JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS (2011)

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

APRIL, 2012
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# Table of Contents

LETTER OF TRANSMITTAL .................................................................................. 5

COMMITTEE PROCEEDINGS ............................................................................ 7

FINDING AND RECOMMENDATIONS ............................................................. 9

APPENDICES

APPENDIX A
MEMBERSHIP OF THE JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS (2011) ........................................................................................................ 11

APPENDIX B
COMMITTEE CHARGE/STATUTORY AUTHORITY ........................................... 12

APPENDIX C
LEGISLATIVE PROPOSALS ............................................................................ 13
TRANSMITTAL LETTER

April 26, 2012

TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The JOINT LEGISLATIVE STUDY COMMISSION ON THE
MODERNIZATION OF NORTH CAROLINA BANKING LAWS (2011),
respectfully submits the following report to the 2012 Regular Session of the 2011
General Assembly.

Sen. Harry Brown (Chair)  Rep. Harold Brubaker (Chair)
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COMMITTEE PROCEEDINGS

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws (2011) met 8 times after the 2011 Regular Session. The following is an outline of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

November 21, 2011

Review of Committee Charge
Karen Cochrane-Brown, Committee Co-Counsel

Remarks from Joseph A. Smith, Jr., North Carolina Commissioner of Banks
Background
A Brief Review of the History of North Carolina Banking
A Proposed Revision of the North Carolina Banking Law
Unfinished Business
Summary

Committee Discussion

December 19, 2011

Review of Draft Legislative Proposal
Joseph A. Smith, Jr., North Carolina Commissioner of Banks
- Article 1A – General Provisions
- Article 2A – Commission and Commissioner
- Article 3A – Organization of a Bank

Committee Discussion

January 20, 2012

Review of Proposed Substantive Corrections to Articles 1A – 3A
Joseph A. Smith, Jr. North Carolina Commissioner of Banks

Review of Draft Legislative Proposal
Joseph A. Smith, Jr., North Carolina Commissioner of Banks Article
- 4A – Governance of Banks Article
- 5A – Powers of Banks

Committee Discussion

February 14, 2012

Review of Follow-Up Items from the January 20, 2012 Meeting
Joseph A. Smith, Jr. North Carolina Commissioner of Banks
Review of Draft Legislative Proposal and OCOB Proposed Substantive Corrections
Joseph A. Smith, Jr., North Carolina Commissioner of Banks
  * Article 6A – Bank Operations’

Committee Discussion

March 6, 2012

Review of Follow-Up Items from the February 14, 2012 Meeting
Ray Grace, Acting North Carolina Commissioner of Banks

Review of Draft Legislative Proposal and OCOB Proposed Substantive Corrections
Ray Grace, Acting North Carolina Commissioner of Banks
  * Article 7A – Control Transactions, Combinations, Conversions
  * Article 8A – Bank Supervision

Committee Discussion

March 27, 2012

Recommendation from the State Banking Commission & Presentation of Mortgage Assessment Proposal
L. McNeil Chestnut, Special Deputy Attorney General and Senior Counsel to the Commissioner of Banks

Review of Follow-Up Items from the March 6, 2012 Meeting
Paul Stock, Legal Specialist, Office of North Carolina Commissioner of Banks

Review of Draft Legislative Proposal and OCOB Proposed Substantive Corrections
Ray Grace, Acting North Carolina Commissioner of Banks
  * Article 9A – Supervisory Liquidation; Voluntary Dissolution and Liquidation
  * Article 10A – Bank Holding Companies

Committee Discussion

April 12, 2012

Paul Stock, Legal Specialist, Office of North Carolina Commissioner of Banks

Review of Proposed Revisions to G.S. 53-5-2
Paul Stock, Legal Specialist, Office of North Carolina Commissioner of Banks

Review of Recommendations Received from the NC Bar Association Task Force
Paul Stock, Legal Specialist, Office of North Carolina Commissioner of Banks

Committee Discussion and Directions to Staff for Final Report

April 26, 2012
FINDINGS AND RECOMMENDATIONS

Based on information presented to the Joint Legislative Commission on the Modernization of North Carolina Banking Laws during their regularly scheduled meetings, the Committee makes the following findings and recommendations to the 2012 Regular Session of the 2011 General Assembly:

FINDINGS:

The Commission finds that:

1. North Carolina has long been a leader in the banking industry. A substantial portion of the law that currently applies to North Carolina banks was first enacted in 1931, when the General Assembly enacted legislation creating the Office of Commissioner of Banks. Modernization of our banking laws is necessary to ensure that banking organizations have all the tools necessary to compete effectively in a financial services marketplace that is now global in scope and driven by technology.

2. As a result of significant changes in federal law, including the Dodd-Frank Act of 2010, North Carolina banking law is out of date. Modernization is also necessary to avoid duplication with federal law and to maintain North Carolina's reputation among the most progressive banking states in the nation.

3. The banking law is much more restrictive than the North Carolina Business Corporation Act, which has led banks to avoid the burden of the banking law by forming holding companies under the more liberal corporation's law.

4. Access to capital markets and the amounts/types of capital a bank must maintain have changed substantially over the years. Reform of our banking law would reduce the burden of regulatory compliance for these banks and facilitate their raising of capital in a way that is consistent with the public interest.

5. The fees generated by the S.A.F.E. Mortgage Licensing Act are insufficient to support the cost of regulating the mortgage lending industry. Since 2002, bank assessments have subsidized mortgage regulation. The funding mechanism for mortgage regulation should be changed to replace the current licensing fees with an assessment structure similar to that currently applicable to banks.
RECOMMENDATIONS:

The Commission recommends the following legislative proposals:

AN ACT TO REWRITE THE BANKING LAWS OF NORTH CAROLINA AS RECOMMENDED BY THE JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.

AN ACT TO MAKE CHANGES TO THE LAW DEALING WITH THE ANNUAL ASSESSMENTS OF MORTGAGE BANKERS, MORTGAGE BROKERS, AND MORTGAGE SERVICERS AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.
### Appendix A

**COMMITTEE MEMBERSHIP**

**2011-2012**

<table>
<thead>
<tr>
<th>President Pro Tempore of the Senate Appointments:</th>
<th>Speaker of the House of Representatives Appointments:</th>
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<tr>
<td>Sen. Harry Brown (Chair)</td>
<td>Rep. Harold Brubaker (Chair)</td>
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<td>Mr. Gray Reed</td>
<td>Mr. Christopher Kukla</td>
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<td>Ms. Andrea Young</td>
<td>Mr. Charles Whitehead</td>
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AN ACT TO ESTABLISH THE JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. There is created the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws. The purpose of the Commission is to determine whether and to what extent the North Carolina Banking Laws need to be updated.

SECTION 2. The Commission shall consist of 14 members as follows:
(1) Five members of the House of Representatives appointed by the Speaker of the House of Representatives.
(2) Five members of the Senate appointed by the President Pro Tempore of the Senate.
(3) One member representing a State-chartered bank and one member of a consumer advocacy organization, each appointed by the Speaker of the House of Representatives.
(4) One member representing a State-chartered bank and one member of a consumer advocacy organization, each appointed by the President Pro Tempore of the Senate.

SECTION 3. The Commission shall have two cochairs, one designated by the Speaker of the House of Representatives and one designated by the President Pro Tempore of the Senate from among their respective appointees. The Commission shall meet upon the call of the cochairs. Any vacancy on the Commission shall be filled by the original appointing authority. A quorum of the Commission shall be a majority of its members.

SECTION 4. The Commission shall study any issue related to the Banking Laws of North Carolina that the Commission deems appropriate.

SECTION 6. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet in the Legislative Building or the Legislative Office Building.

With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be paid out of the funds of the General Assembly.

Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws (2011)
be borne by the Commission. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. If the Commission hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services.

All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

SECTION 7. The Commissioner of Banks shall use up to twenty-five thousand dollars ($25,000) of the funds available to the State Banking Commission for the 2011-2012 fiscal year to fund the study authorized by this act.

SECTION 8. The Commission shall report the results of its study and its recommendations, including any proposed legislative changes, to the 2012 Regular Session of the 2011 General Assembly. The Commission shall terminate on May 1, 2012, or upon the filing of its final report, whichever occurs first.

SECTION 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2011.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 12:13 p.m. this 27th day of June, 2011
Appendix C

LEGISLATIVE PROPOSALS
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

BILL DRAFT 2011-ROz-10 [v.34] (12/05)

(THESE IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/23/2012 1:25:02 PM

Short Title: Banking Law Modernization Act. (Public)

Sponsors: 

Referred to: 

A BILL TO BE ENTITLED
AN ACT TO REWRITE THE BANKING LAWS OF NORTH CAROLINA AS
RECOMMENDED BY THE JOINT LEGISLATIVE STUDY COMMISSION ON
THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.
The General Assembly of North Carolina enacts:

SECTION 1. Articles 1 through 10, 12 and 13 of Chapter 53 of the General
Statutes are repealed.

SECTION 2. Chapter 53 of the General Statutes reads as rewritten:

"CHAPTER 53.
BANKS, REGULATION OF BANKS AND OTHER FINANCIAL SERVICES."

SECTION 3. Chapter 53 of the General Statutes is amended by adding the
following new Articles to read:

Article 1A
General Provisions

§ 53-1-1. Title.
This Chapter shall be known and may be cited as Regulation of Banks and Other
Financial Services.

§ 53-1-2. Scope and applicability of Chapter.
(a) Unless the context specifies otherwise, this Chapter shall apply to:

(1) All existing banks organized or created under the laws of this State.

(2) All banks created under the provisions of Article 3A of this Chapter.

(3) All persons who subject themselves to the provisions of this Chapter.

(4) All persons who become subject to the penalties provided for in this
Chapter as a consequence of violating any of the provisions of this
Chapter.

(b) Transactions validly entered into before the effective date of this act and the
rights, duties, and interests flowing from them remain valid and may be terminated,
completed, or enforced as required or permitted by any statute amended or repealed by
the law by which this act was enacted as though the amendment or repeal had not
occurred.

Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws
(2011)
(c) Except as restricted by federal law, a federally chartered depository institution that has a branch in this State shall have all the rights, powers and privileges and shall be entitled to the same exemptions and immunities as banks organized or created under the laws of this State.

(d) Except as restricted by federal law or the laws of another state in which it was organized or created, an out-of-state bank that has a branch in this State shall have, with respect to activities conducted through such branch, all the rights, powers and privileges and shall be entitled to the same exemptions and immunities as banks organized and created under the laws of this State.

(e) Any reference in this Chapter to a state or federal law, regulation, or agency shall be deemed to refer to any replacement law or regulation or any successor agency, whether or not this Chapter explicitly provides for that reference.

§ 53-1-3. Existing banks; prohibitions, injunctions.

(a) No depository institution organized or created under the laws of this State may operate as a bank except in accordance with this Chapter. Banks established prior to the effective date of this act may continue operation under their existing organizational documents, but shall be subject to all other requirements of this Chapter.

(b) No person shall operate in this State as a "bank," "savings bank," "savings and loan association," "trust company," or otherwise as a depository institution or trust institution unless established as a depository institution or trust institution under the laws of this State or another state, or established under federal law. Unless so authorized, no person doing business in this State shall:

(1) Use in its name the term "bank," "savings and loan," "savings bank," "banking company," "trust company," or words of similar meaning that lead the public reasonably to believe that it conducts the business of a depository institution or trust institution; or

(2) Use any sign, letterhead, circular, or website content or advertise or communicate in any manner that would lead the public reasonably to believe that it conducts the business of a depository institution or trust institution.

(c) Upon application by the Commissioner, a court of competent jurisdiction may issue an injunction to restrain any person from violating or from continuing to violate this section.

§ 53-1-4. 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:

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, or

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 towards 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 institution, 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.

(4a) Banking Laws. — All laws which the Commissioner or the OCOB is authorized to enforce under any applicable statute.

(5) Bank Operating Subsidiary. — A subsidiary which is under the control of a bank, and engages only in activities in which a bank may engage pursuant to G.S. 53-5-1.

(6) Bank Premises. — Any improved or unimproved real estate, whether or not open to the public, which 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, the 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 U.S.C. 204.121.

(9) Board of Directors. — A governing board of a company that is responsible for policy, oversight, and compliance.

(10) 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.

(11) Capital. – An amount equal to the bank's "total capital" as that term is
used by the FDIC in 12 CFR 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.

(12) Capital Impairment. – The reduction of a bank's capital at any time
below its required capital.

(13) Central Reserve Bank. – A depository institution of which at least fifty
percent of its shares are owned by other depository institutions.

(14) CFPB. – The Consumer Financial Protection Bureau or its successor.

(15) Charter. – A document issued by the Commissioner in accordance with
Article 3A of this Chapter permitting a bank to conduct banking
business.

(16) 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.

(17) Commission. – The State Banking Commission provided for in
G.S. 53-2-1.

(18) Commissioner. – The Commissioner of Banks provided for in
G.S. 53-2-2.

(19) Company. – A corporation, limited liability company, partnership,
joint venture, business trust, trust, syndicate, association,
unincorporated organization, or other form of business entity.

(20) 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
or more of the voting securities of the person.

(21) Control Transaction. – The acquisition of control over a bank or a
holding company other than pursuant to a combination.

(22) Credit Union. – A credit union as defined in G.S. 54-109.1.

(23) 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 by virtue of an
acquisition of the existing branch of another bank or out-of-state bank,
by a combination involving the bank or out-of-state bank, or by the
conversion of a non-branch bank business office to a branch.
(24) Deposit. – A "deposit" as defined in Section 3(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(1).

(25) Deposit Insurance. – Insurance of a bank’s deposit accounts where the beneficiaries are the holders of the insured accounts.

(26) Depository Institution. – A bank, out-of-state bank, savings institution, or federally chartered institution, the deposits of which are insured by the FDIC.

(27) Deputy Commissioner. – An individual appointed by the Commissioner to such office as provided by G.S. 53-2-3.

(28) Distribution. – With respect to a bank, "distribution" has the same meaning as set forth in Chapter 55.

(29) Debt Previously Contracted (DPC) Subsidiary. – A subsidiary of a bank which 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.

(30) Examination. – A supervisory inspection of a bank, 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.

(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.

(32) Farm Credit System Institution. – A lending institution regulated by the Farm Credit Administration.

(33) FDIC. – The Federal Deposit Insurance Corporation or its successor.

(34) Federal Reserve Board. – The Board of Governors of the Federal Reserve System or its successor.


(36) Federally Chartered Institution. – A national bank or federal savings association.

(37) Financial Subsidiary. – A "financial subsidiary," as defined in 12 U.S.C. 24a(g).

(38) Holding Company. – A company that controls a depository institution or that controls a company that directly or indirectly controls a depository institution.
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.

Inadequate Capital. – An amount of capital equal to at least 75 percent but less than 100 percent of required capital.

Individual. – A human being.

Insufficient Capital. – An amount of capital less than 75 percent of required capital.

Lower-Tier Subsidiary. – Any bank operating subsidiary in which a bank subsidiary has an equity ownership interest.


Non-branch Bank Business Office. – Any staffed physical location open to the public in this State in which an office of a bank, out-of-state bank, a depository institution established under the laws of another state, or a federally chartered institution that is not a branch, an office of a separately organized subsidiary of such depository institution, or an office of the holding company of such depository institution, at which one or more banking or banking related products or services are offered, other than the taking of deposits. The provision of remote deposit capture facilities or services by a non-branch bank business office shall not be deemed to be a taking of deposits. Non-branch bank business offices include loan production offices, mortgage loan offices, and insurance agency offices, or a combination thereof.

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.

OCOB. – The Office of the Commissioner of Banks as provided in G.S. 53-2-3.

OCC. – The Office of the Comptroller of the Currency or its successor.

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.

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.

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.

(52) 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.

(53) Person. – An individual, a company, or a group of persons who are acting in concert.

(54) Plan of Conversion. – A detailed outline of the procedure of the conversion of a depository institution from one to another charter.

(55) 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.

(56) Principal Office. – The office that houses the headquarters of a bank.

(57) Public Member. – A member of the Commission who is not a practical banker and who is not at the time of appointment to the Commission, nor was within the five years preceding the appointment, an employee of a North Carolina financial institution.

(58) Public Notice. – Notice to the public by (i) a single publication in a newspaper of general circulation in the county in which the bank which 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 website for at least 15 days, in each case of the applicable information specified for such publication or posting in this Chapter.

(59) 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.

(60) Registered Agent. – The person named in the organizational documents of a company upon whom service of legal process is deemed binding upon the company.

(61) Required Capital. – Required capital means:

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; and

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.
(62) 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.

(63) 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.

(64) Shares. – The units into which the equity ownership interests of a corporation are divided.

(65) State. – Any state of the United States, the District of Columbia, or any territory of the United States other than this State.

(66) State Trust Company. – A company organized under the provisions of Article 24 of this Chapter 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.

(67) Subsidiary. – A company over which a bank has control.

(68) This State. – The State of North Carolina.

(69) Trust Business. – Acting as a fiduciary or in other capacities permissible for a trust institution under G.S. 53-331.

(70) 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.

(71) Trust Funds. – Trust funds as defined in Section 3(p) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(p).

(72) Trust Institution. – Any company lawfully acting as a fiduciary in a state or in a foreign country.

(73) 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.

(74) 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).

(75) Well managed. – Except as otherwise provided in this Chapter, a company or depository institution is well managed if:

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.

"§ 53-1-5. Severability."

If any provision of this Chapter is found by any court of competent jurisdiction to be invalid as to any person or circumstance, or to be preempted by federal law, the remaining provisions of this Chapter shall not be affected and shall continue to apply to any other person or circumstance.

"Article 2A
Commission and Commissioner

"§ 53-2-1. The Commission.

(a) The Commission consists of 15 members including the State Treasurer, who shall serve as an ex officio member, 12 members appointed by the Governor, and two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate and one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives. The Governor shall appoint three practical bankers, one consumer finance licensee, and eight public members to the Commission. The member appointed upon the recommendation of the President Pro Tempore of the Senate shall be a practical banker and the member appointed on the recommendation of the Speaker of the House shall be a practical banker. Members shall serve for terms of four years. No individual shall serve on the Commission for more than two complete consecutive terms. Any vacancy occurring in the membership of the Commission shall be filled by the appropriate appointing officer for the unexpired term, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. The appointed members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. This compensation shall be paid from the revenues of the OCOB.

(b) The Commission shall meet at such times, but not less than once every three months, as the Commission may by resolution prescribe, and the Commission shall be convened in special session at the call of the Governor or the Commissioner. The State Treasurer shall be chair of the Commission. The Commission shall meet in person,
provided that it may, so long as consistent with applicable law regarding public
meetings, meet by telephone or video conference, including attendance of one or more
members by telephone or video conferencing.

(c) Except as required by state or federal law, no member of the Commission
shall divulge or make use of any information designated by this Chapter or by the
Commissioner as confidential, and no member shall give out any such information
unless the information shall be required of the member at a hearing at which the
member is duly subpoenaed or by a court of competent jurisdiction.

(d) A quorum of the Commission shall consist of a majority of its total
membership. Subject to the standards of Chapter 138A of the General Statutes, a
majority vote of the members qualified with respect to a matter who are present at the
meeting where such matter is considered shall constitute valid action of the
Commission. In accordance with G.S. 138A-38, The State Treasurer and all disqualified
members who are present at a meeting shall be counted for purposes of determining
whether a quorum is present.

(e) The Commission is authorized to supervise, direct and review the exercise by
the Commissioner of all powers, duties, and functions vested in or exercised by the
Commissioner under the banking laws of this State.

§ 53-2-2. The Commissioner.

(a) Effective April 1, 2011, and quadrennially thereafter, the Governor shall
appoint a Commissioner, which appointment shall be subject to confirmation by the
General Assembly by joint resolution. The name of the individual appointed to be
Commissioner shall be submitted to the General Assembly on or before February 1 of
the year in which the individual's term of office begins. The term of office for the
Commissioner shall be four years. In case of a vacancy in the office of Commissioner,
the Governor shall appoint an individual to serve as Commissioner on an interim basis
pending confirmation of a nominee by the General Assembly.

(b) The Commissioner has the powers enumerated in this Chapter and otherwise
provided by North Carolina law and such other powers as may be necessary for the
proper discharge of the Commissioner's duties, including the power to enter into
contracts. The Commissioner shall act as the executive officer of the Commission.

(c) The Commissioner is authorized to subpoena witnesses and compel their
attendance, require the production of evidence, administer oaths and examine any
person under oath in connection with any subject related to any power vested or duty
imposed on the Commissioner under this Chapter.

(d) The Commissioner may sue and prosecute or defend in any action or
proceeding in any courts of this State or any other state and in any court of the United
States for the enforcement or protection of any right or pursuit of any remedy necessary
or proper in connection with the subjects committed to the Commissioner for
administration or in connection with any bank or the rights, liabilities, property or assets
thereof, under the Commissioner's supervision. Nothing herein shall be construed to
render the Commissioner liable to be sued except as other departments and agencies of
the State may be liable under the general law. The Commissioner may exercise any
jurisdiction, supervise, regulate, examine or enforce any State consumer protection laws
or federal laws with respect to which the Commissioner has enforcement jurisdiction.
(e) The Commissioner shall have a seal of office bearing the legend "State of North Carolina – Commissioner of Banks". The Commissioner may adopt other symbols or marks of office.


(a) The Commissioner shall be assisted in the performance of the duties of office by (i) one or more deputy commissioners, and (ii) examiners, investigators, counsel and other employees under the supervision of the Commissioner, all of whom, together with the Commissioner shall comprise the "Office of the Commissioner of Banks." In addition, the work of the OCOB may be conducted by employees of other agencies of government, and agents and independent contractors of the OCOB. The Commissioner may appoint or remove at his or her discretion any deputy commissioner.

(b) The Commissioner shall appoint, with the approval of the Governor, and may remove at the Commissioner's discretion, a chief deputy commissioner. The chief deputy commissioner may perform such duties and exercise such powers of the Commissioner as the Commissioner may direct. In the event of the absence, death, resignation, disability or disqualification of the Commissioner, or in case the office of Commissioner otherwise becomes vacant, the chief deputy commissioner shall perform the duties and exercise all the powers vested in the Commissioner until the Governor appoints an acting Commissioner.

(c) Except as otherwise provided in this Chapter, the OCOB and its employees are exempt from the classification and compensation rules established by the State Personnel Commission pursuant to G.S. 126-4(1) through (4), G.S. 126-4(5) only as it applies to hours and days of work, vacation and sick leave, G.S. 126-4(6) only as it applies to promotion and transfer, G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive pay programs, and Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1. The salary of the Commissioner shall be fixed by the General Assembly.

(d) The Attorney General shall assign an attorney from the Department of Justice to work full time with the Commission. The attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. The Commission shall fully reimburse the Department of Justice for the compensation, secretarial support, equipment, supplies, records and other property to support the attorney.


(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 in respect of which the budget has been presented and shall approve or modify the budget at the meeting.

"§ 53-2-5. Rulemaking.

(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.

(b) The rulemaking authority conferred on the Commissioner by this section shall be in addition to and not in derogation of any specific rulemaking authority by any other provision of this Chapter or otherwise provided by North Carolina law.

"§ 53-2-6. Hearings and Appeals.

(a) Any administrative hearing required or permitted to be held by the Commissioner shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

(b) Upon an appeal to the Commission by any party from an order entered by the Commissioner following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, the chair of the Commission may appoint an appellate review panel of not less than three members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. Unless another time period for appeals is provided by this Chapter, any party to an order by the Commissioner may, within 20 days after the order and upon written notice to the Commissioner, appeal the Commissioner's order to the Commission for review. The notice of appeal shall state the grounds for the appeal and set forth in numbered order the assignments of error for review by the Commission. Failure to state the grounds for the appeal and assignments of error shall constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule provided by the Commission shall also constitute grounds to dismiss the appeal. Upon receipt of a notice of appeal, the Commissioner shall, within 30 days of the notice, certify to the Commission the record on appeal. Any party to a proceeding before the Commission may, within 20 days after final order of the Commission, petition the Superior Court of Wake County for judicial review of a final determination of any question of law which may be involved. The petition for judicial review shall be entitled "(insert name) Petitioner v. State of North Carolina on Relation of the Commission." A copy of the petition for judicial review shall be served upon the Commissioner pursuant to G.S. 150B-46. The petition shall be placed on the civil issue docket of the court and shall have precedence over other civil actions. Within 15 days of service of the petition for judicial review, the Commissioner shall certify the record to the Clerk of Superior Court of Wake County. The standard of review of a petition for judicial review of a final order of the Commission shall be as provided in G.S. 150B-51(b).

(c) The hearing officer at administrative hearings conducted under the authority of the Commissioner may be the Commissioner, a deputy commissioner or other suitable person designated by the Commissioner to serve as a hearing officer.

(d) The Commission may conduct public hearings on matters within its purview.

(a) The Commissioner shall keep a record in the OCOB of the Commissioner's official acts, rulings, and transactions which, except as otherwise provided, shall be open to inspection and copying by any person. The Commissioner may condition the provision of copies of records upon the payment by the person requesting the documents of an amount sufficient to cover the cost of retrieving, copying and if requested, mailing the documents.

(b) Notwithstanding any laws to the contrary, the following records of the Commissioner shall be confidential and shall not be disclosed or be subject to discovery or public inspection:

1. Records compiled during or in connection with an examination, audit, or investigation of any person, including records relating to any application for licensure or otherwise to conduct business.

2. Records containing information compiled in preparation for or anticipation of or in the course of litigation, examination, audit, or investigation.

3. Records containing nonpublic personal information about a customer, whether in paper, electronic, or other form, that is maintained by or on behalf of the financial institution; provided however, that every report made by a North Carolina financial institution, with respect to a transaction between it and an officer, director or affiliate thereof, which report is required to be filed with the Commissioner pursuant to this Chapter shall be filed with the Commissioner in a form prescribed by the Commissioner and shall be open to inspection and copying by any person.

4. Records containing information furnished in connection with an application bearing on the character, competency, or experience, or information about the personal finances of an existing or proposed organizer, officer, or director of a depository institution, federally chartered institution, trust institution, holding company, or any other person subject to the Commissioner's jurisdiction.

5. Records containing information about the character, competency, experience or finances of the directors, officers or other persons having control over a person giving notice or filing an application to engage in a control transaction pursuant to this Chapter.

6. Records containing information about the character, competency or experience of the directors, executive officers or other persons having control over any of the parties to a combination subject to the Commissioner's jurisdiction.

7. Records of North Carolina financial institutions in dissolution, that have liquidated, that are under the Commissioner's supervisory control or that are in receivership which contain the names or other personal information of any customers of the institutions.

8. Records prepared by a compliance review committee or other committee of the board of directors of a North Carolina financial institution.
institution or established at the direction of such a board of directors
that have been obtained by the Commissioner.

(9) Records prepared during or as a result of an examination or
investigation of any person by an agency of the United States, or
jointly by the agency and the Commissioner, if the records would be
confidential under federal law or regulation.

(10) Records prepared during or as a result of an examination or
investigation of any person by a regulatory agency with jurisdiction of
a state other than this State or of a foreign country if the records would
be confidential under that jurisdiction's law or regulations.

(11) Records of information and reports submitted by any depository
institute, or trust institution, or its affiliates, holding company or
subsidiaries, or any other person subject to the Commissioner's
jurisdiction to federal regulatory agencies, if the records would be
confidential under federal law or regulation.

(12) Records of complaints from the public received by the OCOB.

(13) Any record which would disclose any information set forth in any of
the confidential records referred to in this subsection.

(c) For purposes of this section, "any person subject to the Commissioner's
jurisdiction" includes any person who is licensed or registered or should be licensed or
registered under this Chapter.

(d) Notwithstanding the provisions of subsection (b) of this section, the
Commissioner may, by written agreement with any state or federal law enforcement or
regulatory agency, share with that agency any confidential record set out in subsection
(b) of this section or any information contained therein, on the condition that such
record or information shared shall be treated as confidential under the applicable laws
and regulations governing the recipient agency.

(e) Nothing in this section shall prohibit a bank, upon approval of the
Commissioner, from disclosing to an insurance carrier, for the purpose of obtaining
insurance coverage required by this Chapter, the bank's regulatory rating prepared by
the OCOB; provided however, that the insurance carrier must agree in writing to
maintain the confidentiality of the information and not to disclose it in any manner
whatsoever.

Article 3A
Organization of a Bank

§ 53-3-1. 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. 53-3-4. The applicant shall pay a
non-refundable 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.

§ 53-3-2. 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.
2. The Commissioner's examination as provided for in G.S. 53-3-1 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.

§ 53-3-3. 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:

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.
Before the chartering of a proposed bank, the articles of incorporation filed under the provisions of G.S. 53-3-2 shall be sufficient certification to the FDIC that the proposed bank is a legal entity.

§ 53-3-4. 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.

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 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 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. 53-1-4(69), it appears that trust powers should be granted based on consideration of the various factors set forth in Article 24 of this Chapter 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 hearings. 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 ten days of issuance of the order, give notice of appeal of this decision to the Commission pursuant to G.S. 53-2-6.

§ 53-3-5. 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. The public notice shall contain:

(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.

(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.

§ 53-3-6. 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. 53-3-4 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. 53-2-6.

§ 53-3-7. Issuance of charter.

(a) A proposed bank shall not engage in business except as allowed under G.S. 53-3-2(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:

(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 which 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. 53-2-6.

(e) Following the exhaustion of all appeals, the Commissioner may dissolve and liquidate the proposed bank as provided in G.S. 53-9-301, or order the organizers to dissolve and liquidate the proposed bank pursuant to G.S. 53-9-201, 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."

Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws (2011)
§ 53-4-1. 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.

§ 53-4-2. 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 less than five individuals. For good cause shown, the Commissioner may approve boards of directors consisting of less 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 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.

"§ 53-4-3. Committees of boards of directors.
   (a) The board of directors shall appoint, at a minimum, an audit committee, an executive committee, 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.
   (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.
"§ 53-4-4. 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.

§ 53-4-5. 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) A director must either:
   (1) Appoint an agent in Wake County, North Carolina, for service of process; or
   (2) Consent, on a form satisfactory to the Commissioner, that:
       a. The Commissioner may serve as the director's agent for service of process, and
       b. The director consents to jurisdiction in Wake County, North Carolina, but only for purposes of any action or proceeding brought by the Commissioner.

§ 53-4-6. 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.

§ 53-4-7. 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.

§ 53-4-8. 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 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.

§ 53-4-9. 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.
"§ 53-4-10. Examination of board composition, structure and conduct.
(a) As part of its examinations of a bank, the OCOB may assess the competence, composition, structure and conduct of such bank's board of directors, including:

(1) The number of directors.
(2) The independence of directors.
(3) The committee structure of the board.
(4) The education and training of board members.
(5) Compliance with the bank's code of ethics.

(b) In making the assessment authorized by subsection (a) of this section, the OCOB shall take into consideration publicly issued regulations and guidance of the Commissioner and the bank's primary federal supervisor and 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.

"§ 53-4-11. 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 if 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 non-member 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 clearing house association or similar intermediary.

(2) Balances on demand from designated depository institutions.

(3) Obligations of the United States Treasury, any agency of the United States government which is guaranteed by the United States government, and any general obligation of this State or any political subdivision thereof which 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; and

(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 ten days after the Commissioner directs it to do so, the Commissioner may take such actions under Article 8A of this Chapter as the Commissioner deems necessary.
§ 53-4-12. Compliance review committee.

(a) For purposes of this section, the following definitions apply:

(1) "Compliance review committee" means:

a. An audit, loan review, or compliance committee appointed by the board of directors of a bank, or any other person to the extent the person acts at the direction of or reports to such a committee; and

b. Whose functions are to audit, evaluate, report, or determine compliance with any of the following:

1. Loan underwriting standards.
2. Asset quality.
3. Financial reporting to federal or State regulatory agencies.
4. Adherence to the bank's investment, lending, accounting, ethical, or risk assessment, and financial standards.
5. Compliance with federal or State statutory requirements.

(2) "Compliance review documents" means documents prepared for or created by a compliance review committee.

(3) "Loan review committee" means a person or group of persons who, on behalf of a bank, reviews assets, including loans held by the bank, for the purpose of assessing the credit quality of the loans or the loan application process, compliance with the bank's investment and loan policies and compliance with applicable law and regulations.

(4) "Government agency" means a state or federal regulatory body that is not a bank supervisory agency that has jurisdiction over a bank's compliance with state or federal laws or regulations, including those dealing with taxes, securities, or financial reporting.

(b) Banks shall maintain complete records of compliance review documents, and the documents shall be available for examination by the Commissioner or any bank supervisory agency or government agency having jurisdiction. Notwithstanding Chapter 132 of the General Statutes, compliance review documents in the custody of a bank, the Commissioner, a government agency or a bank supervisory agency are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action against a bank, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence.

Article 5A
Powers of Banks

§ 53-5-1. 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:

(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 interest in a loan.

(5) Make any investments authorized by G.S. 53-5-2 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:

(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.

(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 permitted under the Federal Deposit Insurance Act, 12 U.S.C. 1831a.

(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 which 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 activity before entering into the investment. The bank shall not engage in the 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.

(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 subsections (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.
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.

§ 53-5-2. Investment authority.

(a) In addition to any powers or investments authorized by any other section of this Chapter, a bank may invest in:

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 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 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. 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 which will be operated as a:

(1) Bank operating subsidiary.

(2) Financial subsidiary.

(3) DPC subsidiary, as defined by G.S. 53-1-4(29).

(c) An investment by a bank or a bank subsidiary pursuant to subsection (b) or
(d) of this section shall receive the same accounting and regulatory treatment as is
accorded to such investment by the bank's primary federal supervisor. No investment
shall be made by a bank or a bank subsidiary pursuant to subsection (b) or (d) of this
section unless:

(1) The investment is approved by the board of directors of the bank.

(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 bank operating subsidiary may make an investment of any size in a lower
tier subsidiary.

(e) Except as provided in subsection (f) of this section, a bank or bank operating
subsidiary proposing to make an investment described in subsection (b), (c), 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 bank operating subsidiary that the
Commissioner objects to the proposed investment, the bank or bank operating
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 which require additional information or additional time
for analysis. While the objection period is so extended, the bank or bank operating
subsidiary may not proceed with respect to the proposed investment.

(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:
   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; or
   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, which
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 which 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.
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.

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 of its required capital.

§ 53-5-3. 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 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 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.

Article 6A
Bank Operations.

§ 53-6-1. Loans and extensions of credit.

(a) Subject to the provisions of this subsection, 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 fifteen percent (15%) of the capital of the bank or the percentage 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 ten percent (10%) of the capital 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 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 Commission (or its successor) or any federal banking agency, and (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 which 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.

"§ 53-6-2. Deposits."
(a) A bank may, consistent with applicable law and safe and sound banking practices, offer all types of deposit accounts upon such terms and conditions as the bank considers appropriate.

(b) A bank shall secure insurance for its deposits from the FDIC.

§ 53-6-3. Securing deposits.

(a) A bank may not create a lien on its assets or otherwise secure the repayment of a deposit except as authorized or required by this section, other laws of this State, or federal law.

(b) A bank may pledge its assets to secure a deposit of the government of this State or any other state, any agency or political subdivision of this State or any other state, the United States government, any agency or instrumentality of the United States, or any Indian tribe recognized by the United States government as eligible for the services provided to Indian tribes by the Secretary of the Interior because of its status as an Indian tribe.

(c) This section does not prohibit the pledge of assets by a bank to secure the repayment of money borrowed.

(d) An act, deed, conveyance, pledge, or contract in violation of this section is void.

§ 53-6-4. 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.

(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.
§ 53-6-6. 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 may also 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.

(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. 53-6-6

We understand that by establishing a joint account under the provisions of North Carolina General Statute §53-6-6 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
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 an named joint tenant.

(j) Any joint account created under the provisions of G.S. 53-146.1 as it existed prior to the effective date of this section shall for all purposes be governed by the provisions of this section after the effective date of this section, and any reference to G.S. 53-146.1 in any statement electing a right of survivorship 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.

§ 53-6-7. Payable on death accounts.

(a) If any natural person establishing a deposit account shall execute a written agreement with the bank containing a statement that it is executed pursuant to the provisions of this section and providing for the account to be held in the name of the natural person as owner for one or more beneficiaries, the account and any balance thereof shall be held as a Payable on Death account. The account shall have the following incidents:

1. Any owner during the owner's lifetime may change any designated beneficiary by a written direction to the bank.

2. If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 53-6-6.

3. Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the owner's personal order.

4. If the beneficiary is a natural person, there may be one or more beneficiaries and the following shall apply:

a. If only one beneficiary is living and of legal age at the death of the last surviving owner, the beneficiary shall be the owner of the account and payment by the bank to the owner shall be a
(2) If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 53-6-6, and payment by the bank to the owners or any of the owners shall be a total discharge of the bank's obligation as to the amount paid.

b. If only one beneficiary is living and that beneficiary is not of legal age at the death of the last surviving owner, the bank shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the bank shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.

(5) If the beneficiary is an entity other than a natural person, there shall be only one beneficiary.

(6) If one or more owners survive the last surviving beneficiary who was a natural person, or if a beneficiary who is an entity other than a natural person should cease to exist before the death of the owner, the account shall become an individual account of the owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual account in a case of a single owner or a joint account with right of survivorship, as provided in G.S. 53-6-6, in the case of multiple owners.

(7) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a Payable on Death account established pursuant to this subsection shall belong to the beneficiary or beneficiaries upon the death of the last surviving owner, 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)(1). Payment by the bank of funds in the Payable on Death account to the beneficiary or beneficiaries shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the bank for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary or beneficiaries is not terminated.

The natural person establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the language set out below. The language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person establishing the account:

BANK (or name of institution)
PAYABLE ON DEATH ACCOUNT
G.S. 53-6-7
I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 53-6-7 that:

1. During my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account.
2. By written direction to the bank (or name of institution) I (or we), individually or jointly, may change the beneficiary or beneficiaries.
3. Upon my (or our) death, the money remaining in the account will belong to the beneficiary or beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by will.

(b) 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.

(c) No addition to the accounts, nor any withdrawal, payment, or change of beneficiary, shall affect the nature of the account as Payable on Death accounts or affect the right of any owner to terminate the account.

(d) This section does not repeal or modify any provisions of law relating to estate taxes.

§ 53-6-8. Personal agency accounts.

(a) Any person may establish a personal agency account by written contract containing a statement that it is executed pursuant to the provisions of this section. A personal agency account may be any type of deposit account. The written contract shall name an agent who shall have authority to act on behalf of the depositor in the manner set out in this subsection. The agent shall have the authority to:

(1) Make, sign or execute checks drawn on the account or otherwise make withdrawals from the account.
(2) Endorse checks made payable to the principal for deposit only into the account.
(3) Deposit cash or negotiable instruments, including instruments endorsed by the principal, into the account.

(b) A person establishing an account under this section shall sign a statement containing language substantially similar to the following in a conspicuous manner:

BANK (or name of institution)
PERSONAL AGENCY ACCOUNT
G.S. 53-6-8

The undersigned understands that by establishing a personal agency account under the provisions of North Carolina General Statute §53-6-8, the agent named in the account may:

1. Sign checks drawn on the account.
2. Make deposits into the account.

The undersigned also understand that if the undersigned is a natural person, upon his or her death the money remaining in the account will be controlled by his or her will or inherited by his or her heirs.
(c) An account created under the provisions of this section grants no ownership
right or interest in the agent. Upon the death of the principal there is no right of
survivorship to the account and the authority set out in subsection (a) of this section
terminates.

(d) The written contract referred to in subsection (a) of this section shall provide
that the principal may elect to extend the authority of the agent set out in subsection (a)
of this section to act on behalf of the principal in regard to the account notwithstanding
the subsequent incapacity or mental incompetence of the principal. If the principal is a
natural person and elects to extend the authority of the agent, then upon the subsequent
incapacity or mental incompetence of the principal, the agent may continue to exercise
the authority, without the requirement of bond or of accounting to any court, until such
time as the agent shall receive actual knowledge that the authority has been terminated.
The duly qualified guardian of the estate of the incapacitated or incompetent acting
pursuant to a durable power of attorney, as defined in G.S. 32A-8, which grants to the
attorney-in-fact the authority in regard to the account which is granted to the agent by
the written contract executed pursuant to the provisions of this section, shall have the
power, upon notifying the agent and providing written notice to the bank where the
personal agency account is established, to terminate the agent's authority to act on
behalf of the principal with respect to the account. Upon termination of the agent's
authority, the agent shall account to the guardian or attorney-in-fact for all actions of the
agent in regard to the account during the incapacity or incompetence of the principal. If
the principal is a natural person and does not elect to extend the authority of the agent,
then upon the subsequent incapacity or mental incompetence of the principal, the
authority of the agent set out in subsection (a) of this section terminates.

(e) When an account under this section has been established, all or part of the
account or any interest or dividend may be paid on a check made, signed or executed by
the agent. In the absence of actual knowledge that the principal has died or that the
agency created by the account has been terminated, the payment shall be valid and
sufficient discharge to the bank for payment so made.

(f) A personal agency account shall have only one owner and one agent. The
owner shall retain the authority to change the named agent on the personal agency
account.

(g) Any personal agency account created under the provisions of G.S. 53-146.3
as it existed prior to the effective date of this section shall for all purposes be governed
by the provisions of this section after the effective date of this section, and any reference
to G.S. 53-146.3 in any statement establishing the account shall be deemed a reference
to this section.

§ 53-6-9. Accounts opened by adults for minors.

(a) One or more adults may open and maintain a custodial deposit account for or
in the name of a minor and using the minor's taxpayer identification number. Unless
otherwise provided in the agreement governing the account:

(1) Beneficial ownership of the account vests exclusively in the minor. All
interest credited to the account shall belong to the minor and shall be
reported to the appropriate taxing authorities in the name of the minor
using the minor's taxpayer identification number.
(2) Except as otherwise provided, control of the account vests exclusively in the custodian whose name appears on the bank's records for the account. If there is more than one custodian named on the bank's account records, each may act independently. Any one or more of the custodians named on the bank's records may turn over control of the account to the minor at any time, either before or after the minor reaches the age of majority.

(3) If the custodian has not already transferred control then after the minor beneficiary reaches the age of majority, the beneficiary may instruct the bank to transfer control to the beneficiary and remove the named custodian.

(4) If the custodian, or if more than one custodian is on the account, the last of the custodians to survive, dies before the minor reaches the age of majority, the minor's parent or the minor's legal guardian may act as custodian or name another custodian on the account.

(b) This section shall not be deemed exclusive. Accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes, including Chapter 33A, the North Carolina Uniform Transfers to Minors Act, or the common law, as appropriate.

§ 53-6-10. Payment of balance of deceased person or person under disability to personal representative or guardian.

(a) A bank may pay any balance on deposit to the credit of any deceased individual to the duly qualified personal representative, collector, or public administrator of the decedent who is qualified as such under the laws of any state.

(b) A bank may pay any balance on deposit to the credit of any individual judicially declared incompetent or otherwise under a legal disability to the duly qualified personal representative, guardian, curator, conservator, or committee of the person declared incompetent or under disability who is qualified as such under the laws of any state.

(c) The presentation of a letter of qualification as personal representative, collector, public administrator, guardian, curator, conservator, or committee of the person issued or certified by the appointing court shall be conclusive proof of the jurisdiction of the court issuing the same and sufficient authority for the payment.

(d) Payment by a bank in good faith under the authority of this section discharges the liability of the bank to the extent of the payment.

§ 53-6-11. Powers of attorney; notice of revocation; payment after notice.

(a) Any bank may continue to recognize any act of an attorney-in-fact or other agent until the bank receives actual notice of the principal's death or a written notice of revocation signed by the principal who granted the authority or, in the case of a company, evidence satisfactory to the bank of the revocation. Payment by the bank to or at the direction of an attorney-in-fact or other agent before receipt of the notice is a total discharge of the bank's obligation as to the amount so paid.

(b) Notwithstanding that a bank has received written notice of revocation of the authority of an attorney-in-fact or other designated agent, a bank may, until ten days after receipt of notice, pay any item made, drawn, accepted or endorsed by the
attorney-in-fact or agent prior to the revocation, provided that the item is otherwise properly payable.

§ 53-6-12. 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 website 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.

§ 53-6-13. Safe deposit boxes; unpaid rentals; procedure; escheats.

(a) If the rental due on a safe deposit box is 90 days or more past due, the lessor bank may send a notice by registered mail or certified mail, return receipt requested, to the last known address of the lessee or by another means agreed to in writing by the lessor bank and the lessee, stating that the safe deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days of the date of the mailing of the notice or the date such notice is given by the means otherwise previously agreed to in writing the lessor bank and the lessee. If the rental is not paid within the stated period, the box may be opened in the presence of an officer of the bank and of a notary public who is not a director, officer, employee, or shareholder of the bank. The contents shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail or certified mail, return receipt requested, to the last known address of the lessee or by the means otherwise previously agreed to in writing by the lessor bank and the lessee. The package shall then be placed in the general vaults of the bank at a rental not exceeding the rental previously charged for the box.

(b) If the contents of the safe deposit box have not been claimed within two years of the mailing or other permissible delivery of the copy of the certificate to the lessee, the bank may send a further notice to the last known address of the lessee by registered mail or certified mail, return receipt requested, to the last known address of the lessee or by a means otherwise previously agreed to in writing by the lessor bank and the lessee, stating that unless the accumulated charges are paid within 30 days of the date of the mailing of the notice, the contents of the box will be delivered to the State Treasurer as abandoned property under the provisions of Chapter 116B of the General Statutes.
(c) The bank shall submit to the State Treasurer a verified inventory of all of the contents of the safe deposit box upon delivery of the contents of the box or such part thereof as shall be required by the State Treasurer under G.S. 116B-55, but the bank may deduct from any cash of the lessee in the safe deposit box an amount equal to accumulated charges for rental and shall submit to the State Treasurer a verified statement of the charges and deduction. If there is no cash, or insufficient cash to pay accumulated charges in the safe deposit box, the bank may submit to the State Treasurer a verified statement of accumulated charges or balance of the accumulated charges due, and the State Treasurer shall remit to the bank the charges or balance due, up to the value of the property in the safe deposit box delivered to the State Treasurer, less any costs or expenses of sale; but if the charges or balance due exceeds the value of the property, the State Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe deposit box rental paid by the State Treasurer to the bank shall be deducted from the value of the property of the lessee delivered to the State Treasurer.

(d) Any property, including documents or writings of a private nature, which has little or no apparent financial value, need not be sold but may be destroyed by the bank if the State Treasurer declines to receive the property under G.S. 116B-69(a).

(e) An explanation of the contractual provisions pertaining to default, together with reference to this section, shall be printed on every contract for rental of a safe deposit box.

"§ 53-6-14. 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 which is capable of accurately converting the records into tangible form within a reasonable time. Each such converted tangible form of record shall also 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.

(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. 53-6-14.

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.

"§ 53-6-15. 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 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, 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.

"§ 53-6-16. Change of location of a branch or principal office."

(a) A bank may change the location of its principal office or a branch with the prior written approval of the Commissioner. A request to relocate the principal office or a branch of a bank shall be made in a form acceptable to the Commissioner, and shall include information regarding the reason for the proposed relocation, the distance and direction of the move, and such other information as the Commissioner may require in order to reach a decision in the matter.

(b) Not more than 30 days before nor less than 10 days after filing a request to relocate the principal office or a branch of a bank, the applicant shall publish public notice of the request. The public notice shall contain all of the following:

(1) A statement that the request has been filed with the Commissioner.

(2) The physical address of the principal office or branch to be relocated, and the physical address of the proposed new location.

(3) A statement that any interested person may make written comment on the request to the Commissioner, and that comments received by the Commissioner within 14 days of the date of publication of the public notice will be considered. The statement shall provide the then current mailing address of the Commissioner.

(c) The Commissioner shall approve a request to relocate the principal office or a branch of a bank if the relocation is to a site within the same vicinity as the original location, or does not result in a material change in the primary service area of the principal office or branch, or is considered important to the economic viability of the bank or the branch, or is otherwise found not to be inconsistent with the public need and convenience.

"§ 53-6-17. 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 a posting in a conspicuous manner on the branch premises a notice of its intent to close the branch for a period of 30 days prior to the proposed closing date. 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 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.


(a) A bank may establish one or more nonbranch bank business offices as defined by G.S. 53-14(45).

(1) If a proposed nonbranch bank business office will offer a product, service or other type of business not previously engaged in by the bank, the bank shall provide the Commissioner with written notification of the intent to open the office. The notification shall include the proposed location of the office and a description of the business to be conducted at the office. If the Commissioner does not request additional information or object to its establishment within ten days of the date of receipt of the notification, the nonbranch bank business office shall be deemed approved. In deciding whether to object to the establishment of a nonbranch bank business office, the Commissioner shall consider, without limitation, whether the business proposed to be conducted at the nonbranch bank business office is permissible for a bank, the costs of its establishment and ongoing operation and the impact of the costs on the bank's capital and profitability, and the ability of the bank's management to conduct the proposed business.

(2) If a proposed nonbranch bank business office will offer only products, services or other types of business already engaged in by the bank, the bank shall provide the Commissioner with written notification of the intent to open the office.

(b) An out-of-state bank may establish and operate a nonbranch bank business office in this State upon written notice to the Commissioner.

(c) A bank or an out-of-state bank may close a nonbranch bank business office at any time with notice to the Commissioner.

(d) No deposits may be taken at a nonbranch bank business office.

"§ 53-6-19. Operations; suspension.

(a) A bank, any of its branches and any of its nonbranch 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 which 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.

Article 7A
Control Transactions; Combinations; Conversions.


§ 53-7-101. 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. 53-1-4(21), 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. Each bank shall report to the Commissioner any changes in its directors, president, chief executive officer, chief financial officer, chief loan officer, or chief credit officer by the close of the second day on which the holding company is open for business following such change.

(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:

(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.**

(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), 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 which 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 by unissued for purposes of determining the presence of a quorum of holders of voting securities until such time as:

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) which does not require the filing of a notice with the Commissioner.
3. The transaction is one listed in subsection (c) which 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.

"§ 53-7-102. Application regarding a control transaction.

(a) A person seeking approval of a control transaction involving a bank under this Article shall file with the Commissioner:

1. An application in the form prescribed by the Commissioner.
2. All filing fees required by a rule of the Commissioner.
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. 53-2-8.
§ 53-7-103. Public notice.

A person filing an application for approval of a control application 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:

(1) A statement that the application has been filed with the Commissioner.
(2) The name of the applicable bank and the address of its principal office.
(3) A statement that any interested person may make written comment on the proposed control transaction 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 provide the current mailing address of the Commissioner.

§ 53-7-104. 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.
(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.
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.

"§ 53-7-105. 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. 53-2-6.

Part 2. Combinations.

"§ 53-7-201. 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.

"§ 53-7-202. 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:

(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 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. 53-2-7(b).

"§ 53-7-203. 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.

"§ 53-7-204. Interim banks.

The Commissioner may approve an application to organize an interim bank solely
for the purpose of effecting a combination under this Article. No interim bank shall
transact any business except as is incidental and necessary to its organization and the
combination. The Commissioner may set forth in the order approving the organization
such additional conditions with respect to the interim bank as the Commissioner deems
necessary.

"§ 53-7-205. Fiduciary powers and liabilities of North Carolina financial
institutions combining or transferring assets and liabilities.

Whenever any North Carolina financial institution or federally chartered institution
doing business in this State shall combine with or shall sell to and transfer its assets and
liabilities to any other bank, trust institution, savings 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 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 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.

"§ 53-7-206. 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.

"§ 53-7-207. Combination with a subsidiary.

(a) With the approval of the Commissioner, a bank may do any one the
following:

(1) Combine with a subsidiary so long as a bank is the resulting entity of
the combination.
(2) Combine a subsidiary with another company if a subsidiary is the
resulting entity.
(3) Combine two or more subsidiaries of two or more banks under
common control of the same holding company.

The approval of the Commissioner is not required for a combination of a subsidiary
and another company when a subsidiary is not the resulting entity, which shall be
effected in accordance with organizational law applicable to each, or for a combination
of two or more subsidiaries of the same bank.

(b) The bank seeking approval of the combination shall file with the
Commissioner an application for approval, 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. The bank shall
pay to the Commissioner a fee as set forth by rule.
(c) The Commissioner shall examine the proposed combination to determine whether the customers and communities served by the bank would be adversely affected by the combination, the combination would cause the bank to not be solvent, have inadequate capital, or not be in compliance with this Chapter or the rules of the Commissioner, or the combination would present other risks to the safe and sound operation of the bank deemed unacceptable by the Commissioner.

"§ 53-7-208. Fiduciary powers and liabilities of combining banks.

Whenever any bank shall combine with another depository institution and the other depository institution shall be the resulting institution, all the then existing fiduciary rights, powers, duties and liabilities of the combining bank, including its rights, powers, duties and liabilities as a fiduciary, shall, upon the effective date of the combination, vest in the resulting depository institution, and the resulting depository institution shall be deemed substituted for the combining bank for all fiduciary purposes.

"§ 53-7-209. 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. 53-2-6.


"§ 53-7-301. Conversion to a North Carolina bank charter.

(a) Any depository institution that is not a bank may apply to the Commissioner for permission to convert into a bank and for certification of related amendments to its organizational documents necessary to effect the conversion. 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.

(b) A plan of conversion shall be submitted as a part of the application filed with the Commissioner. The Commissioner may require amendment of the plan.

(c) The Commissioner shall approve the plan of conversion, as amended if applicable, if upon examination the Commissioner finds that:

1. The resulting bank will commence operations in a safe, sound and prudent manner with adequate capital, liquidity, reserves, asset composition and earnings prospects.

2. The directors and officers of the converting institution are qualified by character, competency and experience to control and operate the resulting bank in a legal and proper manner.

3. The interests of the converting institution's customers, creditors, and shareholders will not be materially and adversely affected by the proposed conversion.

4. The plan of conversion is not in violation of the converting institution's applicable organizational law.

5. Adequate written disclosure of the material terms of the plan of conversion and other relevant material information has been or will be made to the converting institution's equity ownership interest holders as required by the converting institution's organizational law, including a statement in any such written disclosure that any materials used to solicit the votes of the holders have not been approved by the
Commission or the Commissioner and that any representation to the contrary is a criminal offense.

(d) Following approval of the plan of conversion, the Commissioner shall supervise and monitor the conversion process in order to determine compliance by the converting institution with the plan of conversion and applicable law.

(e) The Commissioner shall authorize by order the consummation of the conversion, issue a charter, and permit the converting institution to file with the Secretary of State and other public officials such documents as are necessary to effect the conversion when the Commissioner determines the conversion process complied with the organizational law applicable to the converting institution and the plan of conversion was approved, if required by applicable organizational law, by such vote of the converting institution's equity ownership interest holders as is required under the organizational law.

(f) The Commissioner may provide in the order authorizing the consummation of conversion for the resulting bank to:

1. Wind up any activities legally engaged in by the converting institution at the time of conversion but not permitted to banks.
2. Return any assets and deposit liabilities legally held by the converting institution at the time of the conversion but not permitted to be held by banks.

The length, terms, and conditions of the transitional periods described in this subsection shall be subject to the discretion of the Commissioner.

(g) Upon the effective date of the conversion, the converting institution shall continue in existence as a bank and all rights, liabilities and obligations of whatever kind of the converting institution shall continue and remain in its new form of organization. Except as may be authorized by the Commissioner pursuant to subsection (f) of this section, the bank shall have only those rights, powers and duties authorized for or imposed upon banks by the laws of this State and the United States. All actions and proceedings to which the converting institution was party prior to conversion shall be unaffected by the conversion and shall proceed as if the conversion had not been effected.

§ 53-7-302. Appeal.

Any order of the Commissioner denying an application for approval of a conversion to a bank may be appealed to the Commission by the party filing the application as provided in G.S. 53-2-6.

§ 53-7-303. 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.

Article 8A
Bank Supervision

§ 53-8-1. Commissioner has authority to supervise banks.
(a) Every bank shall be under the supervision of the Commissioner. It shall be the Commissioner's duty to enforce the banking laws through the employees and agents of the OCOb. All banks shall conduct their business in a manner consistent with the banking laws.
(b) The Commissioner may enter into written agreements, cease and desist order stipulations, cease and desist orders, consent orders, and similar arrangements with banks and their holding companies, or either of them; may request resolutions be approved by boards of directors of banks and their holding companies, or either of them; and may take other similar corrective actions.
(c) Upon written request, the Commissioner may, notwithstanding any other provision of law to the contrary, issue letters of interpretation, advisory opinions, or written guidance on any laws under the Commissioner's jurisdiction, provided that the interpretations, opinions, and guidance shall not have the force and effect of rules of law.

§ 53-8-2. 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 ($50,000,000.00) of assets, or fraction thereof, ten thousand dollars ($10,000.00).
   b. On assets greater than fifty million dollars ($50,000,000.00) but not more than two hundred fifty million dollars ($250,000,000.00), fourteen dollars ($14.00) per hundred thousand dollars ($100,000.00), or fraction thereof.
   c. On assets greater than two hundred fifty million dollars ($250,000,000.00), but not more than five hundred million dollars ($500,000,000.00), eleven dollars ($11.00) per hundred thousand dollars ($100,000.00), or fraction thereof.
   d. On assets greater than five hundred million dollars ($500,000,000.00), but not more than one billion dollars ($1,000,000,000.00), seven dollars ($7.00) per hundred thousand dollars ($100,000.00), or fraction thereof.
e. On assets greater than one billion dollars ($1,000,000,000.00), but not more than ten billion dollars ($10,000,000,000.00), four dollars ($4.00) per hundred thousand dollars ($100,000.00), or fraction thereof.

f. On assets greater than ten billion dollars ($10,000,000,000.00), two dollars ($2.00) per hundred thousand dollars ($100,000.00), 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 ($100,000.00) 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 which 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.

§ 53-8-3. Reports required of banks.

(a) Each bank shall file 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 a month 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.

§ 53-8-4. 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.

§ 53-8-5. Examination of affiliates.
The Commissioner, at his or her discretion, may examine the affiliates of a bank to the extent it is necessary to safeguard the interest of depositors and creditors of the bank and of the general public, and to enforce the provisions of this Chapter. The Commissioner may conduct the examination in conjunction with any examination of the bank or an affiliate thereof conducted by any other state or federal regulatory authority.

§ 53-8-6. 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.
(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.

"§ 53-8-7. Examiner making false report.

If any bank examiner shall knowingly and willfully make any false or fraudulent
report of the condition of any bank which the examiner has examined with the intent to
aid or abet the bank or its affiliates in committing violations of any provision of the
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.

"§ 53-8-8. 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.

"§ 53-8-9. 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 I 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 I
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.

"§ 53-8-10. 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 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 make, circulate, transmit or otherwise communicate any
such statement or rumor shall be guilty of a Class 1 misdemeanor.

"§ 53-8-11. Misapplication, embezzlement of funds, etc.

(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:

Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws (2011)
(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 which never had any existence, or upon collateral consisting of stocks or bonds of an insolvent, or non-existent 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 ($100,000.00) 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 ($100,000.00), it is a Class H felony.

§ 53-8-12. 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 which the Commissioner is authorized to require by the 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 ($1,000.00) 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:

(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 which 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 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 ($1,000.00) 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 ($10,000.00) 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.

§ 53-8-13. Immediate action orders.

(a) In the event that the Commissioner shall determine that a bank has inadequate capital or insufficient capital or shall determine that immediate action is necessary to cause a bank to conduct its business in a safe and sound manner or to cause a bank or any of its directors, officers or employees to cease from an act or course of conduct that threatens or is reasonably probable of threatening, the financial integrity of the bank, the
commissioner may order, as applicable, the bank to take such corrective action as the
Commissioner deems necessary or may order the bank, director, officer or employee to
immediately cease such conduct, act or course of conduct, to refrain therefrom in the
future.

(b) Any order made under this section shall be effective upon issuance, provided
however, that the Commissioner shall promptly afford a subsequent hearing upon the
order as provided in G.S. 53-2-6.

§ 53-8-14. 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. 53-2-6 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:

(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.

(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.


(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
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 which
shall occur not less ten 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 ten 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,
re-elected, 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. 53-2-6 no later than
10 days after the date of issuance of the order.

§ 53-8-16. Emergency powers.

In the event of a natural disaster or other national, regional, state, or local
emergency, the Commissioner may temporarily waive or suspend requirements for
compliance by one or more banks with any provisions of this Chapter.

§ 53-8-17. Interstate regulatory agreements.

The Commissioner may enter into cooperative, coordinating and information sharing
agreements with (i) any bank supervisory agency having jurisdiction over an
out-of-state bank that operates one or more branches in this State and (ii) any bank
supervisory agency of another state in which a bank operates one or more branches with
respect to the periodic examination or other supervision of the branches of the
out-of-state bank operating in this State or the branches of the bank operating in such
other state.

Article 9A

Supervisory Liquidation; Voluntary Dissolution and Liquidation.


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. 53-8-14. 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.

§ 53-9-102. Distributions; assignments restricted.
A bank which 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.

§ 53-9-103. 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(55). 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.

Part 2. Voluntary Dissolution and Liquidation.

§ 53-9-201. 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.

(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 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. 53-9-203. 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. 53-9-301.

"§ 53-9-203. Voluntary dissolution and liquidation procedure."

(a) At the appropriate time, the Commissioner shall:

(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. 53-9-301.

(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. 53-9-301.

Part 3. Receivership; Involuntary Dissolution.

"§ 53-9-301. 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.

(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 non-confidential written communication that is either directly from the Commissioner or is joined in by the Commissioner.

(c) The Commissioner shall appoint as receiver or co-receivers 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 principle 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 or send, 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. 53-1-4(58).
(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.

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.


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.

(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.
Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws (2011)
as her or she deems advisable to the best interest of all parties, appoint a competent
person authorized to act as substitute trustee, who shall be vested with and shall exercise
all the powers conferred upon the trustee named in the instrument.

"§ 53-9-406. Hearing where objection made; appeal from order.

If objection is made to the appointment of a new trustee under this Part, the Clerk
shall hear and determine the matter, and from his or her decision an appeal may be
prosecuted as in cases of special proceedings generally.

"§ 53-9-407. Registration of final order.

The final order of appointment of a new trustee or trustees under this Part shall be
certified by the Clerk of Superior Court issuing the order and shall be recorded in the
office of the Register of Deeds in the county or counties in which the instrument under
which the appointment has been made is recorded.

"§ 53-9-408. Petition and order applicable to all instruments involved.

The petition and the order appointing a new trustee or trustees under this Part may
apply to any number of indentures, deeds of trust or other instruments, wherein the same
trustee or trustees are named.


The appointment of a substitute trustee as described in this Part shall be in addition
to and not substitution for any other remedy provided by law.

Article 10A
Bank Holding Companies.
Part 1. Change in Control


Every holding company, as defined in G.S. 53-1-4(38), of a bank shall register with
the Commissioner and maintain that registration on an annual basis in the form
prescribed by the Commissioner.

"§ 53-10-102. 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.

(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

Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws
(2011)
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 ten 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 ten 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 that Section.

(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 g
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 which 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:

(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) which does not require
the filing of a notice with the Commissioner.

(3) The transaction is one listed in subsection (c) which 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
Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws (2011)
(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.

(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.

§ 53-10-106. 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. 53-2-6.

Part 2. Combinations

§ 53-10-201. 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.

§ 53-10-202. 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 which 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.
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 principle 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.

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.

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. 53-2-7(b).

"§ 53-10-203. 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.

"§ 53-10-204. 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. 53-2-6.

Part 3. General Authority

"§ 53-10-301. Cease and desist order.
Upon a finding that any action of a holding company subject to this Article may be in violation of any banking laws, the Commissioner, after a reasonable notice to the holding company and an opportunity for it to be heard, shall have the authority to order it to cease and desist from such action. If the holding company fails to appeal the decision within ten days of the date of the issuance of the order in accordance with G.S. 53-2-6, and continues to engage in the action in violation of the Commissioner's order to cease and desist such action, it shall be subject to a civil money penalty of twenty thousand dollars ($20,000.00) for each day it remains in violation of the order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a holding company's failure to comply with an order of the Commissioner. The clear proceeds of the civil money penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
§ 53-10-302. Other control changes.

Each holding company of a bank shall report to the Commissioner any changes in its directors, president, chief executive officer, or chief financial officer by the close of the second day on which the holding company is open for business following the change.

SECTION 4. G.S. 1-339.1(a) reads as rewritten:

"(a) A judicial sale is a sale of property made pursuant to an order of a judge or clerk in an action or proceeding in the superior or district court, including a sale pursuant to an order made in an action in court to foreclose a mortgage or deed of trust, but is not

... (7) A sale made in the course of liquidation of a bank pursuant to G.S. 53-20, Article 9A of Chapter 53 of the General Statutes, or ...

SECTION 5. G.S. 24-1.1A(d) reads as rewritten:

"(d) The loans or investments regulated by G.S. 53-45, G.S. 53-5-3 shall not be subject to the provisions of this section."

SECTION 6. G.S. 25-4-405(c) reads as rewritten:

"(c) A transaction, although subject to this Article, is also subject to G.S. 41-2.1, 53-146.1, G.S. 53-6-6, 54-109.58, and 54B-129, and in case of conflict between the provisions of this section and either of those sections, the provisions of those sections control."

SECTION 7. G.S. 36C-1-102 reads as rewritten:

"§ 36C-1-102. Scope.

This Chapter applies to any express trust, private or charitable, with additions to the trust, wherever and however created. The term "express trust" includes both testamentary and inter vivos trusts, regardless of whether the trustee is required to account to the clerk of superior court. This Chapter also applies to any trust created for or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. This Chapter does not apply to constructive trusts, resulting trusts, conservatorships, estates, trust—Payable on Death accounts as defined in G.S. 53-146.2, G.S. 53-6-7, 54-109.57, 54B-130, and 54C-166, trust funds subject to G.S. 90-210.61, custodial arrangements under Chapter 33A of the General Statutes and Chapter 33B of the General Statutes, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another."

SECTION 8. G.S. 53-163.1(b) reads as rewritten:

"(b) Funds held in a fiduciary capacity by a depository institution, awaiting investment or distribution may, unless prohibited by the instrument creating the fiduciary relationship, be deposited in the commercial or savings or other department of the depository institution, provided that it shall first set aside under control of the trust department as collateral security, the classes of securities listed in G.S. 159-30(c) as being eligible for the investment of funds by local governments and public authorities equal in market value of such deposited funds, or readily marketable commercial bonds
having not less than a recognized "A" rating equal to one hundred and twenty-five percent (125%) of the funds so deposited.

The securities so deposited or securities substituted therefor as collateral in the trust department by the commercial or savings or other department (as well as the deposit of cash in the commercial or savings or other department by the trust department) shall be held pursuant to the provisions of G.S. 53-43(6), G.S. 53-163.3. If such funds are deposited in a depository institution insured under the provisions of the Federal Deposit Insurance Act, the above collateral security will be required only for that portion of uninvested balances of each trust which are not fully insured under the provisions of that act."

SECTION 9. Article 14 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ 53-163.3. Fiduciary funds awaiting investment.

A bank which is a trust institution may maintain separate departments and deposit in its commercial department to the credit of its trust department all uninvested fiduciary funds of cash and secure 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 the 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. To the extent and in the amount such deposits may be insured by the FDIC, the amount of security required for such deposits by this section may be reduced. The Banking Commission shall have power to make such rules as it may deem necessary for the enforcement of the provisions of this section."

SECTION 10. G.S. 53-167 reads as rewritten:

§ 53-167. Expenses of supervision.

Each licensee, for the purpose of defraying necessary expenses of the Commissioner of Banks and his agents in supervising them, Office of Commissioner of Banks for supervision, each licensee shall pay to the Commissioner of Banks the fees prescribed in G.S. 53-122 at the times therein specified, an assessment not to exceed eighteen dollars ($18.00) per one hundred thousand dollars ($100,000.00) 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 as of December 31 of each year, or the date most nearly approximating that date. If the Commissioner determines that the financial condition or manner of operation of a consumer finance licensee warrants further examination or an increased level of supervision, the licensee may be subject to assessment not to exceed the amount determined in accordance with the schedule set forth in this section."
SECTION 11. G.S. 53-184(a) reads as rewritten:

(a) Each licensee shall maintain all books and records relating to loans made under this Article required by the Commissioner of Banks to be kept, and the Commissioner, his deputy, or duly authorized examiner or agent or employee is authorized and empowered to examine such records at any reasonable time. Such books and records may be maintained in the form of magnetic tape, magnetic disk, optical disk, or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium acceptable to the Commissioner of Banks; provided, however, that such books and records so kept must be convertible into clearly legible tangible documents within a reasonable time. Any licensee having more than one licensed office may maintain such books and records at a location other than the licensed office location if such location is approved by the Commissioner; provided that, upon such requirements as may be imposed by the Commissioner of Banks, there shall be available to the borrower at each licensed location or such other location convenient to the borrower, as designated by the licensee, complete loan information; and provided further that such books and records of each licensed office shall be clearly segregated. When a licensee maintains its books and records outside of North Carolina, the licensee shall make them available for examination at the place where they are maintained and shall pay for all reasonable and necessary expenses incurred by the Commissioner in conducting such examination. Where the data processing for any licensee is performed by a person other than the licensee, the licensee shall provide to the Commissioner of Banks a copy of a binding agreement between the licensee and the data processor which allows the Commissioner of Banks, his deputy, or duly authorized examiner or agent or employee to examine that particular data processor's activities pertaining to the licensee to the same extent as if such services were being performed by the licensee on its own premises; and, notwithstanding the provisions of G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the licensee shall reimburse the Commissioner of Banks for all costs and expenses incurred by the Commissioner in such examination.

SECTION 12. G.S. 53-188 reads as rewritten:

"§ 53-188. Review of regulations, order or act of Commission or Commissioner.

The Commission may review any rule, regulation, order or act of the Commissioner done pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such rule, regulation, order or act may appeal, pursuant to G.S. 53-92(d), G.S.53-2-6(b), to the Commission for review upon giving notice in writing within 20 days after any rule, regulation, order or act complained of is adopted, issued or done. Notwithstanding any other provision of law to the contrary, any aggrieved party to a decision of the Commission shall be entitled to petition for judicial review pursuant to G.S.-53-92(d), G.S.53-2-6(b)."

SECTION 13. G.S. 53-208.27(b) reads as rewritten:

(b) The Banking Commission may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such rule, regulation, order, or act may appeal, pursuant to G.S.53-92(d), G.S.53-2-6(b), to the Commission for review upon providing notice in writing within 20 days after any rule, regulation, order, or act complained of is adopted,
issued, or done. Notwithstanding any other provision of law, any aggrieved party to a
decision of the Banking Commission shall be entitled to petition for judicial review
pursuant to G.S. 53-92(d), G.S. 53-2-6(b),"

**SECTION 14.** G.S. 53-215 reads as rewritten:


Any aggrieved party in a proceeding under G.S. 53-214, G.S. 53-211, G.S. 53-10-102, or G.S. 53-227.4 G.S. 53-10-201 may, within 20 days after final
decision of the Commissioner, appeal in writing any decision to the State Banking
Commission. An appeal under this section shall be made pursuant to G.S. 53-92(d).

G.S. 53-2-6. Notwithstanding any other provision of law, any aggrieved party to a
decision of the State Banking Commission shall be entitled to petition for judicial
review pursuant to G.S. 53-92(d), G.S. 53-2-6."

**SECTION 15.** G.S. 53-217 reads as rewritten:

"§ 53-217. Enforcement.

The Commissioner shall have the power to enforce the provisions of this Article
through an action in any court of this State or any other state or in any court of the
United States, as provided in G.S. 53-94 and G.S. 53-134, G.S. 53-8-12, for the purpose
of obtaining an appropriate remedy for violation of any provision of this Article,
including such criminal penalties as are contemplated by G.S. 53-134, Article."

**SECTION 16.** G.S. 53-224.11(b) reads as rewritten:

(b) A North Carolina State bank desiring to establish and maintain a branch in
another state under this section shall file an application on a form prescribed by the
Commissioner and pay the branch application fee prescribed by regulation pursuant to
G.S. 53-122. Commissioner. If the Commissioner finds that the applicant has the
financial resources sufficient to undertake the proposed expansion without adversely
affecting its safety or soundness and that the establishment of the proposed branch is in
the public interest, the Commissioner may approve the application. In acting on the
application, the Commissioner shall consider the views of the appropriate bank
supervisory agencies. The applicant bank may establish the branch when it has received
the written approval of the Commissioner."

**SECTION 17.** G.S. 53-224.18 reads as rewritten:

"§ 53-224.18. Authority of State banks to establish interstate branches by merger.

With the prior approval of the Commissioner, a North Carolina State bank may
establish, maintain, and operate one or more branches in a state other than North
Carolina pursuant to an interstate merger transaction in which the North Carolina State
bank is the resulting bank. Not later than the date on which the required application for
the interstate merger transaction is filed with the responsible federal bank supervisory
agency, the applicant North Carolina State bank shall file an application on a form
prescribed by the Commissioner and pay the fee prescribed by regulation pursuant to
G.S. 53-122. Commissioner. The applicant shall also comply with the applicable
provisions of G.S. 53-12, Part 2 of Article 7A of this Chapter. If the Commissioner
finds that (i) the proposed transaction will not be detrimental to the safety and
soundness of the applicant or the resulting bank, (ii) any new officers and directors of
the resulting bank are qualified by character, experience, and financial responsibility to
direct and manage the resulting bank, and (iii) the proposed merger is consistent with

*Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws (2011)*
the convenience and needs of the communities to be served by the resulting bank in this State and is otherwise in the public interest, it shall approve the interstate merger transaction and the operation of branches outside of North Carolina by the North Carolina State bank. Such an interstate merger transaction may be consummated only after the applicant has received the Commissioner's written approval."

SECTION 18. G.S. 53-224.20 reads as rewritten:

"§ 53-224.20. Notice and filing requirements.

Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a North Carolina bank shall notify the Commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the Commissioner and pay the filing fee required by the Commissioner. All banks which are parties to such interstate merger transaction involving a North Carolina State bank shall comply with G.S. 53-12 Part 2 of Article 7A of this Chapter and with other applicable state and federal laws. Any out-of-state bank which shall be the resulting bank in such an interstate merger transaction shall comply with Article 15 of Chapter 55 of the North Carolina General Statutes."

SECTION 19. G.S. 53-224.24(a) reads as rewritten:

(a) The Commissioner may make such examinations of any branch of an out-of-state state bank established under this Article and located in this State as the Commissioner may deem necessary to determine whether the branch is operating in compliance with the laws of this State and to ensure that the branch is being operated in a safe and sound manner. The provisions of G.S. 53-117 Article 8A of this Chapter apply to such examinations."

SECTION 20. G.S. 53-224.30 reads as rewritten:

"§ 53-224.30. Appeal of Commissioner's decision.

Any aggrieved party in a proceeding under this Article may, within 20 days after final decision of the Commissioner, appeal, in writing, such decision to the North Carolina State Banking Commission. An appeal under this section shall be made pursuant to G.S. 53-92(d), G.S. 53-2-6. Notwithstanding any other provision of law, any aggrieved party to a decision of the Commission shall be entitled to petition for judicial review pursuant to G.S. 53-92(d), G.S. 53-2-6."

SECTION 21. G.S. 53-232.12(b) is repealed.

SECTION 22. G.S. 53-232.17 reads as rewritten:

§ 53-232.17. Appeal of Commissioner's decision.

Any aggrieved party in a proceeding under this Article may, within 20 days after final decision of the Commissioner, appeal such decision in writing to the Banking Commission. An appeal under this section shall be made pursuant to G.S. 53-92(d), G.S. 53-2-6. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition for judicial review pursuant to G.S. 53-92(d), G.S. 53-2-6."

SECTION 23. G.S. 53-244.120(c) reads as rewritten:

"(c) The requirements of G.S. 53-99(b) G.S. 53-2-7 regarding the privacy or confidentiality of any information or material provided under subsections (a) and (b) of this section, and any privilege arising under any other federal or State law with respect

Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws (2011)
to such information or material, shall continue to apply to the information or material after it has been disclosed to an entity described in subsection (a) or (b) of this section. Information or material held by such an entity shall not be subject to disclosure under any State law governing the disclosure to the public of information held by an officer or agency of the State. The entities described in subsections (a) and (b) of this section may share information and material with all State and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by State or federal law."

SECTION 24. G.S. 53-244.121 reads as rewritten:

"§ 53-244.121. Review by Banking Commission.

The Banking Commission may review any rule, regulation, order, or act of the Commissioner made pursuant to or with respect to the provisions of this Article, and any person aggrieved by any rule, regulation, order, or act may, pursuant to G.S.-53-92(d), G.S. 53-2-6, appeal to the Banking Commission for review upon giving 20 days' written notice after the rule, regulation, order, or act is adopted or issued. The notice of appeal shall specifically state the grounds for appeal and, in the case of an appeal from a contested case proceeding before the Commissioner, shall set forth in numbered order the assignments of error for review by the Banking Commission. Failure to specify the assignments of error shall constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule as provided by the Banking Commission shall also constitute grounds to dismiss the appeal. Notwithstanding any other provision of law, any party aggrieved by a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S.-53-92(d), G.S. 53-2-6."

SECTION 25. G.S. 53-252 reads as rewritten:

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

The Commission may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such rule, regulation, order, or act may appeal, pursuant to G.S.-53-92(d), G.S. 53-2-6, to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition for judicial review pursuant to G.S.-53-92(d), G.S. 53-2-6."

SECTION 26. G.S. 53-272 reads as rewritten:

"§ 53-272. Appeals.

The Banking Commission may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such rule, regulation, order, or act may appeal, pursuant to G.S.-53-92(d), G.S. 53-2-6, to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition for judicial review pursuant to G.S.-53-92(d), G.S. 53-2-6."

SECTION 27. G.S. 53-289 reads as rewritten:

"§ 53-289. Commission may review rules, orders, or acts by Commissioner.

Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws (2011)
The Commission may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article. Any person aggrieved by any such rule, regulation, order, or act may appeal, pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition for judicial review pursuant to G.S. 53-92(d), G.S. 53-2-6.

SECTION 28. G.S. 53-301(a) reads as rewritten:

"(a) Except as otherwise provided in this Article, or when the context clearly indicates that a different meaning is intended, the following definitions shall apply throughout this Article:

(7) "Branch" has the meaning set forth in G.S. 53-1(1a), G.S. 53-1-4(10)."

SECTION 29. G.S. 53-359(b) reads as rewritten:

"(b) A merger or share exchange authorized by subsection (a) of this section, shall be governed by Article 11 of Chapter 55 of the General Statutes and G.S. 53-17, G.S. 53-7-205. An acquisition or transfer of assets authorized by subsection (a) of this section shall be governed by Article 12 of Chapter 55 of the General Statutes and G.S. 53-17, G.S. 53-7-205."

SECTION 30. G.S. 53-366 reads as rewritten:

"§ 53-366. Applicability of other laws to authorized trust institutions; status of State trust company.

(a) Except as otherwise provided in this Article, the following provisions of this Chapter shall apply to authorized trust institutions:

(4) G.S. 53-14;
(2) G.S. 53-16;
(3) G.S. 53-17; G.S. 53-7-205;
(4) G.S. 53-68;
(5) G.S. 53-77.3;
(6) G.S. 53-85;
(7) Article 8, Article 8A of this Chapter, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of:
   a. G.S. 53-95; G.S. 53-8-2.
   b. G.S. 53-104; G.S. 53-8-3.
   c. G.S. 53-105; G.S. 53-8-17.
   d. G.S. 53-106; and
   e. G.S. 53-107.1(a), (b) and (d).
(8) Article 9 of this Chapter, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of G.S. 53-119.
Article 10 of this Chapter, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of G.S. 53-135, and except that G.S. 53-131 and G.S. 53-132 shall not apply to authorized trust institutions.

Article 14 of this Chapter.

Rules adopted by the Commissioner to implement those provisions of this Chapter made applicable to authorized trust institutions by subsection (a) of this section also shall apply to authorized trust institutions unless the rules are inconsistent with this Article or it clearly appears from the context that a particular provision is inapplicable to trust business or trust marketing.

Activities of authorized trust institutions for clients shall not be considered the sale or issuance of checks under G.S. 53-194, Article 16A of this Chapter.

Until the Commissioner has issued new rules governing State trust companies, State trust companies shall be governed by rules issued by the Commissioner for banks acting in a fiduciary capacity, except to the extent the rules are inconsistent with this Article or it clearly appears from the context that a particular provision is inapplicable to the business of a State trust company.

Notwithstanding any other provision of this Chapter, a State trust company:

1. Is a "banking entity" for purposes of G.S. 53-127;
2. Is a "bank" for purposes of laws made applicable to authorized trust institutions in this section and for purposes of G.S. 53-277.
3. Is a trust company organized and doing business under the laws of the State of North Carolina, a substantial part of the business of which is exercising fiduciary powers similar to those permitted national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by the Commissioner as a banking institution; and
4. Is a financial institution similar to a bank.

In the case of a State trust company controlled by a company that has declared itself to be a "financial holding company" under 12 U.S.C. § 1843(l)(1)(C)(i), deposits held for an account shall be deemed to be "trust funds" within the meaning of 12 U.S.C. § 1813(p) unless all fiduciary duties with respect to the account are explicitly disclaimed. This subsection does not prescribe the nature or extend the scope of any fiduciary duties; the nature and extent of any fiduciary duties with respect to deposits held for accounts shall be as provided by the instruments and laws applicable to those accounts.

Subject to any limitations contained in this Article, an authorized trust institution is a "trust company", a "corporate trustee", a "corporate fiduciary", and a "corporation acting in a fiduciary capacity", as such and similar terms are used in the General Statutes, except where it clearly appears from the context in which those terms are used that a different meaning is intended.

SECTION 31. G.S. 53-368(c) is repealed.

SECTION 32. G.S. 53-385 reads as rewritten:

§ 53-385. Inventory.
Within 90 days after the filing of a notice described in G.S. § 53-279, G.S. 53-379, the Commissioner shall file an inventory of the assets and liabilities, not including assets and liabilities held in accounts of the State trust company, of the State trust company. A copy of the inventory shall be filed with the clerk of the superior court of the county in which the action is pending, and a copy shall be kept on file with the State trust company. The inventory shall be open for inspection during usual business hours, provided that nothing herein shall require the State trust company to remain open unnecessarily."

SECTION 33. G.S. 53-412 reads as rewritten:

"§ 53-412. Commissioner hearings; appeals.

(a) This section does not grant a right to a hearing to a person that is not otherwise granted by governing law.

(b) The Commissioner may convene a hearing to receive evidence and argument regarding any matter before the Commissioner for decision or review under the provisions of this Article. The hearing shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

(c) Disputes over decisions and actions of the Commissioner under the provisions of this Article shall be "contested cases" as defined in G.S. 150B-2(2).

(d) Except as expressly provided otherwise by this Chapter, an order of the Commissioner may be appealed, in writing, to the Commission for review, pursuant to G.S. § 53-92(d). G.S. § 53-2-6. The Commission may affirm, modify, or reverse a decision of the Commissioner.

(e) Petitions for judicial review from the Commission shall be made to the Wake County Superior Court and shall proceed as provided in G.S. § 53-92(d). G.S. § 53-2-6."

SECTION 34. G.S. 54-73 reads as rewritten:

"§ 54-73. Banking laws applicable.

The statutes relating to banks and banking in this State, that is, G.S. § 53-1 to 53-158 [G.S. § 53-1 to 53-242], The banking laws as defined in G.S. § 53-1-4(4a), insofar as applicable and not in conflict with the provisions hereof shall apply to land mortgage associations."

SECTION 35. G.S. 54B-4(b) reads as rewritten:

"(b) As used in this Chapter, unless the context otherwise requires, the term:

…

(14a) "Commissioner" means the Commissioner of Banks authorized pursuant to G.S. § 53-92, Article 2A of Chapter 53 of the General Statutes.

…"

SECTION 36. G.S. 54B-34.2(a) reads as rewritten:

"(a) A savings and loan association, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to convert to a bank, as defined under G.S. § 53-1(4), G.S. § 53-1-4(4), or to a national bank or other form of depository institution and for certification of appropriate amendments to its certificate of incorporation to effect the change. Upon receipt of an application to so convert, the Commissioner of Banks shall examine all facts connected with the conversion including
receipt of approval of the converting institution's plan of conversion by other federal or state regulatory agencies having jurisdiction over the institution upon completion of its conversion. The depository institution applying for permission to convert shall pay all the expenses and costs of examination."

SECTION 37. G.S. 54B-46(a) reads as rewritten:
"(a) Any bank, as defined in G.S. 53-4, may convert to a stock association as provided in this section."

SECTION 38. G.S. 54B-47(a) reads as rewritten:
"(a) Any State association, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to merge with any bank, as defined in G.S. 53-1, G.S. 53-1-4(4)."

SECTION 39. G.S. 54B-54 reads as rewritten:
"§ 54B-54. Deputy commissioner of Savings Institutions Division.
There shall be a deputy commissioner of the Savings Institutions Division as appointed by the Commissioner in G.S. 53-93.1(b). The deputy commissioner authorized by this section shall perform any duties and exercise any powers directed by the Commissioner."

SECTION 40. G.S. 54B-158 reads as rewritten:
"§ 54B-158. Insured or guaranteed loans.
An association may make insured or guaranteed loans in accordance with the provisions of G.S. 53-45, G.S. 53-5-3."

SECTION 41. G.S. 54C-4(b) reads as rewritten:
"(b) Unless the context otherwise requires, the following definitions apply in this Chapter:

... (8a) Commissioner. – The Commissioner of Banks authorized pursuant to G.S. 53-92, Article 2A of Chapter 53 of the General Statutes. ...

"SECTION 42. G.S. 54C-40(a) reads as rewritten:
"(a) A State savings bank, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to merge with any bank, as defined in G.S. 53-4, G.S. 53-1-4(4), or any association, as defined in G.S. 54B-4."

SECTION 43. G.S. 54C-47(a) reads as rewritten:
"(a) A State savings bank, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to convert to a bank, as defined under G.S. 53-1(4), G.S. 53-1-4(4), or to a national bank or other form of depository institution and for certification of appropriate amendments to its certificate of incorporation to effect the change. Upon receipt of an application to so convert, the Commissioner of Banks shall examine all facts connected with the conversion, including receipt of approval of the converting institution's plan of conversion by other federal or state regulatory agencies having jurisdiction over the institution upon completion of its conversion. The depository institution applying for permission to convert shall pay all the expenses and costs of examination."

SECTION 44. G.S. 54C-122(e) reads as rewritten:
"(e) A savings bank may make insured or guaranteed loans in accordance with G.S. 53-45, G.S. 53-5-3."

SECTION 45. G.S. 116B-55 reads as rewritten:

"§ 116B-55. Contents of safe deposit box or other safekeeping depository.

Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53-43.7, G.S. 53-6-13 and shall be delivered to the Treasurer as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65."

SECTION 46. G.S. 120-123 reads as rewritten:

"§ 120-123. Service by members of the General Assembly on certain boards and commissions.

No member of the General Assembly may serve on any of the following boards or commissions:

…

(3a) The State Banking Commission, as established by G.S. 53-92, Article 2A of Chapter 53 of the General Statutes.

…"

SECTION 47. G.S. 143-143.9(1) reads as rewritten:

"(1) Bank. – A federally insured financial institution including institutions defined under G.S. 53-1(1), G.S. 53-1-4(4), savings and loan associations, credit unions, savings banks and other financial institutions chartered under this or any other state law or chartered under federal law."

SECTION 48. G.S. 164-11.6(a) reads as rewritten:

"(a) The chapters, subchapters, articles and sections now comprising Volume 2B of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of G.S. 53-1 to 82-18, now in force, as amended, are hereby reenacted and designated as Replacement Volume 2B of the General Statutes of North Carolina."

SECTION 49. G.S. 164-11.7(a) reads as rewritten:

"(a) The chapters, subchapters, articles and sections now comprising Volumes 2B and 2C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 53-1 to 105-462, now in force, as amended, are hereby reenacted and designated as 1965 Replacement Volumes 2B, 2C and 2D of the General Statutes of North Carolina."

SECTION 50. This act becomes effective October 1, 2012.
SUMMARY: This draft rewrites much of the State's banking law as recommended by the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws.

CURRENT LAW: The current banking law, Chapter 53 of the General Statutes, has remained largely unchanged since 1931. Since then there have been clarifying amendments and amendments to respond to changes in federal law, especially with regard to interstate banking and branching, and bank holding companies, but there has not been a comprehensive revision of the law.

BILL ANALYSIS: The draft bill renames Chapter 53 of the General Statutes "Regulation of Banks and Other Financial Services" to more accurately reflect the scope of the Chapter.

Articles 1 through 10, 12, and 13 of Chapter 53 are repealed and replaced with the following new Articles:

Article 1A – General Provisions

- Defines the scope and applicability of the Chapter.
- Creates much more comprehensive definitions section than under current law. The draft replaces the definitions under current law that reflects accounting and supervisory capital restrictions with definitions relating to capital adequacy. The definitions also describe the various banking organizations affected by the statute and the federal and state supervisory and regulatory agencies.
- Severability clause.

Article 2A – Commission and Commissioner

- Reauthorizes the Banking Commission. Reduces the membership to 15; adds a representative from the consumer finance industry.
- Reauthorizes the authority of the Commissioner and the Office of Commissioner of Banks.
- Restates the authority of the Commissioner, subject to approval of the Commission to adopt all necessary rules.
• Establishes uniform provisions for hearings and appeals for all statutes administered by the Commission and the Commissioner.

• Revises and expands the list of records which are confidential and extends the legally required confidentiality to legal discovery as well as other requests.

Article 3A – Organization of a Bank

• Authorizes an applicant to seek permission to organize a bank from the Commissioner. With the Commissioner's permission, the organizers may file articles of incorporation with the Secretary of State and continue the organizational process. Upon completion of the initial process, the bank's organization can be done through the corporation with funds held in an escrow account approved by the Commissioner.

• The proposed bank's articles of incorporation must contain information required by Chapter 55 (the Business Corporation Act). The bank cannot begin the business of banking, however, until the Commissioner issues a charter. The Commissioner's decision may be approved, modified, or disapproved by the Commission after a public hearing.

• The Commissioner may dissolve and liquidate a proposed bank if (1) the Commissioner does not recommend issuance of a charter; (2) the Commission denies approval of the charter; or (3) the charter is revoked because the bank does not open within 6 months or for other reasons.

Article 4A – Governance of a Bank

• Provides that banks must be formed as corporations under North Carolina law and shall be operated and controlled by the board of directors. The article establishes the qualifications and liabilities of directors.

• The board must establish at minimum, an audit, executive, and loan committees, and may establish others. Minutes of meetings must be recorded and maintained.

• Establishes the basis upon which the directors may declare a distribution.

• Requires officers and employees to give a bond.

• Provides when a bank may extend credit and engage in transactions with affiliates, directors, executive officers, principal shareholders, and their immediate families.

• Sets reserve fund requirements, including that banks that are not members of the Federal Reserve must meet requirements set by the Commissioner.

• Provides that banks may establish a compliance review committee to monitor and review state and federal laws, regulations, policies, and safe and sound banking practices. Compliance review documents are confidential.

Article 5A – Powers of Banks

• Lists seven express powers, including authority to engage in activities approved by the Commissioner, traditional bank activities, and activities permissible for banks under the FDIC Act. Also, confirms that a bank has all powers "necessary and incident" to carry out the business of banking. The exercise of new powers must get prior approval from the Commissioner.
- Restates the investment authority for banks. Permits investments in depository institutions, other specialized financial institutions, federally chartered institutions; and a variety of state and federal bonds.
- Recodifies former G.S. 53-45 which authorizes banks, and other fiduciaries to invest in securities approved by the Secretary of HUD, FHA, and VA.

**Article 6A – Bank Operations**

- Establishes the numerous aspects of a bank's lending function. Prohibits loans to finance the purchase of the bank's stock or "to carry" the stock. Provides rules for the maximum amount of loans that may be made to a single borrower. Prevents the Commissioner from adopting rules that preclude a state bank from making loans that would be permitted to a federally chartered institution.
- Authorizes banks to offer all types of deposit accounts and requires the bank to obtain FDIC insurance on accounts.
- Authorizes banks to deal with a minor like an adult for purposes of deposit accounts, including with regard to safe deposit boxes. Also, provides the structure for simple account opened by an adult for a minor. This does not alter the Uniform Transfer to Minors Act.
- Authorizes banks to establish deposit accounts or lease a safe deposit box to persons purporting to be trustees without requiring or seeing further documentation.
- Establishes the incidents of joint accounts and sets specific requirements for joint accounts with right of survivorship and provides a model disclosure form for such accounts.
- Establishes the incidents of Payable on Death (POD) accounts and provides a model disclosure form.
- Establishes the incidents of personal agency accounts and provides a model disclosure form.
- Defines the bank's duty in a number of cases, including payment of the balance of an account of a person who is deceased or under a disability; payment pursuant to a power of attorney; when and how account statements must be sent and are deemed final; safe deposit boxes, unpaid rentals; and reproduction and retention of records.
- Sets the process for establishment of branches. The Commissioner's approval is required to open a branch, to change the location of a branch or a principal office, or to close a branch.
- Sets the process for banks to establish nonbranch bank business offices.
- Provides that the bank management has discretion to determine the days and hours of the bank's operation. The Commissioner may authorize banks to suspend operation during an emergency.
- Requires notice to the Commissioner if an out-of-state bank intends to establish or buy a branch in North Carolina.

**Article 7A – Control Transactions; Combinations; Conversions**
Part 1. - Requires the approval of the Commissioner before a person may engage in a control transaction. Authorizes a contract for a control transaction to be executed without approval so long as consummation of the transaction is contingent on the Commissioner's approval. A control transaction applicant must file an application, filing fee, (currently set in rules) and any additional information required with the Commissioner. The applicant must publish public notice of the application. The Commissioner must act on the application within 60 days, absent extraordinary circumstances.

Part 2. - Sets the process for dealing with combination applications. The application must include copies of agreements under which the combination is proposed and any information required by the Commissioner. Applicant must publish public notice. Commissioner must act on the application within 60 days, absent extraordinary circumstances. Authorizes the establishment of an interim bank to effectuate the combination. Also, authorizes combination with a subsidiary.

Part 3. - Sets the process by which a financial institution may convert to a North Carolina bank charter. Also, authorizes a state bank to convert to another type of institution.

Article 8A – Bank Supervision

- Restates the Commissioner's authority to supervise banks, including the authority to order an examination or investigation of any suspected violation of the banking laws.

- Sets the schedule of bank assessment brackets. The operation of Office of Commissioner of Banks is funded by these assessments. This provision does not change current law.

- Requires banks to file annual and periodic reports of condition.

- Grants broad authority to the Commissioner to examine a bank, its holding company and affiliates, including access to all books and records of the bank, its holding company or affiliate.

- Makes it a Class H felony for an examiner to knowingly or willfully make a false report after an examination. It is a Class 1 misdemeanor for an examiner or other employee of OCOB to fail to keep secret facts or information obtained in an examination.

- Makes it a Class 1 misdemeanor for a bank to make any loan or give any gratuity to the Commissioner or any examiner. Also, makes it a Class 1 misdemeanor to transmit false statements about financial condition of a bank.

- Authorizes the Commissioner to issue a show cause order to place a bank under supervisory control, when the Commissioner believes the bank has insufficient capital or is being operated in an unsafe or unsound manner that threatens the financial integrity of the bank. The Commissioner may also issue an order temporarily removing an officer, director or employee of the bank if the Commissioner believes the person has violated the law or engaged in unsafe or unsound practices or for other reasons.
• Authorizes the Commissioner to enter cooperative supervisory and information sharing agreements with out-of-state bank regulatory agencies.

**Article 9A – Supervisory Liquidation; Voluntary Dissolution and Liquidation**

• Part 1. - Authorizes the Commissioner to require a combination or other control transaction, upon a finding that the bank is unable to operate in a safe and sound manner. The Commissioner may order that the transaction take place without the vote of the equity owners of the bank which would otherwise be required. Prohibits a bank in the process of either voluntary or involuntary dissolution from paying distributions to its shareholders without the prior written consent of the Commissioner. Establishes the procedural requirements for the Commissioner to cancel a charter.

• Part 2. – Authorizes a bank, with the Commissioner's approval, to undertake a voluntary dissolution and liquidation.

• Part 3. – Sets forth the process for the Commissioner to take custody of the books, records, and assets of a bank, and appointing a receiver for the purpose of receivership and liquidation of the bank.

• Part 4. – Establishes the provisions relating to any dissolution or receivership, including storage and destruction of records, termination of trusts and appointment of successor or substitute trustee.

**Article 10A – Bank Holding Companies**

• Part 1. - Requires holding companies to register with the Commissioner and to renew registration annually. Requires the approval of the Commissioner before a person may engage in a control transaction. The process is similar to that required in Article 7A.

• Part 2. – Authorizes combinations of one or more holding companies or other companies with the approval of the Commissioner. The process is similar to that required in Article 7A.

• Part 3. – Authorizes the Commissioner to issue cease and desist orders to holding companies upon a finding that it may have violated the laws of this State. Requires holding companies to notify the Commissioner of changes in key personnel within two business days of the change.

Sections 4 through 49 of the bill make conforming changes to various sections of the General Statutes. These sections contained references to sections of the banking law that are repealed by this act.

**EFFECTIVE DATE:** This act becomes effective October 1, 2012.
A BILL TO BE ENTITLED
AN ACT TO MAKE CHANGES TO THE LAW DEALING WITH THE ANNUAL ASSESSMENTS OF MORTGAGE BANKERS, MORTGAGE BROKERS, AND MORTGAGE SERVICERS AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19B of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ 53-244.100A. Assessments.

(a) For the purpose of meeting the cost of regulation under this Article, each mortgage lender, mortgage broker, and mortgage servicer licensed under this Article shall pay into the OCOB an assessment as provided in this subsection. The annual assessment shall consist of a base amount of two thousand dollars ($2,000.00) for volumes of no more than one million five hundred thousand dollars ($1,500,000.00) plus an additional sum, calculated on the loan and servicing dollar volume reported by the licensee to the OCOB for the previous calendar year. If a licensee has both loan and servicing volume, those amounts shall be added together and the assessment shall be calculated from the table below as follows:

<table>
<thead>
<tr>
<th>Loan and/or Servicing Dollar Volume</th>
<th>Per Thousand</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,500,001.00 to $2,500,000.00</td>
<td>$0.07</td>
</tr>
<tr>
<td>$2,500,001.00 to $5,000,000.00</td>
<td>$0.06</td>
</tr>
<tr>
<td>$5,000,001.00 to $10,000,000.00</td>
<td>$0.05</td>
</tr>
<tr>
<td>$10,000,001.00 to $30,000,000.00</td>
<td>$0.04</td>
</tr>
<tr>
<td>$30,000,001.00 to $100,000,000.00</td>
<td>$0.03</td>
</tr>
<tr>
<td>$100,000,001.00 to $1,300,000,000.00</td>
<td>$0.02</td>
</tr>
</tbody>
</table>
| More Than $1,300,000,001.00        | $0.01       

(b) The Commissioner may collect the assessment provided for in subsection (a) of this section annually or in periodic installments as approved by the Commission.
SECTION 2. G.S. 53-244.101 reads as rewritten:

§ 53-244.101. License renewal.

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 31st day of December following issuance or on any other date that the Commissioner may determine. The license is invalid after that date and shall remain invalid unless renewed under subsection (b) of this section.

(b) A license may be renewed on or after November 1 of each year by complying with the requirements of subsection (c) of this section. A mortgage loan originator shall pay a nonrefundable renewal fee of one hundred twenty-five dollars ($125.00) and by paying to the Commissioner, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks and processing fees of the Nationwide Mortgage Licensing System and Registry as the Commissioner shall require, nonrefundable renewal fees as follows:

(1) Licensed mortgage lenders, licensed mortgage brokers, and licensed mortgage servicers shall pay an annual renewal fee of six hundred twenty-five dollars ($625.00), licensed exclusive mortgage brokers shall pay an annual renewal fee of three hundred dollars ($300.00), and licensed mortgage lenders and mortgage brokers shall pay three hundred dollars ($300.00) for each licensed branch office.

(2) Licensed mortgage loan originators shall pay an annual renewal fee of one hundred twenty-five dollars ($125.00).

(c) Licensees may apply to renew a mortgage loan originator, mortgage lender, mortgage broker, and mortgage servicer license. The application for renewal shall demonstrate that:

(1) The licensee continues to meet the initial minimum standards for licensure under G.S. 53-244.060;

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in G.S. 53-244.102; and

(3) The licensee has paid all required fees for renewal of the license.

(d) If a mortgage lender, mortgage broker, or mortgage servicer's license is not renewed prior to the expiration date, then the licensee shall pay two hundred fifty dollars ($250.00) as a nonrefundable late fee in addition to the renewal fee set forth in subsection (b) of this section. If a mortgage loan originator's license is not renewed prior to the expiration date, then the licensee shall pay a nonrefundable late fee of one hundred dollars ($100.00) in addition to the renewal fee set forth in subsection (b) of this section. In the event a licensee fails to obtain a reinstatement of the license prior to March 1, the Commissioner shall require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(e) When required by the Commissioner, each person shall furnish to the Commissioner the person's consent to a criminal history record check and a set of the person's fingerprints in a form acceptable to the Commissioner or to the Nationwide Mortgage Licensing System and Registry. Refusal to consent to a criminal history record check shall constitute grounds for the Commissioner to deny renewal of the
license of the person as well as the license of any other person by whom the person is
employed, over which the person has control, or as to which the person is the current or
proposed qualifying individual or current or proposed branch manager."

SECTION 3. G.S. 53-244.115 reads as rewritten:

"§ 53-244.115. Investigation and examination authority.
(a) For purposes of initial licensing, license renewal, suspension, conditioning,
revocation, or termination, or general or specific inquiry, investigation, or examination
to determine compliance with this Article, the Commissioner may, at the expense of the
applicant or licensee, may access, receive, and use any books, accounts, records, files,
documents, information, or evidence, including:

1. Criminal, civil, and administrative history information, including
   nonconviction data;
2. Personal history and experience information, including independent
   credit reports obtained from a consumer reporting agency described in
   section 603(p) of the Fair Credit Reporting Act; and
3. Any other documents, information, or evidence the Commissioner
   deems relevant to the inquiry, investigation, or examination regardless
   of the location, possession, control, or custody of the documents,
   information, or evidence.

(b) For purposes of investigating violations or complaints arising under this
Article, or for the purposes of examination, the Commissioner may review, investigate,
or examine any licensee, individual, or person subject to this Article as often as
necessary in order to carry out the purposes of this Article. The Commissioner may
interview the officer, principals, person with control, qualified individual, mortgage
loan originators, employees, independent contractors, agents, and customers of the
licensee, individual, or person concerning their business. The Commissioner may direct,
subpoena, or order the attendance of and examine under oath all persons whose
testimony may be required about the loans or the business or subject matter of any
examination or investigation and may direct, subpoena, or order the person to produce
books, accounts, records, files, and any other documents the Commissioner deems
relevant to the inquiry. The reasonable cost of the investigation or examination shall be
charged against the licensee, individual, or person subject to this Article. The
assessment set forth in G.S. 53-244.100A are for the purpose of meeting the cost of
regulation under Article 19B. Any investigation or examination which in the opinion of
the Commissioner of Banks requires extraordinary review, investigation or special
examination shall be subject to the actual costs of additional expenses and the hourly
rate for the staff's time, to be determined annually by the Banking Commission.

(c) Each licensee, individual, or person subject to this Article shall make
available to the Commissioner upon request the books and records relating to the
operations of the licensee, individual, or person. No licensee, individual, or person
subject to investigation or examination under this section may knowingly withhold,
abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or
other information. Each licensee, individual, or person subject to this Article shall also
make available for interview by the Commissioner the officers, principals, persons with
control, qualified individuals, mortgage loan originators, employees, independent
contractors, agents, and customers of the licensee, individual, or person concerning their business.

(d) Each licensee, individual, or person subject to this Article shall make or compile such reports or prepare other information as may be directed or requested by the Commissioner in order to carry out the purposes of this section, including:

1. Accounting compilations;
2. Information lists and data concerning loan transactions in a format prescribed by the Commissioner;
3. Periodic reports, including:
   a. Annual Report Questionnaire,
   b. Servicer Activity Report,
   c. Servicer Schedule of the Ranges of Costs and Fees,
   d. Lender/Servicer Audited Statements of Financial Condition,
   e. Broker Certified Statements of Financial Condition, and
   f. Quarterly Loan Origination Reports.
4. Any other information deemed necessary to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this Article, the Commissioner may control access to any documents and records of the licensee or person under examination or investigation. The Commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this Article, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business.

(f) In order to carry out the purposes of this section, the Commissioner may:

1. Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
2. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, documents, records, information, or evidence obtained under this section;
3. Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this Article;
4. Accept and rely on examination or investigation reports made by other government officials, within or without this State; or
5. Accept audit reports made by an independent certified public accountant for the licensee, individual, or person in the course of that
part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the Commissioner.

(g) In addition to the authority granted by G.S. 53-244.113 and G.S. 53-244.115, the Commissioner is authorized to take action, including summary suspension of the license, if the licensee fails, within 20 days or a lesser time if specifically requested for good cause, to:

(1) Respond to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed against the licensee that allege or appear to involve violation of this Article or any law or rule affecting the mortgage lending business;

(2) Respond to and cooperate fully with notices from the Commissioner or the Commissioner's designee relating to the scheduling and conducting of an examination or investigation under this Article; or

(3) Consent to a criminal history record check. The refusal shall constitute grounds for the Commissioner to deny licensure to the applicant as well as to any entity:

a. By whom or by which the applicant is employed,

b. Over which the applicant has control, or

c. As to which the applicant is the current or proposed qualifying individual or a current or proposed branch manager.

(h) The authority of this section shall remain in effect, whether a licensee, individual, or person subject to this Article acts or claims to act under any licensing law of the State, or claims to act without such authority."

SECTION 4. G.S. 53-244.119(e) is repealed.

SECTION 5. This act becomes effective October 1, 2012.
Bill Draft 2011-ROfz-11: Modify Mortgage Regulation Funding.

**SUMMARY:** This draft bill would amend the law relating regulation of the mortgage licensing industry to change the way regulation is funded from a fee based to an assessment based system.

**CURRENT LAW:** Under the current law, mortgage lenders, mortgage brokers, mortgage servicers, and loan originators are required to be licensed by the Commissioner of Banks before engaging in the business of mortgage lending, mortgage brokering, or servicing unless exempt.

Mortgage brokers, mortgage lenders, and mortgage servicers, must pay a license application fee of $1,250.00 and for mortgage loan originators the fee is $125.00. Each additional branch office must pay a $300.00 filing fee. In addition, applicants must pay any processing fees required by the Nationwide Mortgage Licensing System and Registry.

Licenses must be renewed annually. The renewal fee for licensed mortgage brokers, mortgage lenders, and mortgage servicers is $625.00, together with a $300.00 fee for each branch office. The renewal fee for mortgage loan originators is $125.00. The late fee for mortgage brokers, mortgage lenders, and mortgage servicers is $250.00 and for mortgage loan originators is $100.00.

**BILL ANALYSIS:** The draft bill would create a new funding mechanism for mortgage regulation by replacing the licensing fees for mortgage companies with an assessment. The assessment would include a minimum level of $2,000 plus an additional amount based on loan and servicing volume. The draft includes a table setting out the amount per thousand dollars to be applied to various brackets of loan and servicing volume.

The draft also repeals the renewal fees currently paid by lenders, brokers, and servicers.

**EFFECTIVE DATE:** This act would become effective October 1, 2012.