value of the shares of stock of the consolidating, converting, or merging bank at the time of the stockholders' meeting approving the consolidation, conversion, or merger and the amount fixed by the appraisal as hereinbefore provided, where the fixed value is not accepted, shall constitute a debt of the resulting national bank.* *(e) Upon the completion of the consolidation, conversion, or merger the permit to operate of any consolidating, converting, or merging State bank shall automatically terminate.*		

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§ 53-17. Fiduciary powers and liabilities of banks or trust companies merging or transferring assets and liabilities.		
Whenever any bank, trust company, savings association, or savings bank, organized under the laws of North Carolina or the United States, and doing business in this State, shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other bank, trust company, savings association, or savings bank doing business in this State, as provided by the laws of North Carolina or the United States, all the then existing fiduciary rights, powers, duties and liabilities of such consolidating or merging or transferring institution, including the rights, powers, duties and liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity, whether under appointment by order of court, will, deed, or other instrument, shall, upon the effective date of such consolidation or merger or sale and transfer, vest in, devolve upon, and thereafter be performed by, the transferee institution or the consolidated or merged institution, and such latter institution shall be deemed substituted for and shall have all the rights and powers of the transferring institution.		
§ 53-17.1. Supervisory acquisition of State association.		
(a) A commercial bank may be chartered under the supervisory provisions provided in this section and may enter into and consummate the purchase and assumption transaction contemplated by subdivision (1) of this subsection if:		
(1) The commercial bank proposes to purchase all or substantially all of the book assets and to assume all or substantially all of the book liabilities of an eligible State association; and		
(2) The Commissioner of Banks approves such chartering and such purchase and assumption pursuant to subsection (c) of this section.		
(b) A State association, as defined in G.S. 54B-4, is an eligible State association if it is insured by a mutual deposit guaranty association, as defined in Article 12, Chapter 54B of the General Statutes, which will provide financial assistance for a transaction authorized by this section, and if the Commissioner of Banks has found, pursuant to G.S. 54B-44, that such State association is unable to operate in a safe and sound manner.		

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(c) The Commissioner of Banks shall approve the chartering of a commercial bank, and the purchase and retention by such commercial bank of all or substantially all of the book assets and the assumption by such commercial bank of all or substantially all of the book liabilities, of an eligible State association, pursuant to this section if: *(1) Such commercial bank satisfies the requirements of G.S. 53-4; and* *(2) The chartering and such purchase and assumption will promote the public interest.* *(d) Notwithstanding any regulatory or statutory requirement or provision to the contrary, chartering of a commercial bank, the acquisition by such bank of the assets and assumption of the liabilities of an eligible State association and actions taken by the Commissioner of Banks pursuant to this section, are not subject to any notice or public hearing requirements, nor to the provisions of Chapter 150B of the General Statutes or any other administrative procedure requirements under Chapter 53 or Chapter 54B of the General Statutes, or otherwise, other than as stated in this section.* *(e) Notwithstanding any other provision of the General Statutes of this State, any bank holding company, as defined in G.S. 53-210(4), may acquire a commercial bank chartered pursuant to this section, and a bank holding company which has acquired, directly or indirectly, such a commercial bank may acquire a North Carolina bank or a North Carolina bank holding company, each as defined in G.S. 53-210, on the same terms and conditions, and subject to the same regulatory requirements, as a North Carolina bank or North Carolina bank holding company could acquire a North Carolina bank holding company or a North Carolina bank. A purpose of this section is to remove the limitation imposed by Section 3(d) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1842(d)) on bank holding company acquisitions only to the extent of the limited supervisory circumstances provided for herein.* *(f) A bank holding company which acquires a commercial bank chartered pursuant to this section, and such commercial bank, shall be deemed to be a North Carolina bank holding company and a North Carolina bank, respectively, as defined in, and for all purposes of G.S. 53-210.*		

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(g) Notwithstanding any regulatory or statutory requirement or provision to the contrary, a commercial bank chartered pursuant to this section shall, except as provided in this section, be a "bank" for all purposes of Chapter 53 of the General Statutes. *(h) A commercial bank that is chartered pursuant to this section shall not receive any deposits, or conduct any other transactions with the public, until it has purchased the assets and assumed the liabilities of an eligible State association as contemplated by this section, and has received the certificate of authority provided for in G.S. 53-8.* *(i) No commercial bank may be chartered under this section, and no purchase and assumption may be consummated in reliance upon the authority provided in this section, after September 30, 1986.* ***§ 53-17.2. Conversion of savings association to a State bank.*** *(a) Any association, as defined in G.S. 54B-4, or any savings bank as defined in G.S. 54C-4(b), may convert to a State bank as provided in this section. As used in this section, the term "conversion" includes (i) a transaction in which a State bank assumes all or substantially all of the liabilities and purchases all or substantially all of the assets of an association or savings bank and (ii) any other transaction that results in a change of identity of an association or savings bank to a State bank. A transaction in which the resulting bank is a subsidiary or an affiliate of a bank holding company or bank which has been in existence for at least two years shall not be subject to the provisions of this section but shall be subject to the approval of the Commissioner of Banks.* *(b) Upon a majority vote of its board of directors, any association or savings bank may apply to the Commissioner of Banks for permission to convert to a bank and for certification of appropriate amendments to its certificate of incorporation to effect the conversion. A mutual association or savings bank must also convert to a stock form of organization before completing conversion to a bank.* *(c) The association or savings bank shall submit a plan of conversion as a part of the application to the Commissioner of Banks. The Commissioner of Banks may recommend approval of the plan of conversion with or without amendment. The*		

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Commissioner of Banks shall recommend approval of the plan of conversion if upon examination and investigation the Commissioner finds that: *(1) The resulting bank will operate in a safe, sound, and prudent manner with adequate capital, liquidity, and earnings prospects;* *(2) The directors, officers, and other managerial officials of the association or savings bank are qualified by character and financial responsibility to control and operate in a legal and proper manner the bank proposed to be formed as a result of the conversion;* *(3) The interest of the depositors, the creditors, and the public generally will not be jeopardized by the proposed conversion; and* *(4) The proposed name will not mislead the public as to the character or purpose of the resulting bank, and the proposed name is not the same as one already adopted or appropriated by an existing bank in this State or so similar as to be likely to mislead the public.* *(d) Any action taken by the Commissioner of Banks pursuant to this section shall be subject to review by the State Banking Commission which may approve, modify, or disapprove any action taken or recommended by the Commissioner of Banks. The State Banking Commission may promulgate rules to govern conversions undertaken pursuant to this section. The requirements for a converting association or savings bank shall be no more stringent than those provided by rule or regulation applicable to other FDIC-insured commercial banks. The requirements for a converting association or savings bank shall be no less stringent than those provided by rule or regulation applicable to other FDIC-insured commercial banks, except as may be allowed during transition periods permitted by subdivisions (e)(4) and (h)(2) of this section.* *(e) In the absence of the promulgation of rules under subsection (d), the conditions to be met for approval of the application for conversion should include the following:* *(1) Condition. – The applicant's general condition must reflect adequate capital, liquidity, reserves, earnings, and asset composition necessary for safe and sound operation of the resulting bank.*		

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
(2) Management. – The management and the board of directors must be capable of supervising a sound banking operation and overseeing the changes that must be accomplished in the conversion from an association or savings bank to a bank. *(3) Public Convenience. – The Commission must determine that the conversion will have a positive impact on the convenience of the public and will not substantially reduce the services available to the public in the market area.* *(4) Transition. – Within a reasonable time after the effective date of the conversion, the resulting bank must divest itself of all assets and liabilities that do not conform to State banking law or rules. The length of this transition period shall be determined by the Commissioner and shall be specified when the application for conversion is approved.* *In evaluating each of these conditions, the Commission shall consider a comparison of the relevant financial ratios of the applicant with the average ratios of North Carolina banks of similar asset size. The Commission may not approve a conversion where the applicant presents an undue supervisory concern or has not been operated in a safe and sound manner.* *(f) If the State Banking Commission approves the plan of conversion, then the association or savings bank shall submit the plan to the stockholders or members as provided in subsection (g). After approval of the plan of conversion, the Commissioner of Banks shall supervise and monitor the conversion process and shall ensure that the conversion is conducted pursuant to law and the association's or savings bank's approved plan of conversion.* *(g) After lawful notice to the stockholders or members of the association or savings bank and full and fair disclosure of the plan of conversion, the plan must be approved by a majority of the total votes that stockholders or members of the association or savings bank are eligible and entitled to cast. The vote by the stockholders or members may be in person or by a proxy which has been executed within 45 days prior to the vote. Following the vote of the stockholders or members, the association or savings bank shall file with the Commissioner of Banks the results of the vote certified by an appropriate officer. The Commissioner of Banks shall then approve the requested conversion and the association or savings bank shall file with the Secretary of State*		

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amended articles of incorporation with the certificate of the Commissioner of Banks attached. The conversion to a bank shall be effective upon this filing. *(h) The Commissioner of Banks may authorize the resulting bank to do the following:* *(1) Wind up any activities legally engaged in by the association or savings bank at the time of conversion but not permitted to State banks.* *(2) Retain for a transitional period any assets and deposit liabilities legally held by the association or savings bank at the effective date of the conversion that may not be held by State banks.* *The length, terms, and conditions of the transitional periods under subdivisions (1) and (2) are subject to the discretion of the Commissioner of Banks.* *(i) Upon conversion of an association or savings bank to a bank, the legal existence of such institution does not terminate, and the resulting bank is a continuation of the former institution. The conversion shall be a mere change in identity or form of organization. All rights, liabilities, obligations, interest, and relations of whatever kind of the association or savings bank shall continue and remain in the resulting bank. Except as may be authorized during a transitional period by the Commissioner of Banks pursuant to subsection (h), a bank resulting from the conversion of an association or savings bank shall have only those rights, powers and duties which are authorized for banks by the laws of this State and the United States. All actions and legal proceedings to which the association or savings bank was a party prior to conversion shall be unaffected by the conversion and shall proceed as if the conversion had not taken place.]*		
[Article 3. Dissolution and Liquidation.]		
§ 53-18. Voluntary liquidation. A bank may go into voluntary liquidation and be closed, and may surrender its charter and franchise as a corporation of this State by the affirmative votes of its stockholders owning two thirds of its stock, such vote to be taken at a meeting of the stockholders duly called by resolution of the board of directors, written notice of which, stating the purpose of the meeting, shall be mailed to each stockholder, or in case of his death, to	**§ 53C-9-202. Voluntary dissolution.** (a) With the approval of the Commissioner, a bank may engage in a voluntary dissolution and liquidation. (b) If, by a majority vote, the board of directors of a bank should determine that in their judgment the bank should be dissolved and liquidated, then the board of directors shall	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-9-202 and G.S. 53C-9-203.** Staff agrees and would add the closely related

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his legal representative or heirs at law, addressed to his last known residence 10 days previous to the date of said meeting. Whenever stockholders shall by such vote at a meeting regularly called for the purpose, notice of which shall be given as herein provided, decide to liquidate such bank, a certified copy of all proceedings of the meeting at which said action shall have been taken, verified by the oath of the president and secretary, shall be transmitted to the Commissioner of Banks for his approval. If the Commissioner of Banks shall approve the same, he shall issue to the said bank, under his seal, a permit for such purpose. No such permit shall be issued by the Commissioner of Banks until said Commissioner of Banks shall be satisfied that provision has been made by such bank to satisfy and pay off all depositors and all creditors of such bank. If not so satisfied, the Commissioner of Banks shall refuse to issue a permit, and shall be authorized to take possession of said bank and its assets and business, and hold the same and liquidate said bank in the manner provided in this Chapter. When the Commissioner of Banks shall approve the voluntary liquidation of a bank, the directors of said bank shall cause to be published in a newspaper in the county in which such bank is located, or if no newspaper is published in such county, then in a newspaper having a general circulation in such county, a notice that the bank is closing up its affairs and going into liquidation, and notify its depositors and creditors to present their claims for payment. Such notice shall be published once a week for four consecutive weeks. When any bank shall be in process of voluntary liquidation, it shall be subject to examination by the Commissioner of Banks, and shall furnish such reports from time to time as may be called for by the Commissioner of Banks. All unclaimed deposits and dividends remaining in the hands of such bank shall be subject to the provisions of Chapter 116B. Whenever the Commissioner of Banks shall approve it, any bank may sell and transfer to any other bank, either State bank or national bank, all of its assets of every kind upon such terms as may be agreed upon and approved by the Commissioner of Banks and by two-thirds vote of its board of directors. A certified copy of the minutes of any meeting at which such action is taken, under the oath of the president and secretary, together with a copy of the contract of sale and transfer, shall be filed with the Commissioner of Banks. Whenever voluntary liquidation shall be approved by the Commissioner of Banks or the sale and transfer of the assets of any bank shall be approved by the Commissioner of Banks, a certified copy of such approval under seal of the Commissioner of Banks, filed in the office of the Secretary of State, shall authorize the cancellation of the charter of such bank, subject, however, to its continued existence, as provided by this Chapter and the general law relative to corporations.	submit immediately to the Commissioner the following documents, certified by an appropriate officer of the bank: (1) The board of directors' resolution. (2) The bank's proposed articles of dissolution. (3) The board of directors' plan for liquidation. (4) Any notices or proxy solicitation materials proposed to be sent to shareholders. (c) The Commissioner shall examine the documents submitted under subsection (b) of this section and such other matters as the Commissioner deems relevant and may issue an order authorizing the bank and its board of directors to proceed with dissolution and liquidation as provided in G.S. 53C-9-203. Examination by the Commissioner of the materials referred to in subsection (b)(4) of this section shall not be deemed to be approval of the documents for any purpose. (d) At any annual or special meeting of shareholders called for the purpose of voting upon a proposal for voluntary dissolution of a bank, the shareholders of the bank may, by an affirmative vote, in person or by proxy, of the holders of shares representing at least two-thirds of the votes entitled to be cast on such matters, resolve to dissolve and liquidate the bank in accordance with the order of the Commissioner issued under subsection (c) of this section. (e) If a majority of the board of directors of a bank should determine that in its best judgment the bank should be dissolved and liquidated but deems it impractical or otherwise inadvisable to proceed with a vote upon voluntary dissolution by the shareholders, then the board of directors shall immediately forward a certified copy of its resolution to the Commissioner and the Commissioner shall place the bank in receivership pursuant to G.S. 53C-9-301. **§ 53C-9-203. Voluntary dissolution and liquidation procedure.** (a) At the appropriate time, the Commissioner shall do the following: (1) Inform the FDIC and the bank's federal supervisory agency if other than the FDIC.	provision, G.S. 53C-9-201 (Voluntary dissolution prior to receipt of charter). These three provisions constitute Part 2 (Voluntary Dissolution and Liquidation) of Article 9 of Chapter 53C.

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	(2) Select and appoint a receiver or receiver in liquidation, just as if the liquidation were involuntary under G.S. 53C-9-301. (3) Attach a certificate of approval to the articles of dissolution, and the bank shall then file the certified articles with the Secretary of State. (b) Upon the filing of the articles of dissolution with the Secretary of State, it shall be unlawful for the bank to accept any additional deposit accounts or additions to deposit accounts or make any additional extensions of credit, but all its income and receipts in excess of actual expenses of liquidation of the bank shall be applied to the discharge of its liabilities. (c) The persons charged with liquidation of the bank in the approved plan of dissolution shall cause to be published a public notice stating the bank has closed and will dissolve and liquidate and notifying its depositors and creditors to present their claims for payment, specifying the method for doing so. (d) The bank may pay reasonable compensation, subject to the approval of the Commissioner, to the persons charged with its liquidation. (e) Any bank in the process of voluntary dissolution and liquidation shall be subject to examination by the Commissioner and shall furnish any reports required by the Commissioner. (f) If the Commissioner determines at any time that the voluntary liquidation plan is not working, the Commissioner may place the bank in receivership pursuant to G.S. 53C-9-301. *[Staff Note: Staff suggests adding G.S. 53C-9-201:* ***§ 53C-9-201. Voluntary dissolution prior to receipt of charter.*** *A bank in formation may, prior to issuance of its charter, give notice to the Commissioner and, with the Commissioner's consent, abandon its application to the Commissioner and dissolve and liquidate by a majority vote of its board of directors and as provided under Chapter 55 of the General Statutes.]*	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
§ 53-19. When Commissioner of Banks may take charge. The Commissioner of Banks may forthwith take possession of the business and property of any bank to which this Chapter is applicable whenever it shall appear that such bank: (1) Has violated its charter or any laws applicable thereto; (2) Is conducting its business in an unauthorized or unsafe manner; (3) Is in an unsafe or unsound condition to transact its business; (4) Has an impairment of its capital stock; (5) Has refused to pay its depositors in accordance with the terms on which such deposits were received, or has refused to pay its holders of certificates of indebtedness or investment in accordance with the terms upon which such certificates of indebtedness or investment were sold; (6) Has become otherwise insolvent; (7) Has neglected or refused to comply with the terms of a duly issued lawful order of the Commissioner of Banks; (8) Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination of a duly appointed or authorized examiner of the Commissioner of Banks; (9) Its officers have refused to be examined upon oath regarding its affairs; or (10) Has made a voluntary assignment of its assets to trustees. Such banks may resume business as provided in G.S. 53-37.	**§ 53C-8-14. Supervisory control.** (a) Whenever the Commissioner determines that a bank has insufficient capital and is conducting its business in an unsafe or unsound manner or in any fashion that threatens the financial integrity of the bank, the Commissioner may serve a notice of charges on the bank, requiring it to show cause why it should not be placed under supervisory control. The notice of charges shall specify the grounds for supervisory control and set the time and place for a hearing. A hearing before the Commissioner shall be held no earlier than seven days and no later than 15 days after issuance of the notice of charges. (b) If, after the hearing provided in subsection (a) of this section, the Commissioner determines that supervisory control of the bank is necessary to protect the bank's customers, creditors, or the general public, the Commissioner shall issue an order taking supervisory control of the bank. The board of directors of the bank in office on the date of the issuance of the order may appeal the order of the Commissioner to the Commission pursuant to G.S. 53C-2-6 no later than 10 days after the date of the issuance of the order. (c) The Commissioner may appoint an agent to supervise and monitor the operations of the bank during the period of supervisory control. During the period of supervisory control, the bank shall act in accordance with any instructions and directions as may be given by the Commissioner, directly or through the agent, and shall not act or fail to act except when to do so would violate an outstanding order of its federal bank supervisory agent or the FDIC if the FDIC is not its primary federal regulator. (d) Within 180 days of the date of the order taking supervisory control, the Commissioner shall issue an order approving a plan for the termination of supervisory control on the 30th day following the issuance of the order. The plan may provide for the following: (1) The issuance by the bank of debt instruments or shares. (2) The appointment or removal of one or more officers and/or one or more directors. (3) The reorganization or combination of the bank. (4) A control transaction with respect to the bank. (5) The dissolution and liquidation of the bank.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-8-14 and G.S. 53C-9-301.** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(e) The reasonable costs of the Commissioner under this section shall be paid by the bank. The Commissioner's determination of the costs shall be, in the absence of manifest error, dispositive of the issue of reasonableness. **§ 53C-9-301. Receivership.** (a) The Commissioner may take custody of the books, records, and assets of every kind and character of any bank in the instances established in Part 2 of this Article or if it reasonably appears from one or more examinations made by the Commissioner that any of the following conditions exist: (1) The directors or officers of the bank, or the liquidators of the bank subject to a voluntary plan of liquidation, have neglected, failed, or refused to take action that the Commissioner deems necessary for the protection of the bank. (2) The directors, officers, or liquidators of the bank have impeded or obstructed an examination. (3) The business of the bank is being conducted in a fraudulent, illegal, or unsafe manner. (4) The bank is in an unsafe or unsound condition to transact business and it is not reasonably probable that it will be able to return to a safe and sound condition. (5) The capital of the bank is impaired such that the likely realizable value of its assets is insufficient to pay and satisfy the claims of all depositors and all creditors. (6) The directors or officers of the bank, or the liquidators of a bank subject to a voluntary plan of liquidation, have assumed duties or performed acts in excess of those authorized by applicable statutes or regulations, by the bank's organizational documents or plan of liquidation, or without supplying the required bond. (7) The bank is insolvent or is in imminent danger of insolvency or has suspended its ordinary business transactions due to insufficient funds. (8) The bank is unable to continue operations.	

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	(b) Unless the Commissioner reasonably finds that an emergency exists that requires that the Commissioner take custody immediately, the Commissioner shall first give written notice to the board of directors of the bank specifying which of those circumstances listed in subdivisions (1) through (8) of subsection (a) have been determined to exist and shall allow a reasonable time in which corrections may be made before a receiver of the bank will be appointed as outlined in subsections (c) and (d) of this section. For these purposes, "written notice" shall be deemed to include any report of examination or other confidential or nonconfidential written communication that is either directly from the Commissioner or is joined in by the Commissioner. (c) The Commissioner shall appoint as receiver or coreceivers one or more qualified persons for the purpose of receivership and liquidation of the bank of which the Commissioner has taken custody under subsection (a) of this section, which receiver shall furnish a bond in such form and amount, and with such surety, as the Commissioner may require. (d) The Commissioner may appoint the FDIC or its nominee as the receiver, and the receiver shall be permitted to serve without posting bond. In the event of such an appointment, the Commissioner shall thereafter be forever relieved of any and all responsibility and liability in respect to the receivership and the liquidation of the bank. (e) In the event the Commissioner takes custody of a bank and then appoints a receiver for the bank, the Commissioner shall serve personally at the bank's principal office through the officer who is present and appears to be in charge, the Commissioner's order taking possession and, if applicable, the Commissioner's order appointing a receiver for the bank in liquidation. The Commissioner shall also mail a certified copy of the order taking possession and the appointing order by certified mail or by express delivery to any previous receiver or other legal custodian of the bank and to the Clerk of Superior Court of Wake County. The Commissioner shall give notice to the public of the Commissioner's actions by posting a notice summarizing the Commissioner's actions near the entrance to each branch of the bank, and the Commissioner shall issue a similar public notice as defined in G.S. 53C-1-4(59). (f) Whenever a receiver for a bank is duly appointed and qualified under subsection (c) or (d) of this section:	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(1) The receiver, by operation of law and without any conveyance or other instrument, act, or deed, shall succeed to all the rights, titles, powers, and privileges of the bank, its shareholders, officers, and directors, or any of them, and to the titles to the books, records, and assets of every description of any previous receiver or other legal custodian of the bank. Neither the shareholders, officers, or directors, nor any of them, shall thereafter, except as expressly provided in this section, have or exercise any rights, powers, or privileges or act in connection with any assets or property of any nature of the bank in receivership. (2) The Commissioner may, at any time, direct the receiver (unless it is the FDIC) to return the bank to its previous or a newly constituted management and its shareholders. (3) A receiver, other than the FDIC, may, at any time during the receivership and before final liquidation, be removed and a replacement appointed by the Commissioner. (g) A receiver may perform any of the following acts: (1) Demand, sue for, collect, receive, and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, instruments, notes, intangible interests, and property of every description of the bank. (2) Foreclose mortgages, deeds of trust, and other liens granted to the bank to the extent the bank would have the right to do so. (3) Seek injunctions and institute suits for the recovery of any property, damages, or demands existing in favor of the bank, and shall, upon the receiver's own application, be substituted as party plaintiff in the place of the bank in any suit or proceeding pending at the time of the receiver's appointment. (4) Sell, convey, and assign any or all of the property rights and interests owned by the bank. (5) Appoint agents and engage independent contractors.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(6) Examine papers and investigate persons. (7) Make and carry out agreements with the FDIC for the payment or assumption of the bank's liabilities, in whole or in part, and to sell, convey, transfer, pledge, or assign assets as security or otherwise and to make guarantees in connection therewith. (8) Perform all other acts that might be done by the employees, officers, and directors of the bank. These powers shall be continued in effect until liquidation of the bank or until return of the bank to its prior or newly constituted management. (h) The Commissioner may, unless the FDIC has been appointed as receiver, determine that the receivership proceedings of a bank should be discontinued and the possession of the bank returned to newly constituted management. The Commissioner shall then remove the receiver and restore all the rights, powers, and privileges of the bank's depositors, shareholders, customers, employees, officers, and directors. The return of a bank to a newly constituted management from the possession of a receiver shall, by operation of law and without any conveyance or other instrument, act, or deed, vest in the bank the title to all property held by the receiver in the capacity as receiver for the bank. (i) Claims against a bank in receivership shall have the following order of priority for payment: (1) Costs, expenses, and debts of the bank incurred on or after the date of the appointment of the receiver, including compensation for the receiver and a reasonable sum for the time of employees and agents of the OCOB. (2) Claims of holders of deposit accounts. (3) Claims of secured creditors in such order of priority as is established by applicable law or regulation. (4) Claims of general creditors.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(5) Claims of holders of the bank's shares in the order of preference established by the bank's organizational documents. (j) All claims of each class described within subsection (i) of this section shall be paid in full so long as sufficient assets are available therefor. Members of a class for which the receiver cannot make payment in full shall be paid an amount proportionate to their total claims. (k) The Commissioner may direct the receiver to make payment of claims for which no provision is made in this section and may direct the payment of less than all claims within a class. (*l*) When all assets of the bank have been fully liquidated, all claims and expenses have been paid or settled, and the receiver has recommended a final distribution, the dissolution of the bank in receivership shall be accomplished in the following manner: (1) The receiver shall file with the Commissioner a detailed report, in a form to be prescribed by the Commissioner, of the receiver's acts and proposed final distribution of the bank's assets. (2) Upon the Commissioner's approval of the final report of the receiver, the receiver shall make the final distribution of the bank's assets in any manner as the Commissioner may direct. (3) When any unclaimed property, including funds due to a known but unlocated depositor, remains following the final distribution of the bank's assets, such property shall be promptly transferred to the State Treasurer to hold in accordance with the provisions of Chapter 115B of the General Statutes. (4) Upon completion of the actions described in this subsection, the process of dissolution and liquidation of the bank shall be deemed complete, and the Commissioner shall issue a certification of completed liquidation to the Secretary of State. (5) Upon completion of the process of dissolution and liquidation, the Commissioner shall cause an examination of the receiver's activities and records to be conducted, with which the receiver shall assist. The accounts of the receiver shall then be ruled	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	upon by the Commissioner, and if approved, the receiver shall be given a final and complete discharge and release.	
§ 53-20. Liquidation of banks. (a) When Commissioner of Banks to Take Possession. – Whenever any State bank shall neglect or refuse for a period of 60 days to make a report to the Commissioner of Banks, as he may demand, or shall, after demand under seal of the Commissioner of Banks, fail, neglect or refuse to comply with any of the rules, regulations or requirements of the State Banking Commission, or the provisions of the banking law, or if at any time the Commissioner of Banks shall find a bank subject to the supervision of the Commissioner of Banks, in an insolvent, unsafe or unsound condition to transact the business for which it was organized, or in an unsafe, or unsound condition to continue its business, or if such institution shall neglect or refuse to correct any irregularity which may be called to the attention of the president, cashier or board of directors, by the Commissioner of Banks, or any of his assistants, then, in either of such events, the Commissioner of Banks, or any duly authorized agent of the Commissioner of Banks appointed under seal of the Commissioner of Banks, shall forthwith take possession of such bank, and all of its assets and business and shall retain possession thereof until such bank shall be authorized by the Commissioner of Banks to resume business, or its affairs shall be fully liquidated as herein provided, or possession thereof shall have been surrendered under order of a judge of the superior court under the provisions of this section. (b) Directors May Act. – Any bank may place its assets and business under the control of the Commissioner of Banks for liquidation by a resolution of a majority of its directors upon notice to the said Commissioner of Banks, and, upon taking possession of said bank, the Commissioner of Banks, or duly appointed agent, shall retain possession thereof until such bank shall be authorized by the Commissioner of Banks to resume business or until the affairs of said bank shall be fully liquidated as herein provided, and no bank shall make any general assignment for the benefit of its creditors save and except by surrendering possession of its assets to the Commissioner of Banks, as herein provided. Whenever any bank for any reason shall suspend operations for any length of time, said bank shall, immediately upon such suspension of operations, be deemed in the possession of the Commissioner of Banks and subject to liquidation hereunder.	**§ 53C-9-102. Distributions; assignments restricted.** A bank that is in the process of involuntary or voluntary dissolution pursuant to this Article may not make or pay distributions to its shareholders unless the bank has the prior written approval of the Commissioner. No bank shall make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the Commissioner for dissolution and liquidation pursuant to G.S. 53-9-301, and any other purported assignment by the bank for the benefit of its creditors shall be void. **§ 53C-9-203. Voluntary dissolution and liquidation procedure.** (a) At the appropriate time, the Commissioner shall do the following: (1) Inform the FDIC and the bank's federal supervisory agency if other than the FDIC. (2) Select and appoint a receiver or receiver in liquidation, just as if the liquidation were involuntary under G.S. 53C-9-301. (3) Attach a certificate of approval to the articles of dissolution, and the bank shall then file the certified articles with the Secretary of State. (b) Upon the filing of the articles of dissolution with the Secretary of State, it shall be unlawful for the bank to accept any additional deposit accounts or additions to deposit accounts or make any additional extensions of credit, but all its income and receipts in excess of actual expenses of liquidation of the bank shall be applied to the discharge of its liabilities. (c) The persons charged with liquidation of the bank in the approved plan of dissolution shall cause to be published a public notice stating the bank has closed and will dissolve and liquidate and notifying its depositors and creditors to present their claims for payment, specifying the method for doing so. (d) The bank may pay reasonable compensation, subject to the approval of the Commissioner, to the persons charged with its liquidation.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-9-102, 53C-9-203, and 53C-9-301.** Staff agrees and suggests also including the closely related provisions, G.S. 53C-9-101, 53C-9-103, and 53C-9-202.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
(c) Notice of Seizure to Court Bar to Attachment, etc.; Transfers Void. – When the Commissioner of Banks, or duly appointed agent, shall take possession of any bank under subsections (a) or (b) hereof he shall, within 48 hours, file with the clerk of the superior court in the county where said bank is located, a notice of his action which shall state the reason therefor; and such notice shall be deemed the equivalent of a summons and complaint against said bank in an action in the superior court except that it shall not be necessary to make service thereof, and the taking possession of any bank shall thereupon date from the time when such authority was exercised and from and after such time all assets and property of such bank, of whatever nature shall be deemed to be in possession of the Commissioner of Banks, and the exercise of such authority shall operate as a bar to any attachment, or other legal proceeding, against such bank or its assets and, after such exercise of authority, no lien shall be acquired, in any manner binding or affecting any of the assets of such bank and every transfer or assignment made thereafter by such bank, or by its authority, of the whole or any part of its assets, shall be null and void; and the Commissioner of Banks shall be substituted in place of the bank in all actions in the State or federal courts, pending at the time of the exercise of such authority. (d) Notice to Banks; Corporations and Persons Holding Assets; Liens Not to Accrue. – On taking possession of the assets and business of any bank, the Commissioner of Banks, or duly appointed agent, shall forthwith give notice, by mail or otherwise, of such action to all banks or other persons or corporations holding, or having in possession, any assets of such bank. No bank or other person or corporation shall have a lien or charge for any payment, advance or clearance made, or liability incurred against any of the assets of said bank after possession has been taken as provided under this section, except as hereinafter provided. (e) Permission to Resume Business. – After the Commissioner of Banks has taken possession of any bank, such bank may resume business as provided in G.S. 53-37. (f) Remedy by Bank for Seizure; Answer to Notice; Injunction, etc.; Appeal. – Whenever any bank, of whose assets and business the Commissioner of Banks has taken possession as aforesaid, except where possession is taken under subsection (b) hereof, shall deem itself aggrieved thereby, it may, at any time within 10 days after the filing of the notice with the clerk of the superior court, file an answer to said notice and may also upon notice to the Commissioner of Banks, apply to the resident or the presiding judge of the district for an injunction to enjoin further proceedings by the	(e) Any bank in the process of voluntary dissolution and liquidation shall be subject to examination by the Commissioner and shall furnish any reports required by the Commissioner. (f) If the Commissioner determines at any time that the voluntary liquidation plan is not working, the Commissioner may place the bank in receivership pursuant to G.S. 53C-9-301. **§ 53C-9-301. Receivership.** (a) The Commissioner may take custody of the books, records, and assets of every kind and character of any bank in the instances established in Part 2 of this Article or if it reasonably appears from one or more examinations made by the Commissioner that any of the following conditions exist: (1) The directors or officers of the bank, or the liquidators of the bank subject to a voluntary plan of liquidation, have neglected, failed, or refused to take action that the Commissioner deems necessary for the protection of the bank. (2) The directors, officers, or liquidators of the bank have impeded or obstructed an examination. (3) The business of the bank is being conducted in a fraudulent, illegal, or unsafe manner. (4) The bank is in an unsafe or unsound condition to transact business and it is not reasonably probable that it will be able to return to a safe and sound condition. (5) The capital of the bank is impaired such that the likely realizable value of its assets is insufficient to pay and satisfy the claims of all depositors and all creditors. (6) The directors or officers of the bank, or the liquidators of a bank subject to a voluntary plan of liquidation, have assumed duties or performed acts in excess of those authorized by applicable statutes or regulations, by the bank's organizational documents or plan of liquidation, or without supplying the required bond.	

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said Commissioner of Banks, and the said judge may cite the said Commissioner of Banks to show cause within 10 days thereafter why further proceedings should not be enjoined, and after hearing the allegations and proof of the parties with respect to the condition of said bank, may dismiss such application for injunction or may enjoin further proceedings under this section by the Commissioner of Banks. If the judge shall enjoin further action of the Commissioner of Banks and permit the reopening of the bank, he shall have authority to require of the bank such surety bond as he may deem necessary to insure its solvency, payable to the Commissioner of Banks for the sole benefit of the general creditors of the bank, and upon such terms as said judge may deem proper. Either party shall have the right to appeal to the Supreme Court as in other actions. (g) Collection of Debts and Claims; Sale or Compromise of Debts and Claims; Commissioner Succeeds to All Property of Bank. – Upon taking possession of the assets and business of any bank by the Commissioner of Banks, the Commissioner of Banks, or the duly appointed agent, is authorized to collect all money due such bank, and to do such other acts as are necessary to conserve its assets and property, and shall proceed to liquidate the affairs thereof, as hereinafter provided. The Commissioner of Banks, or the duly appointed agent, shall collect all debts due and claims belonging to such bank, by suit, if necessary; and, by motion in the pending action, and upon authority of an order of the presiding or resident judge of the district may sell, compromise or compound any bad or doubtful debt or claim, and may upon such order, sell the real and personal property of such bank on such terms as the order may provide or direct, except that, where the sale is made under power contained in any mortgage or lien bond or other paper wherein the title is retained for sale and the terms of sale set out, sale may be made under said authority. Upon taking possession of any bank under this section, the Commissioner of Banks and/or the duly appointed agent shall have the possession and the right to the possession of all the property, assets, choses in action, rights and privileges of the said bank, including the right to resign the trust or exercise the power in all mortgages, deeds of trust, and all other papers executed to secure the payment of money in any form in which the said bank shall have been named as trustee and/or pledgee, and such property rights and privileges shall vest in the said Commissioner and/or duly appointed liquidating agent absolutely, for the purpose of liquidating, and sales and conveyance of the same, together with any and all other incidental rights, privileges, and powers necessary and convenient for the enjoyment of the right of conveyance	(7) The bank is insolvent or is in imminent danger of insolvency or has suspended its ordinary business transactions due to insufficient funds. (8) The bank is unable to continue operations. (b) Unless the Commissioner reasonably finds that an emergency exists that requires that the Commissioner take custody immediately, the Commissioner shall first give written notice to the board of directors of the bank specifying which of those circumstances listed in subdivisions (1) through (8) of subsection (a) have been determined to exist and shall allow a reasonable time in which corrections may be made before a receiver of the bank will be appointed as outlined in subsections (c) and (d) of this section. For these purposes, "written notice" shall be deemed to include any report of examination or other confidential or nonconfidential written communication that is either directly from the Commissioner or is joined in by the Commissioner. (c) The Commissioner shall appoint as receiver or coreceivers one or more qualified persons for the purpose of receivership and liquidation of the bank of which the Commissioner has taken custody under subsection (a) of this section, which receiver shall furnish a bond in such form and amount, and with such surety, as the Commissioner may require. (d) The Commissioner may appoint the FDIC or its nominee as the receiver, and the receiver shall be permitted to serve without posting bond. In the event of such an appointment, the Commissioner shall thereafter be forever relieved of any and all responsibility and liability in respect to the receivership and the liquidation of the bank. (e) In the event the Commissioner takes custody of a bank and then appoints a receiver for the bank, the Commissioner shall serve personally at the bank's principal office through the officer who is present and appears to be in charge, the Commissioner's order taking possession and, if applicable, the Commissioner's order appointing a receiver for the bank in liquidation. The Commissioner shall also mail a certified copy of the order taking possession and the appointing order by certified mail or by express delivery to any previous receiver or other legal custodian of the bank and to the Clerk of Superior Court of Wake County. The Commissioner shall give notice to the public of the Commissioner's actions by posting a notice summarizing the Commissioner's actions near the entrance to each branch of the bank, and the Commissioner shall issue a similar public notice as defined in G.S. 53C-1-4(59).	

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and sale and for the exercise of the same. Upon the motion made, the bank or any person interested, may be heard, but the judge hearing the motion shall enter his order as in his discretion will best serve the parties interested. The powers granted by the second preceding sentence shall be in addition to and not in derogation of any existing acts ratified at the 1931 session of the General Assembly. The officers and directors of any bank, or any bank that is in liquidation as provided by law, shall not hereafter exercise any powers herein declared to be vested in the North Carolina Commissioner of Banks, and/or the duly appointed liquidating agent. (h) Bond of Commissioner of Banks; Surety; Condition; Minimum Penalty. – Upon taking possession of any bank, the Commissioner of Banks, or the duly appointed agent, shall execute and file a bond payable to the State of North Carolina, with some surety company as surety thereon, with the clerk of the superior court of the county where the bank is located, conditioned upon the faithful performance of all duties imposed by reason of the liquidation of such bank by the said Commissioner of Banks, or the duly appointed agent, or any agent or assistant assisting in the liquidation of the said bank, the penal sum of said bond to be fixed by order of the Commissioner of Banks, which in no case shall be less than five thousand dollars ($5,000). Any person interested, by motion in the pending action, shall be heard by the resident or presiding judge as to the sufficiency of the bond; the judge hearing the motion may thereupon fix the bond; provided, that where such bank under this section is taken possession of by the Commissioner of Banks, he may, in his discretion with the approval of the State Banking Commission, appoint as his agent with the powers, duties and responsibilities of such agent under this section, the Federal Deposit Insurance Corporation or any corporation or agency established under and by virtue of the laws of the United States of America which is established for the purposes for which the said Federal Deposit Insurance Corporation was created under the Banking Act of 1933, enacted by Congress; and provided further that such appointment may be made when and only when the liabilities of such bank to its depositors are insured by said corporation or agency, either in whole or in part. In the event of such appointment such corporation or agency, with the approval of the Commissioner of Banks, may serve as such agent without giving the bond required under all other circumstances in this subsection. Also, in the event of such appointment, the Commissioner of Banks shall thereafter be forever relieved from any and all responsibility and liability in respect to the liquidation of such bank.	(f) Whenever a receiver for a bank is duly appointed and qualified under subsection (c) or (d) of this section: (1) The receiver, by operation of law and without any conveyance or other instrument, act, or deed, shall succeed to all the rights, titles, powers, and privileges of the bank, its shareholders, officers, and directors, or any of them, and to the titles to the books, records, and assets of every description of any previous receiver or other legal custodian of the bank. Neither the shareholders, officers, or directors, nor any of them, shall thereafter, except as expressly provided in this section, have or exercise any rights, powers, or privileges or act in connection with any assets or property of any nature of the bank in receivership. (2) The Commissioner may, at any time, direct the receiver (unless it is the FDIC) to return the bank to its previous or a newly constituted management and its shareholders. (3) A receiver, other than the FDIC, may, at any time during the receivership and before final liquidation, be removed and a replacement appointed by the Commissioner. (g) A receiver may perform any of the following acts: (1) Demand, sue for, collect, receive, and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, instruments, notes, intangible interests, and property of every description of the bank. (2) Foreclose mortgages, deeds of trust, and other liens granted to the bank to the extent the bank would have the right to do so. (3) Seek injunctions and institute suits for the recovery of any property, damages, or demands existing in favor of the bank, and shall, upon the receiver's own application, be substituted as party plaintiff in the place of the bank in any suit or proceeding pending at the time of the receiver's appointment.	

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(i) Inventory Necessary. – Within 30 days after the filing of the notice of the taking possession of any bank in the office of the clerk of the superior court, the Commissioner of Banks, or the duly appointed agent, shall make and state an inventory of the assets and liabilities of the said bank, and shall file one copy thereof with the clerk of the superior court in the pending action and shall keep one copy on file in the said bank. Such inventory shall be open for inspection during the usual banking hours, provided, that nothing herein shall require said bank to remain open unnecessarily. (j) Notice and Time for Filing Claims; Copies Mailed. – Notice shall be given by advertisement once a week for four consecutive weeks in a newspaper published in said county; if no newspaper is published in said county, then in some newspaper having a general circulation in said county, calling on all persons who may have claims against the bank to present the same to the Commissioner of Banks at the office of the bank, and within the time to be specified in the notice, not less, however, than 90 days from the date of the first publication. A copy of this notice shall be mailed to all persons whose names appear as creditors upon the books of the bank. Affidavit by the Commissioner of Banks, or agent mailing the notice, to the effect that said notice was mailed shall be conclusive evidence thereof. (k) Power to Reject Claims; Notice; Affidavit of Service; Action on Claim. – If the Commissioner of Banks, or the duly appointed agent, doubts the justice and validity of any claim or deposit, he may reject the same and serve notice of such rejection upon the claimant or depositor, either personally or by registered mail, and an affidavit of the service of such notice shall be filed in the office of the clerk of the superior court in the pending action, and shall be conclusive evidence of such notice. Any action or suit upon such claim so rejected must be brought by the claimant against the Commissioner of Banks in the proper court of the county in which the bank is located within 90 days after such service, or the same shall be barred. Objections to any claim or deposit not rejected by the Commissioner of Banks, or the duly appointed agent, may be made by any person interested by filing such objection in the pending action and by serving a copy thereof on the Commissioner of Banks, or duly appointed agent, and the Commissioner of Banks or duly appointed agent, after investigation, shall either allow such objection and reject the claim or deposit, or disallow the objection. If the objection is not allowed and the claim or deposit not rejected, the Commissioner of Banks or the duly appointed agent, shall file a notice to this effect in the pending action; and within 10 days thereafter, the person filing objection by motion in the	(4) Sell, convey, and assign any or all of the property rights and interests owned by the bank. (5) Appoint agents and engage independent contractors. (6) Examine papers and investigate persons. (7) Make and carry out agreements with the FDIC for the payment or assumption of the bank's liabilities, in whole or in part, and to sell, convey, transfer, pledge, or assign assets as security or otherwise and to make guarantees in connection therewith. (8) Perform all other acts that might be done by the employees, officers, and directors of the bank. These powers shall be continued in effect until liquidation of the bank or until return of the bank to its prior or newly constituted management. (h) The Commissioner may, unless the FDIC has been appointed as receiver, determine that the receivership proceedings of a bank should be discontinued and the possession of the bank returned to newly constituted management. The Commissioner shall then remove the receiver and restore all the rights, powers, and privileges of the bank's depositors, shareholders, customers, employees, officers, and directors. The return of a bank to a newly constituted management from the possession of a receiver shall, by operation of law and without any conveyance or other instrument, act, or deed, vest in the bank the title to all property held by the receiver in the capacity as receiver for the bank. (i) Claims against a bank in receivership shall have the following order of priority for payment: (1) Costs, expenses, and debts of the bank incurred on or after the date of the appointment of the receiver, including compensation for the receiver and a reasonable sum for the time of employees and agents of the OCOB. (2) Claims of holders of deposit accounts.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
pending action, a copy of which notice shall be served upon the person whose claim or deposit is objected to, may present to the court the question of the validity of said claim or deposit; and the questions of law and issues of fact shall thereupon be determined as in other civil actions. (*l*) List of Claims Presented and Deposits; Copies; Proviso. – Upon the expiration of the time fixed for presentation of claims, the Commissioner of Banks, or the duly appointed agent, shall make a full and complete list of the claims presented and of the deposits as shown, including and specifying any claims or deposits which have been rejected by him, and shall file one copy in the office of the clerk of the superior court in the pending action, and shall keep one copy on file with the inventory in the office of the bank for examination. Any indebtedness against any bank which has been established or recognized as a valid liability of said bank before it went into liquidation, for which no claimant has filed claim, and/or any liability for which claim has been filed and disapproved, shall be listed in the office of the clerk of the superior court of the county in which the bank is located, by the liquidating agent, and the dividends accruing thereto shall be paid into the said office and shall be held for a period of three months after said liquidation is completed, and shall then be paid to the escheator of the State Treasurer. Any claim which may be presented after the expiration of the time fixed for the presentation of claims in the notice hereinbefore provided shall, if allowed, share pro rata in the distribution only of those assets of the bank in the hands of the Commissioner of Banks, and undistributed at the time the claim is presented: Provided, that when it is made to appear to the judge of the superior court, resident or presiding in the county, that the claim could not have been filed within said period, said judge may permit those creditors or depositors who subsequently file their claim to share as other creditors. (m) Declaration of Dividends; Order of Preference in Distribution. – At any time after the expiration of the date fixed by the Commissioner of Banks, or the duly appointed agent, for the presentation of claims against the bank, and from time to time thereafter, the Commissioner of Banks, out of the funds in his hands, after the payment of expenses and priorities, may declare and pay dividends to the depositors and other creditors of such bank in the order now or hereafter provided by law; and a dividend shall be declared when and as often as the funds on hand subject to the payment of dividends shall be sufficient to pay ten per centum (10%) of all claims entitled to share in such dividends. In paying dividends and calculating the same, all disputed claims and deposits shall be taken into account, but no dividend shall be paid upon such	(3) Claims of secured creditors in such order of priority as is established by applicable law or regulation. (4) Claims of general creditors. (5) Claims of holders of the bank's shares in the order of preference established by the bank's organizational documents. (j) All claims of each class described within subsection (i) of this section shall be paid in full so long as sufficient assets are available therefor. Members of a class for which the receiver cannot make payment in full shall be paid an amount proportionate to their total claims. (k) The Commissioner may direct the receiver to make payment of claims for which no provision is made in this section and may direct the payment of less than all claims within a class. (*l*) When all assets of the bank have been fully liquidated, all claims and expenses have been paid or settled, and the receiver has recommended a final distribution, the dissolution of the bank in receivership shall be accomplished in the following manner: (1) The receiver shall file with the Commissioner a detailed report, in a form to be prescribed by the Commissioner, of the receiver's acts and proposed final distribution of the bank's assets. (2) Upon the Commissioner's approval of the final report of the receiver, the receiver shall make the final distribution of the bank's assets in any manner as the Commissioner may direct. (3) When any unclaimed property, including funds due to a known but unlocated depositor, remains following the final distribution of the bank's assets, such property shall be promptly transferred to the State Treasurer to hold in accordance with the provisions of Chapter 115B of the General Statutes. (4) Upon completion of the actions described in this subsection, the process of dissolution and liquidation of the bank shall be deemed complete, and the	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
disputed claims and deposits until the same shall have been finally determined. The following shall be the order and preference in the distribution of the assets of any bank liquidated hereunder: (1) Taxes and fees due the Commissioner of Banks for examination or other services; (2) Wages and salaries due officers and employees of the bank, for a period of not more than four months; (3) Expenses of liquidation; (4) Certified checks and cashier's checks in the hands of a third party as a holder for value and the amounts due on collections made and unremitted for or for which final actual payment has not been made by the bank; (5) Amounts due creditors other than stockholders. The word "asset" used herein shall not be deemed to include bailments or other property to which such bank has no title. Provided, that when any bank, or any officer, clerk, or agent thereof, receives by mail, express or otherwise, a check, bill of exchange, order to remit, note, or draft for collection, with request that remittance be made therefor, the charging of such item to the account of the drawer, acceptor, indorser, or maker thereof, or collecting any such item from any bank or other party, and failing to remit therefor, or the nonpayment of a check sent in payment therefor, shall create a lien in favor of the owner of such item on the assets of such bank making the collection, and shall attach from the date of the charge, entry or collection of any such funds. A statement of all dividends paid shall be filed in the office of the clerk of the superior court in the pending action, and said statements shall show the expenses deducted and the disputed claims and deposits considered in determining said dividend. (n) Deposit of Funds Collected. – All funds collected by the Commissioner of Banks, in liquidating any bank, shall be deposited from time to time in such bank or banks as may be selected by him, and shall be subject to the check of the Commissioner of Banks. The payment of interest on the net average of such sums on deposit shall be controlled by the Governor and Council of State, who shall have full power and	Commissioner shall issue a certification of completed liquidation to the Secretary of State. (5) Upon completion of the process of dissolution and liquidation, the Commissioner shall cause an examination of the receiver's activities and records to be conducted, with which the receiver shall assist. The accounts of the receiver shall then be ruled upon by the Commissioner, and if approved, the receiver shall be given a final and complete discharge and release. *[Staff Note: Staff suggests also including G.S. 53C-9-101, 53C-9-103, and 53C-9-202:* ***§ 53C-9-101. Supervisory combinations.*** *Notwithstanding any other provision of this Chapter, in order to protect the public, including depositors and creditors of a bank, the Commissioner, upon making a finding that a bank is unable to operate in a safe and sound manner and is not reasonably likely to be able to resume safe and sound operations, may authorize or require a combination of the bank, a control transaction, or any other transaction, whether or not the Commissioner has taken supervisory control pursuant to G.S. 53C-8-14. In ordering any such combination, control transaction, or other transaction, the Commissioner may order that a vote of the bank's shareholders shall not be required to effect the combination, control transaction, or other transactions.* ***§ 53C-9-103. Cancellation of charter.*** *Whenever a combination, dissolution, or other transaction occurs by which a bank ceases to exist or ceases to be eligible for a charter, the Commissioner shall by order cancel the bank's charter and shall publish the order in accordance with G.S. 53-1-4(59). A copy of the order shall be filed by the Commissioner with the Secretary of State. The bank shall continue to exist under Chapter 55 of the General Statutes for the purpose of dissolving and liquidating its business and affairs.* ***§ 53C-9-202. Voluntary dissolution.*** *(a) With the approval of the Commissioner, a bank may engage in a voluntary dissolution and liquidation.*	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
authority to determine for what periods of time payment of interest on such deposits shall or shall not be required, and to fix the rate of interest to be paid thereon. (o) Employment of Local Attorneys; Expert Accountants and Other Experts; Compensation. – The Commissioner of Banks, for the purpose of liquidating banks as herein provided, shall employ such liquidating agents, competent local attorneys, accountants and clerks as may be necessary to properly liquidate and distribute the assets of said bank, and shall fix the compensation for all such agents, attorneys, accountants and clerks, and shall pay the same out of the funds derived from the liquidation of the assets of said bank: Provided, that all expenditure for the purpose herein provided shall be approved by the resident or presiding judge in the pending action at such time as the same may be reported, and such charges shall be a proper charge and lien on the assets of such bank until paid. (p) Unclaimed Dividends Held in Trust. – The unclaimed dividends remaining in the hands of the Commissioner of Banks for six months after the order for final distributions shall be held in trust for the several depositors and creditors of the liquidated bank; and the money so held by him shall be paid over to the persons respectively entitled thereto as and when satisfactory evidence of their right to the same is furnished. In case of doubtful or conflicting claims the Commissioner of Banks shall have authority to apply to the superior court of the county, by motion in the pending action, for an order from the resident or presiding judge of the superior court directing the payment of the moneys so claimed. When issues of fact are raised by said motion, the same may, upon request of any claimant, be submitted to the jury for determination as other issues of fact are determined. The interest earned on the unclaimed dividend so held shall be applied toward defraying the expenses incurred in the distribution of such unclaimed dividends. The balance of interest, if any, shall be deposited and held as other funds of the banking department to the credit of the Commissioner of Banks. After the Commissioner of Banks has held the unclaimed dividends held in trust by him under the provisions of this statute for the several depositors and creditors of the liquidated bank for a period of 10 years, he is hereby given the authority to pay the principal amount of such unclaimed dividends to the State Treasurer, to be held by the State Treasurer without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto. Upon payment of the said unclaimed dividends to the State Treasurer, the Commissioner of Banks shall be fully discharged from all further liability therefor.	*(b) If, by a majority vote, the board of directors of a bank should determine that in their judgment the bank should be dissolved and liquidated, then the board of directors shall submit immediately to the Commissioner the following documents, certified by an appropriate officer of the bank:* *(1) The board of directors' resolution.* *(2) The bank's proposed articles of dissolution.* *(3) The board of directors' plan for liquidation.* *(4) Any notices or proxy solicitation materials proposed to be sent to shareholders.* *(c) The Commissioner shall examine the documents submitted under subsection (b) of this section and such other matters as the Commissioner deems relevant and may issue an order authorizing the bank and its board of directors to proceed with dissolution and liquidation as provided in G.S. 53C-9-203. Examination by the Commissioner of the materials referred to in subsection (b)(4) of this section shall not be deemed to be approval of the documents for any purpose.* *(d) At any annual or special meeting of shareholders called for the purpose of voting upon a proposal for voluntary dissolution of a bank, the shareholders of the bank may, by an affirmative vote, in person or by proxy, of the holders of shares representing at least two-thirds of the votes entitled to be cast on such matters, resolve to dissolve and liquidate the bank in accordance with the order of the Commissioner issued under subsection (c) of this section.* *(e) If a majority of the board of directors of a bank should determine that in its best judgment the bank should be dissolved and liquidated but deems it impractical or otherwise inadvisable to proceed with a vote upon voluntary dissolution by the shareholders, then the board of directors shall immediately forward a certified copy of its resolution to the Commissioner and the Commissioner shall place the bank in receivership pursuant to G.S. 53C-9-301.]*	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
(q) Report by Commissioner of Banks. – If the assets of any bank when fully collected by the Commissioner of Banks are not more than sufficient to pay the depositors and creditors of said bank, the Commissioner of Banks after he shall have fully distributed as herein provided the sums so collected, then he shall cause to be filed in the office of the clerk of the superior court in the pending action a full and complete report of all his transactions in said liquidation; and the filing of such report shall act as a full and complete discharge of the Commissioner of Banks from all further liabilities by reason of the liquidation of the bank. (r) Action by Commissioner of Banks after Full Settlement. – Whenever the Commissioner of Banks shall have paid all the expenses of liquidation and shall have paid to each and every depositor and creditor of such bank, whose claims shall have been duly proven and allowed, the full amount of such claims, and shall have made proper provision for unclaimed and unpaid deposits and disputed claims and deposits, and shall have in hand other assets of said bank, he shall call a meeting of the stockholders of said bank by giving notice thereof by publication once a week for four consecutive weeks in a newspaper published in said county, or if no newspaper is published in said county, then in a newspaper having general circulation in said county, and by mailing a copy of such notice to each stockholder addressed to him at his address as the same shall appear upon the books of the bank. Affidavit of the officer mailing the notice herein required and of the printer as to the publication shall be conclusive evidence of notice hereunder. At such meeting any stockholders may be represented by proxy and the stockholders shall elect, by a majority vote of the stock present, an agent or agents who shall be authorized to receive from the Commissioner of Banks all the assets of said bank then remaining in his hands; and the Commissioner of Banks shall cause to be transferred and delivered to the said agent, or agents, all such assets of said bank. The Commissioner of Banks shall thereupon cause to be filed in the office of the clerk of the superior court in the pending actions a full and complete report of all his transactions, showing the assets of said bank so transferred, together with the name of the agent or agents receipting for the same; and the filing of such report shall act as a full and complete discharge of the Commissioner of Banks from all further liabilities by reason of the liquidation of the bank. Such agent, or agents, shall convert the assets coming into his hands, or their hands, into cash, and shall make distribution to the stockholders of said bank as herein provided. Said agent, or agents, shall file semiannually a report of all transactions with the superior court of the county in which the bank is located, and with the Commissioner of Banks, and shall be allowed for such services such fees not in excess		

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
of five percent (5%), as may be fixed by the court. In case of death, removal or refusal to act, of any agent or agents elected by the stockholders, the Commissioner of Banks shall, upon report of such action on the part of such agent or agents to the superior court of the county in which the bank is located, turn over to said superior court for the stockholders of said bank, all the remaining assets of the bank, file his report and be discharged from any and all further liability to the stockholders as herein provided. Said assets, when turned over to the superior court hereunder, shall remain in the hands of the superior court until such time as, by order of court or by action of the stockholders, distribution shall be provided for. (s) Annual Report of Commissioner of Banks; Items in Report of. – The Commissioner of Banks shall file, as a part of his annual report to the Governor, a list of the names of the banks so taken possession of and liquidated; and the Commissioner of Banks shall, from time to time, compile and make available for public inspection, reports showing the condition of each and all the banks so taken possession of; and the annual report of the Commissioner of Banks shall show the sum of unclaimed and unpaid deposits, with respect to each bank and shall show all depositories of all sums coming into the hands of the Commissioner of Banks under the provisions of this section. (t) Compensation of Commissioner of Banks. – The Commissioner of Banks, for his services rendered in connection with the liquidation of banks hereunder, shall be entitled to actual expenses incurred in connection with the liquidation of each bank, including therein a reasonable sum for the time of the bank examiners and other agents of the Commissioner of Banks, which expenses shall be a prior lien on the assets of such bank so liquidated until paid in full; and the Commissioner of Banks shall have authority to prescribe reasonable rules and regulations for fixing such expenses. (u) Exclusive Methods of Liquidation. – No bank created under the Banking Act or the Industrial Banking Act, and under the supervision of the Commissioner of Banks, shall be liquidated in any other way or manner than that provided herein. (v) Application of Act. – The applicable provisions of this section as enacted by Chapter 113 of the Public Laws of 1927 shall apply to all banks which on March 7, 1927, have suspended operations or are in the process of liquidation but for which no permanent receiver has been appointed by the court.		

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
(w) Liquidation by Commissioner of Banks of All Banks in Receivership Required. – On and after the first day of January, 1936, the provisions of this section shall apply to all banks included in the definition or classification of banking institutions under this Chapter, and/or any amendment thereto, which at said time shall be in receivership in the State courts; and the said banks shall be liquidated exclusively in accordance with the provisions of this section and by said Banking Commissioner. The liquidation of said banks shall be made strictly in accordance with the terms of this section and the words "competent local attorneys," as set forth in subsection (o) of this section shall be defined to be any attorney or attorneys resident of the county in which the bank is being liquidated. (x) Unlocated Depositor. – Any funds due a known but unlocated person shall be disposed in accordance with Chapter 116B of the General Statutes, except where the provisions of this Chapter specifically provide otherwise.		
[Staff Note: G.S. 53-21 is not referenced in the Industrial Banks article. NCCOB's chart suggests that there is no corresponding section, and staff agrees.]		
§ 53-22. Statute relating to receivers applicable to insolvent banks. The provisions of G.S. 1-507.1 through 1-507.11, both inclusive, relating to receivers, when not inconsistent with the provisions of G.S. 53-20, shall apply to liquidation of insolvent banks.	**§ 53C-9-401. Statute relating to receivers applicable to insolvent banks.** The provisions of G.S. 1-507.1 through 1-507.11, relating to receivers, when not inconsistent with the provisions of this Article, shall apply to the liquidation of banks under this Article.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-9-401.** Staff agrees.
§ 53-23. Disposition of books, records, etc. All books, papers, and records of a bank which has been finally liquidated shall be deposited by the receiver in the office of the clerk of the superior court for the county in which the office of such bank is located, or in such other place as in his judgment will provide for the proper safekeeping and protection of such books, papers, and records. The books, papers, and records herein referred to shall be held subject to the orders of the Commissioner of Banks and the clerk of the superior court for the county in which such bank was located. **§ 53-24. Destruction of records of liquidated insolvent banks.**	**§ 53C-9-402. Storage and destruction of records.** (a) Any record of a bank that is in or has completed the process of dissolution and liquidation may be kept in compliance with the provisions of G.S. 53C-6-14. (b) All records of a bank that has completed the process of dissolution and liquidation shall be held in such place as in the Commissioner's judgment will provide for their proper safekeeping and protection.	Both Chapter 53 sections are referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-9-402.** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
After the expiration of 10 years from the date of filing in the office of the clerk of the superior court of a final order approving the liquidation by the banking department of any insolvent bank and the delivery to the clerk or into his custody of the records of such bank, the said records may be destroyed by the clerk of the superior court holding said records by burning the same in the presence of the register of deeds and the sheriff of said county, who shall join with the clerk in the execution of a certificate as to the destruction of said records. The certificate shall be filed by the clerk in the court records of the liquidation of the bank whose records are thus destroyed. After 10 years from the filing by the Commissioner of Banks of a final report of liquidation of any insolvent bank, the said Commissioner, by and with the consent of the State Banking Commission or its successor, may destroy by burning the records of any insolvent bank held in the Department of the Commissioner of Banks in connection with the liquidation of such bank: Provided, that in connection with any unpaid dividends the Commissioner of Banks shall preserve the deposit ledger or other evidence of indebtedness of the bank with reference to the unpaid dividend until the dividend shall have been paid. Nothing in this section shall be construed to authorize the destruction by the clerk of the superior court of any county or by the Commissioner of Banks of any of the formal records of liquidation, nor shall the Commissioner of Banks have authority under this section to destroy any of the records made in his office with reference to the liquidation of any insolvent bank.	(c) After the expiration of five years from the date of filing of the certificate of completed liquidation under G.S. 53C-9-301, the records of the liquidated bank may be destroyed by the Commissioner using commercially reasonable record destruction procedures. (d) Nothing in this section shall be construed to authorize the destruction by the Commissioner of any of the records of the OCOB made by it with reference to the dissolution, receivership, or liquidation of any bank.	
[Staff Note: G.S. 53-25 through G.S. 53-36 are not referenced in the Industrial Banks article. NCCOB's chart suggests that they correspond to G.S. 53C-9-403 through G.S. 53C-4-409. NCCOB's draft does not include these Chapter 53C provisions, and staff agrees. Therefore, staff believes that G.S. 53-25 through G.S. 53-36 do not impact this chart.]		
[Article 4. Reopening of Closed Banks.]		
§ 53-37. Conditions under which banks may reopen.	**§ 53C-9-301. Receivership.**	Referenced in G.S. 53-145.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
Whenever the Commissioner of Banks has taken in possession any bank, such bank may, with the consent of the Commissioner of Banks, resume business upon such terms and conditions as may be approved by the State Banking Commission. When such banks have been taken in possession under the provisions of G.S. 53-20, subsections (a) or (b), such conditions shall be fully stated in writing and a copy thereof shall be filed with the clerk of the superior court in the action required to be commenced in such cases against said bank under the provisions of G.S. 53-20, subsection (c): Provided, however, no bank or banking institution which has been taken in possession by the Commissioner of Banks under the provisions of the State banking laws shall be reopened to receive deposits or for the transaction of a banking business unless and until: (1) The bank has been completely restored to solvency; (2) The capital stock, if impaired, has been entirely restored in cash; or (3) It shall clearly appear to the Commissioner of Banks that such bank may be reopened with safety to the public and such reopening is necessary to serve the business interests of the community.	(a) The Commissioner may take custody of the books, records, and assets of every kind and character of any bank in the instances established in Part 2 of this Article or if it reasonably appears from one or more examinations made by the Commissioner that any of the following conditions exist: (1) The directors or officers of the bank, or the liquidators of the bank subject to a voluntary plan of liquidation, have neglected, failed, or refused to take action that the Commissioner deems necessary for the protection of the bank. (2) The directors, officers, or liquidators of the bank have impeded or obstructed an examination. (3) The business of the bank is being conducted in a fraudulent, illegal, or unsafe manner. (4) The bank is in an unsafe or unsound condition to transact business and it is not reasonably probable that it will be able to return to a safe and sound condition. (5) The capital of the bank is impaired such that the likely realizable value of its assets is insufficient to pay and satisfy the claims of all depositors and all creditors. (6) The directors or officers of the bank, or the liquidators of a bank subject to a voluntary plan of liquidation, have assumed duties or performed acts in excess of those authorized by applicable statutes or regulations, by the bank's organizational documents or plan of liquidation, or without supplying the required bond. (7) The bank is insolvent or is in imminent danger of insolvency or has suspended its ordinary business transactions due to insufficient funds. (8) The bank is unable to continue operations. (b) Unless the Commissioner reasonably finds that an emergency exists that requires that the Commissioner take custody immediately, the Commissioner shall first give written notice to the board of directors of the bank specifying which of those circumstances listed in subdivisions (1) through (8) of subsection (a) have been determined to exist and shall allow a reasonable time in which corrections may be made before a receiver of the bank will be appointed as outlined in subsections (c) and (d) of this section. For these purposes,	NCCOB's chart suggests **G.S. 53C-9-301.** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	"written notice" shall be deemed to include any report of examination or other confidential or nonconfidential written communication that is either directly from the Commissioner or is joined in by the Commissioner. (c) The Commissioner shall appoint as receiver or coreceivers one or more qualified persons for the purpose of receivership and liquidation of the bank of which the Commissioner has taken custody under subsection (a) of this section, which receiver shall furnish a bond in such form and amount, and with such surety, as the Commissioner may require. (d) The Commissioner may appoint the FDIC or its nominee as the receiver, and the receiver shall be permitted to serve without posting bond. In the event of such an appointment, the Commissioner shall thereafter be forever relieved of any and all responsibility and liability in respect to the receivership and the liquidation of the bank. (e) In the event the Commissioner takes custody of a bank and then appoints a receiver for the bank, the Commissioner shall serve personally at the bank's principal office through the officer who is present and appears to be in charge, the Commissioner's order taking possession and, if applicable, the Commissioner's order appointing a receiver for the bank in liquidation. The Commissioner shall also mail a certified copy of the order taking possession and the appointing order by certified mail or by express delivery to any previous receiver or other legal custodian of the bank and to the Clerk of Superior Court of Wake County. The Commissioner shall give notice to the public of the Commissioner's actions by posting a notice summarizing the Commissioner's actions near the entrance to each branch of the bank, and the Commissioner shall issue a similar public notice as defined in G.S. 53C-1-4(59). (f) Whenever a receiver for a bank is duly appointed and qualified under subsection (c) or (d) of this section: (1) The receiver, by operation of law and without any conveyance or other instrument, act, or deed, shall succeed to all the rights, titles, powers, and privileges of the bank, its shareholders, officers, and directors, or any of them, and to the titles to the books, records, and assets of every description of any previous receiver or other legal custodian of the bank. Neither the shareholders, officers, or directors, nor any of them, shall thereafter, except as expressly provided in this section, have or exercise any	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	rights, powers, or privileges or act in connection with any assets or property of any nature of the bank in receivership. (2) The Commissioner may, at any time, direct the receiver (unless it is the FDIC) to return the bank to its previous or a newly constituted management and its shareholders. (3) A receiver, other than the FDIC, may, at any time during the receivership and before final liquidation, be removed and a replacement appointed by the Commissioner. (g) A receiver may perform any of the following acts: (1) Demand, sue for, collect, receive, and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, instruments, notes, intangible interests, and property of every description of the bank. (2) Foreclose mortgages, deeds of trust, and other liens granted to the bank to the extent the bank would have the right to do so. (3) Seek injunctions and institute suits for the recovery of any property, damages, or demands existing in favor of the bank, and shall, upon the receiver's own application, be substituted as party plaintiff in the place of the bank in any suit or proceeding pending at the time of the receiver's appointment. (4) Sell, convey, and assign any or all of the property rights and interests owned by the bank. (5) Appoint agents and engage independent contractors. (6) Examine papers and investigate persons. (7) Make and carry out agreements with the FDIC for the payment or assumption of the bank's liabilities, in whole or in part, and to sell, convey, transfer, pledge, or assign assets as security or otherwise and to make guarantees in connection therewith.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(8) Perform all other acts that might be done by the employees, officers, and directors of the bank. These powers shall be continued in effect until liquidation of the bank or until return of the bank to its prior or newly constituted management. (h) The Commissioner may, unless the FDIC has been appointed as receiver, determine that the receivership proceedings of a bank should be discontinued and the possession of the bank returned to newly constituted management. The Commissioner shall then remove the receiver and restore all the rights, powers, and privileges of the bank's depositors, shareholders, customers, employees, officers, and directors. The return of a bank to a newly constituted management from the possession of a receiver shall, by operation of law and without any conveyance or other instrument, act, or deed, vest in the bank the title to all property held by the receiver in the capacity as receiver for the bank. (i) Claims against a bank in receivership shall have the following order of priority for payment: (1) Costs, expenses, and debts of the bank incurred on or after the date of the appointment of the receiver, including compensation for the receiver and a reasonable sum for the time of employees and agents of the OCOB. (2) Claims of holders of deposit accounts. (3) Claims of secured creditors in such order of priority as is established by applicable law or regulation. (4) Claims of general creditors. (5) Claims of holders of the bank's shares in the order of preference established by the bank's organizational documents. (j) All claims of each class described within subsection (i) of this section shall be paid in full so long as sufficient assets are available therefor. Members of a class for which the receiver cannot make payment in full shall be paid an amount proportionate to their total claims.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(k) The Commissioner may direct the receiver to make payment of claims for which no provision is made in this section and may direct the payment of less than all claims within a class. (*l*) When all assets of the bank have been fully liquidated, all claims and expenses have been paid or settled, and the receiver has recommended a final distribution, the dissolution of the bank in receivership shall be accomplished in the following manner: (1) The receiver shall file with the Commissioner a detailed report, in a form to be prescribed by the Commissioner, of the receiver's acts and proposed final distribution of the bank's assets. (2) Upon the Commissioner's approval of the final report of the receiver, the receiver shall make the final distribution of the bank's assets in any manner as the Commissioner may direct. (3) When any unclaimed property, including funds due to a known but unlocated depositor, remains following the final distribution of the bank's assets, such property shall be promptly transferred to the State Treasurer to hold in accordance with the provisions of Chapter 115B of the General Statutes. (4) Upon completion of the actions described in this subsection, the process of dissolution and liquidation of the bank shall be deemed complete, and the Commissioner shall issue a certification of completed liquidation to the Secretary of State. (5) Upon completion of the process of dissolution and liquidation, the Commissioner shall cause an examination of the receiver's activities and records to be conducted, with which the receiver shall assist. The accounts of the receiver shall then be ruled upon by the Commissioner, and if approved, the receiver shall be given a final and complete discharge and release.	
[Staff Note: G.S. 53-38 is not referenced in the Industrial Banks article. NCCOB's chart suggests that there is no corresponding section, and staff agrees.]		

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
[Article 5. Stockholders.]		
§ 53-39. New State banks to set up surplus fund. The common stockholders of any bank organized after March 17, 1933, under the laws of the State of North Carolina shall pay in, in cash, a surplus fund equal to fifty per centum (50%) of its common capital stock before the bank shall be authorized to commence business.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests there is no corresponding section. Staff agrees.
§ 53-40. Executors, trustees, etc., not personally liable. Persons holding stock as executors, administrators, guardians, or trustees shall not personally be subject to any liabilities as stockholders, but the estate and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust fund would be if living and competent to hold stock in his own name.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests there is no corresponding section. Staff agrees.
§ 53-41. Stock sold if subscription unpaid. Whenever any stockholder, or his assignee, fails to pay any installment on the stock, when the same is required by law to be paid, the directors of the bank shall sell the stock of such delinquent stockholder at public or private sale, as they may deem best, having first given the delinquent stockholder 20 days' notice, personally or by mail, at his last known address. If no party can be found who will pay for such stock the amount due thereon to the bank with any additional indebtedness of such stockholder to the bank, the amount previously paid shall be forfeited to the bank, and such stock shall be sold, as the directors may order, within 30 days of the time of such forfeiture, and if not sold, it shall be canceled and deducted from the capital stock of the bank.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests there is no corresponding section. Staff agrees.
§ 53-42. Impairment of capital; assessments, etc. The Commissioner of Banks shall notify every bank whose capital shall have become impaired from losses or any other cause, and the surplus and undivided profits of such bank are insufficient to make good such impairment, to make the impairment good within 60 days of such notice by an assessment upon the stockholders thereof, and it	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests there is no corresponding section. Staff agrees.

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shall be the duty of the officers and directors of the bank receiving such notice to immediately call a special meeting of the stockholders for the purpose of making an assessment upon its stockholders sufficient to cover the impairment of the capital, payable in cash, at which meeting such assessment shall be made: Provided, that such bank may reduce its capital to the extent of the impairment, as provided in G.S. 53-11. If any stockholder of such bank neglects or refuses to pay such assessment as herein provided, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder or stockholders to be sold at public auction, upon 30 days' notice given by posting such notice of sale in the office of the bank and by publishing such notice in a newspaper in the county where the bank is located, and if none therein, a newspaper having general circulation in the county in which the bank is located, to make good the deficiency, and the balance, if any, shall be returned to the delinquent shareholder or shareholders. If any such bank shall fail to cause to be paid in such deficiency in its capital stock for three months after receiving such notice from the Commissioner of Banks, the Commissioner of Banks may forthwith take possession of the property and business of such bank until its affairs be finally liquidated as provided by law. A sale of stock, as provided in this section, shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall make the certificate null and void, and a new certificate shall be issued by the bank to the purchaser of such stock.		
§ 53-42.1. Change in bank control or management. (a) (1) No person shall acquire voting stock of any bank or bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956 as amended, which will result in a change in the control of the bank or bank holding company unless the Commissioner of Banks shall have approved the proposed acquisition. (2) Written application for the proposed change in control of a bank or bank holding company must be filed with the Commissioner of Banks in such form as he may prescribe and contain such information as he may require at least 60 days prior to effective date of the proposed acquisition. The Commissioner of Banks shall approve the proposed change of control, unless upon examination and investigation he finds that a. The character, competence, general fitness, experience or integrity of any acquiring person or of any of the proposed management personnel shows that it	**§ 53C-7-101. Control transactions.** (a) Except as otherwise expressly permitted by this section, a person shall not engage in a control transaction, as defined by G.S. 53C-1-4(22), involving a bank without the prior approval of the Commissioner. A person may contract to engage in a control transaction with the consummation of such control transaction being subject to receipt of the approval of the Commissioner. (b) The Commissioner may require a person who is obligated to file an application under this Part to appoint an agent resident in this State for service of process upon the filing of such notice or as a condition to the acceptance of such application for review. The application for approval shall be in a form required by the Commissioner and shall be accompanied by such fee as may be required by rule. (c) The following transactions shall not constitute a control transaction requiring the prior approval of the Commissioner:	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-7-101, 53C-7-102, 53C-7-104, 53C-10-102, 53C-10-103, and 53C-10-105.** Staff agrees with G.S. 53C-7-101, 53C-7-102, and 53C-7-104 and would add the closely related provision, G.S. 53C-7-105. Staff, however, disagrees with G.S. 53C-10-102, 53C-

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would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank or bank holding company; or b. The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or bank holding company or prejudice the interests of the depositors of the bank. All information contained in any application or report filed under this section and all information produced by examination and investigation of any application or report by the Commissioner of Banks shall be confidential and not available for public inspection. (3) The provisions of this subsection shall not apply to the following transactions: a. The acquisition of bank shares or assets which is subject to approval under section 3 of the Bank Holding Company Act as amended (12 U.S.C. 1842); b. The acquisition of shares of a bank holding company as defined by section 2 of the Bank Holding Company Act as amended (12 U.S.C. 1841) which bank holding company has a national bank as its principal banking subsidiary; c. The acquisition of shares in connection with securing, collecting, or satisfying a debt previously contracted in good faith; d. The acquisition of shares by will or through intestate succession; and e. The acquisition of shares by gift, unless such gift is made for the purpose of circumventing this section. In the event of an acquisition of shares which is exempted by c, d, or e above, the person acquiring the shares shall report the transaction to the Commissioner of Banks within 30 days after the acquisition. The report shall contain such information and be in such form as the Commissioner shall request and prescribe. (4) As used in this section the following terms shall have the following meanings:	(1) The acquisition of control over voting securities in connection with securing, collecting, or satisfying a debt previously contracted for in good faith and not for the purpose of acquiring control of the bank, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing such transaction at least 10 days before the acquiring person first votes or directs the voting of the voting securities. (2) The acquisition of control over voting securities by a person who has previously engaged in a control transaction with respect to the bank after receiving the approval of the Commissioner under this Article, which approval permits the acquisition of control over additional voting securities, or any person who is an affiliate of the person previously engaging in the approved control transaction with the permission and who is identified in the application submitted for the approval, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the transaction at least 10 days before the acquiring person or affiliate thereof first votes or directs the voting of the voting securities. (3) An acquisition of control over voting securities by operation of law, will, or intestate succession, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the acquisition or transfer at least 10 days before the acquiring person first votes or directs the voting of the voting securities. (4) Bona fide gifts. (5) A transaction exempted by rules, orders, or declaratory rulings of the Commissioner issued because approval of such a transaction is not necessary to achieve the objectives of this Chapter. (5a) An acquisition of control over voting shares exempt from the prior approval requirements set forth in section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842), pursuant to the exceptions described in items (A), (B), or (C) of subsection (a) of that section. (6) An acquisition of control over voting securities in a transaction subject to approval under section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842).	10-103, and 53C-10-105, because those provisions deal with bank holding companies. One of the primary features of an industrial bank is that its parent is not required to register as a bank holding company. *See* 12 U.S.C. § 1841(c)(2)(H) (excluding industrial banks from the definition of bank in the chapter on bank holding companies).

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a. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of the bank or bank holding company, or ownership of as much as ten percent (10%) of the outstanding voting stock in a bank or bank holding company; and b. "Person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any other form of entity not specifically listed herein. (b) Whenever a loan or loans are made by a bank, which loan or loans are, or are to be, secured by ten percent (10%) or more of the voting stock of a bank, the president or other chief executive officer of the bank which makes the loan or loans shall report such fact to the Commissioner of Banks within 24 hours after obtaining knowledge of such loan or loans, except when the borrower has been the owner of record of the stock for a period of one year or more, or the stock is of a newly organized bank prior to its opening. The report shall show the identity of borrower, the name of the bank issuing the stock securing the loan, the number of shares securing the loan and the amount of the loan or loans, and this report shall be in addition to any report that may be required pursuant to other provisions of law. (c) Repealed by Session Laws 1981, c. 671, s. 6. (d) Each bank shall report to the Commissioner of Banks within 24 hours any changes in chief executive officers or directors, including in its report a statement of the past and current business and professional affiliations of new chief executive officers or directors.	(d) Upon receipt of a notice described in subsection (c), the Commissioner may, before the 10th day following the receipt, notify the acquiring person of the Commissioner's objection to the exercise of control over the voting securities or may require the acquiring party to submit further information before exercising control over the voting securities. An acquiring person receiving a notice of objection shall be required to submit an application for approval of a control transaction. An acquiring person receiving a notice to submit further information may be required to provide any information that would be included in an application for approval of a control transaction. In the event such an acquiring person is comprised of a group of persons, the Commissioner may require each member of the group to submit relevant information. (e) All voting securities over which control has been acquired by an acquiring person shall not be voted on any matter submitted to a vote of the holders of the outstanding voting securities of the bank and shall be deemed authorized but unissued for purposes of determining the presence of a quorum of holders of voting securities until such time as follows: (1) The Commissioner has approved an application for approval of a control transaction with respect to the voting securities. (2) The transaction is one listed in subsection (c) of this section that does not require the filing of a notice with the Commissioner. (3) The transaction is one listed in subsection (c) of this section that requires a notice to be filed with the Commissioner and the Commissioner has not issued an objection to the notice and any requirement of the Commissioner for the filing of further information has been determined by the Commissioner to have been satisfied. **§ 53C-7-102. Application regarding a control transaction.** (a) A person seeking approval of a control transaction involving a bank under this Article shall file the following with the Commissioner: (1) An application in the form prescribed by the Commissioner. (2) All filing fees required by a rule of the Commissioner.	

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	(3) Such information as is required by a rule of the Commissioner or as is deemed by the Commissioner to achieve the objectives of this Chapter. (b) In the event a person submitting an application is a group of persons, the Commissioner may require each member of the group to submit information relevant to the application. (c) Notwithstanding any laws to the contrary, information about the character, competence, or experience of an acquiring person or its proposed management personnel or affiliates shall be deemed a record of the Commissioner and subject to G.S. 53C-2-7(b). **§ 53C-7-104. Actions on control transaction applications.** (a) The Commissioner shall examine the proposed control transaction, including the character, competence, and experience of the acquiring person and its proposed management personnel, to determine whether the interests of the customers and communities served by the bank would be adversely affected by the proposed control transaction. Not later than the 60th day following receipt of a completed application for approval of a control transaction, unless extraordinary circumstances require a longer period of review, the Commissioner shall approve or deny the application. (b) The Commissioner may deny an application for approval of a control transaction for any of the following reasons: (1) The financial condition of the person seeking approval of a control transaction could jeopardize the financial stability of the bank or the financial interests of its customers. (2) An examination of the character, competence, and experience of any acquiring person or of any of the proposed management personnel shows that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit the person to control the bank. (3) The plans or proposals of the person seeking approval with respect to exercising control over the bank would not be in the best interests of the bank's customers.	

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	(4) Upon the effective date of such proposed control transaction, the bank would not be solvent, have inadequate capital, or not be in compliance with this Chapter or rules of the Commissioner. (5) The application for approval is incomplete. (6) If the acquiring person solicits votes for the approval of or consents to the control transaction from the holders of the voting securities of the bank, adequate and complete disclosures of all material information about the proposed control transaction, together with a prominent statement that neither the control transaction nor any solicitation of the holders' votes or consents have been approved by the Commissioner and that any representation to the contrary is a criminal offense, have not been made to the holders. (c) If an application filed under this Part is approved by the Commissioner, the control transaction may become effective. All conditions to approval set forth in the order of the Commissioner shall be enforceable against the person, and each member of a group of persons, receiving the approval. **§ 53C-10-102. Holding company control transaction.** (a) Except as otherwise expressly permitted by this section, a person shall not engage in a control transaction to which a holding company formed under the laws of this State and having a bank as a subsidiary is a party without the prior approval of the Commissioner. A person may contract to engage in a control transaction with the consummation of the control transaction being subject to receipt of the approval of the Commissioner. (b) The Commissioner may require a person who is obligated to file a notice or an application under this section to appoint an agent resident in this State for service of process upon the filing of the notice or application or as a condition to the acceptance of the notice or application for review. An application for approval shall be in a form required by the Commissioner and shall be accompanied by such fee as may be required by rule.	

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	(c) The following transactions shall not constitute a control transaction under this section requiring the prior approval of the Commissioner: (1) The acquisition of control over voting securities by a person who has previously engaged in a control transaction with respect to the holding company after receiving the approval of the Commissioner under this Article, which approval permits the acquisition of control over additional voting securities, or any person who is an affiliate of the person previously engaging in the approved control transaction with such permission and who is identified in the application submitted for the approval, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the transaction at least 10 days before the acquiring person or affiliate thereof first votes or directs the voting of the voting securities. (2) An acquisition of control over voting securities by operation of law, will, or intestate succession, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the acquisition or transfer at least 10 days before the acquiring person first votes or directs the voting of the voting securities. (3) Bona fide gifts. (4) A transaction exempted by rules, orders, or declaratory rulings of the Commissioner, issued because approval of the transaction is not necessary to achieve the objectives of this Chapter. (5) An acquisition of control over voting shares exempt from the prior approval requirements set forth in section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842), pursuant to the exceptions described in items (A), (B), or (C) of subsection (a) of that section. (6) An acquisition of control over voting securities in a transaction subject to approval under section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842). (d) Upon receipt of a notice described in subsection (c) of this section, the Commissioner may, before the 10th day following the receipt, notify the acquiring person of the Commissioner's objection to the exercise of control over the voting securities or may require the acquiring party to submit further information before exercising control over	

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	the voting securities. An acquiring person receiving a notice of objection shall be required to submit an application for approval of a control transaction. An acquiring person receiving a notice to submit further information may be required to provide any information that would be included in an application for approval of a control transaction. In the event such an acquiring person is comprised of a group of persons, the Commissioner may require each member of the group to submit relevant information. (e) All voting securities over which control has been acquired by an acquiring person shall not be voted on any matter submitted to a vote of the holders of the outstanding voting securities of the holding company of a bank and shall be deemed authorized but unissued for purposes of determining the presence of a quorum of holders of voting securities until such time as follows: (1) The Commissioner has approved an application for approval of a control transaction with respect to the voting securities. (2) The transaction is one listed in subsection (c) of this section that does not require the filing of a notice with the Commissioner. (3) The transaction is one listed in subsection (c) of this section that requires a notice to be filed with the Commissioner and the Commissioner has not issued an objection to the notice and any requirement of the Commissioner for the filing of further information had been determined by the Commissioner to have been satisfied. **§ 53C-10-103. Application regarding a control transaction.** (a) A person seeking approval of a control transaction to which a holding company of a bank is a party under this Article shall file the following with the Commissioner: (1) An application in the form prescribed by the Commissioner. (2) All filing fees required by rule of the Commissioner. (3) Any other information required by a rule of the Commissioner or deemed by the Commissioner to achieve the objectives of this Chapter.	

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	(b) In the event a person submitting an application is a group of persons, the Commissioner may require each member of the group to submit information relevant to the application. (c) Notwithstanding any laws to the contrary, information about the character, competence, or experience of an acquiring person or its proposed management personnel or affiliates shall be deemed a confidential record of the Commissioner subject to G.S. 53C-2-7(b). **§ 53C-10-105. Actions on control transaction applications.** (a) The Commissioner shall examine the proposed control transaction, including the character, competence, and experience of the acquiring person and its proposed management personnel, to determine whether the financial stability of the holding company or the interests of the customers served by one or more bank subsidiaries of the holding company would be adversely affected by the proposed control transaction. Not later than the 60th day following receipt of a completed application for approval of a control transaction unless extraordinary circumstances require a longer period of review, the Commissioner shall approve or deny the application. (b) The Commissioner may deny an application for approval of a control for any of the following reasons: (1) The financial condition of the person seeking approval of a control transaction could jeopardize the financial stability of the holding company, one or more bank subsidiaries of the holding company, or the financial interests of the bank's customers. (2) An examination of the character, competence, or experience of any acquiring person or of any of the proposed management personnel of the holding company shows that it would not be in the interest of the customers of one or more of the bank subsidiaries of the holding company or in the interest of the public to permit the person to control the holding company. (3) The plans or proposals of the person seeking approval with respect to exercising control over the holding company would not be in the best interests of the customers of one or more bank subsidiaries of the holding company.	

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	(4) Upon the effective date of the proposed control transaction, one or more of the bank subsidiaries of the holding company would not be solvent, have inadequate capital, or not be in compliance with this Chapter or rules of the Commissioner. (5) The application for approval is incomplete. (6) If the acquiring person solicits votes for the approval of or consents to the control transaction from the holders of the voting securities of the holding company, adequate and complete disclosures of all material information about the proposed control transaction, together with a prominent statement that neither the control transaction nor any solicitation of such holders' votes or consents has been approved by the Commissioner and that any representation to the contrary is a criminal offense, have not been made to the holders. (c) If an application filed under this Part is approved by the Commissioner, the control transaction may become effective. All conditions to approval set forth in the order of the Commissioner shall be enforceable against the person, and each member of a group of persons, receiving the approval. *[Staff Note: Staff would add G.S. 53C-7-105, which provides:* ***§ 53C-7-105. Appeal.*** *Any order of the Commissioner denying an application for approval of a control transaction may be appealed to the Commission by the person filing the application denied, as provided in G.S. 53C-2-6.]*	
[Article 6. Powers and Duties.]		
§ 53-43. General powers. In addition to the powers conferred by law upon private corporations, banks shall have the power: (1) To exercise by its board of directors, or duly authorized officers and agents, subject to law, all such powers as shall be necessary to carry on the business of	**§ 53C-5-1. Powers.** (a) Except as otherwise specifically provided by this Chapter, a bank shall have the powers conferred upon business corporations organized under the laws of this State. In addition, and not by way of limitation, a bank shall have the power to do the following:	G.S. 53-43(3) is referenced in the introductory paragraph of G.S. 53-141. G.S. 53-43(1) is referenced in G.S. 53-141(1).

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banking, by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness, by receiving deposits, by buying and selling exchange, coin, and bullion, and by loaning money on personal security or real and personal property. Such corporation at the time of making loans may not take and receive interest or discounts in advance where the effective rates of interest or discounts collected shall exceed the maximum rates of interest provided under this section, G.S. 24-1.1 and 24-1.2 if such interest or discount had not been collected in advance. (2) To adopt regulations for the government of the corporation not inconsistent with the Constitution and laws of this State. (3) To purchase, hold, and convey real estate for the following purposes: a. Such as shall be necessary for the convenient transaction of its business, including furniture and fixtures, with its banking offices and other spaces to rent as a source of income, which investment shall not exceed fifty percent (50%) of its unimpaired capital fund: Provided, that this fifty percent (50%) limitation shall not apply to banking houses, furniture and fixtures leased for the purposes set forth in this subdivision. Provided, further, that if any bank shall demonstrate to the satisfaction of the Commissioner of Banks that an investment of more than fifty percent (50%) of its unimpaired capital fund in its banking houses, furniture and fixtures, would promote the convenience of the general public in transacting its banking business and would not adversely affect the financial stability of the bank, the Commissioner of Banks may, in his discretion, authorize any bank to invest more than fifty percent (50%) of its unimpaired capital fund in its banking houses, furniture and fixtures. b. Such as is mortgaged to it in good faith by way of security for loans made or moneys due to such banks. c. Such as has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or in settlements affecting security of such debts. All real property referred to in this subdivision shall be sold by such bank within five years after it is acquired unless, upon application by the board of directors, the Commissioner of Banks extends the time within which such sale shall be made.	(1) Carry on the business of banking, which includes such activities as discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness; receiving deposits; issuing, advising, and confirming letters of credit; receiving money for transmission; and loaning money on personal security or on real or personal property. (2) Make any loan that could be made by a federally chartered institution doing business in this State. (3) Purchase or invest in loans, or a participating interest in loans, of a type that the bank could itself make. (4) Sell any loan, including one or more participating interests in a loan. (5) Make any investments authorized by G.S. 53C-5-2 or any other section of this Chapter. (6) Through information technology systems, processes, and capabilities, provide, deliver, or otherwise make available banking services and products, enhance the effectiveness or efficiency of its operations, and provide other benefits to its customers. Additionally, a bank may utilize its information technology systems, processes, capabilities, and capacities in the same manner and to the same extent as is permitted for national banks. (7) Engage in any other activities approved by rule, order, or interpretation of the Commissioner. (b) A bank shall also have the power to engage in any of the following activities: (1) As principal in any activity permissible for a national bank under any law, including the National Bank Act, 12 U.S.C. § 24, as well as any activity recognized as permissible for a national bank in any regulation, order, or written interpretation issued by the OCC. (2) As principal in any activity that is permissible or determined by the FDIC to be permissible for a bank under the Federal Deposit Insurance Act, 12 U.S.C. § 1831a, or in any regulation, order, or written interpretation thereunder.	NCCOB's chart suggests that G.S. 53-43's successor provision is G.S. 53C-5-1. NCCOB's draft, however, suggests a different treatment. The introductory paragraph of G.S. 53-141 refers to "powers conferred by . . . subdivision (3) of G.S. 53-43". NCCOB's draft suggests **G.S. 53C-5-2(i).** Staff agrees. G.S. 53-141(1) gives industrial banks the power to "take and receive interest or discounts subject to G.S. 53-43(1)." NCCOB's draft suggests deleting the reference. Staff agrees, because G.S. 53C-5-1(a)(1), which is the successor provision of G.S. 53-43(1), does not include any limitations.

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Any and all powers and privileges heretofore granted and given to any person, firm, or corporation doing a banking business in connection with a fiduciary and insurance business, or the right to deal to any extent in real estate, inconsistent with this Chapter, are hereby repealed. (4) Nothing contained in this section shall be deemed to authorize banking corporations to engage in the business of dealing in investment securities: Provided, however, that the term "dealing in investment securities" as used herein, shall not be deemed to include the purchasing and selling of securities without recourse, solely upon order, and for the account of, customers; and provided further, that "investment securities," as used herein, shall not be deemed to include obligations of the United States, or general obligations of any state or of any political subdivision thereof, or of cities, towns, or other corporate municipalities of any state or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the federal home loan banks or the Home Owner's Loan Corporation. Any provision in conflict with this subdivision contained in the articles of incorporation heretofore issued to any banking corporation is hereby revoked. (5) Repealed by Session Laws 1989, c. 187, s. 5. (6) To maintain separate departments and deposit in its commercial department to the credit of its trust department all uninvested fiduciary funds of cash and secure, under rules and regulations of the State Banking Commission, all such deposits in the name of the trust department whether in consolidated deposits or for separate fiduciary accounts, by segregating and delivering to the trust department such securities as are required by G.S. 53-163.1 for such deposits. Such securities shall be held by the trust department as security for the full payment or repayment of all such deposits, and shall be kept separate and apart from other assets of the trust department. Until all of such deposits shall have been accounted for to the trust department or to the individual fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When fiduciary funds are deposited by the trust department in the commercial department of the bank, the deposit thereof shall not be deemed to constitute a use of such funds in the general business of the bank and the bank in such instance shall not be liable for interest on such funds. To the extent and in the amount such deposits may be insured by the Federal	(3) As principal in any activity that is permissible for a savings institution organized under Chapters 54B or 54C of the General Statutes, or that is permissible for a federal savings association under the Home Owners' Loan Act of 1933, 12 U.S.C. § 1464, or in any regulation, order, or written interpretation thereunder. (4) In any activity other than as principal. (c) In addition to the other powers described in this section, a bank shall have the power to exercise all other powers that are reasonably necessary or incident to the exercise of the powers authorized in subsections (a) and (b) of this section. (d) Except as provided in subsection (e) of this section, a bank that proposes to engage in any new activity shall apply to the Commissioner for approval to engage in the activity before its commencement. If the new activity will be conducted in a new or existing subsidiary in which the bank intends to make an investment, the bank shall apply to the Commissioner for approval to engage in the new activity before entering into the investment. The bank shall not engage in the new activity or make the investment unless and until the Commissioner issues a written approval of the application. An application for approval shall contain a description of the proposed activity and any other information required by the Commissioner. A copy of any notice or application the bank is required to file with any bank supervisory agency with respect to the proposed activity shall also be provided to the Commissioner. For the purpose of this section, a "new activity" is any business activity in which the bank is not currently engaged. The extension or relocation of an existing activity into a new department, division, or subsidiary of the bank shall not be considered a new activity. A bank may appeal a denial of an application by the Commissioner pursuant to G.S. 53C-2-6. (e) No application for approval to engage in a new activity shall be required, provided all of the following conditions are met as of the date the activity is commenced: (1) The new activity is one described in subsection (a), (b), or (c) of this section. (2) The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent safety and soundness examination.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
Deposit Insurance Corporation, the amount of security required for such deposits by this section may be reduced. The Banking Commission shall have power to make such rules and regulations as it may deem necessary for the enforcement of the provisions of the preceding paragraph, and such authority shall exist and is hereby conferred under the general authority heretofore conferred upon said Commission as well as by this paragraph. (7) To issue, advise and confirm letters of credit authorizing the beneficiaries thereof to draw upon the institution or its correspondents. (8) To receive money for transmission. (9) To become a member of a clearinghouse association and to pledge assets required for its qualification. (10) To provide for the performance of bank service corporation services, such as data processing services and bookkeeping, subject to such rules and regulations as may be adopted by the State Banking Commission.	(3) No notice or application to engage in the new activity is required to be filed by the bank with any federal banking regulator. (f) A bank permitted to commence a new activity without prior application and approval pursuant to subsection (e) of this section shall notify the Commissioner in writing of the commencement of the new activity no later than the 30th day after the earlier of (i) commencing the new activity or (ii) if applicable, making an investment in a subsidiary through which the new activity will be conducted. **§ 53C-5-2. Investment authority.** (a) In addition to any powers or investments authorized by any other section of this Chapter, a bank may invest in the following: (1) The shares or other securities of the following: a. Any other depository institution. b. Any industrial bank, bankers' bank, or other deposit-taking entity chartered or existing under any federal or State law, including the shares or other securities of clearing corporations defined in G.S. 25-8-102, the shares or other securities of central reserve banks, and the shares of an Edge Act bank. The investment of any bank in the shares of a central reserve bank or bank organized under the Edge Act, 12 U.S.C. § 611, et seq., shall at no time exceed ten percent (10%) of the required capital of the bank making the investment. c. Any company in which a federally chartered institution is authorized to invest under any statute or any regulation, official circular, bulletin, order, or written interpretation issued by the OCC. (2) Bonds or notes issued by or fully and unconditionally guaranteed as to principal and interest by the United States Treasury. No bank shall be required to maintain a reserve against deposits secured by United States Treasury bonds or notes equal in market value to the amount of such deposits, and such bonds or notes shall be valid security for all loans and deposits to the same extent as are any obligations of the United States.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(3) Federal farm loan bonds, notes, or similar obligations issued by a farm credit system institution. (4) Securities issued by federal home loan banks pursuant to the Federal Home Loan Bank Act of 1932, as amended. (5) Bonds or notes secured by a mortgage or deed of trust insured or guaranteed by the Federal Housing Administration, Secretary of Housing and Urban Development, or the Veterans Administration, or in mortgages or deeds of trust on real estate that have been accepted for insurance or guarantee by the Federal Housing Administration, Secretary of Housing and Urban Development, or Veterans Administration, or in obligations of a national mortgage association, which obligations are insured or guaranteed by the United States government. No law of this State prescribing the nature, amount, or form of security or requiring security upon which loans or investments may be made, or prescribing the rates or time of payment of the interest any obligation may bear, or prescribing the period for which loans or investments may be made, shall apply to investments made pursuant to this subsection. (6) Mutual funds, but subject to rules or orders adopted by the Commissioner. (b) A bank may make an investment in a subsidiary that will be operated as any of the following: (1) Bank operating subsidiary. (2) Financial subsidiary. (3) DPC subsidiary, as defined by G.S. 53C-1-4(30). (c) No investment shall be made by a bank or a subsidiary pursuant to subsection (b) or (d) of this section unless the following apply: (1) The investment is approved by the board of directors of the bank or a board-authorized committee.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(2) The bank has carefully investigated the business or activity in which the subsidiary established by the investment will engage. (3) The bank has established the risk management and financial controls necessary to engage in the business or activity in a safe and sound manner. (4) The bank has, and following the making of the investment and the application of the provisions of this subsection, will continue to satisfy the capital requirements of this Chapter. (d) A subsidiary may invest in a lower-tier subsidiary, subject to the same requirements and limitations applicable to a bank's investment in a subsidiary. (e) Except as provided in subsection (f) of this section, a bank or subsidiary proposing to make an investment described in subsection (b) or (d) of this section shall give prior written notice to the Commissioner, providing such detail as the Commissioner may require. Unless the Commissioner, within 30 days following receipt of the notice, notifies the bank or subsidiary that the Commissioner objects to the proposed investment, the bank or subsidiary may complete the investment. However, the Commissioner may extend the period within which to object to the proposed investment if the Commissioner determines that it raises issues that require additional information or additional time for analysis. While the objection period is so extended, the bank or subsidiary may not proceed with respect to the proposed investment. A bank may appeal an objection by the Commissioner pursuant to G.S. 53C-2-6. (f) The prior notice requirement provided by subsection (e) of this section shall not apply if all of the following apply: (1) The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent examination. (2) Each activity of the subsidiary in which the investment is to be made is either of the following: a. One in which the bank is then engaged or has previously been engaged, directly or through a different subsidiary, and for which all necessary approvals of bank	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	supervisory agencies and of the Commissioner have previously been obtained and remain in effect. b. One for which no prior notice or application for approval to any federal bank supervisory authority is required. (3) A bank that makes an investment pursuant to the exception created by this subsection shall nevertheless notify the Commissioner in writing of the investment within 30 days thereafter. (g) Any bank, out-of-state bank, national bank, or any subsidiary thereof that engages in an activity subject to licensure and/or regulation under the laws of this State, other than this Chapter, shall be subject to licensure and/or regulation on a basis that does not arbitrarily discriminate by the appropriate regulatory agency which licenses and/or regulates nonbanks that engage in the same activity. (h) The Commissioner shall monitor the impact of investment activities of banks and their subsidiaries under this section on the safety and soundness of such banks. Any securities owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the securities and, if not so disposed of, they shall be charged to profit and loss account and no longer carried on the books as an asset. The limit of time in which securities shall be disposed of or charged off the books of the bank may be extended by the Commissioner if in the Commissioner's judgment it is for the best interest of the bank that the extension be granted, provided that the limitations imposed in this section on the ownership of shares or other equity ownership interest in companies are suspended only to the extent that any bank operating under the supervision of the Commissioner may subscribe for and purchase shares and other equity ownership interests in, or debentures, bonds, or other types of securities of, any company organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors. (i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(1) As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith. (2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real property acquired under this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made. (j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent (10%) of the sum of (i) the bank's "capital," as that term is defined in G.S. 53C-1-4, plus (ii) those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325.	
[Staff Note: G.S. 53-43.1, 53-43.2, 53-43.3, 53-43.4, 53-43.6, and 53-43.7 are not referenced in the Industrial Banks article. NCCOB's chart suggests they correspond to G.S. 53C-6-3 and G.S. 53C-6-13. NCCOB's draft does not include these Chapter 53C provisions, and staff agrees. Staff believes that G.S. 53-43.1, 53-43.2, 53-43.3, 53-43.4, 53-43.6, and 53-43.7 do not impact this chart. *G.S. 53-43.5 is also not referenced in the Industrial Banks article; this provision, however, does mention industrial banks:* ***§ 53-43.5. Minors' deposits and safe-deposit agreements.*** *(a) Deposits. – A bank, including an industrial bank, may operate a deposit account in the name of a minor or in the name of two or more persons, one or more of whom are minors, with the same effect upon its liability as if such minors were of full age. This section shall not affect the law governing transactions with minors in cases outside the scope of this section.* *(b) Dealings with Minor. – A bank, including an industrial bank, may lease a safe-deposit box to and in connection therewith deal with a minor with the same effect*	*[Staff Note: NCCOB's chart suggests that G.S. 53-43.5 corresponds to G.S. 53C-6-4, which does not mention industrial banks:* ***§ 53C-6-4. Minors.*** *(a) A bank may issue and operate a deposit account in the name of a minor or in the name of two or more individuals, one or more of whom are minors, and receive payments, pay withdrawals, accept a pledge of the account, issue automated teller machine (ATM) and debit cards, contract for overdraft protection, and act in any other manner with respect to the account on the order of the minor with like effect as if the minor were of full age and legal capacity. Any payment to or at the direction of a minor is a discharge of the bank to the extent thereof. The account shall be held for the exclusive right and benefit of the minor and any joint owners, free from the control of all other persons except creditors. A minor who obtains a deposit account from a bank under this subsection, whether individually or together with others, is bound by the terms of the deposit account agreement to the same extent as if the minor were of full age and legal capacity.*	Because G.S. 53-43.5 is not referenced in the Industrial Banks article and G.S. 53C-6-4, which is its successor provision, does not mention industrial banks, staff does not recommend that G.S. 53C-6-4 be included. NCCOB's draft also does not include G.S. 53C-6-4.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
as if leasing to and dealing with a person of full legal capacity. This section shall not affect the law governing transactions with minors in cases outside the scope of this section. *(c) Safe-Deposit Agreements. – An institution, including an industrial bank, may rent a safe-deposit box or other receptacle for safe deposit of property to, and receive property for safe deposit from, a married minor and spouse, whether adult or minor, jointly. This section shall not affect the law governing transactions with minors in cases outside the scope of this section.]*	*(b) Any bank may lease a safe deposit box to a minor or to two or more individuals, one or more of whom are minors. With respect to any such lease, a bank may deal with the minor in all regards as if the minor were of full age and legal capacity. A minor entering a lease agreement with a bank under this subsection, whether individually or together with others, is bound by the terms of the safe deposit box agreement to the same extent as if the minor were of full age and legal capacity.* *(c) If a minor with a deposit account, other than a joint account with right of survivorship or a Payable on Death account, dies, a parent or legal guardian of the minor may access and withdraw the funds on deposit, and the bank is discharged to the extent of any withdrawal. If a minor with a safe deposit box dies, the provisions of G.S. 28A-15-13 shall control the opening, inventory, and release of contents of the safe deposit box.* *(d) This section shall not affect the law governing transactions with minors in cases outside the scope of this section, including transactions that constitute an extension of credit to the minor.]*	
§ 53-44. Investment in bonds guaranteed by United States. (a) Authority to Make Investments. – Any bank, building and loan association, land and loan association, savings and loan association, insurance company, title insurance company, land mortgage company, fraternal order or benevolent association, or any other corporation incorporated under the laws of this State, and operating under the supervision of the Commissioner of Banks, Insurance Commissioner, or Superintendent of Savings and Loan Associations; the State Treasurer, as custodian of the assurance fund provided under the Torrens Act, or any officer charged with the investment of sinking funds of the State, any county, city, town, incorporated village, township, school district, school taxing district, or other district or political subdivision of government of the State; the North Carolina State Thrift Society, any clerk of the court holding money by color of his office or as receiver; and any person, firm or corporation acting as executor, administrator, guardian, trustee, or other person acting in a fiduciary capacity may invest in bonds issued, or in bonds which are fully and unconditionally guaranteed as to principal and interest by the United States, to the same extent as the same are now or may be hereafter authorized to invest in any obligation of the United States: Provided that all investments authorized hereunder shall be guaranteed, both as to the payment of principal and interest thereon, by the United States treasury.	**§ 53C-5-2. Investment authority.** (a) In addition to any powers or investments authorized by any other section of this Chapter, a bank may invest in the following: (1) The shares or other securities of the following: a. Any other depository institution. b. Any industrial bank, bankers' bank, or other deposit-taking entity chartered or existing under any federal or State law, including the shares or other securities of clearing corporations defined in G.S. 25-8-102, the shares or other securities of central reserve banks, and the shares of an Edge Act bank. The investment of any bank in the shares of a central reserve bank or bank organized under the Edge Act, 12 U.S.C. § 611, et seq., shall at no time exceed ten percent (10%) of the required capital of the bank making the investment. c. Any company in which a federally chartered institution is authorized to invest under any statute or any regulation, official circular, bulletin, order, or written interpretation issued by the OCC.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-5-2.** Staff agrees for the most part but would specifically exclude subdivisions (a)(3), (a)(4), and (a)(6). These provisions correspond to G.S. 53-44.1, 53-44.2, 53-46.1, and 53-60, which are not referenced in the Industrial Banks article.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
(b) Security for Loans and Deposits. – No bank shall be required to maintain a reserve against deposits secured by any of the above-mentioned bonds equal in market value to the amount of such deposits, and such bonds shall be valid security for all loans and deposits to the same extent as are any obligations of the United States. (c) Bonds Deemed Cash in Settlements by Fiduciaries. – In settlements by guardians, executors, administrators, trustees and others acting in a fiduciary capacity, the bonds and securities herein mentioned shall be deemed cash to the amount actually paid for same, including the premium, if any, paid for such bonds, and may be paid as such by the transfer thereof to the persons entitled and without any liability for a greater rate of interest than the amount actually accruing from such bonds. *[Staff Note: G.S. 53-44.1, 53-44.2, 53-46.1, and 53-60 are not referenced in the Industrial Banks article. They provide:* ***§ 53-44.1. Investments in obligations of agencies supervised by Farm Credit Administration.*** *Notwithstanding any restrictions or limitations on investments contained in any law of this State, federal farm loan bonds issued by federal land banks pursuant to the Federal Farm Loan Act as amended, federal intermediate credit bank debentures issued by federal intermediate credit banks pursuant to the Federal Farm Loan Act as amended, and debentures issued by Central Bank for Cooperatives and regional banks for cooperatives pursuant to the Farm Credit Act of 1933 as amended, or by any of such banks, or any notes, bonds, debentures, or similar type obligations, consolidated or otherwise, issued by any farm credit institution pursuant to authorities contained in the Farm Credit Act of 1971 (Public Law 92-181), as amended, shall be, without limitation, authorized investments of funds of banks, savings banks, trust companies, insurance companies, building and loan associations, savings and loan associations, credit unions, fraternal organizations, pension and retirement funds, and of fiduciary funds of executors, administrators, guardians and trustees, unless such trust and fiduciary funds are required to be otherwise invested by will, deed, order or decree of court, gift, grant or other instrument creating or fixing the trust. This section shall be cumulative to all other laws relating to investments of such funds.*	(2) Bonds or notes issued by or fully and unconditionally guaranteed as to principal and interest by the United States Treasury. No bank shall be required to maintain a reserve against deposits secured by United States Treasury bonds or notes equal in market value to the amount of such deposits, and such bonds or notes shall be valid security for all loans and deposits to the same extent as are any obligations of the United States. (3) Federal farm loan bonds, notes, or similar obligations issued by a farm credit system institution. (4) Securities issued by federal home loan banks pursuant to the Federal Home Loan Bank Act of 1932, as amended. (5) Bonds or notes secured by a mortgage or deed of trust insured or guaranteed by the Federal Housing Administration, Secretary of Housing and Urban Development, or the Veterans Administration, or in mortgages or deeds of trust on real estate that have been accepted for insurance or guarantee by the Federal Housing Administration, Secretary of Housing and Urban Development, or Veterans Administration, or in obligations of a national mortgage association, which obligations are insured or guaranteed by the United States government. No law of this State prescribing the nature, amount, or form of security or requiring security upon which loans or investments may be made, or prescribing the rates or time of payment of the interest any obligation may bear, or prescribing the period for which loans or investments may be made, shall apply to investments made pursuant to this subsection. (6) Mutual funds, but subject to rules or orders adopted by the Commissioner. (b) A bank may make an investment in a subsidiary that will be operated as any of the following: (1) Bank operating subsidiary. (2) Financial subsidiary. (3) DPC subsidiary, as defined by G.S. 53C-1-4(30).	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
§ 53-44.2. Investments in obligations of agencies supervised by Federal Home Loan Bank Board. *Notwithstanding any restrictions or limitations on investments contained in any law of this State, federal home loan banks securities issued by federal home loan banks pursuant to the Federal Home Loan Bank Act of 1932 as amended shall be without limitation, authorized investments of funds of banks, savings banks, trust companies, insurance companies, building and loan associations, savings and loan associations, credit unions, fraternal organizations, pension and retirement funds, and of fiduciary funds of executors, administrators, guardians and trustees, unless such trust and fiduciary funds are required to be otherwise invested by will, deed, order or decree of court, gift, grant or other instrument creating or fixing the trust. This section shall be cumulative to all other laws relating to investments of such funds.* ***§ 53-46.1. Investments in mutual funds.*** *Subject to rules adopted by the Banking Commission, a bank may invest a portion of its unimpaired capital in mutual funds. Any limitation imposed by rule on the amount of such investment shall be in addition to a bank's limitations on investment in stocks provided in G.S. 53-47.* ***§ 53-60. Authorized investment in farm loan bonds.*** *Any bank or insurance company organized under the laws of this State, and any person acting as executor, administrator, guardian, or trustee, may invest in federal farm loan bonds issued by any federal farm loan bank or joint-stock land bank organized pursuant to an act entitled "An act of Congress to provide capital for agricultural development, to create standard forms of investment based upon farm mortgages to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositories, and financial agents for the United States, and for other purposes," approved the seventeenth day of July, 1916, or any notes, bonds, debentures, or similar type obligations, consolidated or otherwise, issued by any farm credit institution pursuant to authorities contained in the Farm Credit Act of 1971 (Public Law 92-181), as amended.]*	(c) No investment shall be made by a bank or a subsidiary pursuant to subsection (b) or (d) of this section unless the following apply: (1) The investment is approved by the board of directors of the bank or a board-authorized committee. (2) The bank has carefully investigated the business or activity in which the subsidiary established by the investment will engage. (3) The bank has established the risk management and financial controls necessary to engage in the business or activity in a safe and sound manner. (4) The bank has, and following the making of the investment and the application of the provisions of this subsection, will continue to satisfy the capital requirements of this Chapter. (d) A subsidiary may invest in a lower-tier subsidiary, subject to the same requirements and limitations applicable to a bank's investment in a subsidiary. (e) Except as provided in subsection (f) of this section, a bank or subsidiary proposing to make an investment described in subsection (b) or (d) of this section shall give prior written notice to the Commissioner, providing such detail as the Commissioner may require. Unless the Commissioner, within 30 days following receipt of the notice, notifies the bank or subsidiary that the Commissioner objects to the proposed investment, the bank or subsidiary may complete the investment. However, the Commissioner may extend the period within which to object to the proposed investment if the Commissioner determines that it raises issues that require additional information or additional time for analysis. While the objection period is so extended, the bank or subsidiary may not proceed with respect to the proposed investment. A bank may appeal an objection by the Commissioner pursuant to G.S. 53C-2-6. (f) The prior notice requirement provided by subsection (e) of this section shall not apply if all of the following apply: (1) The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent examination.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(2) Each activity of the subsidiary in which the investment is to be made is either of the following: a. One in which the bank is then engaged or has previously been engaged, directly or through a different subsidiary, and for which all necessary approvals of bank supervisory agencies and of the Commissioner have previously been obtained and remain in effect. b. One for which no prior notice or application for approval to any federal bank supervisory authority is required. (3) A bank that makes an investment pursuant to the exception created by this subsection shall nevertheless notify the Commissioner in writing of the investment within 30 days thereafter. (g) Any bank, out-of-state bank, national bank, or any subsidiary thereof that engages in an activity subject to licensure and/or regulation under the laws of this State, other than this Chapter, shall be subject to licensure and/or regulation on a basis that does not arbitrarily discriminate by the appropriate regulatory agency which licenses and/or regulates nonbanks that engage in the same activity. (h) The Commissioner shall monitor the impact of investment activities of banks and their subsidiaries under this section on the safety and soundness of such banks. Any securities owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the securities and, if not so disposed of, they shall be charged to profit and loss account and no longer carried on the books as an asset. The limit of time in which securities shall be disposed of or charged off the books of the bank may be extended by the Commissioner if in the Commissioner's judgment it is for the best interest of the bank that the extension be granted, provided that the limitations imposed in this section on the ownership of shares or other equity ownership interest in companies are suspended only to the extent that any bank operating under the supervision of the Commissioner may subscribe for and purchase shares and other equity ownership interests in, or debentures, bonds, or other types of securities of, any company organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes: (1) As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith. (2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real property acquired under this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made. (j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent (10%) of the sum of (i) the bank's "capital," as that term is defined in G.S. 53C-1-4, plus (ii) those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325.	
§ 53-45. Banks, fiduciaries, etc., authorized to invest in securities approved by the Secretary of Housing and Urban Development, Federal Housing Administration, Veterans Administration, etc. (a) Insured Mortgages and Obligation of National Mortgage Associations and Federal Home Loan Banks. – It shall be lawful for all commercial and industrial banks, trust companies, building and loan associations, savings and loan associations, insurance companies, mortgagees and loan correspondents approved by the Secretary of Housing and Urban Development or Federal Housing Administration, and other financial institutions engaged in business in this State, and for guardians, executors, administrators, trustees or others acting in a fiduciary capacity in this State to invest, to the same extent that such funds may be invested in interest-bearing obligations of the United States, their funds or moneys in their custody or possession which are eligible for investment, in bonds or notes secured by a mortgage or deed of trust insured or guaranteed by the Federal Housing Administration, Secretary of Housing	**§ 53C-5-3. Banks, fiduciaries authorized to invest in securities approved by the Secretary of Housing and Urban Development, Federal Housing Administration, Veterans Administration.** (a) Insured Mortgages and Obligation of National Mortgage Associations and Federal Home Loan Banks. – It shall be lawful for all commercial and industrial banks, trust companies, building and loan associations, savings and loan associations, insurance companies, mortgagees and loan correspondents approved by the Secretary of Housing and Urban Development or Federal Housing Administration, and other financial institutions engaged in business in this State, and for guardians, executors, administrators, trustees, or others acting in a fiduciary capacity in this State to invest, to the same extent that such funds may be invested in interest-bearing obligations of the United States, their funds or moneys in their custody or possession that are eligible for investment, in bonds or notes secured by a mortgage or deed of trust insured or guaranteed by the Federal Housing Administration, Secretary of Housing and Urban	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-5-3.** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
and Urban Development or the Veterans Administration, or in mortgages or deeds of trust on real estate which have been accepted for insurance or guarantee by the Federal Housing Administration, Secretary of Housing and Urban Development or Veterans Administration, and in obligations of a national mortgage association which obligations are insured or guaranteed by the United States Government, or bonds, debentures, consolidated bonds, or other obligations of any federal home loan bank or banks. (b) Insured or Guaranteed Loans; Loans Purchased by National Mortgage Associations and Federal Home Loan Banks. – All such banks, trust companies, building and loan associations, savings and loan associations, insurance companies, mortgagees and loan correspondents approved by the Secretary of Housing and Urban Development, or Federal Housing Administration, and other financial institutions, and also all such guardians, executors, administrators, trustees or others acting in a fiduciary capacity in this State, may make such loans, secured by real estate, as the Secretary of Housing and Urban Development, the Federal Housing Administration, a national mortgage association, or the Veterans Administration has insured or guaranteed, or has made a commitment to insure or guarantee, and may obtain such insurance or guarantee; provided, further, that the above designated financial institutions, may make loans, secured by real estate, that are eligible and committed for sale to a national mortgage association, federal home loan bank, federal home loan mortgage corporation or other agency or instrumentality of the United States. (c) Eligibility for Credit Insurance. – All banks, trust companies, building and loan associations, savings and loan associations, insurance companies, mortgagees and loan correspondents approved by the Secretary of Housing and Urban Development, or Federal Housing Administration and other financial institutions, on being approved as eligible for credit insurance by the Secretary of Housing and Urban Development, the Federal Housing Administration, or the Veterans Administration, may make such loans as are insured by the Secretary of Housing and Urban Development or Federal Housing Administration or insured or guaranteed by the Veterans Administration. (d) Certain Securities Made Eligible for Collaterals, etc. – Whenever by statute of this State, collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or other fund is required to be maintained, consisting of designated securities, bonds, and notes secured by a mortgage or deed	Development, or the Veterans Administration, or in mortgages or deeds of trust on real estate which have been accepted for insurance or guarantee by the Federal Housing Administration, Secretary of Housing and Urban Development, or Veterans Administration, and in obligations of a national mortgage association, which obligations are insured or guaranteed by the United States Government, or bonds, debentures, consolidated bonds, or other obligations of any federal home loan bank or banks. (b) Insured or Guaranteed Loans; Loans Purchased by National Mortgage Associations and Federal Home Loan Banks. — All such banks, trust companies, building and loan associations, savings and loan associations, insurance companies, mortgagees and loan correspondents approved by the Secretary of Housing and Urban Development or Federal Housing Administration, and other financial institutions, and also all such guardians, executors, administrators, trustees, or others acting in a fiduciary capacity in this State, may make such loans, secured by real estate, as the Secretary of Housing and Urban Development, the Federal Housing Administration, a national mortgage association, or the Veterans Administration has insured or guaranteed, or has made a commitment to insure or guarantee, and may obtain such insurance or guarantee; provided, further, that the above designated financial institutions may make loans, secured by real estate, that are eligible and committed for sale to a national mortgage association, federal home loan bank, federal home loan mortgage corporation, or other agency or instrumentality of the United States. (c) Eligibility for Credit Insurance. — All banks, trust companies, building and loan associations, savings and loan associations, insurance companies, mortgagees and loan correspondents approved by the Secretary of Housing and Urban Development or Federal Housing Administration, and other financial institutions, on being approved as eligible for credit insurance by the Secretary of Housing and Urban Development, the Federal Housing Administration, or the Veterans Administration, may make such loans as are insured by the Secretary of Housing and Urban Development or Federal Housing Administration or insured or guaranteed by the Veterans Administration. (d) Certain Securities Made Eligible for Collaterals. — Whenever by statute of this State collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or other fund is required to be maintained, consisting of designated securities, bonds, and notes secured by a mortgage or deed of trust insured or guaranteed by the Secretary of Housing and Urban Development, Federal Housing	

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of trust insured or guaranteed by the Secretary of Housing and Urban Development, Federal Housing Administration, or Veterans Administration, debentures issued by the Secretary of Housing and Urban Development or the Federal Housing Administration and obligations of a national mortgage association shall be eligible for such purposes. (e) General Laws not Applicable. – No law of this State prescribing the nature, amount or form of security or requiring security upon which loans or investments may be made, or prescribing or limiting the rates or time of payment of the interest any obligation may bear, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to the foregoing paragraphs.	Administration, or Veterans Administration, debentures issued by the Secretary of Housing and Urban Development or the Federal Housing Administration and obligations of a national mortgage association shall be eligible for such purposes. (e) General Laws Not Applicable. — No law of this State prescribing the nature, amount, or form of security or requiring security upon which loans or investments may be made, or prescribing or limiting the rates or time of payment of the interest any obligation may bear, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to the foregoing paragraphs.	
§ 53-46. Limitations on investments in securities. The investment in any bonds or other debt obligations of any one firm, individual, or corporation, unless it be the obligations of the United States, or agency thereof, or other obligations guaranteed by the United States Government, State of North Carolina, or other state of the United States, or other political subdivision of the State of North Carolina, or other state of the United States in which the bank maintains a branch, shall at no time exceed fifty thousand dollars ($50,000) plus ten percent (10%) of all amounts in excess of two hundred fifty thousand dollars ($250,000) of the bank's unimpaired capital fund.	**§ 53C-5-2. Investment authority.** (a) In addition to any powers or investments authorized by any other section of this Chapter, a bank may invest in the following: (1) The shares or other securities of the following: a. Any other depository institution. b. Any industrial bank, bankers' bank, or other deposit-taking entity chartered or existing under any federal or State law, including the shares or other securities of clearing corporations defined in G.S. 25-8-102, the shares or other securities of central reserve banks, and the shares of an Edge Act bank. The investment of any bank in the shares of a central reserve bank or bank organized under the Edge Act, 12 U.S.C. § 611, et seq., shall at no time exceed ten percent (10%) of the required capital of the bank making the investment. c. Any company in which a federally chartered institution is authorized to invest under any statute or any regulation, official circular, bulletin, order, or written interpretation issued by the OCC. (2) Bonds or notes issued by or fully and unconditionally guaranteed as to principal and interest by the United States Treasury. No bank shall be required to maintain a reserve against deposits secured by United States Treasury bonds or notes equal in	Referenced in G.S. 53-143. NCCOB's draft suggests **G.S. 53C-5-2(j).** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	market value to the amount of such deposits, and such bonds or notes shall be valid security for all loans and deposits to the same extent as are any obligations of the United States. (3) Federal farm loan bonds, notes, or similar obligations issued by a farm credit system institution. (4) Securities issued by federal home loan banks pursuant to the Federal Home Loan Bank Act of 1932, as amended. (5) Bonds or notes secured by a mortgage or deed of trust insured or guaranteed by the Federal Housing Administration, Secretary of Housing and Urban Development, or the Veterans Administration, or in mortgages or deeds of trust on real estate that have been accepted for insurance or guarantee by the Federal Housing Administration, Secretary of Housing and Urban Development, or Veterans Administration, or in obligations of a national mortgage association, which obligations are insured or guaranteed by the United States government. No law of this State prescribing the nature, amount, or form of security or requiring security upon which loans or investments may be made, or prescribing the rates or time of payment of the interest any obligation may bear, or prescribing the period for which loans or investments may be made, shall apply to investments made pursuant to this subsection. (6) Mutual funds, but subject to rules or orders adopted by the Commissioner. (b) A bank may make an investment in a subsidiary that will be operated as any of the following: (1) Bank operating subsidiary. (2) Financial subsidiary. (3) DPC subsidiary, as defined by G.S. 53C-1-4(30). (c) No investment shall be made by a bank or a subsidiary pursuant to subsection (b) or (d) of this section unless the following apply:	

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	(1) The investment is approved by the board of directors of the bank or a board-authorized committee. (2) The bank has carefully investigated the business or activity in which the subsidiary established by the investment will engage. (3) The bank has established the risk management and financial controls necessary to engage in the business or activity in a safe and sound manner. (4) The bank has, and following the making of the investment and the application of the provisions of this subsection, will continue to satisfy the capital requirements of this Chapter. (d) A subsidiary may invest in a lower-tier subsidiary, subject to the same requirements and limitations applicable to a bank's investment in a subsidiary. (e) Except as provided in subsection (f) of this section, a bank or subsidiary proposing to make an investment described in subsection (b) or (d) of this section shall give prior written notice to the Commissioner, providing such detail as the Commissioner may require. Unless the Commissioner, within 30 days following receipt of the notice, notifies the bank or subsidiary that the Commissioner objects to the proposed investment, the bank or subsidiary may complete the investment. However, the Commissioner may extend the period within which to object to the proposed investment if the Commissioner determines that it raises issues that require additional information or additional time for analysis. While the objection period is so extended, the bank or subsidiary may not proceed with respect to the proposed investment. A bank may appeal an objection by the Commissioner pursuant to G.S. 53C-2-6. (f) The prior notice requirement provided by subsection (e) of this section shall not apply if all of the following apply: (1) The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent examination. (2) Each activity of the subsidiary in which the investment is to be made is either of the following:	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	a. One in which the bank is then engaged or has previously been engaged, directly or through a different subsidiary, and for which all necessary approvals of bank supervisory agencies and of the Commissioner have previously been obtained and remain in effect. b. One for which no prior notice or application for approval to any federal bank supervisory authority is required. (3) A bank that makes an investment pursuant to the exception created by this subsection shall nevertheless notify the Commissioner in writing of the investment within 30 days thereafter. (g) Any bank, out-of-state bank, national bank, or any subsidiary thereof that engages in an activity subject to licensure and/or regulation under the laws of this State, other than this Chapter, shall be subject to licensure and/or regulation on a basis that does not arbitrarily discriminate by the appropriate regulatory agency which licenses and/or regulates nonbanks that engage in the same activity. (h) The Commissioner shall monitor the impact of investment activities of banks and their subsidiaries under this section on the safety and soundness of such banks. Any securities owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the securities and, if not so disposed of, they shall be charged to profit and loss account and no longer carried on the books as an asset. The limit of time in which securities shall be disposed of or charged off the books of the bank may be extended by the Commissioner if in the Commissioner's judgment it is for the best interest of the bank that the extension be granted, provided that the limitations imposed in this section on the ownership of shares or other equity ownership interest in companies are suspended only to the extent that any bank operating under the supervision of the Commissioner may subscribe for and purchase shares and other equity ownership interests in, or debentures, bonds, or other types of securities of, any company organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors. (i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(1) As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith. (2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real property acquired under this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made. (j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent (10%) of the sum of (i) the bank's "capital," as that term is defined in G.S. 53C-1-4, plus (ii) those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325.	
[Staff Note: G.S. 53-46.1 is discussed in the row on G.S. 53-44.]		
§ 53-47. Limitations on investment in stocks. (a) In addition to any powers or investments authorized by any other section of this Chapter, a bank may invest in the capital stock or other securities of any other state, national or foreign bank or trust company, and in any other industrial bank, savings bank, Morris Plan bank, savings and loan association, bankers' bank or other deposit taking entity chartered or existing under any federal, state, or foreign law including, but not limited to, the capital stock of clearing corporations defined in G.S. 25-8-102, the capital stock or other securities of central reserve banks whose capital stock exceeds one million dollars ($1,000,000) and the capital stock of an Edge or Agreement corporation. As used in this Chapter, the term "bankers' bank" means an insured depository financial institution, organized and chartered to do business exclusively with other banks and savings institutions, and the stock of which, or the stock of the holding company which controls such bank, is owned exclusively (except	**No corresponding section.** *[Staff Note: Staff believes that G.S. 53-47 is comparable to G.S. 53C-5-2:* ***§ 53C-5-2. Investment authority.*** *(a) In addition to any powers or investments authorized by any other section of this Chapter, a bank may invest in the following:* *(1) The shares or other securities of the following:* *a. Any other depository institution.*	Referenced in G.S. 53-145. NCCOB's chart suggests there is no corresponding section. Staff disagrees and suggests G.S. 53C-5-2 except subdivisions (a)(3), (a)(4), and (a)(6). See row on G.S. 53-44.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
to the extent directors' qualifying shares are required by law) by banks or savings institutions. To constitute a central reserve bank as contemplated by this Chapter, at least fifty percent (50%) of the capital stock of such bank shall be owned by other banks. The investment of any bank in the capital stock of such central reserve bank or bank organized under the "Edge Act", (12 U.S.C. § 611 et seq.) shall at no time exceed ten percent (10%) of the paid-in capital and permanent surplus of the bank making the investment. (b) A bank may invest, without limitation, in a corporation, firm, partnership, or company: (1) Which is a bank operating subsidiary, or (2) To protect the bank from loss. (c) In addition to the foregoing, upon 30 days prior written notice to the Commissioner of Banks, providing such detail as the Commissioner may require, a bank may invest, in the aggregate, up to seventy-five percent (75%) of its unimpaired capital fund in the stock or assets of other corporations, firms, partnerships, or companies which are: (1) Primarily engaging in activities permissible for national banks or bank holding companies under applicable laws, rules, regulations or orders; (2) Primarily engaging in activities of a financial nature, including the transmission or processing of information or data relating to such activities. For the purpose of this subsection, activities of a financial nature shall include, but not be limited to, all forms of securities activities, including underwriting, distribution, and brokerage, together with such other activities as the Commissioner of Banks shall determine by regulation or order; (3) Engaging in any other activity approved by the Commissioner of Banks. (d) Any state or national bank subsidiary which engages in an activity subject to licensure and/or regulation under other than Chapter 53 of the General Statutes shall be subject to licensure and/or regulation on a basis that does not arbitrarily discriminate by the appropriate regulatory agency which licenses and/or regulates nonbanks which engage in the same activity.	*b. Any industrial bank, bankers' bank, or other deposit-taking entity chartered or existing under any federal or State law, including the shares or other securities of clearing corporations defined in G.S. 25-8-102, the shares or other securities of central reserve banks, and the shares of an Edge Act bank. The investment of any bank in the shares of a central reserve bank or bank organized under the Edge Act, 12 U.S.C. § 611, et seq., shall at no time exceed ten percent (10%) of the required capital of the bank making the investment.* *c. Any company in which a federally chartered institution is authorized to invest under any statute or any regulation, official circular, bulletin, order, or written interpretation issued by the OCC.* *(2) Bonds or notes issued by or fully and unconditionally guaranteed as to principal and interest by the United States Treasury. No bank shall be required to maintain a reserve against deposits secured by United States Treasury bonds or notes equal in market value to the amount of such deposits, and such bonds or notes shall be valid security for all loans and deposits to the same extent as are any obligations of the United States.* *(3) Federal farm loan bonds, notes, or similar obligations issued by a farm credit system institution.* *(4) Securities issued by federal home loan banks pursuant to the Federal Home Loan Bank Act of 1932, as amended.* *(5) Bonds or notes secured by a mortgage or deed of trust insured or guaranteed by the Federal Housing Administration, Secretary of Housing and Urban Development, or the Veterans Administration, or in mortgages or deeds of trust on real estate that have been accepted for insurance or guarantee by the Federal Housing Administration, Secretary of Housing and Urban Development, or Veterans Administration, or in obligations of a national mortgage association, which obligations are insured or guaranteed by the United States government. No law of this State prescribing the nature, amount, or form of security or requiring security upon which loans or investments may be made, or prescribing the rates or time of payment of the interest any obligation may bear, or prescribing the period for which loans or investments may be made, shall apply to investments made pursuant to this subsection.*	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
(e) Unless otherwise notified by the Commissioner within 30 days following receipt of the written notice, a bank may complete its investment in the stock or assets of the other corporation, firm, partnership, or company, or commence a new activity through an existing subsidiary. The Commissioner may extend the 30-day period if the Commissioner determines that the proposed investment or activity raises issues which require additional information or additional time for analysis. If the 30-day period is extended, the bank may proceed with respect to the proposed investment or activity only upon written approval of the Commissioner of Banks. (f) The Commissioner of Banks shall monitor the impact of investment activities of banks under this section on the safety and soundness of such banks. Any stocks owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the stocks, and if not so disposed of, they shall be charged to profit and loss account, and no longer carried on the books as an asset. The limit of time in which said stocks shall be disposed of or charged off the books of the bank may be extended by the Commissioner of Banks if in the Commissioner's judgment it is for the best interest of the bank that such extension be granted; provided that the limitations imposed in this section on the ownership of stock in or securities of corporations are suspended only to the extent that any bank operating under the supervision of the Commissioner of Banks may subscribe for and purchase shares of stock in or debentures, bonds, or other types of securities of any corporation organized under the laws of the United States for the purposes of insuring to depositors a part or all of their funds on deposit in banks where and to such extent as such stock or security ownership is required in order to obtain the benefits of such deposit insurance for its depositors.	*(6) Mutual funds, but subject to rules or orders adopted by the Commissioner.* *(b) A bank may make an investment in a subsidiary that will be operated as any of the following:* *(1) Bank operating subsidiary.* *(2) Financial subsidiary.* *(3) DPC subsidiary, as defined by G.S. 53C-1-4(30).* *(c) No investment shall be made by a bank or a subsidiary pursuant to subsection (b) or (d) of this section unless the following apply:* *(1) The investment is approved by the board of directors of the bank or a board-authorized committee.* *(2) The bank has carefully investigated the business or activity in which the subsidiary established by the investment will engage.* *(3) The bank has established the risk management and financial controls necessary to engage in the business or activity in a safe and sound manner.* *(4) The bank has, and following the making of the investment and the application of the provisions of this subsection, will continue to satisfy the capital requirements of this Chapter.* *(d) A subsidiary may invest in a lower-tier subsidiary, subject to the same requirements and limitations applicable to a bank's investment in a subsidiary.* *(e) Except as provided in subsection (f) of this section, a bank or subsidiary proposing to make an investment described in subsection (b) or (d) of this section shall give prior written notice to the Commissioner, providing such detail as the Commissioner may require. Unless the Commissioner, within 30 days following receipt of the notice, notifies the bank or subsidiary that the Commissioner objects to the proposed investment, the bank or subsidiary may complete the investment. However, the Commissioner may*	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	extend the period within which to object to the proposed investment if the Commissioner determines that it raises issues that require additional information or additional time for analysis. While the objection period is so extended, the bank or subsidiary may not proceed with respect to the proposed investment. A bank may appeal an objection by the Commissioner pursuant to G.S. 53C-2-6. *(f) The prior notice requirement provided by subsection (e) of this section shall not apply if all of the following apply:* *(1) The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent examination.* *(2) Each activity of the subsidiary in which the investment is to be made is either of the following:* *a. One in which the bank is then engaged or has previously been engaged, directly or through a different subsidiary, and for which all necessary approvals of bank supervisory agencies and of the Commissioner have previously been obtained and remain in effect.* *b. One for which no prior notice or application for approval to any federal bank supervisory authority is required.* *(3) A bank that makes an investment pursuant to the exception created by this subsection shall nevertheless notify the Commissioner in writing of the investment within 30 days thereafter.* *(g) Any bank, out-of-state bank, national bank, or any subsidiary thereof that engages in an activity subject to licensure and/or regulation under the laws of this State, other than this Chapter, shall be subject to licensure and/or regulation on a basis that does not arbitrarily discriminate by the appropriate regulatory agency which licenses and/or regulates nonbanks that engage in the same activity.* *(h) The Commissioner shall monitor the impact of investment activities of banks and their subsidiaries under this section on the safety and soundness of such banks. Any securities owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the*	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	securities and, if not so disposed of, they shall be charged to profit and loss account and no longer carried on the books as an asset. The limit of time in which securities shall be disposed of or charged off the books of the bank may be extended by the Commissioner if in the Commissioner's judgment it is for the best interest of the bank that the extension be granted, provided that the limitations imposed in this section on the ownership of shares or other equity ownership interest in companies are suspended only to the extent that any bank operating under the supervision of the Commissioner may subscribe for and purchase shares and other equity ownership interests in, or debentures, bonds, or other types of securities of, any company organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors. *(i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:* *(1) As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith.* *(2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real property acquired under this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made.* *(j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent (10%) of the sum of (i) the bank's "capital," as that term is defined in G.S. 53C-1-4, plus (ii) those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325.]*	
§ 53-48. Limitation of loans.	**§ 53C-6-1. Loans and extensions of credit.**	Referenced in G.S. 53-143.

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(a) The total loans and extensions of credit, both direct and indirect, by a bank to a person, other than a municipal corporation for money borrowed, including in the liabilities of a firm the liabilities of the several members thereof, outstanding at one time and not fully secured, as determined in a manner consistent with subsection (b) of this section, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed the greater of fifteen percent (15%) of the unimpaired capital fund of the bank or the percentage permitted for national banks in this State by statute or regulation of the Comptroller of the Currency. (b) The total loans and extensions of credit, both direct and indirect, by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan or extension of credit outstanding shall not exceed the greater of ten percent (10%) of the unimpaired capital fund of the bank or the percentage permitted for national banks by statute or regulation of the Comptroller of the Currency. This limitation shall be separate from and in addition to the limitation contained in subsection (a) of this section. (c) The discount of bills of exchange drawn in good faith against actual existing values, the discount of solvent trade acceptances or other solvent commercial or business paper actually owned by the person negotiating the same, loans or extensions of credit secured by a segregated deposit account in the lending bank, the purchase of bankers acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other banks, and the purchase of any notes and the making of any loans, secured by not less than a like face amount of bonds of the United States, or an agency of the United States, or other obligations guaranteed by the United States Government, or State of North Carolina or certificates of indebtedness of the United States, or agency thereof, or other obligations guaranteed by the United States Government, shall not be considered as money borrowed within the meaning of this section: Provided, however, that the limitations of this section shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same, made by any federal reserve bank or by the United States or any department, board, bureau, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States. (d) For purposes of this section, the term "person" shall be deemed to include an	(a) A bank may make a loan or extension of credit secured by the pledge of its own shares or the shares of its holding company, provided: (1) When a bank exercises its security interest in shares of the bank or its holding company, it shall dispose of all of the shares within a period of six months. If the shares have not been disposed of within six months, the shares shall be charged to profit and loss and no longer carried as an asset of the bank. The Commissioner may extend the six-month period not to exceed an additional six months. (2) A bank may not extend credit to finance the purchase of or to carry shares of the bank or the shares of its holding company. For purposes of this subsection, the phrase "to carry" has the meaning set forth in 12 C.F.R. Part 221, as promulgated by the Federal Reserve Board. (b) Loans and Extensions of Credit – Limitations: (1) The total loans and extensions of credit, both direct and indirect, by a bank to a person, other than a municipal corporation for money borrowed, including in the liabilities of a company the liabilities of the several members of the company, outstanding at one time and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit, shall not exceed the greater of (i) fifteen percent (15%) of the sum of the bank's capital plus those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325 or (ii) the amount permitted for national banks in this State by statute or regulation of the Comptroller of the Currency. (2) The total loans and extensions of credit, both direct and indirect, by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan or extension of credit outstanding, shall not exceed the greater of (i) ten percent (10%) of the sum of the bank's capital plus those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325 or (ii) the amount permitted for national banks by statute or regulation of the	NCCOB's chart and draft suggest **G.S. 53C-6-1.** Staff agrees. Please note that G.S. 53C-6-1 is also discussed in the row on G.S. 53-64.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
individual, or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any other form of entity not specifically listed herein. Loans or extensions of credit to one person include loans made to other persons when the proceeds of the loans or extensions of credit are to be used for the direct benefit of the first person or the persons are engaged in a common enterprise. The Commissioner of Banks shall monitor the lending activities of banks under this section for undue credit concentrations and inadequate risk diversification which could adversely affect the safety and soundness of such banks.	Comptroller of the Currency. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection. (3) The following shall not be considered as extensions of credit within the meaning of this section; provided that the limitations of this subsection shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same made by any federal reserve bank or by the United States or any department, board, bureau, commission, or establishment of the United States, including any corporation wholly owned, directly or indirectly, by the United States: a. The discount of bills of exchange drawn in good faith against actual existing values. b. The discount of solvent trade acceptances or other solvent commercial or business paper actually owned by the person negotiating the same. c. Loans or extensions of credit secured by a segregated deposit account in the lending bank. d. The purchase of bankers' acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other depository institutions. e. The purchase of any notes and the making of any loans secured by not less than a like face amount of bonds of the United States or any agency of the United States; or other obligations guaranteed by the United States government or the State of North Carolina; or certificates of indebtedness of the United States, or agency thereof; or other obligations guaranteed by the United States government. (4) For purposes of this subsection, the following definitions and conditions apply: a. "Person" includes an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed; provided, the term "person" shall not include (i) a clearing organization registered with the Commodity Futures Trading Commission (or its successor) or the Securities and Exchange	

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	Commission (or its successor) or any federal banking agency or (ii) a bank's affiliates. b. Loans or extensions of credit to one person include loans made to other persons when the proceeds of the loans or extensions of credit are to be used for the direct benefit of the first person or the persons are engaged in a common enterprise. c. For purposes of this section, extensions of credit by a bank to a person shall include the bank's credit exposures to the person in derivative transactions with the bank. d. "Derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to one or more commodities, securities, debt instruments, currencies, interest or other rates, indices, or assets. e. Credit exposure to a person in connection with a derivative transaction shall be determined based on an amount that the bank reasonably determines, in accordance with customary industry practices under the terms of the derivative transaction or otherwise, would be its loss if the person were to default on the date of determination, taking into account any netting and collateral arrangements and any guarantees or other credit enhancements, provided that the bank may elect to determine credit exposure on the basis of such other method of determining credit exposure as may be permitted by the bank's primary federal regulator. (c) The Commissioner shall monitor the lending activities of banks under this section for undue credit concentrations and inadequate risk diversification that could adversely affect the safety and soundness of the banks. (d) Rules adopted by the Commissioner to ensure that extensions of credit made by banks are in keeping with sound lending practices and to promote the purposes of this Chapter shall not prohibit a bank from making any extension of credit that is a permitted extension of credit for a federally chartered institution. (e) Any bank may, by resolution duly passed at a meeting of its board of directors or a board-authorized committee, request the Commissioner to suspend the limitations on	

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	loans set forth in this section as the limitations may apply to any particular loan (i) on the bank's books that then exceeds such limitations, or (ii) which the bank desires to make or modify in a manner that would not otherwise be permitted in the absence of a suspension of such limitations. Upon receipt of a duly certified copy of such resolution, the Commissioner may, in the Commissioner's discretion and subject to such requirements, limitations, and conditions as the Commissioner deems appropriate, suspend the limitations on loans set forth in this section insofar as they apply to the loan in question.	
§ 53-49. Suspension of investment and loan limitation. The board of directors of any bank, may by resolution duly passed at a meeting of the board, request the Commissioner of Banks to suspend temporarily the limitations on loans and investments as the same may apply to any particular loan or investment in excess of the limitations of G.S. 53-46, 53-47, and 53-48 which the bank desires to make. Upon receipt of a duly certified copy of such resolution, the Commissioner of Banks may, in his discretion, suspend the limitations on loans and investments insofar as they would apply to the loan or investment which the bank desires to make: Provided, however, such loan shall be amply secured and shall be for a period not longer than 120 days.	**No corresponding section.** *[Staff Note: NCCOB's draft suggests G.S. 53C-6-1(e):* *(e) Any bank may, by resolution duly passed at a meeting of its board of directors or a board-authorized committee, request the Commissioner to suspend the limitations on loans set forth in this section as the limitations may apply to any particular loan (i) on the bank's books that then exceeds such limitations, or (ii) which the bank desires to make or modify in a manner that would not otherwise be permitted in the absence of a suspension of such limitations. Upon receipt of a duly certified copy of such resolution, the Commissioner may, in the Commissioner's discretion and subject to such requirements, limitations, and conditions as the Commissioner deems appropriate, suspend the limitations on loans set forth in this section insofar as they apply to the loan in question.]*	Referenced in G.S. 53-143. NCCOB's chart suggests no corresponding section. NCCOB's draft, however, suggests **G.S. 53C-6-1(e).** Staff agrees with NCCOB's draft.
§ 53-50. Requirement of reserve fund. (a) A bank which is not a member of the federal reserve system shall maintain at all times a reserve fund in such amounts and/or ratios as shall be fixed by regulation of the Banking Commission. In fixing the amounts and/or ratios of the reserve fund the Banking Commission shall take into consideration the level of liquidity necessary to assure the safety and soundness of the State banking system. (b) A bank which is a member of the federal reserve system shall maintain at all times a reserve fund in accordance with the requirements applicable to a member bank under the laws of the United States. (c) A bank shall give written notice to the Commissioner of Banks, in the manner	**§ 53C-4-11. Reserve fund.** (a) Each bank shall maintain a reserve fund as follows: (1) If the bank is a member of the Federal Reserve System, it shall maintain a reserve fund in accordance with the requirements of the Federal Reserve Board. (2) All other banks shall maintain a reserve fund as required by the Commissioner. (b) The Commissioner may require a level of reserve fund for nonmember banks as provided in subsection (a)(2) of this section, taking into consideration the level of liquidity the Commissioner deems necessary for the safe and sound operation of the banks.	Both Chapter 53 sections are referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-4-11.** Staff agrees.

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prescribed by the Commissioner for such notice, of any deficiency in the reserve fund required under subsection (a) or (b) of this section within three business days after the close of any scheduled averaging period during which such deficiency occurs. **§ 53-51. Reserve and cash defined.** (a) Reserve shall consist of: (1) Cash on hand; (2) Balances payable on demand, due from other approved solvent banks, which have been designated depositories as hereinafter provided in this Chapter; and (3) Subject to rules and regulations, duly adopted by the State Banking Commission, fixing the maximum percentage of required reserves that may consist of such obligations, the following prescribed unencumbered, interest-bearing obligations, which shall not have more than 120 days to final maturity: a. Obligations of the United States Treasury and of any agency of the United States which are guaranteed by the United States Government; and b. General obligation of the State of North Carolina and of any political subdivision thereof which has received an investment rating of A or higher by a nationally recognized rating service. (4) Balances maintained at a federal reserve bank either directly or on a pass-through basis to meet the reserve requirements of the federal reserve system. (b) For purposes of this section, cash shall include both lawful money of the United States and exchange of any clearinghouse association.	(c) In establishing the required level of reserve fund, the Commissioner shall include the following types of liquid reserves: (1) Cash on hand, which shall include both United States currency and exchange of any clearinghouse association or similar intermediary, and balances maintained at any federal reserve bank, either directly or on a pass-through basis, to meet federal reserve system reserve requirements. (2) Balances payable on demand from designated depository institutions. (3) Obligations of the United States Treasury, any agency of the United States government that is guaranteed by the United States government, and any general obligation of this State or any political subdivision thereof that has an investment grade rating of A or higher by a nationally recognized rating service. (d) Notwithstanding any other provision of this Chapter, in the event the reserve fund of a bank falls below the level required under subsection (b) of this section, the Commissioner may require the bank to do the following: (1) Discontinue making any new extension of credit. (2) Promptly restore its reserve fund to the applicable required level. (e) In the event a bank shall fail to promptly restore its reserve fund to the applicable level required within 10 days after the Commissioner directs it to do so, the Commissioner may take such actions under Article 8 of this Chapter as the Commissioner deems necessary.	
[Staff Note: G.S. 53-52 and G.S. 53-53 are not referenced in the Industrial Banks article and were repealed prior to the 2012 rewrite of the banking laws.]		
§ 53-54. Transactions not performed during banking hours.	**No corresponding section.**	Referenced in G.S. 53-145.

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Nothing in any law of this State shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank in this State, because done or performed during any time other than regular banking hours. Nothing herein shall be construed to require a bank doing business in this State to be open when it may otherwise lawfully be closed or to prohibit a bank from conducting a transaction at times other than its regularly scheduled hours of operation.		NCCOB's chart suggests no corresponding section. Staff agrees.
[Staff Note: G.S. 53-55 through G.S. 53-60 are not referenced in the Industrial Banks article. According to NCCOB's chart, G.S. 53-55 and G.S. 53-56 have no corresponding section, and staff agrees. G.S. 53-57, 53-58, and 53-59 were repealed prior to the 2012 rewrite of the banking laws. G.S. 53-60 is discussed in the row on G.S. 53-44]		
§ 53-61. Authority to join federal reserve bank. (a) Terms Defined. – The words "Federal Reserve Act," as herein used, shall be held to mean and to include the act of Congress of the United States, approved December 23, 1913, as heretofore and hereafter amended. The words "Federal Reserve Board" shall be held to mean the Federal Reserve Board created and described in the Federal Reserve Act. The words "federal reserve banks" shall be held to mean federal reserve banks created and organized under the authority of the Federal Reserve Act. The words "member bank" shall be held to mean any national or state bank or bank and trust company which has become or which becomes a member of one of the federal reserve banks created by the Federal Reserve Act. (b) Membership in Bank. – Any bank incorporated under the laws of this State shall have the power to subscribe to the capital stock and become a member of a federal reserve bank. (c) Powers Vested by Federal Reserve Act. – Any bank incorporated under the laws of this State which is, or which may become, a member of the federal reserve bank is by this Chapter vested with all powers conferred upon member banks of the federal reserve banks by terms of the Federal Reserve Act as fully and completely as if such powers were specifically enumerated and described therein, and such powers shall be exercised subject to all restrictions and limitations imposed by the Federal Reserve	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.

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Act, or by regulations of the Federal Reserve Board made pursuant thereto. The right, however, is expressly reserved to revoke or to amend the powers herein conferred. (d) Compliance with Reserve Requirements. – A compliance on the part of any such bank with the reserve requirements of the Federal Reserve Act shall be held to be a full compliance with the provisions of the laws of this State, which require banks to maintain cash balances in their vaults or with other banks, and no such bank shall be required to carry or maintain reserve other than such as is required under the terms of the Federal Reserve Act. (e) Supervision and Examination of Bank. – Any such bank shall continue to be subject to the supervision and examination required by the laws of this State, except that the Federal Reserve Board shall have the right, if it deems necessary, to make examinations; and the authorities of this State having supervision over such banks may disclose to the Federal Reserve Board, or to the examiners duly appointed by it, all information in reference to the affairs of any bank which has become, or desires to become, a member of a federal reserve bank.		
§ 53-62. Establishment of branches; limited service facilities; and off-premises customer-bank communications terminals. (a) The word "capital" as used in this section means capital stock and unimpaired surplus. (b) A bank doing business under this Chapter may establish branches or limited service facilities within this State after having first obtained the written approval of the Commissioner of Banks, which approval may be given or withheld by the Commissioner of Banks, in his discretion. The Commissioner of Banks, in exercising such discretion, shall take into account, but not by way of limitation, such factors as the financial history and condition of the applicant bank, the adequacy of its capital structure, its future earnings prospects, and the general character of its management. Such approval shall not be given until he shall find (i) that the establishment of such branch or limited service facility will meet the needs and promote the convenience of the community to be served by the bank, and (ii) that the probable volume of business and reasonable public demand in such community are sufficient to assure and maintain the solvency of said branch or limited service facility and of the existing bank or banks in said community.	**§ 53C-6-15. Establishment of branches.** (a) A bank may establish one or more branches in this State, whether de novo or by acquisition of existing branches of another depository institution, with the prior written approval of the Commissioner. The Commissioner's approval may be given or withheld, in the Commissioner's discretion, in accordance with the provisions of subsection (c) of this section. (b) A bank may establish branches in another state, whether de novo or by acquisition of existing branches of another depository institution, in accordance with the provisions of applicable federal law and the laws of the other state, upon prior written approval of the Commissioner. The Commissioner's approval may be given or withheld in the Commissioner's discretion in accordance with the provisions of subsection (c) of this section. (c) A bank seeking authority to establish a branch shall make application to the Commissioner in a form acceptable to the Commissioner. Not more than 30 days before nor less than 10 days after the filing of the application with the Commissioner, the	Referenced in G.S. 53-141(3). NCCOB's draft replaces references to G.S. 53-62 in the context of establishing a branch with **G.S. 53C-6-15.** NCCOB's draft replaces a reference to G.S. 53-62(e) in the context of closing a branch with **G.S. 53C-6-17.** Staff agrees with both replacements.

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(c) (1) A branch or limited service facility of a bank shall be operated as a branch or office of and under the name of the bank, and under the control and direction of the board of directors and executive officers of the bank. The board of directors of the bank shall elect such officers as may be required to properly conduct the business of any branch or limited service facility. (2) The Commissioner of Banks shall not authorize the establishment of a branch until he is satisfied that the applicant bank has sufficient capital to maintain a minimum capital to asset ratio as the Commissioner of Banks, in his discretion, may require. In determining such ratio the Commissioner of Banks shall give due consideration to (i) the amount of capital required to support the bank's projected growth, (ii) the bank's earnings history and projected earnings, (iii) the quality of the bank's assets, (iv) compliance with the fixed asset limitation contained in G.S. 53-43(3), and (v) the business experience and reputation of bank management. (3) The Commissioner of Banks may, on written application by a bank, in his discretion authorize the bank to establish a limited service facility after considering the criteria and making the findings required in subsection (b). (d) A limited service facility, upon written request to the Commissioner of Banks, and after meeting the requirements of subsection (c) may convert to a branch. If branch status is granted then the branch shall be subject to all of the conditions and requirements of that type of banking office. Upon 30 days written notice to the Commissioner of Banks, a bank may discontinue any limited service facility operation; provided, however, if a limited service facility has within five years preceding the proposed closing date been a branch of any bank, it shall comply with the requirements of subsection (e) below before closing. (d1) Subject to such rules and regulations as may be prescribed by the State Banking Commission with regard to their use, maintenance and supervision, any bank may establish off the premises of any principal office, branch or limited service facility a customer-bank communications terminal, point-of-sale terminal, automated teller machine, automated banking facility or other direct or remote information-processing device or machine, whether manned or unmanned, through or by means of which information relating to any financial service or transaction rendered to the public is	applicant shall publish public notice of the filing of the application. The public notice shall contain all of the following: (1) A statement that the application has been filed with the Commissioner. (2) The physical address or location of the proposed branch, including street and city or town. (3) A statement that any interested person may make written comment on the application to the Commissioner and that comments received by the Commissioner within 14 days of the date of publication of the public notice shall be considered. The public notice shall provide the then current mailing address of the Commissioner. (d) A bank may conduct any activities at a branch in another state authorized under this section that are permissible for a bank chartered by the other state where the branch is located, except to the extent the activities are expressly prohibited by the laws of this State or by any rule or order of the Commissioner applicable to the bank. (e) Upon receipt of an application to establish a branch, the Commissioner shall conduct an examination of the pertinent facts and information and may request such additional information as the Commissioner deems necessary to make a decision on the application. In deciding whether to approve a branch application, the Commissioner shall take into account such factors as the financial condition and history of the applicant; the adequacy of its capital; the applicant's future earnings prospects; the character, competency, and experience of its management; the probable impact of the branch on the condition of the applicant bank and existing depository institutions in the community to be served; and the convenience and needs of the community the proposed branch is to serve. **§ 53C-6-17. Branch closings.** A bank may close a branch upon providing written notice to the Commissioner and the customers of the branch at least 90 days prior to the proposed closing. The notice shall include the date the branch will close and posting, in a conspicuous manner on the branch premises for a period of 30 days prior to the proposed closing date, a notice of its intent to close the branch. The consolidation of two or more branches into a single location in the same vicinity shall not be considered a closure subject to the 90-day and 30-day notice requirements of this section. To be considered a consolidation, the bank shall	

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stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank terminal; and the establishment and use of such a device or machine shall not be deemed a branch or limited service facility, and the capital requirements and standards for approval of a branch or limited service facility, all as set forth in subsections (b) and (c) of this section, shall not be applicable to the establishment of any such off-premises terminal device or machine. (e) A bank may, upon resolution by the board of directors, discontinue a branch office subject to the following: (1) The bank shall notify the Commissioner in writing of its intent to close a branch not later than 90 days prior to the proposed closing date. Such notice shall include a detailed statement of the reasons for the decision to close a branch and statistical or other information in support of such reasons. (2) The bank shall provide a notice of its intent to close a branch to its customers. Such notice shall be posted in a conspicuous manner on the branch premises for a period of 30 days prior to the proposed closing date, and shall either be included in at least one of any regular account statements mailed to customers of such branch, or in a separate mailing to such customers. The later notice shall be given at least 90 days prior to the proposed closing date. No branch shall be closed until approved by the Commissioner of Banks, provided, however, the consolidation of two or more branches into a single location in the same vicinity shall not be considered a closure subject to the provisions of this subsection. (f) Any action taken by the Commissioner of Banks pursuant to this section shall be subject to review by the State Banking Commission which shall have the authority to approve, modify or disapprove any action taken or recommended by the Commissioner of Banks.	request consolidation treatment from the Commissioner, who shall decide, in his or her discretion, whether the branches to be consolidated are considered to be in the same vicinity, with due consideration to the distance between the branches and the nature of the market in which the branches are situated.	
§ 53-63. Unlawful issuing of certificate of deposit. It shall be unlawful for any bank to issue any certificate of deposit or other negotiable instrument of its indebtedness to the holder thereof except for lawful money of the United States, checks, drafts, or bills of exchange which are the actual equivalent of such money. Any officer or employee of any bank violating the provisions of this section shall be guilty of a Class 1 misdemeanor.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.

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§ 53-64. Loans secured by bank's own stock or stock of parent bank holding company. (a) It shall be lawful for a bank to make a loan secured by the pledge of its own shares of stock or the stock of its parent holding company; provided that whenever any bank shall exercise its security interest in the shares of the bank or its parent holding company upon a loan default or other transfer, it shall dispose of all of such shares of stock within a period of six months. If such stock has not been disposed of within six months, the same shall be charged to profit and loss and no longer carried as an asset of the bank. The Commissioner may extend the six-month period not to exceed an additional six months. (b) A bank may not make a loan to finance the purchase of or to carry its stock or the stock of its parent holding company. For purposes of this subsection, the phrase "to carry" shall have the meaning set forth in 12 C.F.R. Part 221, by the Board of Governors of the Federal Reserve System. (c) A bank may not purchase any portion of its shares of stock, nor the stock of its parent holding company, unless the same is purchased or pledged to the bank to prevent a loss upon a debt previously contracted in good faith. In the event the bank shall become the owner of its shares, or those of its parent holding company, the bank shall dispose of the same as provided in subsection (a) of this section.	**§ 53C-6-1. Loans and extensions of credit.** (a) A bank may make a loan or extension of credit secured by the pledge of its own shares or the shares of its holding company, provided: (1) When a bank exercises its security interest in shares of the bank or its holding company, it shall dispose of all of the shares within a period of six months. If the shares have not been disposed of within six months, the shares shall be charged to profit and loss and no longer carried as an asset of the bank. The Commissioner may extend the six-month period not to exceed an additional six months. (2) A bank may not extend credit to finance the purchase of or to carry shares of the bank or the shares of its holding company. For purposes of this subsection, the phrase "to carry" has the meaning set forth in 12 C.F.R. Part 221, as promulgated by the Federal Reserve Board. (b) Loans and Extensions of Credit – Limitations: (1) The total loans and extensions of credit, both direct and indirect, by a bank to a person, other than a municipal corporation for money borrowed, including in the liabilities of a company the liabilities of the several members of the company, outstanding at one time and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit, shall not exceed the greater of (i) fifteen percent (15%) of the sum of the bank's capital plus those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325 or (ii) the amount permitted for national banks in this State by statute or regulation of the Comptroller of the Currency. (2) The total loans and extensions of credit, both direct and indirect, by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan or extension of credit outstanding, shall not exceed the greater of (i) ten percent (10%) of the sum of the bank's capital plus those portions of the bank's allowance for loan and lease losses, deferred tax	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-6-1.** Staff agrees. Please note that G.S. 53C-6-1 is also discussed in the row on G.S. 53-48.

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	assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325 or (ii) the amount permitted for national banks by statute or regulation of the Comptroller of the Currency. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection. (3) The following shall not be considered as extensions of credit within the meaning of this section; provided that the limitations of this subsection shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same made by any federal reserve bank or by the United States or any department, board, bureau, commission, or establishment of the United States, including any corporation wholly owned, directly or indirectly, by the United States: a. The discount of bills of exchange drawn in good faith against actual existing values. b. The discount of solvent trade acceptances or other solvent commercial or business paper actually owned by the person negotiating the same. c. Loans or extensions of credit secured by a segregated deposit account in the lending bank. d. The purchase of bankers' acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other depository institutions. e. The purchase of any notes and the making of any loans secured by not less than a like face amount of bonds of the United States or any agency of the United States; or other obligations guaranteed by the United States government or the State of North Carolina; or certificates of indebtedness of the United States, or agency thereof; or other obligations guaranteed by the United States government. (4) For purposes of this subsection, the following definitions and conditions apply: a. "Person" includes an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed; provided, the term "person" shall not include (i) a clearing organization registered with the Commodity Futures	

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	Trading Commission (or its successor) or the Securities and Exchange Commission (or its successor) or any federal banking agency or (ii) a bank's affiliates. b. Loans or extensions of credit to one person include loans made to other persons when the proceeds of the loans or extensions of credit are to be used for the direct benefit of the first person or the persons are engaged in a common enterprise. c. For purposes of this section, extensions of credit by a bank to a person shall include the bank's credit exposures to the person in derivative transactions with the bank. d. "Derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to one or more commodities, securities, debt instruments, currencies, interest or other rates, indices, or assets. e. Credit exposure to a person in connection with a derivative transaction shall be determined based on an amount that the bank reasonably determines, in accordance with customary industry practices under the terms of the derivative transaction or otherwise, would be its loss if the person were to default on the date of determination, taking into account any netting and collateral arrangements and any guarantees or other credit enhancements, provided that the bank may elect to determine credit exposure on the basis of such other method of determining credit exposure as may be permitted by the bank's primary federal regulator. (c) The Commissioner shall monitor the lending activities of banks under this section for undue credit concentrations and inadequate risk diversification that could adversely affect the safety and soundness of the banks. (d) Rules adopted by the Commissioner to ensure that extensions of credit made by banks are in keeping with sound lending practices and to promote the purposes of this Chapter shall not prohibit a bank from making any extension of credit that is a permitted extension of credit for a federally chartered institution.	

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	(e) Any bank may, by resolution duly passed at a meeting of its board of directors or a board-authorized committee, request the Commissioner to suspend the limitations on loans set forth in this section as the limitations may apply to any particular loan (i) on the bank's books that then exceeds such limitations, or (ii) which the bank desires to make or modify in a manner that would not otherwise be permitted in the absence of a suspension of such limitations. Upon receipt of a duly certified copy of such resolution, the Commissioner may, in the Commissioner's discretion and subject to such requirements, limitations, and conditions as the Commissioner deems appropriate, suspend the limitations on loans set forth in this section insofar as they apply to the loan in question.	
[Staff Note: G.S. 53-65 and G.S. 53-66 are not referenced in the Industrial Banks article. G.S. 53-65 has no corresponding section according to NCCOB's chart, and staff agrees. G.S. 53-66 was repealed prior to the 2012 rewrite of the banking laws.]		
§ 53-67. Banks controlled by boards of directors. The corporate powers, business, and property of banks doing business under this Chapter shall be exercised, conducted, and controlled by its board of directors, which shall meet at least quarterly. Such board shall consist of not less than five directors, to be chosen by the stockholders, and shall hold office for the term for which they are elected, and until their successors are elected and qualified. The annual meeting of stockholders for the election of directors shall be held at such time as may be designated by the charter or the bylaws of the bank but shall be held not later than June 30 each year; provided, however, that any bank which has been open for business for fewer than 12 months as of June 30 of the current year shall hold its first annual meeting by not later than June 30 of the following year. In addition to the foregoing powers relating to the fixing of the number and the election of directors, the stockholders of a bank, at any stockholders' meeting, special or annual, may authorize not more than two additional directorships which may be left unfilled and to be filled in the discretion of the directors of the institution during the interval between such stockholders' meetings. Aside from the specific provisions of this section, the number, election, term and classification of the directors of banks doing business under this Chapter shall be governed by the provisions of the North Carolina Business Corporation Act.	**§ 53C-4-2. Banks controlled by boards of directors.** (a) The corporate powers of a bank shall be exercised by or under the authority of, and the business and affairs of the bank shall be managed by or under the direction of, its board of directors. (b) A bank's board of directors shall consist of not fewer than five individuals. For good cause shown, the Commissioner may approve boards of directors consisting of fewer than five individuals to the extent consistent with other applicable law. (c) The board of directors shall meet at least quarterly, provided that the executive committee shall meet in any month in which there is no meeting of the board of directors, and the loan committee shall meet monthly. (d) Except to the extent the provisions of this Chapter or other applicable federal or state laws and regulations impose a different standard, bank directors shall have the duties, authority, and liabilities of directors of corporations organized under Chapter 55 of the General Statutes. (e) The board of directors of a bank may appoint directors with respect to such of the bank's branches as it deems useful to the business of the bank. No such advisory director	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-4-2.** Staff agrees. G.S. 53C-4-2 is also discussed in the row on G.S. 53-91.3.

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	shall be liable for acts or omissions undertaken as an advisory director under the laws applicable to the performance of the duties of a director of a bank, unless and only to the extent he or she undertakes or is delegated authority as a director of the bank.	
§ 53-68. Statements showing deposits of State and State officials. All banks in which any money is on deposit by the State of North Carolina or any of the officials thereof shall, in their published statements as by law required, show the amount of money on deposit in such bank to the credit of the State or of any official thereof; and no officials of the State shall deposit money in any bank which shall refuse to comply with the provisions of this section.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.
[Staff Note: G.S. 53-69 is not referenced in the Industrial Banks article and was repealed prior to the 2012 rewrite of the banking laws.]		
§ 53-70. No fees on remittances covering checks. No bank or trust company in this State shall charge a fee on remittances covering checks.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.
§ 53-71. Checks payable in exchange. In order to prevent accumulation of unnecessary amounts of currency in the vaults of the banks and trust companies chartered by this State, all checks drawn on said banks and trust companies shall, unless specified on the face thereof to the contrary by the maker or makers thereof, be payable at the option of the drawee bank, in exchange drawn on the reserve deposits of said drawee bank when any such check is presented by or through any federal reserve bank, post office, or express company, or any respective agents thereof.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.
[Staff Note: G.S. 53-72 is not referenced in the Industrial Banks article and was repealed prior to the 2012 rewrite of the banking laws.]		

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
§ 53-73. Checks exempted. All checks drawn on the banks and trust companies in this State in payment of obligations due the State of North Carolina or the federal government shall be exempt from the provisions of G.S. 53-71.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.
[Staff Note: G.S. 53-74 is not referenced in the Industrial Banks article and was repealed prior to the 2012 rewrite of the banking laws.]		
§ 53-75. Statement of account from bank to depositor deemed final adjustment if not objected to within five years; statements of account to be rendered annually or on request. When a statement of account has been rendered by a bank to a depositor accompanied by vouchers, if any, which are the basis for debit entries in such account, or the depositor's passbook has been written up by the bank showing the condition of the depositor's account and delivered to such depositor with like accompaniment of vouchers, if any, such account shall, after the period of five years from the date of its rendition in the event no objection thereto has been theretofore made by the depositor, be deemed finally adjusted and settled and its correctness conclusively presumed and such depositor shall thereafter be barred from questioning the incorrectness of such account for any cause. Every bank operating under this Chapter shall render a statement of account for each deposit account, including NOW or similar accounts, at least annually to the last known address of the depositor; provided, however, such statements are not required for time deposits, or for savings deposits evidenced by passbooks. Every bank operating under this Chapter shall render a statement of account for each deposit account, including demand, time, savings, NOW, and other similar accounts upon receipt of an appropriate request reasonably made by a depositor. **§ 53-76. Depositor not relieved from exercising diligence as to errors.** Nothing in the preceding section [G.S. 53-75] shall be construed to relieve the depositor from the duty now imposed by law of exercising due diligence in the examination of such account and vouchers, if any, when rendered by the bank.	**§ 53C-6-12. Account statements to be rendered annually or on request.** (a) Every bank shall render an account statement for each deposit account at least annually to the depositor; provided, however, the statements are not required for time deposits. Every bank shall render a statement of account for each deposit account, including time deposits upon receipt of an appropriate request reasonably made by a depositor. (b) For purposes of this section, an account statement is deemed to have been "rendered" to a depositor as of the earlier of the date the statement is mailed to the depositor's address as shown on bank records and the date the account is posted to the bank's Web site in a manner and a form ensuring the statement to be readily available to the depositor; provided however, the bank and the depositor may agree that an account statement may be rendered by other means. (c) Nothing in this section shall be construed to relieve the depositor from the duty of exercising due diligence in the review of an account statement rendered by the bank and of timely notification to the bank upon discovery of any error.	Both Chapter 53 sections are referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-6-12.** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
§ 53-77. Governor empowered to proclaim banking holidays. The Governor is hereby authorized and empowered, by and with the advice and consent of the Council of State, to name and set apart such day or days, as he may from time to time designate, as banking holidays. During such period of holidays, all the ordinary and usual operations and business of all banking corporations, State or national, in this State shall be suspended, and during such period no banking corporation shall pay out or receive deposits, make loans or discounts, transfer credits, or transact any other banking business whatsoever: Provided, however, that during any such holiday, including the holiday validated in this section, the Commissioner of Banks, with the approval of the Governor, may permit any or all such banking institutions to perform any or all of the usual banking functions. The banking holiday heretofore proclaimed by the Governor of this State for Monday, Tuesday and Wednesday, March 6, 7, and 8, 1933 is hereby approved and validated, and the said days are hereby declared to be banking holidays in the State of North Carolina. *[Staff Note: G.S. 53-77.1A and G.S. 53-77.3, which are not referenced in the Industrial Banks article, provided:* ***§ 53-77.1A. Days and hours of operation.*** *A bank as defined in G.S. 53-1 or G.S. 53-136, or any branch or limited service facility thereof located in this State, may operate on such days and during such hours, and may observe such holidays, as the bank's board of directors shall designate.* ***§ 53-77.3. Banks suspending business during an emergency.*** *(a) As used in this section, unless the context otherwise requires:* *(1) "Bank" includes commercial banks, industrial banks, trust companies, any branch or agency of a foreign banking organization, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and, to the extent that the provisions hereof are not inconsistent with and do not infringe upon paramount federal law, also includes national banks.*	**§ 53C-6-19. Operations; suspension.** (a) A bank, any of its branches, and any of its non-branch bank business offices may operate on such days and during such hours, and may observe such holidays, as the bank's board of directors shall designate. (b) Whenever the Commissioner determines that an emergency exists or is pending in this State or any part thereof, the Commissioner may authorize banks operating in the affected area or areas to suspend any or all of their operations in such area or areas for such period or periods as the Commissioner establishes. An emergency is any condition or occurrence that may interfere with a bank's operations or poses an existing or imminent threat to the safety or security of persons or property, or both. (c) In the event that an emergency exists or is pending in this State or any part thereof and a bank operating in the affected area or areas is unable to communicate the existence or pendency of the emergency to the OCOB, an officer of the bank may suspend any or all of the bank's operations in the affected area or areas without the prior approval of the Commissioner. The bank shall give notice of such closing to the Commissioner as soon as practicable.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-6-19.** Staff disagrees and does not believe there is a corresponding section. G.S. 53-77.1A and G.S. 53-77.3, which are not referenced in the Industrial Banks article, are more comparable to G.S. 53C-6-19.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
(2) "Emergency" means any condition or occurrence, which may interfere physically with the conduct of normal business operations at one or more or all of the offices of a bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any one or more of the following: fire; flood; earthquake; hurricanes; wind, rain, or snow storms; labor disputes and strikes; power failures; transportation failures; interruption of communication facilities; shortages of fuel, housing, food, transportation or labor; robbery or attempted robbery; actual or threatened enemy attack; epidemics or other catastrophes; riots, civil commotions, and other acts of lawlessness or violence, actual or threatened. *(3) "Office" means any place at which a bank transacts its business or conducts operations related to its business.* *(4) "Officers" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank, to act for the bank in carrying out the provisions of this section or, in the absence of any such designation or of the officer or officers so designated, the president or any other officer currently in charge of the bank or of the office or offices in question.* *(b) Whenever the Commissioner of Banks is of the opinion that an emergency exists, or is impending, in this State or in any part or parts of this State, he may authorize banks located in the affected area or areas to close any or all of their offices. In addition, if the Commissioner is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally, he may authorize the particular bank or banks, or office or offices so affected, to close. In addition, the Commissioner of Banks may in the interest of national defense authorize any bank, or any of its offices, to open or close, for the transaction of business. The office or offices so closed shall remain closed until the Commissioner declares that the emergency has ended, or until such earlier time as the officers of the bank determine that one or more offices, previously closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen.* *In the event communications systems should be so disrupted as to make it impossible or impractical for a bank official to communicate with the Commissioner of Banks,*		

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
the bank officer or manager or other person in charge of any such bank or branch bank may close said office without prior approval of the Commissioner of Banks provided he gives prompt notice thereof to the Commissioner as soon as communications have been restored. *(c) Any day on which a bank, or any one or more of its offices, is closed during all or any part of its normal banking hours pursuant to the authorization granted under this section shall be, with respect to such bank or, if not all of its offices are closed, then with respect to any office or offices which are closed, a legal holiday for all purposes with respect to any banking business of any character. No liability, or loss of rights of any kind, on the part of any bank, or director, officer, or employee thereof, shall accrue or result by virtue of any closing authorized by this section.* *(d) The provisions of this section shall be construed and applied as being in addition to, and not in substitution for or limitation of, any other law of this State or of the United States authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control, or otherwise.]*		
[Staff Note: G.S. 53-77.1 through G.S. 53-77.3 are not referenced in the Industrial Banks article. G.S. 53-77.1, 53-77.2, and 53-77.2A were repealed prior to the 2012 rewrite of the banking laws. G.S. 53-77.1A and G.S. 53-77.3 are discussed in the row above.]		
[Article 7. Officers and Directors.]		
§ 53-78. Appointment of executive and loan committees by directors. The board of directors shall appoint an executive committee or committees, each of which shall be composed of at least three of its members with such duties and powers as are defined by the regulations or bylaws, who shall serve until their successors are appointed. Such executive committee or committees shall meet as often as the board of directors may require, except that the executive committee or committees shall meet at least once during each month in which there is no meeting of the board of	**§ 53C-4-3. Committees of boards of directors.** (a) The board of directors shall appoint, at a minimum, an audit committee, an executive committee, and a loan committee (which may be the executive committee or the board of directors as a whole) and may appoint such other committees as it deems appropriate to provide for the safe and sound operation of the bank in a manner consistent with applicable laws and regulations.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-4-3.** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
directors, and approve or disapprove all loans and investments. All loans and investments shall be made under such rules and regulations as the board of directors may prescribe. The board of directors may appoint, in addition to the executive committee or committees, a general loan committee, the membership of which shall include at least three directors and such officers of the bank as may be appointed, with such duties and powers with respect to making loans and investments as are defined in the bylaws or by resolution of the board of directors, the members of such general loan committee to serve until their successors are appointed. Such general loan committee, if appointed, shall meet as often as the bylaws or resolution of the board of directors may require, which shall not be less frequently than once each month, and approve or disapprove all such loans and investments as may be required by the bylaws or by resolution of the board of directors to be submitted to the general loan committee. The board of directors of any bank, which has branches, may appoint, in addition to a general loan committee, a loan committee for the parent bank and for any branch, each of which committees shall include at least three members who are officers or members of the local advisory board for such parent bank or branch, with such duties and powers with respect to approving or disapproving loans and investments as may be defined in the bylaws or by resolution of the board of directors, and under such rules and regulations as the board of directors may prescribe. Such loans and investments as are authorized or approved by a general loan committee or either of the other loan committees hereinabove provided for may, but need not, be approved or disapproved by the executive committee or committees. All loans and investments made, however, shall be authorized or approved by either the executive committee or committees, a general loan committee, or one of the other loan committees herein provided for.	(b) The Commissioner may require the board of directors of a bank to establish one or more additional committees if, in the judgment of the Commissioner, such committees are reasonably necessary or appropriate for good corporate governance, for the safe and sound operation of the bank, or to ensure the bank's compliance with applicable laws and regulations. In the exercise of his or her judgment under this subsection, the Commissioner may consider, among other factors, the asset size of the bank, the range and complexity of the activities in which the bank is engaged, the various risks undertaken by the bank, the experience and abilities of the bank's directors and officers, and the adequacy of the bank's existing policies, procedures, and internal controls.	
§ 53-79. Minutes of meetings of directors and executive and loan committees. Minutes shall be kept of all meetings of the board of directors, executive committee or committees, and of the loan committee or committees, if appointed, and the same shall be recorded in a book or books which shall be kept for that purpose; which book or books shall be kept on file in the bank. Such minutes shall show a record of the action taken by the board of directors, the executive committee or committees and the loan committee or committees on all loans, discounts, and investments made, authorized or approved, and such further action as the board of directors and the executive committee or committees shall take concerning the conduct, management	**§ 53C-4-4. Minutes of meetings of directors and committees.** Minutes shall be recorded and retained for all meetings of the board of directors and board committees and kept on file at the bank. The minutes shall show a record of actions taken.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-4-4.** Staff agrees.

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and welfare of the bank. The minutes of the executive committee and all committees authorizing or approving loans and investments, showing the actions taken by such committees since the last meeting of the board of directors, shall be submitted to the board of directors at each meeting of the board.		
§ 53-80. Qualifications of directors. Every director of a bank doing business under this Chapter shall be the owner and holder of shares of stock in the bank representing not less than one thousand dollars ($1,000) book value as of the last business day of the calendar year immediately prior to the election of such director. For the purpose of this section, book value shall consist of common capital stock, unimpaired surplus, undivided profits, and reserves for contingencies if any such reserves are segregations of capital. Where directors are appointed during the interval between stockholders' meetings pursuant to the provisions of G.S. 53-67, such directors shall hold the required qualifying shares as of the time of their appointment. Notwithstanding the proviso at the end of this section, where the bank is a wholly owned subsidiary, the required qualifying shares shall be shares in the parent corporation, whether or not the bank was doing business before February 18, 1921. And every such director shall hold the shares in the director's own name unpledged and unencumbered in any way. Provided, however, shares of the bank or parent corporation stock held in an individual retirement account or other retirement account of a bank director, over which the director has investment authority, shall be considered qualifying shares for the purpose of this section. The office of any director at any time violating any of the provisions of this section shall immediately become vacant, and the remaining directors shall declare that director's office vacant and proceed to fill such vacancy forthwith. Not less than one-half of the directors of every bank doing business under this Chapter shall be residents of the State of North Carolina or any state in which the bank has a branch: Provided, that as to banks doing business before February 18, 1921, the requirements as to amount of stock owned by a director shall not apply unless the Commissioner of Banks shall rule that the director is not bona fide discharging the director's duties.	**§ 53C-4-5. Qualifications of bank directors.** (a) At least three-fourths of the directors of a bank shall be citizens of the United States of America. (b)A director must satisfy eligibility requirements for bank directors imposed by federal law, including Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. § 1829(a). (c) Following a director's election or appointment as a director, the director shall, solely for purposes of any action or proceeding that may thereafter be brought by the Commissioner, and on a form satisfactory to the Commissioner, do all of the following: (1) Consent to the jurisdiction of the Commissioner and the General Court of Justice for the State of North Carolina in any such action or proceeding. (2) Consent to venue in Wake County, North Carolina, in any such action or proceeding. (3) Unless the director appoints an agent pursuant to subsection (f) of this section, appoint the Commissioner as the director's agent for service of process in any such action or proceeding and authorize and instruct the Commissioner or the Commissioner's duly appointed deputy or agent to accept service of process for the director in any such action or proceeding. (d) When service of legal process in an action or proceeding brought by the Commissioner is made on a director by service and acceptance of service of process in the manner provided in subdivision (3) of subsection (c) of this section, the Commissioner shall, within three business days thereafter, give notice to the director of such service and acceptance of service of process by depositing a copy of the process served and accepted, together with any pleading, order, or other item accompanying the process, with a "designated delivery service" as defined in 26 U.S.C. § 7502(f)(2) and directed to the director's last known address in the Commissioner's records. The Commissioner shall keep a record which shall show the day and hour of such acceptance	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-4-5.** Staff agrees.

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	of service of process, any pleading, order, or other item accompanying the process, and the date upon which the above notice was given. When service of process is made pursuant to subdivision (3) of subsection (c) of this section, the time within which the director may file a responsive pleading or similar response, as provided by Chapter 1A or Chapter 150B of the General Statutes, shall be extended by 12 days. (e) The consent and appointment described in subsections (c) and (f) of this section shall be deemed irrevocable and shall not be affected by the termination of the director's service as a director. (f) In lieu of meeting the requirements of subdivision (3) of subsection (c) of this section, a director may appoint an agent for service of such process in Wake County, North Carolina.	
§ 53-81. Directors shall take oath. Every director shall, within 30 days after his election, take and subscribe, in duplicate, an oath that he will diligently and honestly perform his duties in such office; and that he is the owner in good faith of the shares of stock of the bank required to qualify him for such office, standing in his own name on its books, and one of such oaths shall forthwith be filed with the Commissioner of Banks, and the other shall be kept on file in the bank.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.
§ 53-82. Liability of directors. Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of such bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its stockholders or any other person shall have sustained in consequence of such violation. Any aggrieved stockholder in any bank in liquidation may prosecute an action for the enforcement of the provisions of this section. Only one such action may be brought. The procedure shall follow as nearly as may be that prescribed by G.S. 44-14, relative to suits on bonds of contractors with municipal corporations.	**§ 53C-4-6. Liability of directors.** (a) The standard of conduct for directors shall be as set forth in G.S. 55-8-30. (b) Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of the bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its shareholders, or any other person shall have sustained in consequence of such violation. Any aggrieved shareholder of any bank in liquidation may prosecute an action for the enforcement of the provisions of this section. Only one such action may be brought.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-4-6.** Staff agrees.
§ 53-83. Examining committee of directors. A committee of at least three directors or stockholders shall be appointed annually to examine, or to superintend the examination of the assets and the liabilities of the bank,	**§ 53C-4-3. Committees of boards of directors.** (a) The board of directors shall appoint, at a minimum, an audit committee, an executive committee, and a loan committee (which may be the executive committee or the board	Referenced in G.S. 53-145.

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and to report to the board of directors the result of such examination. The committee, with the approval of the board of directors, may provide for such examinations by a certified public accountant or clearinghouse examiner in any city where such examination is provided for by the rules of such clearinghouse association. A copy of such report of examination, which is herein required to be made, attested, and verified under oath by the signature of at least three members of such committee, shall forthwith be filed with the Commissioner of Banks.	of directors as a whole) and may appoint such other committees as it deems appropriate to provide for the safe and sound operation of the bank in a manner consistent with applicable laws and regulations. (b) The Commissioner may require the board of directors of a bank to establish one or more additional committees if, in the judgment of the Commissioner, such committees are reasonably necessary or appropriate for good corporate governance, for the safe and sound operation of the bank, or to ensure the bank's compliance with applicable laws and regulations. In the exercise of his or her judgment under this subsection, the Commissioner may consider, among other factors, the asset size of the bank, the range and complexity of the activities in which the bank is engaged, the various risks undertaken by the bank, the experience and abilities of the bank's directors and officers, and the adequacy of the bank's existing policies, procedures, and internal controls.	NCCOB's chart suggests **G.S. 53C-4-3.** Staff agrees.
[Staff Note: G.S. 53-84 is not referenced in the Industrial Banks article. According to NCCOB's chart, it has no corresponding section. Staff agrees.]		
§ 53-85. Shareholders' book. The directors shall provide a book in which shall be kept the name and resident address of each shareholder of record, the number of shares held by each, the time when such person became a shareholder, together with all transfer of stock, stating the time when made, the number of shares and by whom transferred, which book shall be subject to the inspection of the directors, officers, and shareholders of record of the bank at all times during the usual hours for the transaction of business.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section, and staff agrees.
§ 53-86. Directors, officers, etc., accepting fees, etc. No gift, fee, commission, or brokerage charge shall be received, directly or indirectly, by any officer, director, or employee of any bank doing business under this Chapter, on account of any transaction to which the bank is a party. Any officer, director, employee, or agent who shall violate the provisions of this section shall be guilty of a Class 3 misdemeanor, and shall be and thereafter remain ineligible as an officer, director, or employee of any bank doing business under this Chapter. Nothing in this section shall be construed to prevent the payment of necessary and proper fees to any licensed attorney or licensed real estate broker or salesman, who is a director but not	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section, and staff agrees.

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an officer or employee of the bank for professional services rendered, and nothing in this section shall be construed to apply to commissions on insurance and surety bond premiums.		
§ 53-87. Directors may declare dividends. The board of directors of any bank may declare a dividend of so much of its undivided profits as they may deem expedient, subject to the requirements hereinafter provided. When the surplus of any bank having a capital stock of fifteen thousand dollars ($15,000) or more is less than fifty percent (50%) of its paid-in capital stock, such bank shall not declare any dividend until it has transferred from undivided profits to surplus twenty-five percent (25%) of said undivided profits, or any lesser percentage that may be required to restore the surplus to an amount equal to fifty percent (50%) of the paid-in capital stock. When the surplus of any bank having a capital stock of less than fifteen thousand dollars ($15,000) is less than one hundred percent (100%) of its paid-in capital stock, such bank shall not declare any dividend until it has transferred from undivided profits to surplus fifty percent (50%) of said undivided profits, or any lesser percentage that may be required to restore the surplus to an amount equal to one hundred percent (100%) of the paid-in capital stock. In order to ascertain the undivided profits from which such dividend may be made, there shall be charged and deducted from the actual profits: (1) All ordinary and extraordinary expenses, paid or incurred, in managing the affairs and transacting the business of the bank; (2) Interest paid or then due on debts which it owes; (3) All taxes due; (4) All overdrafts over one thousand dollars ($1,000) which have been standing on the books of the bank for a period of 60 days or longer; (5) All losses sustained by the bank. In computing the losses, there shall be included debts owing the bank which have become due and are not in process of collection, and on which interest for one year or more is due and unpaid, unless said debts are well secured; and debts reduced to final judgments which have been unsatisfied for more than one year and on which no interest has been paid for a period of one year, unless said judgments are well secured.	**§ 53C-4-7. Directors may declare distributions.** Provided a bank does not make distributions that reduce its capital below its applicable required capital, the board of directors of a bank may declare such distributions as it deems proper.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-4-7.** Staff agrees.

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(6) All investments carried on its books, which are prohibited under the provisions of this Chapter, or rules and regulations made by the Commissioner of Banks, pursuant to the powers conferred under this Chapter.		
[Staff Note: G.S. 53-87.1 is not referenced in the Industrial Banks article. According to NCCOB's chart, it has no corresponding section. Staff agrees.]		
§ 53-88. Use of surplus. The surplus of any bank doing business under this Chapter shall not be used for the purpose of paying expenses or losses until the credit to undivided profits has been exhausted. But any portion of such surplus may be converted into capital stock and distributed as a stock dividend, provided that such surplus shall not thereby be reduced below fifty percent (50%) of the paid-in capital of such bank, having a paid-in capital of fifteen thousand dollars ($15,000) or more. When the surplus of any bank having a capital stock of less than fifteen thousand dollars ($15,000) shall reach an amount equal to one hundred percent (100%) of its paid-in capital, the board of directors of such bank shall declare a dividend of fifty percent (50%) of said surplus and distribute the same as a stock dividend: Provided, that where the distribution of such a stock dividend would increase the capital stock of any bank to an amount greater than fifteen thousand dollars ($15,000), the board of directors of such bank may, in its discretion, declare a stock dividend of only so much of said surplus as will be necessary to increase the stock of the said bank to fifteen thousand dollars ($15,000).	**No corresponding section.**	Referenced in G.S. 53-137(4) and G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees. NCCOB's draft suggests deleting the following proviso in G.S. 53-137(4): "Provided, fractional shares may be issued for the purpose of complying with the requirements of G.S. 53-88." Staff agrees.
[Staff Note: G.S. 53-89 is not referenced in the Industrial Banks article. According to NCCOB's chart, it has no corresponding section. Staff agrees.]		
§ 53-90. Officers and employees shall give bond. The active officers and employees of any bank before entering upon their duties shall give bond to the bank in a bonding company authorized to do business in North Carolina, in the amount required by the directors and upon such form as may be approved by the Commissioner of Banks, the premium for same to be paid by the bank. The Commissioner of Banks or directors of such bank may require an increase	**§ 53C-4-8. Officers and employees shall give bond.** (a) A bank shall require security in the form of a bond for the fidelity and faithful performance of duties by its officers and employees. The bond shall be issued by a bonding company authorized to do business in this State and upon such form as may be approved by the Commissioner. Otherwise, the amount, form, and terms of the bond	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-4-8.** Staff agrees.

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of the amount of such bond whenever they may deem it necessary. If injured by the breach of any bond given hereunder, the bank so injured may put the same in suit and recover such damages as it may have sustained.	shall be such as the board of directors may require. The premium for the bond is to be paid by the bank. (b) To provide for the safety and soundness of a bank, the Commissioner may require an increase in the amount of the bond or additional or different security.	
[Staff Note: G.S. 53-91 and G.S. 53-91.1 are not referenced in the Industrial Banks article. G.S. 53-91 was repealed prior to the 2012 rewrite of the banking laws. According to NCCOB's chart, G.S. 53-91.1 has no corresponding section. Staff agrees.]		
§ 53-91.2. Loans to executive officers. No bank may extend credit to any of its executive officers nor a firm or partnership of which such executive officer is a member, nor a company in which such executive officer owns a controlling interest, unless the extension of credit is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with persons who are not employed by the bank, and provided further that the extension of credit does not involve more than the normal risk of repayment. This general prohibition shall not prevent an executive officer from obtaining loans on terms and conditions that are available to all employees of the bank. For the purposes of this section, the term "executive officer" shall mean an officer who has authority to participate in major policy-making functions of the bank. Provided further, the maximum amount of such loans shall be that as prescribed by applicable federal banking regulations.	**§ 53C-4-9. Affiliate transactions.** A bank may extend credit to, and engage in transactions with, its affiliates, directors, executive officers, principal shareholders, and their respective immediate family members only to the extent permitted by, and subject to such restrictions and conditions as are imposed by, applicable State and federal laws and regulations.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-4-9.** Staff agrees.
§ 53-91.3. Directors defined; appointment of advisory directors. (a) Unless otherwise expressly provided, reference to "director" or "board of directors" shall mean a director of the banking corporation as elected by the shareholders pursuant to North Carolina corporation law. (b) The board of directors so elected by the shareholders may, consistent with a bank's articles of incorporation or bylaws, appoint advisory directors to perform such duties as prescribed by the board with respect to local offices and branches of any bank chartered under Chapter 53 of the General Statutes.	**§ 53C-4-2. Banks controlled by boards of directors.** (a) The corporate powers of a bank shall be exercised by or under the authority of, and the business and affairs of the bank shall be managed by or under the direction of, its board of directors. (b) A bank's board of directors shall consist of not fewer than five individuals. For good cause shown, the Commissioner may approve boards of directors consisting of fewer than five individuals to the extent consistent with other applicable law.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-4-2.** Staff agrees. G.S. 53C-4-2 is also discussed in the row on G.S. 53-67.

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	(c) The board of directors shall meet at least quarterly, provided that the executive committee shall meet in any month in which there is no meeting of the board of directors, and the loan committee shall meet monthly. (d) Except to the extent the provisions of this Chapter or other applicable federal or state laws and regulations impose a different standard, bank directors shall have the duties, authority, and liabilities of directors of corporations organized under Chapter 55 of the General Statutes. (e) The board of directors of a bank may appoint directors with respect to such of the bank's branches as it deems useful to the business of the bank. No such advisory director shall be liable for acts or omissions undertaken as an advisory director under the laws applicable to the performance of the duties of a director of a bank, unless and only to the extent he or she undertakes or is delegated authority as a director of the bank.	
[Article 8. Commissioner of Banks and State Banking Commission.]		
[Staff Note: G.S. 53-92 through G.S. 53-104.1 are not referenced in the Industrial Banks article. NCCOB's chart suggests the successor provisions are G.S. 53C-2-1, 53C-2-2, 53C-2-3, 53C-2-6, 53C-2-7, 53C-4-12, 53C-8-1, and 53C-8-5. NCCOB's draft does not include any of these Chapter 53C provisions, and staff agrees.]		
§ 53-105. Reports of condition. Every bank shall make to the Commissioner of Banks not less than four reports during each year in the manner and form prescribed by the Commission by regulation. Each such report shall exhibit in detail and under appropriate heads the resources, assets, and liabilities of such bank at the close of business on any past day by the Commissioner of Banks specified, and shall be transmitted to the Commissioner of Banks within 10 days after the receipt of a request or requisition therefor from the Commissioner of Banks; provided, however, the Commissioner of Banks may extend the time for a period not to exceed 30 days for any bank to transmit the reports heretofore required whenever in his judgment such extension is necessary; and in a form prescribed by the Commissioner of Banks; a summary of the report for the	**§ 53C-8-3. Reports required of banks.** (a) Each bank shall file the following with the Commissioner, at such times, on such forms, and in such formats as the Commissioner may require: (1) Annual reports of conditions. (2) Periodic reports for interim periods within a year, not less than monthly in any case. (b) In addition to the reports filed pursuant to subsection (a) of this section, each bank shall provide to the Commissioner copies of all applications and reports of condition	Both Chapter 53 sections are referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-8-3.** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
quarter ending December 31, shall if required by the Commissioner of Banks, be published in a newspaper published in the county where the bank is located, or if there is no newspaper in the county, then in a newspaper having a general circulation in the county in which such bank is established. Proof of such publication shall be furnished the Commissioner of Banks in such form as may be prescribed by him. **§ 53-106. Special reports.** The Commissioner of Banks may call for special reports whenever in his judgment it is necessary to inform him of the condition of any bank, or to obtain a full and complete knowledge of its affairs. Said reports shall be in and according to the form prescribed by the Commissioner of Banks and shall be published as provided in G.S. 53-105, if so required by the Commissioner of Banks. The Commissioner of Banks may extend the time for filing special reports for a period not to exceed 30 days.	filed by it under applicable federal law contemporaneously with the filing of such application and reports by the bank with its primary federal regulator. (c) Nothing in this section shall be interpreted to limit the authority of the Commissioner to request and obtain other information that the Commissioner may deem necessary to discharge the duties of the Commissioner under this Chapter.	
§ 53-107. Penalty for failure to make report. Every bank failing to make and transmit any report which the Commissioner of Banks is authorized to require by this Chapter, and in and according to the form prescribed by said Commissioner of Banks, within 10 days after the receipt of a request or requisition therefor, or within the extension of time granted by the Commissioner of Banks heretofore provided or failing to publish the reports as required, shall forthwith be notified by the Commissioner of Banks, and if such failure continue for five days after the receipt of such notice, such delinquent bank shall be subject to a penalty of two hundred dollars ($200.00). The penalty herein provided for shall be recovered in a civil action in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.
[Staff Note: G.S. 53-107.1 and G.S. 53-107.2 are not referenced in the Industrial Banks article and are discussed in the row on G.S. 53-132 through G.S. 53-134.]		
§ 53-108. List of shareholders of record to be kept. Every bank doing business under this Chapter shall at all times keep a correct list of its shareholders of record and whenever called upon by the Commissioner of Banks or his duly authorized agent, make available for examination a correct list of all its	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.

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shareholders of record, the address of each, and the number of shares held by each. Whenever the word "shareholders" is used in this section, the same shall be deemed to include, to the extent available, shareholders of any corporations which own ten percent (10%) or more of the capital stock of any bank doing business under this Chapter or a lesser amount when required by the Commissioner.		
§ 53-109. Official communications of Commissioner of Banks. Each official communication directed by the Commissioner of Banks, or any State bank examiner, to any bank, or to any officer thereof, relating to an examination or investigation conducted or made by the Commissioner of Banks, or containing suggestions or recommendations as to the conduct of the bank shall, if required by the authority submitting same, be submitted by the officer or director receiving it, to the executive committee or board of directors of such bank and duly noted in the minutes of such meeting. The receipt and submission of such notice to the executive committee or board of directors shall be certified to the Commissioner of Banks within such time as he may require, by three members of such committee or board.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.
§ 53-110. Banking Commission to prescribe books, records, etc.; retention, reproduction and disposition of records. (a) Whenever in its judgment it may appear to be advisable, the State Banking Commission may issue such rules, instructions, and regulations prescribing the manner of keeping books, accounts, and records of banks as will tend to produce uniformity in the books, accounts, and records of banks of the same class. (b) The following provisions shall be applicable to banks and trust companies operating under Chapter 53 of the General Statutes and amendments thereto, and to national banking associations insofar as this section does not contravene paramount federal law: (1) Each bank shall retain permanently the minute books of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, and all records which the Banking Commission shall in accordance with the terms of this section require to be retained permanently. (2) All other bank records shall be retained for such periods as the Banking Commission shall in accordance with the terms of this section prescribe.	**§ 53C-6-14. Reproduction and retention of records; admissibility of copies in evidence; disposition of originals; record production generally.** (a) Any bank may cause any or all records kept by it to be recorded, copied, or reproduced by any photographic, reproduction, electronic, or digital process or method, or by any other records retention technology approved by rule or order of the Commissioner, of a kind that is capable of accurately converting the records into tangible form within a reasonable time. Each such converted tangible form of record also shall be deemed a record. (b) Any tangible form of a record shall be deemed for all purposes to be an original record and shall be admissible in evidence in all courts and administrative agencies in this State, if otherwise admissible, and the bank may destroy or otherwise dispose of the original form of the record; provided, however, that a bank shall retain either the originals or convertible form of its records for such period as may be required by law or by rule or order of the Commissioner. Any bank may dispose of any original or convertible form of a record that has been retained for the period prescribed by law or by rule or order of the Commissioner for its class.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-6-14.** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
(3) The Banking Commission shall from time to time issue regulations classifying all records kept by banks and prescribing the period for which records of each class shall be retained. Such periods may be permanent or for a lesser term of years. Such regulations may from time to time be amended or repealed, but any amendment or repeal shall not affect any action taken prior to such amendment or repeal. Prior to issuing any such regulations the Commission shall consider: a. Actions at law and administrative proceedings in which the production of bank records might be necessary or desirable; b. State and federal statutes of limitation applicable to such actions or proceedings; c. The availability of information contained in bank records from other sources; and d. Such other matters as the Banking Commission shall deem pertinent in order that its regulation will require banks to retain their records for as short a period as is commensurate with the interest of bank customers and stockholders and of the people of this State in having bank records available. (4) Any bank may cause any or all records kept by it to be recorded, copied or reproduced by any photographic, photostatic or miniature photographic or reproduction process of any kind which is capable of conversion into written form within a reasonable time and which correctly, accurately, and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material. (5) Any such photographic, photostatic or miniature photographic copy or reproduction of any kind, including electronic or computer-generated data, which is capable of conversion into written form within a reasonable time, shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts and administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such photographic copy or reproduction shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original record.	(c) Originals and converted tangible forms of records shall not be held inadmissible in any court action or proceeding on the grounds that they lack certification, identification, or authentication and shall be received as evidence if otherwise admissible in any court or quasi-judicial proceeding if they have been identified and authenticated by the live testimony of a competent witness or if the records are accompanied by a certificate substantially in the following form: "CERTIFICATE REGARDING BANK RECORDS 1. The accompanying documents are true and correct copies of the records of [name of bank]. The records were made in the regular course of business of the bank at or near the time of the acts, events, or conditions they reflect. 2. The undersigned is authorized to execute this certificate. 3. This certificate is issued pursuant to G.S. 53C-6-14. I certify, under penalty of perjury under the laws of the State of North Carolina, that the foregoing statements are true and correct. Date: _____ _____ Signature _____ Print or type name _____ Title [Notarize as required by law for an affidavit]" (d) This section supplements and does not supersede G.S. 8-45.1.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
(6) Any bank may dispose of any record which has been retained for the period prescribed by the Banking Commission or in accordance with the terms of this section for retention of records for its class.		
§ 53-111. When reserve below legal requirement. When the reserve of any bank falls below the amount required by law, it shall not make new loans or discounts, otherwise than by discounting or purchasing bills of exchange, payable at sight or on demand, nor make dividends of its profits until the reserve required by law is restored. The Commissioner of Banks shall require any bank whose reserve falls below the amount herein required immediately to make good such reserve. In case the bank fails for 30 days thereafter to make good its reserve the Commissioner of Banks may forthwith take possession of the property and business of such bank until its affairs be adjusted or finally liquidated as provided for in this Chapter.	**§ 53C-4-11. Reserve fund.** (a) Each bank shall maintain a reserve fund as follows: (1) If the bank is a member of the Federal Reserve System, it shall maintain a reserve fund in accordance with the requirements of the Federal Reserve Board. (2) All other banks shall maintain a reserve fund as required by the Commissioner. (b) The Commissioner may require a level of reserve fund for nonmember banks as provided in subsection (a)(2) of this section, taking into consideration the level of liquidity the Commissioner deems necessary for the safe and sound operation of the banks. (c) In establishing the required level of reserve fund, the Commissioner shall include the following types of liquid reserves: (1) Cash on hand, which shall include both United States currency and exchange of any clearinghouse association or similar intermediary, and balances maintained at any federal reserve bank, either directly or on a pass-through basis, to meet federal reserve system reserve requirements. (2) Balances payable on demand from designated depository institutions. (3) Obligations of the United States Treasury, any agency of the United States government that is guaranteed by the United States government, and any general obligation of this State or any political subdivision thereof that has an investment grade rating of A or higher by a nationally recognized rating service. (d) Notwithstanding any other provision of this Chapter, in the event the reserve fund of a bank falls below the level required under subsection (b) of this section, the Commissioner may require the bank to do the following:	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-4-11.** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(1) Discontinue making any new extension of credit. (2) Promptly restore its reserve fund to the applicable required level. (e) In the event a bank shall fail to promptly restore its reserve fund to the applicable level required within 10 days after the Commissioner directs it to do so, the Commissioner may take such actions under Article 8 of this Chapter as the Commissioner deems necessary.	
§ 53-112. Appraisal of assets of doubtful value. If any assets of a bank are of a doubtful or disputed value, an appraisal of such assets may be had by the Commissioner of Banks, and for the purpose of making such appraisal the Commissioner of Banks shall designate one agent as an appraiser and the bank shall designate an agent as an appraiser and the two so chosen shall designate a third. The appraisers so selected shall make an appraisal of the assets so designated as doubtful or disputed and file a written report of their appraisal with the bank and with the Commissioner of Banks. In making such appraisal the appraisers shall determine the actual cash market value of such assets. Such appraisal, when made, shall be accepted as the value of such assets for the purpose of examination or for the purpose of determining the actual cash market value of such assets. The appraisers designated shall not be interested, in any way, either in the bank or as an employee of the Commissioner of Banks and all expenses of such appraisal shall be paid by the bank whose assets are appraised. If any bank required to appoint an appraiser hereunder shall fail for 10 days to appoint an appraiser, the Commissioner of Banks may apply to the clerk of the superior court of the county in which the bank is located for the appointment of such an appraiser, and the clerk shall thereupon make the appointment for the bank.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.
§ 53-113. Certified copies of records as evidence. In all civil actions in the courts of this State wherein are involved as evidence or otherwise any of the records of the Commissioner of Banks, a certified copy over the signature and under the seal of the Commissioner of Banks shall be admissible in evidence to the same effect as if produced in court at trial by the proper custodian of the records.	**§ 53C-6-14. Reproduction and retention of records; admissibility of copies in evidence; disposition of originals; record production generally.** (a) Any bank may cause any or all records kept by it to be recorded, copied, or reproduced by any photographic, reproduction, electronic, or digital process or method, or by any other records retention technology approved by rule or order of the Commissioner, of a kind that is capable of accurately converting the records into tangible form within a reasonable time. Each such converted tangible form of record also shall be deemed a record.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-6-14.** Staff disagrees: G.S. 53-113 discusses NCCOB records, whereas G.S. 53C-6-14 discusses records of banks. This

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(b) Any tangible form of a record shall be deemed for all purposes to be an original record and shall be admissible in evidence in all courts and administrative agencies in this State, if otherwise admissible, and the bank may destroy or otherwise dispose of the original form of the record; provided, however, that a bank shall retain either the originals or convertible form of its records for such period as may be required by law or by rule or order of the Commissioner. Any bank may dispose of any original or convertible form of a record that has been retained for the period prescribed by law or by rule or order of the Commissioner for its class. (c) Originals and converted tangible forms of records shall not be held inadmissible in any court action or proceeding on the grounds that they lack certification, identification, or authentication and shall be received as evidence if otherwise admissible in any court or quasi-judicial proceeding if they have been identified and authenticated by the live testimony of a competent witness or if the records are accompanied by a certificate substantially in the following form: "CERTIFICATE REGARDING BANK RECORDS 1. The accompanying documents are true and correct copies of the records of [name of bank]. The records were made in the regular course of business of the bank at or near the time of the acts, events, or conditions they reflect. 2. The undersigned is authorized to execute this certificate. 3. This certificate is issued pursuant to G.S. 53C-6-14. I certify, under penalty of perjury under the laws of the State of North Carolina, that the foregoing statements are true and correct. Date: _____ _____ Signature _____ Print or type name _____ Title	disagreement, however, is probably immaterial because staff believes that G.S. 53C-6-14 should be included in the list in G.S. 53-145. See row on G.S. 53-110.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	[Notarize as required by law for an affidavit]" (d) This section supplements and does not supersede G.S. 8-45.1.	
§ 53-114. Other powers of State Banking Commission. In addition to all other powers conferred upon and vested in the State Banking Commission, the said Commission, with the approval of the Governor, is hereby authorized, empowered and directed, whenever in its judgment the circumstances warrant it: (1) To authorize, permit, and/or direct and require all banking corporations under its supervision, to extend for such period and upon such terms as it deems necessary and expedient, payment of any demand and/or time deposits. (2) To direct, require or permit, upon such terms as it may deem advisable, the issuance of evidence of claims against assets of such banking institutions. (3) To authorize and direct the creation, in such banking institutions, of special trust accounts for the receipt of new deposits, which deposits shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separate in cash or on deposit in such banking institutions as it shall designate or invested in such obligations of the United States and/or the State of North Carolina as it shall designate. (4) To adopt for such banking institutions such regulations as are necessary in its discretion to enable such banking institutions to comply fully with the federal regulations prescribed for national or state banks.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.
§ 53-115. State Banking Commission to adopt rules. (a) The State Banking Commission is hereby authorized, empowered and directed to make all necessary rules with respect to the establishment, operation, conduct, and termination of any and all activities and businesses that are subject to licensing, regulation, supervision, or examination by the Commissioner of Banks under this Chapter.	**§ 53C-2-5. Rule making.** (a) The Commissioner, subject to review and approval by the Commission, may make all necessary rules with respect to the establishment, operation, conduct, and termination of any and all activities and businesses that are subject to licensing, regulation, supervision, or examination by the Commissioner under this Chapter.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-2-5.** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
(b) The rule-making authority conferred on the State Banking Commission by this section shall be in addition to and not in derogation of any specific rule-making authority by any other provision of this Chapter.	(b) The rule-making authority conferred on the Commissioner by this section shall be in addition to and not in derogation of any specific rule-making authority by any other provision of this Chapter or otherwise provided by North Carolina law.	
§ 53-116. Commissioner need not take over banks failing to meet deposit demands. The Commissioner of Banks is authorized and directed not to take possession of any banking corporation under his supervision for failure to meet its deposit liabilities during the period in which such banking corporation is operating under the terms of G.S. 53-114, subdivision (1); and he is hereby relieved from any and all liability for permitting such banking corporations to continue operations under the terms thereof.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.
[Article 9. Bank Examiners.]		
§ 53-117. Appointment by Commissioner of Banks; examination of banks. (a) The Commissioner of Banks, for the purpose of carrying out the provisions of this Chapter, shall appoint from time to time such State bank examiners, assistant State bank examiners, clerks and stenographers as may be necessary to examine the affairs of every bank doing business under this Chapter as often as the Commissioner of Banks shall deem necessary, and at least once every year; but the Commissioner may extend this period to 18 months when, in his opinion, an emergency condition exists that necessitates such action. The Commissioner of Banks may, at any time, remove any person appointed by him under this Chapter. (b) The State Banking Commission shall adopt rules and regulations to implement the provisions of this Chapter, prescribing the nature and scope of examination of banks. (c) The Commissioner of Banks is authorized to accept, in his discretion, as a part of a bank examination, reports on audits conducted in accordance with generally accepted auditing standards by independent accountants, when such reports contain an opinion by the independent accountant on the fairness of presentation of the financial statements and present information required by the rules and regulations of the State Banking Commission. No report of an audit of any bank shall be acceptable under this subsection if such audit was made by a person, firm or corporation who is	**§ 53C-8-3. Reports required of banks.** (a) Each bank shall file the following with the Commissioner, at such times, on such forms, and in such formats as the Commissioner may require: (1) Annual reports of conditions. (2) Periodic reports for interim periods within a year, not less than monthly in any case. (b) In addition to the reports filed pursuant to subsection (a) of this section, each bank shall provide to the Commissioner copies of all applications and reports of condition filed by it under applicable federal law contemporaneously with the filing of such application and reports by the bank with its primary federal regulator. (c) Nothing in this section shall be interpreted to limit the authority of the Commissioner to request and obtain other information that the Commissioner may deem necessary to discharge the duties of the Commissioner under this Chapter. **§ 53C-8-4. Examination by Commissioner.**	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-8-3 and G.S. 53C-8-4.** Staff disagrees and would replace with G.S. 53C-8-4 alone. This disagreement, however, is probably immaterial because NCCOB and staff agree that G.S. 53C-8-3 should be included in the list in G.S. 53-145. See row on G.S. 53-105 and G.S. 53-106.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
a director, officer or employee of a bank or has a financial interest, other than as a depositor or obligor upon a fully collateralized loan, in the bank which is the subject of the audit. (d) In the case of a bank which is a member of the Federal Reserve System or in the case of a bank whose deposits are insured by the Federal Deposit Insurance Corporation, the Commissioner of Banks is authorized to accept, in his discretion, as a part of the examinations prescribed in subsection (b) of this section, examinations and reports made pursuant to the Federal Reserve Act or the Federal Deposit Insurance Corporation Act.	(a) The Commissioner may examine everything relating to the business of a bank or its holding company, and may appoint examiners to make such examination. The examiners shall file with the Commissioner a full report of the findings resulting from the examination, including any violation of law or any unauthorized or unsafe practices of the bank or the holding company disclosed by the examination. (b) Examinations under subsection (a) of this section shall be conducted pursuant to practices and procedures established by the OCOB, provided the Commissioner may take into consideration the guidelines and requirements for such activity of the primary federal supervisor of the bank or holding company. (c) The Commissioner shall furnish a copy of the report of examination to the bank or the holding company examined and may, upon request, furnish a copy of the report to the primary federal regulator of the bank or its holding company and to the FDIC if not the bank's primary federal regulator.	
§ 53-118. Duties and powers. It shall be the duty of the examiners to verify all reports made to the Commissioner of Banks by the officers and directors, members, or individuals conducting any banking institution, as required by this Chapter or by the Commissioner of Banks. The officers of every bank shall submit and surrender its books, assets, papers, and concerns to the examiners appointed under this Chapter, who shall retain the custody and possession of such books, assets, papers, and concerns for such length of time as may be required for the purpose of making an examination as required by this Chapter. If any officer shall refuse to surrender the books, assets, papers, and concerns as herein provided, or shall refuse to be examined under oath touching the affairs of such bank, the Commissioner of Banks may forthwith take possession of the property and business of the bank and liquidate its affairs in accordance with the provisions of this Chapter.	**§ 53C-8-4. Examination by Commissioner.** (a) The Commissioner may examine everything relating to the business of a bank or its holding company, and may appoint examiners to make such examination. The examiners shall file with the Commissioner a full report of the findings resulting from the examination, including any violation of law or any unauthorized or unsafe practices of the bank or the holding company disclosed by the examination. (b) Examinations under subsection (a) of this section shall be conducted pursuant to practices and procedures established by the OCOB, provided the Commissioner may take into consideration the guidelines and requirements for such activity of the primary federal supervisor of the bank or holding company. (c) The Commissioner shall furnish a copy of the report of examination to the bank or the holding company examined and may, upon request, furnish a copy of the report to the primary federal regulator of the bank or its holding company and to the FDIC if not the bank's primary federal regulator.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-8-4.** Staff agrees.
§ 53-119. Removal of officers and employees. The Commissioner of Banks shall have the right, and is hereby empowered, to require the immediate removal from office of any officer, director, or employee of any bank	**§ 53C-8-15. Removal of directors, officers, and employees.** (a) If the Commissioner determines that a director, officer, or employee of a bank has participated in or consented to any violation of this Chapter or an order of the	Referenced in G.S. 53-145.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
doing business under this Chapter, who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the bank, or who persistently violates the laws of this State or the lawful orders, instructions, and regulations issued by the State Banking Commission.	Commissioner, or has engaged in any unsafe or unsound business practice in the operation of the bank, or has been dishonest, incompetent, or reckless in the management of the affairs of the bank, or has persistently violated the laws of this State, or repeatedly violated or failed to comply with any of the bank's organizational documents, and that as a result, a situation exists requiring prompt corrective action in order to protect the bank, its customers, or the public, the Commissioner may issue an order temporarily removing the director, officer, or employee pending a hearing that shall occur not less 10 days after removal. The order shall state that it is a "Temporary Order of Removal" and shall further state the grounds upon which it was issued together with the date, time, and location of a hearing on the matter. For good cause shown, the Commissioner may grant the director, officer, or employee subject to the order a 10-day extension of the hearing date, but the temporary removal order shall remain in full force and effect. Upon a hearing before the Commissioner within the prescribed time, the temporary removal order may be dissolved or made permanent in whole or in part. (b) Any removal under this section is effective in all respects as if the removal had been made by the shareholders of the bank in question. (c) Without the prior written approval of the Commissioner, no director, officer, or employee subject to an order under this section shall be eligible to be elected, reelected, or appointed any position as a director, officer, or employee of that bank or any other North Carolina financial institution during the period of the order's effect. (d) An individual who is the subject of an order of the Commissioner under this section may appeal the order to the Commission pursuant to G.S. 53C-2-6 no later than 10 days after the date of issuance of the order.	NCCOB's chart suggests **G.S. 53C-8-15.** Staff agrees.
§ 53-120. Examiners may administer oaths; summoning witnesses. For the purpose of making examinations as required by this Chapter, any duly appointed examiner may administer oaths to examine any officer, director, agent, employee, customer, depositor, shareholder of such bank, or any other person or persons, touching its affairs and business. Any examiner may summon in writing any officer, director, agent, employee, customer, depositor, shareholder, or any person or persons resident of this State to appear before him and testify in relation thereto.	**§ 53C-8-6. Access to books and records; right to issue subpoenas, administer oaths, and examine witnesses.** (a) The Commissioner and the Commissioner's examiners and agents: (1) Shall have free access to all books and records of a bank, its holding company, and their affiliates that relate to the business of the bank or the holding company, and the books and records kept by an officer, agent, or employee of the bank or holding company relating to or upon which any record is kept.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-8-6.** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
	(2) May subpoena witnesses and administer oaths or affirmations in the examination of any director, officer, agent, or employee of the bank, its holding company, or their affiliates or of any other person in relation to affairs, transactions, and conditions of the bank, its holding company, or their affiliates. (3) May require the production of the records, books, papers, contracts, and other documents of a bank, its holding company, and their affiliates. (4) May order that improper entries be corrected on the books and records of a bank, its holding company, and the bank's affiliates. (b) The Commissioner may issue subpoenas duces tecum. (c) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, a court of competent jurisdiction, on the application of the Commissioner, may compel compliance by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court.	
§ 53-121. Examiners may make arrest. When it shall appear to any examiner, by examination or otherwise, that any officer, agent, employee, director, stockholder, or owner of any bank has been guilty of a violation of the criminal laws of this State relating to banks, it shall be his duty, and he is hereby empowered to hold and detain such person or persons until a warrant can be procured for his arrest; and for such purposes such examiners shall have and possess all the powers of peace officers of such county, and may make arrest without warrant for past offenses. Upon report of his action to the Commissioner of Banks, said Commissioner may direct the release of the person or persons so held, or, if in his judgment such person or persons should be prosecuted, the Commissioner of Banks shall cause the district attorney of the prosecutorial district in which such detention is had to be promptly notified, and the action against such person or persons shall be continued a reasonable time to enable the district attorney to be present at the trial.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.
§ 53-122. Fees and assessments.	**§ 53C-2-4. Administration of the Office of the Commissioner of Banks.**	Referenced in G.S. 53-145.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
(a) For the purpose of operating and maintaining the office of the Commissioner of Banks, banks and consumer finance licensees doing business under the authority of Chapter 53 of the General Statutes shall pay the following fees and assessments into the office of the Commissioner of Banks within 10 days after the assessment: (1) Banks. – Each bank shall pay a cumulative assessment based on its total assets, as shown on its report of condition made to the Commissioner of Banks as of December 31 each year or the date most nearly approximating the same, not to exceed the amount determined by applying the following schedule: (i) on the first fifty million dollars ($50,000,000) of assets, or fraction thereof, ten thousand dollars ($10,000); (ii) on assets over fifty million dollars ($50,000,000), but not more than two hundred fifty million dollars ($250,000,000), fourteen dollars ($14.00) per one hundred thousand dollars ($100,000), or fraction thereof; (iii) on assets over two hundred fifty million dollars ($250,000,000), but not more than five hundred million dollars ($500,000,000), eleven dollars ($11.00) per one hundred thousand dollars ($100,000), or fraction thereof; (iv) on assets over five hundred million dollars ($500,000,000), but not more than one billion dollars ($1,000,000,000), seven dollars ($7.00) per one hundred thousand dollars ($100,000), or fraction thereof; (v) on assets over one billion dollars ($1,000,000,000), but not more than ten billion dollars ($10,000,000,000), four dollars ($4.00) per one hundred thousand dollars ($100,000), or fraction thereof; and (vi) on assets over ten billion dollars ($10,000,000,000), two dollars ($2.00) per one hundred thousand dollars ($100,000), or fraction thereof. Additionally, each bank shall pay an assessment on trust assets held by it in the amount of one dollar ($1.00) per one hundred thousand dollars ($100,000) of the assets, or fraction thereof; except that banks are not required to pay assessments on real estate held as trust assets. (2) Consumer Finance Licensees. – Each consumer finance licensee shall pay an assessment not to exceed eighteen dollars ($18.00) per one hundred thousand dollars ($100,000) of assets, or fraction thereof, plus a fee of three hundred dollars ($300.00) per office; provided, however, a consumer finance licensee shall pay a minimum annual assessment of not less than five hundred dollars ($500.00). The assessment shall be determined on a consumer finance licensee's total assets as shown on its report of condition made to the Commissioner of Banks as of December 31 each year, or the date most nearly approximating the same.	(a) As authorized in Chapters 54B, 54C, and this Chapter, the OCOB shall be funded by annual or periodic assessments, licensing fees and charges, and reimbursements for examination costs. This list is not exclusive. The OCOB may not levy assessments, fees, or other charges except as expressly provided in this Chapter or by rule adopted in accordance with the provisions of Chapter 150B of the General Statutes and the provisions of this section. The Commissioner is authorized, in the exercise of reasonable discretion, to establish the time, place, and method for the payment of assessments, fees, charges, and costs. (b) Not less than 30 days prior to the commencement of each fiscal year, the OCOB shall prepare and submit to the Commission a budget for the upcoming fiscal year, including the estimated revenues and expenses for the year. The Commission shall review the budget in a meeting prior to the commencement of the fiscal year with respect to which the budget has been presented and shall approve or modify the budget at the meeting. **§ 53C-8-2. Assessments and fees.** Banks shall pay the following assessments and fees into the OCOB within 10 days after receipt of an invoice: (1) Annual assessments. – Each bank shall pay a cumulative assessment based on its total assets as shown on its report of condition made to the Commissioner as of December 31 each year or the date most nearly approximating the same, not to exceed the amount determined by applying the following schedule: a. On the first fifty million dollars ($50,000,000) of assets, or fraction thereof, ten thousand dollars ($10,000). b. On assets greater than fifty million dollars ($50,000,000) but not more than two hundred fifty million dollars ($250,000,000), fourteen dollars ($14.00) per hundred thousand dollars ($100,000), or fraction thereof. c. On assets greater than two hundred fifty million dollars ($250,000,000), but not more than five hundred million dollars ($500,000,000), eleven dollars ($11.00) per hundred thousand dollars ($100,000), or fraction thereof.	NCCOB's chart suggests **G.S. 53C-2-4 and G.S. 53C-8-2.** Staff agrees. NCCOB's draft, however, does not include G.S. 53C-2-4 in the list in G.S. 53-145. **Query to NCCOB:** Was this intentional?

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
(3) Special Assessment. – If the Commissioner of Banks determines that the financial condition or manner of operation of a bank or consumer finance licensee warrants further examination or an increased level of supervision, or in the event of a merger or conversion of a savings institution organized under State or federal law into a bank, or conversion of a federally chartered bank into a State bank, the institutions may be subject to assessment not to exceed the amount determined in accordance with the schedule set forth in subdivision (1) of subsection (a) of this section for banks or subdivision (2) for consumer finance licensees. (b) The State Banking Commission may by rule set the amount to be collected for processing any application or proceeding required by law to be filed with the Commissioner and for obtaining copies of any public record of the Banking Commission. (c) In all civil and criminal cases tried in any of the courts of this State wherein any of the employees of the Commissioner of Banks are used as witnesses, a fee per day, to be determined by the presiding judge, and actual expenses incurred shall be allowed such witnesses and the same shall be paid to the Commissioner of Banks by the clerk of the court of the county in which the case is tried and thereafter charged in bill of costs as are other costs incurred in the matter. (d) The total expenses of the office of the Commissioner of Banks shall not in any one year exceed the total fees collected under the provisions of this section, provided the expenses may exceed the total fees collected in any year when surplus funds are available. (e) In the first half of each calendar year, the State Banking Commission shall review the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. If the estimated fees and assessments provided for under this section shall exceed the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may reduce by uniform percentage the fees and assessments provided for in this section. If the estimated fees and assessments provided for under this section shall be less than the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may increase by uniform percentage the fees and assessments provided for in this section to an amount which will increase the amount of the fees and assessments to be collected to an amount at least equal to the estimated	d. On assets greater than five hundred million dollars ($500,000,000), but not more than one billion dollars ($1,000,000,000), seven dollars ($7.00) per hundred thousand dollars ($100,000), or fraction thereof. e. On assets greater than one billion dollars ($1,000,000,000), but not more than ten billion dollars ($10,000,000,000), four dollars ($4.00) per hundred thousand dollars ($100,000), or fraction thereof. f. On assets greater than ten billion dollars ($10,000,000,000), two dollars ($2.00) per hundred thousand dollars ($100,000), or fraction thereof. (2) Assessments on trust assets. – Each bank shall pay an assessment on trust assets held by it in the amount of one dollar ($1.00) per hundred thousand dollars ($100,000) of trust assets, or fraction thereof, except that banks are not required to pay assessments on real estate held as trust assets. (3) Special assessments. – If the Commissioner determines that the financial condition or manner of operation of a bank warrants further examination or an increased level of supervision, or in the event of a combination or conversion, the Commissioner may charge, and the institutions shall pay, an assessment equal to the reasonable cost of further examination, increased level of supervision, or supervision with regard to the combination or conversion. The Commissioner's determination of the cost of further examination shall be, in the absence of manifest error, dispositive of the issue of reasonableness. (4) In the first half of each calendar year, the Commission shall review the estimated cost of maintaining each division of the OCOB for the next fiscal year. If the estimated assessments provided for under this Chapter for any division shall exceed the estimated cost of maintaining that division for the next fiscal year, then the Commission may reduce by a uniform percentage any assessments provided for in this Chapter for that division. If the estimated assessments provided for in this Chapter for any division shall be less than the estimated cost of maintaining that division for the next fiscal year, then the Commission may increase by a uniform percentage any assessments provided for in this Chapter for that division to an amount that will increase the amount of assessments to be collected to an amount at least equal to the estimated cost of maintaining that division of the OCOB for the next fiscal year.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
cost of maintaining the office of the Commissioner of Banks for the next fiscal year. The State Banking Commission shall report to the Joint Legislative Commission on Governmental Operations its conclusion that the estimated fees and assessments should be reduced or increased. Any reduction or increase of estimated fees and assessments provided for under this section shall become effective July 1 of the next fiscal year. (f) The Commissioner of Banks may collect the assessments provided for in subsection (a) of this section annually or in periodic installments as approved by the State Banking Commission.		
§ 53-123. Examiners shall make report. Examiners shall make a full and detailed report in writing to the Commissioner of Banks of the condition of each bank within 10 days after each and every examination made by them.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section. Staff agrees.
[Article 10. Penalties.]		
§ 53-124. Examiner making false report. If any bank examiner shall knowingly and willfully make any false or fraudulent report of the condition of any bank, which shall have been examined by him, with the intent to aid or abet the officers, owners, or agents of such bank in continuing to operate an insolvent bank, or if any such examiner shall keep or accept any bribe or gratuity given for the purpose of inducing him not to file any report of examination of any bank made by him, or shall neglect to make an examination of any bank by reason of having received or accepted any bribe or gratuity, he shall be guilty of a Class H felony.	**§ 53C-8-7. Examiner making false report.** If any bank examiner shall knowingly and willfully make any false or fraudulent report of the condition of any bank that the examiner has examined with the intent to aid or abet the bank or its affiliates in committing violations of any provision of this Chapter, or if any examiner shall keep or accept any bribe or gratuity given for the purpose of inducing the examiner not to file any report of examination of any bank, or if any examiner shall neglect to make an examination of any bank by reason of having received or accepted any bribe or gratuity, the examiner shall be guilty of a Class H felony.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-8-7.** Staff agrees.
§ 53-125. Examiners disclosing confidential information. If any bank examiner or other employee of the Commissioner of Banks fails to keep secret the facts and information obtained in the course of an examination of a bank, except when the public duty of such examiner or employee requires him to report upon or take official action regarding the affairs of such bank, he shall be guilty of a Class 1 misdemeanor. Nothing in this section shall prevent the proper exchange of	**§ 53C-8-8. Examiner disclosing confidential information.** If any examiner or other employee of the OCOB fails to keep secret the facts and information obtained in the course of an examination of a bank except as permitted or required by this Chapter, the examiner shall be guilty of a Class 1 misdemeanor.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-8-8.** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
information with the representatives of the banking departments of other states, with the federal reserve bank or national bank examiners, or other authorities, with the creditors of such bank or others with whom a proper exchange of information is wise or necessary.		
§ 53-126. Loans or gratuities forbidden. No State bank, or any officer, director or employee thereof shall hereafter make any loan or grant any gratuity to the Commissioner of Banks, any bank examiner or assistant bank examiner of the Commissioner of Banks of North Carolina. Any such officer, director or employee violating this provision shall be guilty of a Class 1 misdemeanor; and they may be fined a further sum equal to the money so loaned or gratuity given. If the Commissioner of Banks, or any bank examiner, or assistant bank examiner of the Commissioner of Banks of North Carolina shall accept a loan or gratuity from any State bank, or from any officer, director or employee thereof, he shall be guilty of a Class 1 misdemeanor, and may be fined a further sum equal to the money so loaned or gratuity given.	**§ 53C-8-9. Loans or gratuities forbidden.** (a) No bank, or any officer, director, employee, or affiliate thereof, shall make an extension of credit or grant any gratuity to the Commissioner, any deputy commissioner, or any bank examiner. Any person violating this provision shall be guilty of a Class 1 misdemeanor and may be fined a sum equal to the amount of the extension made or the gratuity given. If the Commissioner, any deputy commissioner, or any bank examiner accepts an extension of credit or gratuity from any bank, or from any officer, director, employee, or affiliate thereof, that individual shall be guilty of a Class 1 misdemeanor and may be fined a sum equal to the extension of credit made or the gratuity given. (b) Notwithstanding the provisions of subsection (a) of this section, the Commissioner may exempt from the application of subsection (a) any deputy commissioner or any bank examiner with respect to any extension of credit existing upon the hiring of the deputy commissioner or bank examiner by the OCOB and any extension of the term or renewal of such extension of credit made thereafter, so long as the extension of term or renewal has terms and conditions generally available to customers of the applicable bank having generally the same creditworthiness as the deputy commissioner or bank examiner.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-8-9.** Staff agrees.
[Staff Note: G.S. 53-127 is not referenced in the Industrial Banks article. NCCOB's chart suggests that its successor provision is G.S. 53C-1-3. NCCOB's draft does not include G.S. 53C-1-3, and staff agrees.]		
§ 53-128. Willfully and maliciously making derogatory reports. Any person who shall willfully and maliciously make, circulate, or transmit to another or others any statement, rumor, or suggestion, written, printed, or by word of mouth, which is directly or by inference false and derogatory to the financial condition, or affects the solvency or financial standing of any bank, or who shall counsel, aid, procure, or induce another to state, transmit, or circulate any such statement or rumor shall be guilty of a Class 1 misdemeanor.	**§ 53C-8-10. Willfully and maliciously making derogatory reports.** Any person who shall willfully and maliciously make, circulate, transmit, or otherwise communicate any statement, rumor, or suggestion to one or more other persons that is directly or by inference false and derogatory to the financial condition, or affects the solvency or financial standing, of any bank, or who shall counsel, aid, procure, or induce another to make, circulate, transmit, or otherwise communicate any such statement or rumor, shall be guilty of a Class 1 misdemeanor.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-8-10.** Staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
§ 53-129. Misapplication, embezzlement of funds, etc. Whoever being an officer, employee, agent or director of a bank, with intent to defraud or injure the bank, or any person or corporation, or to deceive an officer of the bank or an agent appointed to examine the affairs of such bank, embezzles, abstracts, or misapplies any of the money, funds, credit or property of such bank, whether owned by it or held in trust, or who, with such intent, willfully and fraudulently issues or puts forth a certificate of deposit, draws an order or bill of exchange, makes an acceptance, assigns a note, bond, draft, bill of exchange, mortgage, judgment, decree or fictitiously borrows or solicits, obtains or receives money for a bank not in good faith, intended to become the property of such bank; or whoever being an officer, employee, agent, or director of a bank, makes or permits the making of a false statement or certificate, as to a deposit, trust fund or contract, or makes or permits to be made a false entry in a book, report, statement or record of such bank, or conceals or permits to be concealed by any means or manner, the true and correct entries of said bank, or its true and correct transactions, who knowingly loans, or permits to be loaned, the funds or credit of any bank to any insolvent company or corporation, or corporation which has ceased to exist, or which never had any existence, or upon collateral consisting of stocks or bonds of such company or corporation, or who makes or publishes or knowingly permits to be made or published a false report, statement or certificate as to the true financial condition of such bank, shall be guilty of a felony. If an offense committed under this section involves money, funds, credit, or property with a value of one hundred thousand dollars ($100,000) or more, it is a Class C felony. If an offense committed under this section involves money, funds, credit, or property with a value of less than one hundred thousand dollars ($100,000), it is a Class H felony. Any other offense committed under this section is a Class H felony.	**§ 53C-8-11. Misapplication, embezzlement of funds.** (a) Any person who, with intent to defraud or injure a bank or any other person or with intent to deceive an officer of the bank or an employee of the OCOB appointed to examine the affairs of the bank, commits any of the following acts shall be guilty of a felony: (1) Embezzles, converts, or misapplies any of the money, funds, credit, or property of the bank, whether owned by it or held in trust. (2) Issues or puts forth a certificate of deposit; draws an order or bill of exchange; makes an acceptance; assigns a note, bond, draft, bill of exchange, mortgage, judgment, or decree; or fictitiously borrows or solicits, obtains, or receives money for a bank not in good faith. (3) Makes or permits to be made a false entry in a record of a bank, or conceals or permits to be concealed, by any means or manner, the true and correct entries in a record of a bank. (4) Knowingly makes an extension of credit, or permits an extension of credit, by a bank to any insolvent person or to a person who has ceased to exist, or that never had any existence, or upon collateral consisting of stocks or bonds of an insolvent or nonexistent person. (5) Makes or publishes, or knowingly permits to be made or published, a false report, statement, or certificate as to the true financial condition of a bank. (b) If an offense committed under this section involves money, funds, credit, or property with a value of one hundred thousand dollars ($100,000) or more, it is a Class C felony. If an offense committed under this section involves money, funds, credit, or property with a value of less than one hundred thousand dollars ($100,000), it is a Class H felony.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-8-11.** Staff agrees.
[Staff Note: G.S. 53-130 and G.S. 53-131 are not referenced in the Industrial Banks article and are discussed in the row below.]		

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
§ 53-132. Receiving deposits in insolvent banks. Any person, being an officer or employee of a bank, who receives, or being an officer thereof, permits an employee to receive money, checks, drafts, or other property as a deposit therein when he has knowledge that such bank is insolvent, shall be guilty of a Class I felony which may include a fine not more than five thousand dollars ($5,000). Provided, that in any indictment hereunder, insolvency shall not be deemed to include insolvency as defined under paragraph d of subdivision (3) in the definition of insolvency under G.S. 53-1. **§ 53-133. Advertising larger amount than that paid in capital stock.** It shall be unlawful for any bank to advertise in a newspaper, letterhead, or any other way, a larger capital stock than has been actually paid in in cash. Any bank violating this section shall be subject to a penalty of five hundred dollars ($500.00) for each and every offense. The penalty herein provided for shall be recovered by the State in a civil action in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions. The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. **§ 53-134. Offenses declared misdemeanors; prosecution; employment of counsel; punishment.** Any offense against the banking laws of the State of North Carolina which is not elsewhere specifically declared to be a crime, or for which elsewhere a penalty is not specifically provided, is a Class 1 misdemeanor. The Commissioner of Banks is authorized and directed to prosecute all offenses against the banking laws of the State, and to that end is expressly authorized to employ counsel to prosecute in the inferior courts and to aid the district attorney in the superior courts. The Commissioner of Banks shall compensate the counsel so employed, and the State Treasurer shall pay the same out of the funds in the treasury and not otherwise appropriated. *[Staff Note: G.S. 53-107.1, 53-107.2, 53-130, and 53-131, which are not referenced in the Industrial Banks article, provided:*	**§ 53C-8-12. Enforcement of the banking laws.** (a) When the Commissioner believes that a violation of the banking laws has occurred or is continuing, the Commissioner may order an examination or investigation of the facts and circumstances relating to the suspected violation. (b) Every bank failing to make and transmit any report that the Commissioner is authorized to require by this Chapter, and in and according to the form prescribed by the Commissioner, within 10 business days after the receipt of a request or requisition therefor, or within the extension of time granted by the Commissioner, shall be notified by the Commissioner, and if the failure continues for five business days after the receipt of the notice, the delinquent bank shall be subject to a penalty of up to one thousand dollars ($1,000). The penalty provided by this section shall be recovered in a civil action in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions. (c) In addition to any other powers conferred by this Chapter, the Commissioner shall have the power to do the following: (1) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, to cease and desist violating any provision of this Chapter or any lawful rule issued thereunder. (2) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, to cease and desist from a course of conduct that is unsafe or unsound and that is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of a depositor. (d) Consistent with Article 3A of Chapter 150B of the General Statutes, notice and opportunity for hearing shall be provided before any of the actions authorized by this section shall be undertaken by the Commissioner. In cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action but shall promptly afford a subsequent hearing upon application to rescind the action taken. (e) The Commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any	All Chapter 53 sections are referenced in G.S. 53-145. NCCOB's chart suggests G.S. 53C-8-12. Staff disagrees and believes there is no corresponding section. G.S. 53-107.1 and G.S. 53-107.2, which are not referenced in the Industrial Banks article, are much more comparable to G.S. 53C-8-12. Staff believes that excluding G.S. 53C-8-12 is not problematic because comparable language is included in the Industrial Banks article as G.S. 53-144.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
§ 53-107.1. Administrative orders; penalties for violation. *(a) In addition to any other powers conferred by this Chapter, the Commissioner shall have the power to:* *(1) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee to cease and desist violating any provision of this Chapter or any lawful regulation issued thereunder; and* *(2) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of a depositor.* *(b) Consistent with Article 3A of Chapter 150B of the General Statutes, notice and opportunity for hearing shall be provided before any of the foregoing actions shall be undertaken by the Commissioner. Provided, however, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action, but shall promptly afford a subsequent hearing upon application to rescind the action taken.* *(c) The Commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the Commissioner.* *(d) The Commissioner may impose a civil money penalty of not more than one thousand dollars ($1,000) for each violation by any bank, trust company, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (1) of subsection (a) of this section. Provided further, the Commissioner may impose a civil money penalty of not more than five hundred dollars ($500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any director, officer, or employee violates a cease and desist order issued under subdivision (2) of subsection (a) of this section.*	person under oath in connection with any subject related to a duty imposed or a power vested in the Commissioner. (f) The Commissioner may impose a civil money penalty of not more than one thousand dollars ($1,000) for each violation by any bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, of an order issued under subdivision (1) of subsection (c) of this section. The Commissioner may impose a civil money penalty of not more than five hundred dollars ($500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, violates a cease and desist order issued under subdivision (2) of subsection (c) of this section. The proceeds of civil money penalties imposed pursuant to this subsection, net of documented expenses of examination and enforcement, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (g) Administrative orders issued by the Commissioner and civil money penalties imposed for violation of such orders shall be subject to review by the Commission, which shall have power to amend, modify, or disapprove the same at any regular or special meeting. (h) Notwithstanding any penalty imposed by the Commissioner, the Commission may, after notice of and opportunity for hearing, impose, enter judgment for, and enforce, by appropriate process, a penalty of not more than ten thousand dollars ($10,000) against any bank, trust company, or subsidiary thereof, or against any of its directors, officers, or employees, or any other person the Commissioner is authorized to regulate, for violating any lawful order of the Commission or Commissioner. The proceeds of civil money penalties imposed pursuant to this subsection, net of documented expenses of examination and enforcement, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (i) If the Commissioner believes that a violation of a criminal statute has occurred, the Commissioner may refer the matter to the appropriate prosecutorial agency.	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
The clear proceeds of civil money penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.		
§ 53-107.2. Review by the Banking Commission; additional penalties.		
(a) Administrative orders issued by the Commissioner of Banks and civil money penalties imposed for violation of such orders shall be subject to review by the Banking Commission which shall have power to amend, modify, or disapprove the same at any regular or special meeting.		
(b) Notwithstanding any penalty imposed by the Commissioner of Banks, the Banking Commission may after notice of and opportunity for hearing, impose, enter judgment for, and enforce by appropriate process, a penalty of not more than ten thousand dollars ($10,000) against any bank, trust company, or subsidiary thereof, or against any of its directors, officers, or employees for violating any lawful orders of the Commission or Commissioner of Banks.		
The clear proceeds of civil money penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.		
§ 53-130. Making false entries in banking accounts; misrepresenting assets and liabilities of banks.		
If any person shall willfully and knowingly subscribe to, or make, or cause to be made, any false statement or false entry in the books of any bank, or shall knowingly subscribe to or exhibit false papers, with intent to deceive any person authorized to examine into the affairs of such bank, or shall willfully and knowingly make, state or publish any false statement of the amount of the assets or liabilities of any bank, he shall be guilty of a Class H felony.		
§ 53-131. False certification of a check.		
Whoever, being an officer, employee, agent, or director of a bank, certifies a check drawn on such bank, and willfully fails to forthwith charge the amount thereof against the account of the drawer thereof, or willfully certifies a check drawn on such bank		

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
unless the drawer of such check has on deposit with the bank an amount of money subject to the payment of such check and equivalent to the amount therein specified, shall be guilty of a Class I felony which may include a fine not more than five thousand dollars ($5,000).]		
§ 53-135. General corporation law to apply. All provisions of the law relating to private corporations, and particularly those enumerated in the Chapter entitled "North Carolina Business Corporation Act," not inconsistent with this Chapter or with the business of banking, shall be applicable to banks.	**§ 53C-4-1. Banks – Form of organization.** (a) A bank shall be formed as, and shall maintain the form of, a corporation formed under the laws of this State. (b) The provisions contained in Chapter 55 of the General Statutes shall apply to banks, except where provisions of this Chapter provide differently or where the Commissioner determines that any provision of Chapter 55 is inconsistent with the business of banking or the safety and soundness of banks.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-4-1.** Staff agrees.
[Article 11. Industrial Banks.]		This comparison chart skips Article 11 (G.S. 53-136 through G.S. 53-145), because that article is the Industrial Banks article.
[Article 12. Joint Deposits.]		
§ 53-146. Deposits in two names. When a deposit has been or is hereafter made in any bank, trust company, banking and trust company, or any other institution transacting business in this State, in the names of two persons, payable to either, or payable to either or the survivor, all or any part of the deposit, or any interest or dividend thereon, may be paid to either of said persons, whether the other is living or not; and the receipt or acquittance of the person so paid is a valid and sufficient discharge to the bank for payment so made. *[Staff Note: G.S. 53-146.1, which is not referenced in the Industrial Banks article, provided:* ***§ 53-146.1. Joint accounts.***	**§ 53C-6-6. Joint accounts.** (a) Any two or more individuals may establish a joint deposit account by written contract. The deposit account shall be held for them as joint tenants. The account also may be held pursuant to G.S. 41-2.1 of the General Statutes and have the incidents set forth in that section. If the account is held pursuant to G.S. 41-2.1, the contract shall set forth that fact. (b) Unless the individuals establishing a joint account have agreed with the bank that withdrawals require more than one signature, payment by the bank to, or at the direction of, any joint tenant designated in the contract authorized by this section shall be a total discharge of the bank's obligation as to the amount so paid.	Referenced in G.S. 53-145. NCCOB's chart suggests **G.S. 53C-6-6.** Staff disagrees and believes there is no corresponding section. G.S. 53-146.1, which is not referenced in the Industrial Banks article, is much more comparable to G.S. 53C-6-6.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
(a) Any two or more persons may establish a deposit account or accounts by written contract. The deposit account and any balance thereof shall be held for them as joint tenants, with or without right of survivorship, as the contract shall provide; the account may also be held pursuant to G.S. 41-2.1 and have the incidents set forth in that section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract shall set forth that fact as well. Unless the persons establishing the account have agreed with the bank that withdrawals require more than one signature, payment by the bank to, or on the order of, any persons designated in the contract authorized by this section shall be a total discharge of the bank's obligation as to the amount so paid. Funds in a joint account established with right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established pursuant to the provisions of that section. Payment by the bank of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the bank for the funds so paid, but the personal representative's authority to collect such funds from the surviving joint tenant or tenants is not terminated. A pledge of such account by any owner or owners, unless otherwise specifically agreed upon, shall be a valid pledge and transfer of such account, or of the amount so pledged, and shall not operate to sever or terminate the joint ownership of all or any part of the account. Persons establishing an account under this section shall sign a statement showing their election of the right of survivorship in the account, and containing language set forth in a conspicuous manner and substantially similar to the following: *"BANK (or name of institution)* *JOINT ACCOUNT WITH RIGHT OF* *SURVIVORSHIP* *G. S. 53-146.1* *We understand that by establishing a joint account under the provisions of North Carolina General Statute 53-146.1 that:* *1. The bank (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless we*	(c) Funds in a joint account established with right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established pursuant to the provisions of that section. Payment by the bank of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the bank for the funds so paid, but the personal representative's authority to collect such funds from the surviving joint tenant or tenants is not terminated. (d) A pledge of a joint account by any one or more of the joint tenants, unless otherwise specifically agreed between the bank and all joint tenants in writing, shall be a valid pledge and transfer of the account or of the amount so pledged, shall be binding upon all joint tenants, shall not operate to sever or terminate the joint ownership of all or any part of the account, and shall survive the death of any joint tenant. (e) A bank is not liable to joint tenants for complying in good faith with a writ of execution, garnishment, attachment, levy, or other legal process that appears to have been issued by a court or other authority of competent jurisdiction and seeks funds held in the name of any one or more of the joint tenants. (f) Persons establishing a joint account with right of survivorship under this section shall sign a statement showing their election of the right of survivorship in the account and containing language set forth in a conspicuous manner and substantially similar to the following: "BANK (or name of institution) JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP G.S. 53C-6-6 We understand that by establishing a joint account under the provisions of North Carolina General Statute 53C-6-6 that: (1) The bank (or name of institution) may pay the money in the account to, or on the order of, any person named as a joint holder of the account unless we have agreed with the bank that withdrawals require more than one signature; and	

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
have agreed with the bank that withdrawals require more than one signature; and *2. Upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.* *We DO elect to create the right of survivorship in this account.* _____ _____" *(a1) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other common law provisions of the General Statutes or the common law as appropriate.* *(b) This section does not repeal or modify any provisions of laws relating to estate taxes. This section regulates and protects the bank in its relationship with joint owners of deposit accounts.* *(c) No addition to such deposit account, nor any withdrawal or payment shall affect the nature of the account as a joint account, or affect the right of any tenant to terminate the account.]*	(2) Upon the death of one joint owner, the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will. _____ _____" (g) This section does not repeal or modify any provision of law relating to estate taxes. (h) Any joint tenant may terminate a joint account. (i) Where a joint account is held by two or more individuals and a joint tenant does not wish for the account to be terminated but requests to be removed from the account, the bank shall remove the joint tenant from the account. The joint account shall continue in the names of the remaining tenant or tenants. Any joint tenant who requested to be removed from an account remains liable for any debts incurred in connection with the joint account during the period in which the individual was a named joint tenant. (j) Any joint account created under the provisions of G.S. 53-146.1 as it existed prior to October 1, 2012, shall for all purposes be governed by the provisions of this section on and after October 1, 2012, and any reference to G.S. 53-146.1 in any document concerning the account shall be deemed a reference to this section. (k) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.	
[Staff Note: G.S. 53-146.1 through G.S. 53-147 are not referenced in the Industrial Banks article. G.S. 53-146.1 is discussed in the row above. NCCOB's chart suggests that G.S. 53-146.2A and G.S. 53-146.3 are succeeded by G.S. 53C-6-7 and G.S. 53C-6-8. NCCOB's draft does not include these Chaper 53C provisions, and staff agrees. G.S. 53-147 was repealed prior to the 2012 rewrite of the banking laws.]		
[Article 13. Conservation of Bank Assets and Issuance of Preferred Stock.]		

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
§ 53-148. Provision for bank conservators; duties and powers. Whenever he shall deem it necessary, in order to conserve the assets of any bank for the benefit of the depositors and other creditors thereof, the Commissioner of Banks may (with the approval of the Governor), appoint a conservator for such bank and require of such conservator such bond with such security as he may deem necessary and proper. The conservator, under the direction of the Commissioner of Banks, shall take possession of the books, records and assets of every description of such bank, and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business as provided by law. Such conservator shall have all such rights, powers and privileges, subject to the Commissioner of Banks, now possessed by or hereafter given to the Commissioner of Banks under G.S. 53-20, as amended, as are necessary to conserve the assets of said bank. During the time that such conservator remains in possession of such bank, the rights of all parties with respect thereto, shall be the same as those provided in G.S. 53-20, as amended. All expenses of any such conservator shall be paid out of the assets of such bank and shall be a lien thereon which shall be prior to any other lien provided by this Article or otherwise. The conservator shall receive as salary an amount no greater than that paid at the present time to employees of departments of the State government for similar services.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section, and staff agrees.
§ 53-149. Examination of bank. The Commissioner of Banks shall cause to be made such examination of the affairs of such bank as shall be necessary to inform him as to the financial condition of such bank.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section, and staff agrees.
§ 53-150. Termination of conservatorship. If the Commissioner of Banks shall become satisfied that it may safely be done, he may, in his discretion, terminate the conservatorship and permit such bank to resume the transaction of its business, subject to such terms, conditions, restrictions and limitations as he may prescribe.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section, and staff agrees.
§ 53-151. Special funds for paying depositors and creditors ratably; new deposits.	**No corresponding section.**	Referenced in G.S. 53-145.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
While such bank is in the hands of the conservator appointed by the Commissioner of Banks, the Commissioner of Banks may require the conservator to set aside from unpledged assets and make available for withdrawal by depositors and payment to other creditors on a ratable basis, such amounts as, in the opinion of the Commissioner of Banks, may safely be used for this purpose; and the Commissioner of Banks, may, in his discretion, permit the conservator to receive deposits, but deposits received while the bank is in the hands of the conservator (as well as special or trust deposits received by any bank, under the orders of the Commissioner of Banks, since March 2, 1933), shall not be subject to any limitation as to payment or withdrawal, and such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank existing at the time that a conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of said bank existing at the time such conservator was appointed. Such deposits received while the bank is in the hands of the conservator, as well as the special or trust deposits received since March 2, 1933, shall be kept on hand in cash or on deposit with a federal reserve bank. In being transmitted to the federal reserve bank, said deposits shall be so marked and designated as to indicate to such federal reserve bank that they are special deposits.		NCCOB's chart suggests no corresponding section, and staff agrees.
§ 53-152. Reorganization on agreement of depositors and stockholders. By the agreement of (i) depositors and other creditors of any bank representing at least seventy-five percent (75%) in amount of its total deposits and other liabilities as shown by the books of the banks, or (ii) stockholders owning at least two thirds of each class of its outstanding capital stock as shown by the books of the bank, or (iii) both depositors and other creditors representing at least seventy-five percent (75%) in amount of the total deposits and other liabilities, and stockholders owning at least two thirds of its outstanding capital stock as shown by the books of the bank, any bank may effect such reorganization with the consent and approval of the Commissioner of Banks as by such agreement may be determined: Provided, however, that claims of depositors or other creditors which will be satisfied in full under the provisions of the plan of reorganization shall not be included among the total deposits and other liabilities of the bank in determining the percent thereof as above provided. When such reorganization becomes effective, all books, records and assets of such bank shall be disposed of in accordance with the provisions of the plan, and the affairs of the bank shall be conducted by its board of directors in the manner provided by the plan and under the conditions, restrictions and limitations which may have been	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section, and staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
prescribed by the Commissioner of Banks. In any reorganization which shall have been approved, and shall have become effective as provided herein, all depositors and other creditors and stockholders of such bank, whether or not they shall have consented to such plan of organization, shall be fully and in all respects subject to and bound by its provisions, and claims of all depositors and other creditors shall be treated as if they had consented to such plan of reorganization: Provided, however, that no reorganization shall affect the lien of secured creditors.		
§ 53-153. Segregation of recent deposits not effective after bank turned back to officers; notice of turning bank back to officers. After 15 days after the affairs of a bank shall have been turned back to its board of directors by the conservator, either with or without a reorganization as provided in G.S. 53-152 hereof, the provisions of G.S. 53-151 with respect to the segregation of deposits received while it is in the hands of the conservator, and with respect to the use of such deposits to liquidate the indebtedness of such bank, shall no longer be effective: Provided, that before the conservator shall turn back the affairs of the bank to its board of directors, he shall cause to be published in a newspaper published in the county in which such bank is located, and if no newspaper is published in such county, in a newspaper having a general circulation in such county, a notice in form approved by the Commissioner of Banks, stating the date on which the affairs of the bank will be returned to its board of directors, and that the said provisions of G.S. 53-151 will not be effective after 15 days after such date; and on the date of publication of such notice, the conservator shall immediately send to every person who is a depositor in such bank under G.S. 53-151, a copy of such notice by registered mail, addressing it to the last known address of such persons shown by the records of the bank; and the conservator shall send similar notice in like manner to every person making deposit in such bank under G.S. 53-151, after the date of such newspaper publication and before the time when the affairs of the bank are returned to its directors.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section, and staff agrees.
§ 53-154. Issuance of preferred stock. Notwithstanding any other provision of this Article or any other law, and notwithstanding any of the provisions of its articles of incorporation or bylaws, any bank may, with the approval of the Commissioner of Banks, and by vote of stockholders owning a majority of the stock of such bank, upon not less than two days' notice given by registered mail pursuant to action taken at a meeting of its board of	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section, and staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
directors (which may be held upon not less than one day's notice) issue preferred stock in such amount and with such par value and at such annual dividend rate as shall be approved by said Commissioner of Banks. A copy of the minutes of such directors' and stockholders' meetings, certified by the proper officer and under the corporate seal of the bank, and accompanied by the written approval of the Commissioner of Banks shall be immediately filed in the office of the Secretary of State, and when so filed, shall be deemed and treated as an amendment to the articles of incorporation of such bank. No issue of preferred stock shall be valid until the par value of all stock so issued shall have been paid for in full in cash or in such manner as may be specifically approved by the Commissioner of Banks.		
§ 53-155. Rights and liabilities of preferred stockholders. The holders of such preferred stock shall be entitled to cumulative dividends payable at an annual rate approved by the Commissioner of Banks, but shall not be held individually responsible as such holders for any debts, contracts or engagements of such bank, and shall not be liable for assessments to restore impairments in the capital of such banks as now provided by law with reference to holders of common stock in banks. Notwithstanding any other provisions of law, the holders of such preferred stock shall have such voting rights and such stock shall be subject to retirement in such manner and on such terms and conditions as may be provided in the articles of incorporation or any amendment thereto, with the approval of the Commissioner of Banks. No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full; and if the bank is placed in liquidation, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full the par value of such stock and all accumulated dividends.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section, and staff agrees.
§ 53-156. Term "stock" to include preferred stock. Whenever in existing banking law, the words "stock," "stockholders," "capital," or "capital stock" are used, the same shall be deemed to include preferred stock: Provided, that no bank issuing preferred stock under the provisions hereof, shall be permitted at any time to make loans secured by such preferred stock; provided further	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section, and staff agrees.

Repealed Provision in Chapter 53	Successor Provision in Chapter 53C	Analysis
that such words shall not be deemed to include preferred stock where they are used in G.S. 53-2, 53-10, 53-80, 53-87, 53-88 and 53-139.		
§ 53-157. Rights and liabilities of conservator. The conservator appointed pursuant to the provisions of this Article shall be subject to the provisions of and to the penalties prescribed by G.S. 53-43, 53-129, and 53-131.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section, and staff agrees.
§ 53-158. Naming of conservator not liquidation. No power conferred in this Article upon the Commissioner of Banks, when exercised, shall be deemed an act of possession for the purposes of liquidation; and whenever the Commissioner of Banks shall, with reference to any bank for which a conservator is appointed, deem that liquidation is necessary, he shall exercise the powers for the purposes of liquidation as provided in G.S. 53-20 as amended.	**No corresponding section.**	Referenced in G.S. 53-145. NCCOB's chart suggests no corresponding section, and staff agrees.
[Staff Note: G.S. 53-158.1 is not referenced in the Industrial Banks article. NCCOB's chart suggests no corresponding section, and staff agrees.]		