2011-2012

MODERNIZATION OF N.C. BANKING LAWS JOINT LEGISLATIVE STUDY COMMISSION

MINUTES

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

2011-2012 Session

CHAIR

Senator Harry Brown, Chairman
Representative Harold J. Brubaker, Chairman

STAFF

Drupti Chauhan
Karen Cochrane-Brown
Greg Roney
Ryan Blackledge

COMMITTEE ASSISTANT

Darryl Black
Cindy Coley

(Book 1 of 4 Books)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-353
SENATE BILL 555

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 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

Rec'd 10/10/11

Office of the Speaker
North Carolina House of Representatives
Raleigh, N.C. 27601-1096

THOM TILLIS
SPEAKER

August 23, 2011

The Honorable Harold J. Brubaker
North Carolina House of Representatives
300 North Salisbury Street, Room 302
Raleigh, North Carolina 27603

Dear Representative Brubaker:

Pursuant to North Carolina Session Law 2011-353, I am pleased to appoint you to serve as Chairman of the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws. Your term is effective immediately and will expire on May 1, 2012.

I appreciate your willingness to serve in this capacity. I am confident that you will contribute much to the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws.

Best regards,

Thom Tillis

Copy: Governor Bev Perdue
Lieutenant Governor Walter Dalton
The Honorable Phil Berger
The Honorable Elaine Marshall
Denise Weeks, House Principal Clerk
Sarah Clapp, Senate Principal Clerk
George R. Hall, Jr. Legislative Services Officer
O. Walker Reagan, Director of Research
Office of the State Controller
State Library
Legislative Library
State Ethics Commission

DEB WILLIFORD
DWILLIFOR@NCCOB.GOV

State of North Carolina

OFFICE OF THE COMMISSIONER OF BANKS

BEVERLY E. PERDUE
GOVERNOR

JOSEPH A. SMITH, JR.
COMMISSIONER OF BANKS

October 12, 2011

The Honorable Harry Brown
Member of the North Carolina Senate
300 North Salisbury Street, Room 300-B
Raleigh, NC 27603-5925

The Honorable Harold J. Brubaker
Member of the North Carolina House of Representatives
300 North Salisbury Street, Room 302
Raleigh, NC 27603-5925

Re: Joint Committee to Study the Modernization of the North Carolina Banking Laws

Dear Senator Brown and Representative Brubaker:

I am delighted that you have agreed to co-chair the Banking Law Study Committee (the "Committee") and to learn of the Committee's membership. There is a lot to be accomplished, and I am confident that you can get the job done.

The current banking statute, Chapter 53 of the General Statutes, was codified in 1921 and last revised to any extent in 1931. Since then, there have only been clarifying amendments as needed and amendments to respond to federal developments, especially with regard to interstate banking and branching and bank holding companies. Our banking law has been very progressive compared to many states, but is outdated and in need of substantial revision.

My colleagues and I have undertaken an internal review of the law and have expanded this review to include input from the North Carolina Bankers Association, private law firms and other groups that may have an interest in this project. We also plan to invite comments from the Business Law Section of the North Carolina Bar Association and consumer advocacy groups on an internal draft. It has been the long-standing practice of this office to reach a consensus on legislative matters among interested parties where possible and to avoid divisive disagreements that create issues as a matter proceeds through the General Assembly. We intend to continue this practice.

LOCATION: 316 W. EDENTON STREET, RALEIGH, NC 27603
MAILING ADDRESS: 4309 MAIL SERVICE CENTER, RALEIGH, NC 27699-4309
(919) 733-3016 • FAX (919) 733-6918 • INTERNET: WWW.NCCOB.ORG
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

11/21/11 @ 10:00

We need until the end of October to complete our work. If I may be presumptuous, we would like to see the Committee begin its work in November or early December. At that time, I will be prepared to summarize the history of our statutes, recommend changes that we think should be made, and offer a working draft from which the Committee may begin its deliberations. We will do all that we can to assist you in arriving at modern banking laws that are mutually beneficial to the industry and to the people of our State.

Additionally, I believe the Commmittee's enabling legislation, S.B. 555/S.L. 2011-353, also allows the Committee to consider other banking-related matters. In addition to state-chartered banks, this agency regulates non-depository financial firms such as mortgage lenders, brokers, servicers and loan originators under the N.C. S.A.F.E. Mortgage Licensing Act, Article 19B of Chapter 53. The demands that have been made on this office by state and federal developments, hearings and enforcement actions have substantially depleted our resources. The licensing and examination fees for non-depository financial firms have not covered the expense of regulating them. Our banks are no longer in position to subsidize this cost. Therefore, we will ask you to consider revisions to Article 19B that permit assessment of mortgage companies based on loan volume as opposed to revenue from licensing and examination fees. For most smaller, locally owned and operated entities, this will result in a lower cost. For the larger companies operating on a more national scope, this will result in some increase. We are fully prepared to give the facts of the matter for your consideration.

My colleagues and I look forward to beginning our work with you and, if you so determine, to the enactment of a modern banking law for North Carolina. In the interim, if I may be of assistance to you, please let me know. Also, I believe you know my senior attorney who handles legislative matters for this agency, McNeil Chestnut. Please feel free to contact Mac at any time. His direct dial is 919.716.6805 and his cell number is 919.210.8904.

Again, thank you for your willingness to work on this project.

Sincerely yours,

Joseph A. Smith, Jr.
Commissioner of Banks

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

MEMBER	ASSISTANT	PHONE	OFFICE
Rep. Harold Brubaker Chairman	Cindy Coley	715-4946	302
Rep. Leo Daughtry	Margaret Dockery	733-5605	2207
Rep. Beverly Earle	Ann Raeford	715-2530	610
Rep. Jonathan Jordan	Brian Mullis	733-7727	418C
Rep. Daniel McComas	Judy Lowe	733-5786	506

Mr. Charles M. Whitehead, Jr. (House Appt.)
Randolph Bank & Trust Co.
Post Office Box 216
Ramseur, N. C. 27316
(336) 633-5650
cmwhitehead@randolphbank.com

Mr. Christopher Kukla (House Appt.)
302 W. Main Street
Durham, N. C. 27701

Sen. Harry Brown Chairman	Darryl Black	715-3034	300A
Sen. Thomas Apodaca	Carolyn Gooden	733-5745	2010
Sen. Harris Blake	Anna Kidd	733-4809	408
Sen. Daniel Blue	Bonnie McNeil	733-5752	1117
Sen. Thom Goolsby	Joseph Kyzer	715-2525	2115

Mr. Gray Reed (Senate Appt.)
BB & T
434 Fayetteville St., Floor 29
Raleigh, N. C. 27601-1701
greed@bbandt.com
(919) 716-9000
(919) 441-6918 (m)

Andrea B. Young (Senate Appt.)
Financial Protection Law Center
272 N. Front Street
Suite 342
Wilmington, N. C. 28401
beth@financialprotectionlawcenter.org
(910) 442-1010 (w)

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

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
Rep. Harold Brubaker Chairman	Cindy Coley	715-4946	302	1
Rep. Leo Daughtry	Margaret Dockery	733-5605	2207	
Rep. Beverly Earle	Ann Raeford	715-2530	610	
Rep. Jonathan Jordan	Brian Mullis	733-7727	418C	
Rep. Daniel McComas	Judy Lowe	733-5786	506	

Mr. Michael Whitehead, Jr. (House Bank Appointment)
President, Randolph Bank & Trust Co.
Post Office Box 216
Ramseur, N. C. 27316
(336) 633-5650
cmwhitehead@randolphbank.com

Sen. Harry Brown Chairman	Darryl Black	715-3034	300A
Sen. Thomas Apodaca	Carolyn Gooden	733-5745	2010
Sen. Harris Blake	Anna Kidd	733-4809	408
Sen. Daniel Blue	Bonnie McNeil	733-5752	1117
Sen. Thom Goolsby	Joseph Kyzer	715-2525	2115

Mr. Gray Reed (Senate Bank Appointment)
BB & T

Andrea B. Young (Senate Advocacy Group Appointment)
Financial Protection Law Center

NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

George R. Hall, Legislative Services Officer

Research Division
300 N. Salisbury Street, Suite 545
Raleigh, NC 27603-5925
Tel. 919-733-2578 Fax 919-715-5460

O. Walker Reagan
Director

October 20, 2011

The Honorable Harold J. Brubaker, Co-Chair
Joint Legislative Commission on the Modernization
of North Carolina Banking Laws
North Carolina House of Representatives
300 N. Salisbury Street, Room 302
Raleigh, NC 27603-5925

Dear Representative Brubaker:

Congratulations on your designation as Co-Chair of the Joint Legislative Commission on the Modernization of North Carolina Banking Laws.

I have asked Ms. Drupti Chauhan, Ms. Karen Cochrane-Brown, and Mr. Greg Roney, with the Research Division; Mr. Ryan Blackledge, with the Bill Drafting Division; to serve as staff to this Commission. In accordance with the Commission's directions as expressed through the Co-Chairs, they will aid in all aspects of the Commission's work, and will attend the meetings of the Commission when it convenes upon the call of the Co-Chairs. Please note that all these individuals also will be responsible for staffing other study committees and commissions during the Interim.

Should you wish to contact Ms. Chauhan, Ms. Cochrane-Brown, and Mr. Roney, they may be reached by telephone at 919.733.2578. Mr. Ryan Blackledge may be reached at 919. 733.6660.

My best wishes to you and the Commission in its work. If I may be of any service to you or the Commission, please contact me.

Yours truly,

O. Walker Reagan

O. Walker Reagan
Director

OWR:wsh

cc: Hon. Thom Tillis, Speaker
Hon. Philip Berger, President Pro Tempore
Hon. Harry Brown, Co-Chair
Mr. George Hall
Mr. Gerry Cohen
Ms. Nichole McGuiness
Ms. Sarah Wolfe
Ms. Drupti Chauhan
Ms. Karen Cochrane-Brown
Mr. Greg Roney
Mr. Ryan Blackledge
Mr. Brian Peck
Ms. Becky Cook

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Office of the Speaker
North Carolina House of Representatives
Raleigh, N.C. 27601-1096

THOM TILLIS
SPEAKER

November 7, 2011

Mr. Christopher Kukla
302 West Main Street
Durham, North Carolina 27701

Dear Mr. Kukla:

Pursuant to North Carolina Session Law 2011-353 Section 2(4), I am pleased to appoint you to serve as a member of a consumer advocacy organization on the Joint Legislative Commission on the Modernization of NC Banking Laws. Your term is effective immediately and will expire on May 1, 2012 or upon the filing of its final report, whichever occurs first.

I appreciate your willingness to serve in this capacity. I am grateful for individuals such as you who give their time and talent to move North Carolina forward. I know you have much to offer the Joint Legislative Commission on the Modernization of NC Banking Laws and will be effective in your service to our State.

Best regards,

Thom Tillis

Thom Tillis

Copy: Governor Bev Perdue
Lieutenant Governor Walter Dalton
The Honorable Phil Berger
The Honorable Elaine Marshall
Denise Weeks, House Principal Clerk
Sarah Clapp, Senate Principal Clerk
George R. Hall, Jr. Legislative Services Officer
O. Walker Reagan, Director of Research
Office of the State Controller
State Library
Legislative Library
State Ethics Commission

Office of the Speaker
North Carolina House of Representatives
Raleigh, N.C. 27601-1096

THOM TILLIS
SPEAKER

October 31, 2011

Mr. Charles M. Whitehead, Jr.
4492 Woodmont Place
Ramseur, North Carolina 27316

Dear Mr. Whitehead:

Pursuant to the authority granted to me by North Carolina Session Law 2011-353 Section 2(4), I am pleased to appoint you to serve as a representative of a state-chartered bank on the Joint Legislative Study Commission on the Modernization of Banking Laws. Your appointment is effective immediately and will expire on May 1, 2012 or upon the filing of its final report, whichever occurs first.

Thank you for your willingness to serve in this capacity. I am grateful for individuals such as you who give their time and talent to move North Carolina forward. I know you have much to offer the Joint Legislative Study Commission on the Modernization of Banking Laws and will be effective in your service to our State.

Best regards,

Thom Tillis

Thom Tillis

Copy: Governor Bev Perdue
Lieutenant Governor Walter Dalton
The Honorable Phil Berger
The Honorable Elaine Marshall
Denise Weeks, House Principal Clerk
Sarah Clapp, Senate Principal Clerk
George R. Hall, Jr. Legislative Services Officer
O. Walker Reagan, Director of Research
Office of the State Controller
State Library
Legislative Library
State Ethics Commission

MINUTES

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

Monday, November 21, 2011

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws met on Monday, November 21, 2011 at 10:00 a.m., Room 544 Legislative Office Building, Raleigh, North Carolina. In attendance were Representative Brubaker (Chairman); Representatives Daughtry and Earle; Senator Blue; Christopher Kukla, Charles Whitehead, Jr., and Andrea Young. Ryan Blackledge (Bill Drafting Staff), Drupti Chauhan (Research Staff), Karen Cochrane-Brown (Research Staff) Greg Roney (Research Staff), and Committee Assistants Cindy Coley, Darryl Black and Elise Quick were present.

Chairman Brubaker called the meeting to order and recognized House Sergeant-At-Arms Staff Larry Elliott, Fred Hines, and Reggie Sills; and Senate Sergeant-At-Arms Staff Jim Blackburn and Jon Fitchett.

Chairman Brubaker introduced North Carolina Commissioner of Banks Joseph A. Smith, Jr. who discussed in depth the history of Banking in North Carolina (Exhibit #1). He distributed his recommended changes to the current North Carolina Banking Statutes (Exhibit #2). North Carolina's Banking Statute, Chapter 53C, is attached as Exhibit #3.

The following is a tentative Committee schedule for the recommended revisions to the Banking Statute:

December:	Articles 1, 2 and 3
January:	Articles 4 and 5
February:	Articles 6 and 7
March:	Articles 8 and 9
April:	Article 10

Commissioner Smith also recommended that the Committee look at a revision of the fee schedule for mortgages.

Chairman Brubaker announced the next meeting is scheduled for Monday, December 19, 2011, 10:00 a.m., 544 Legislative Office Building, Raleigh, North Carolina. There being no further business, the meeting adjourned at 12:00 p. m.

Rep. Harold J. Brubaker, Chairman

ATTEST:

Cindy Coley, Committee Assistant

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

Senator Harry Brown, Co-Chair ***Representative Harold J. Brubaker, Co-Chair***

AGENDA

Monday, November 21, 2011
10:00 am.
Room 544 LOB

1. **Welcome and Introductions**
   Representative Harold J. Brubaker, Co-Chair

2. **Review of Committee Charge**
   Karen Cochrane-Brown, Committee Co-Counsel

3. **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*

4. **Committee Discussion**

5. **Adjourn**

ATTENDANCE

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

2011 - 2012

(Name of Committee)

DATES	Nov. 21, 2011						
Rep. Brubaker, - House Chair	Yes						
Sen. Harry Brown, Senate Chair	No						
Rep. Leo Daughtry	Yes						
Rep. Beverly Earle	Yes						
Rep. Jonathan Jordan	No						
Rep. Daniel McComas	No						
Sen. Thomas Apodaca	No						
Sen. Harris Blake	No						
Sen. Dan Blue	Yes						
Sen. Thom Goolsby	No						
Charles Whitehead (House)	Yes						
Christopher Kukla (House)	Yes						
Gray Reed (Senate)	No						
Andrea Young (Senate)	Yes						

Committee Sergeants at Arms

NAME OF COMMITTEE NC Banking Laws

DATE: 11-21-2011 **Room:** 544

House Sgt-At Arms:

1. **Name:** Reggie Sills
2. **Name:** Larry Elliott
3. **Name:** Fred Hines
4. **Name:** _____
5. **Name:** _____

Senate Sgt-At Arms:

1. **Name:** Jon Fitchett
2. **Name:** Jim Blackburn
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — 11/21/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DANIEL GARNER	OFFICE OF COMR of BANKS
PAUL STOCK	" " " " "
HA NGUYEN	" " " " "
Elizabeth Hammond	NCCOB
RAY GRACE	NCCOB
Arnold Chastain	for the Comm Pkgs.
Katie E. Mills	Com. Banks
MEL BLACK	

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — 11/21/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Sarko	UNC
Al Ripley	NC JC
Lauren Whaley	NCCUL
Lisa McDougald	BB&T
Nathan Batts	NCBA
Meghan Best	NCBA
Elizabeth Biser	Brooks Pierce / NCBA
Ben Davis	Brooks Pierce / NCBA
Daniel Baum	Troutman Sanders
Justin Fye	NC Commissioner of Banks
Patrick Brannan	NC Commissioner of Banks

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — 11/21/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fred Bone	Bone & Asso.
Meihui Bodane	Dept of NC Commerce
Christa Wagner Vinson	"
Ron Ottaviano	Dept State Treasurer
Sola Zi	DST
John Palmer	VCBA

EXHIBIT #1

REMARKS OF JOSEPH A. SMITH, JR.
NORTH CAROLINA COMMISSIONER OF BANKS

JOINT COMMITTEE TO STUDY THE MODERNIZATION OF THE NORTH CAROLINA BANKING LAW

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina

November 21, 2011

Chairman Brubaker, Chairman Brown, and members of the Committee, I am Joseph A. Smith, Jr., North Carolina Commissioner of Banks. Thank you very much for holding this hearing and for inviting me to speak to you. With your permission, I will review the current status of banking in North Carolina, summarize the history of our banking law, propose some changes to it and introduce a draft of a proposed law that includes these changes.

I would first like to discuss with you the reasons for revising our banking law. This is not a new topic. In an address at my swearing in to my first full term as Commissioner, in August 2003, I set forth as one of my goals:

> Modernization of North Carolina's banking laws and our bank supervisory activities to ensure that North Carolina banking organizations have all of the tools necessary to compete effectively in a financial services marketplace that is now global in scope and driven by technology.[1]

That statement is as relevant today as it was over nine years ago. What's taken so long to get consideration of revision? As members of this Committee will soon see, revision of a statute like the banking law is not an easy job; it is time-consuming and detailed work. In the past, banking law revision for all of the relevant stakeholders – banks, regulators, consumers, communities, advocates – was a desirable goal, but not immediately necessary. The existing law, liberally interpreted, served the needs of the industry and the public interest reasonably well. I respectfully submit to you that revision is necessary today.

---

[1] Available at: http://www.nccob.gov/Public/docs/News/Testimony%20And%20Speeches/Archives/CommissionerSwearingIn_speech.pdf .

What has changed? As I will discuss later in this presentation: almost everything. The banking industry, along with the rest of our economy, took a severe hit in the financial crisis of 2008. The health of the economy and the banking industry have declined as a result and recovery is slow. The structure of the industry is becoming ever more concentrated. The regulatory landscape continues to change with an increasing Federal role and attendant complexity. The industry's need for new capital is great and growing. Public trust in the banking industry and its regulators has been weakened.

It would be easy enough in this state of affairs to do nothing, blaming "the banks" for our current economic malaise and letting events take their course. The easy path in this instance would not be the right one. The banks that are supervised by the North Carolina Office of the Commissioner of Banks ("OCOB") are community and regional banks, two of which I acknowledge to be in the super-regional or mega-regional category. None of these banks engaged in the conduct that brought on the financial crisis; rather, they are "main street banks" whose business models are centered on small and medium sized businesses, local communities and their residents. Reform of our banking laws can reduce the burden of regulatory compliance for these banks and facilitate their raising of capital, so that they can more effectively meet the needs of our citizens. In addition, revision of the statute can help preserve the role of this state in regulating our financial system.

Background

In order to put the proposed revision of our banking laws in context, I will review the current status of the banking industry in the United States generally and in North Carolina in particular. I will then review the history of banking in North Carolina and the State's supervision of that industry.

The United States

The United States has a dual banking system, comprising:

- National banks, organized under the National Bank Act and supervised by the Office of the Comptroller of the Currency ("OCC"). Bank of America, Wells Fargo, Community One, and The First National Bank of Shelby are national banks with headquarters or significant operations in North Carolina.

- Federal savings associations, organized under the Home Owners Loan Act and supervised by OCC.

- State-chartered banks and thrifts, organized under state law and supervised by state bank supervisory organizations – in North Carolina, OCOB – together with either the Board of Governors of the Federal Reserve acting through regional reserve banks (the "Federal Reserve") or the Federal Deposit Insurance Corporation ("FDIC"). BB&T, First Citizens, and 79 other community and regional banks and thrifts are state-chartered institutions with headquarters in North Carolina. A list of state-chartered institutions is attached as Exhibit A.

National banks and thrifts account for 27% of the number of banking institutions in the United States and 70% of total industry assets. State-chartered banks and thrifts account for 73% of institutions and 30% of assets. Most of the systemically significant banks in our financial system are national banks. The largest of these banks have capital markets operations and account for a significant share of the credit card and mortgage markets.

Our financial services marketplace also includes credit unions, mutually-owned organizations based on a "common bond" among members. Credit unions are organized and regulated under both federal and state law. If added to banking institutions and assets, credit unions would account for 38% of total institutions and 9.6% of total assets.

Banking organizations are supervised to ensure their safe and sound operation by the governmental agencies referred to above. In addition, banks are subject to extensive consumer protection regulation, including:

- Federal consumer protection laws and regulations under such laws issued by federal regulatory agencies. The Consumer Financial Protection Bureau ("CFPB") created by the Dodd-Frank Wall Street Reform and Financial Protection Act ("Dodd-Frank") is now responsible for regulations under these laws.

- Examination and enforcement to ensure compliance with Federal consumer protection laws and regulations by:

    - The CFPB, in the case of banking organizations larger than $10 billion in assets.
    - The OCC, Federal Reserve or FDIC, in the case of all other banks.

- The Federal Community Reinvestment Act ("CRA"), which requires that banks meet the credit needs of communities from which they receive deposits, including low and moderate income communities.

- CRA examinations by each bank's primary federal regulator.

- State consumer protection laws; in North Carolina's case, primarily Chapter 24 of the General Statutes. These laws are included in state bank examinations and are enforceable, as a rule, by state attorneys general.

I believe it is fair to say that banks are heavily regulated. While no bank likes the extent of current regulation, the cost of compliance is particularly heavy for small banks.

As the result of a number of factors, which I will discuss more fully later, the United States banking industry is highly concentrated. The top five banks in the United States account for 53% of total industry assets and 57% of Gross Domestic Product, a vast increase in concentration from past norms. For what it's worth, concentration is worse in the UK, Switzerland, Ireland and Iceland. In a number of cases, including our own, this concentration has resulted in bank difficulties affecting the entire economy, resulting in taxpayer exposure.

North Carolina

North Carolina is served by 128 banking organizations. Banking in our state is more concentrated than the United States as a whole, with the top five banks accounting for 81% of total deposits and 49% of offices. The top ten banks account for 87% of deposits and 63% of offices. Unlike the total US market, three of the five and six of the ten largest banks operating here are North Carolina state-chartered banks. Overall, North Carolina state-chartered banks and thrifts hold 31.4% of total deposits in the State and operate 56% of all offices. These figures are as of June 30, 2011, and will be changed during the next year by the acquisition of RBC Bank (USA) by PNC, a national bank headquartered in Pittsburgh, Pennsylvania, and of Bank of Granite by Community One, a national bank headquartered in Asheboro.

It is also important to note that banking is not an entirely local activity. Out-of-state banks do business here and our banks operate in other states. As of June 30, 28 out-of-state banks hold 32% of total North Carolina deposits and operate 19% of bank offices in North Carolina. Conversely, the top ten North Carolina state-chartered banks have operations outside North Carolina, accounting for 60% of their total deposits. While this percentage will be reduced by the merger of RBC into PNC, it will increase by subsequent acquisitions and interstate branching by our banks.

Since the financial crisis of 2008, banking in North Carolina has gone through a difficult period. Wachovia, an institution with deep roots in this State, was acquired by Wells Fargo in that year. Twenty-nine of our state-chartered banks received federal investments under the so-called "TARP" program. Five of these banks have paid back the TARP investments; 21 have not; and three have refinanced the investment. Seven of our banks sought and received $99.2 million of federal capital investments through the Federal Small Business Loan Fund, $73.9 million of

which was used to refinance TARP investments. We have had four bank failures since 2008, two in Wilmington, and two in Asheville. We currently have 15 banks that are subject to consent orders mainly attributable to loan losses and related depletion of capital. Our community and regional banks have, in the aggregate, non-performing loans, charge-offs and OREO at high levels relative to historic norms and in comparison with some other states. These problems can only be resolved by restructuring the loans, if possible; collecting the loans, including taking possession of collateral; and disposing of the collateral, often real estate. In the current environment, these actions usually result in losses to the bank. Such losses will cause the bank itself to be rendered insolvent – witness our recent failures – unless the bank has sufficient balance sheet strength to absorb them. This, in turn, requires capital.

Capital is a technical term among banks and bank regulators that will be addressed as this Committee goes through the proposed revisions to the banking law. For present purposes, I believe it is sufficient to say that capital represents the net worth of a bank: what is left over after liabilities are subtracted from assets. The two main sources of capital are retained earnings – profits that are not distributed to shareholders – and new investment in the bank's common or preferred stock. For many of our banks, earnings have been small or non-existent in recent times, so capital has had to be sought from other sources: the government (through TARP and SBLF) or private investors.

North Carolina state-chartered banks have had some success in raising capital. Since 2008, our banks have raised a net unpaid investment of $392 million from TARP and SBLF and $337 million from investors, mainly private equity firms. North Carolina banks on average have a higher level of capital than banks throughout the Southeast or the nation generally. That said, there is a continuing need by our banks to attract capital both to address the balance sheet problems discussed above and to finance growth.

A second challenge for our community and small regional banks is to broaden and expand their business models to generate the preferred source of capital: earnings. Many of our banks have relied too heavily on their local real estate markets. This source of loans will, in all probability, be smaller in the future, so these banks will need new sources of earning assets. This is an important issue that will be a part of the discussion of banking law revision.

How We Got Here: A Brief and Selective Review of the History of North Carolina Banking

When discussing banking law, Professor Lissa Broome of UNC Law School often quotes Justice Holmes: "a page of history is worth a volume of logic."[2] This is true with regard to North

[2] *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921).

Carolina's banking law in particular. The history of our banking law makes clear that banking is not like other businesses. It has always been conducted under governmental authorization that has reflected both its importance to the public good and a desire by government to ensure that banks and bankers operate in a safe and sound manner, consistent with the public interest.

Ironically, perhaps, North Carolina was the last of the original 13 states to charter a privately owned bank.[3] In 1804, the General Assembly chartered two banks: the Bank of Cape Fear and the Bank of New Bern. These banks opened for business in 1805: Bank of Cape Fear in Wilmington, with a branch office in Fayetteville, and the Bank of New Bern in New Bern only. The charters were for a term of years and were renewable at the discretion of the General Assembly. It is interesting to note that the State of North Carolina was a minority investor in each of these banks and the majority investor in a third bank chartered by the General Assembly in 1811: the State Bank of North Carolina. It was the intention of the General Assembly that there should be no further bank charters in North Carolina other than in these three banks and accordingly, in 1814, the General Assembly authorized these banks to open branches wherever they wished in the State.[4] This is the origin of statewide branching for North Carolina, which is often mentioned as the basis for the expansion of our banks in the 20th Century.

The national bank charter was created in 1863. National banks issued national bank notes, a uniform federal currency. Congress imposed a tax on state bank notes and hoped that state banks would avoid the tax by converting to a national charter. Instead, state banks discontinued the use of state bank notes and pioneered the use of deposit credit transferable by draft or check – the modern day checking account. During the Civil War, North Carolina state banks were required to transfer their gold and silver reserves to the Confederate States of America (CSA) in return for interest-bearing notes from the CSA. At the end of the war, the Union elected not to honor the CSA notes and all state banks were forced into liquidation. The first new banks to open thereafter in North Carolina were national banks. State bank charters were soon also granted, beginning with the Bank of Greensboro in 1869.

The power to charter banks in North Carolina was retained by the General Assembly until the enactment of a general banking law in 1903.[5] Regulation of banks was overseen by the General Assembly, which required banks to make reports to the State Treasurer. In 1889, the General Assembly appointed the first bank examiner, and in 1891, required the examiner to report to the State Treasurer.[6] In 1899, the General Assembly created the Corporation Commission, which was given the powers formerly exercised by the State Treasurer related to banking, including

---

[3] Broome, "The First Hundred Years of Banking in North Carolina," 9 N.C. Banking Institute 103 (2005). In this article, Professor Broome acknowledges and relies on T. Harry Gattton, "Banking in North Carolina: A Narrative History" (1987).

[4] *Ibid, p. 111.*

[5] *Ibid, p. 127.*

[6] *Ibid, p. 126.*

examination.[7] In 1921, the General Assembly adopted legislation creating a Banking Department within the Corporation Commission and establishing the office of Chief Examiner.[8] In 1927, jurisdiction over the liquidation of banks was removed from court-appointed receivers and granted to the supervisor of banks in the Corporation Commission.[9] In 1931, the General Assembly adopted legislation creating the Office of the Commissioner of Banks, a State Banking Department, and an Advisory Commission made up of the State Treasurer, State Attorney General and three other members appointed by the Governor.[10] In 1939, the General Assembly replaced the Advisory Commission with a State Banking Commission.[11] Mr. Gurney P. Hood of Wayne County was the first Commissioner of Banks, serving from 1931 to 1951. I have the honor to be the 11th person to hold that office.

Over the years since 1931, additional responsibilities have been assigned to OCOB with regard to regulation and supervision of other financial services providers. In 2001, the Savings Institution Division of the Department of Commerce, which regulated state-chartered savings banks and savings and loan associations, was merged into OCOB, and the Commission was expanded to reflect that new responsibility. A number of non-bank financial services providers have been made subject to the jurisdiction of the Commission and OCOB over time: consumer finance companies in 1961; money transmitters in 1963; refund anticipation loan facilitators in 1989; reverse mortgage lenders in 1991; check cashers in 1997; mortgage bankers and brokers in 1998; mortgage loan originators in 2002; and mortgage servicers in 2009. In addition, the Commissioner has the authority to extend one time the allowable filing date for any foreclosure proceeding on a primary residence for a period of up to 30 days and, in certain circumstances, additional time under legislation originally adopted by the General Assembly in 2008.

In addition to state law, North Carolina state-chartered banks are subject to federal supervision and regulation. The nature and extent of this regulation, both in terms of bank safety and soundness and consumer protection have increased over the years. North Carolina state-chartered banks are supervised jointly by OCOB and either (i) the Federal Reserve, if they are member banks under the Federal Reserve Act; or (ii) the FDIC if they are non-member banks. All North Carolina banks are subject to the FDIC's regulations regarding federal deposit insurance. Examinations and supervision are carried out under standards established by the federal bank regulatory agencies, supplemented by standards of OCOB relating to state law. Of particular importance in this process is the application of capital adequacy measurement under the "prompt corrective action" standards established under the Federal Deposit Insurance Corporation Improvements Act of 1991 ("FIDICIA"). As the result of FIDICIA, these standards

---

[7] *Ibid, p. 127.*
[8] Batton, *op. cit. n. 1 at p. 75.*
[9] *Ibid, p. 76.*
[10] *Ibid, p. 79.*
[11] *Ibid, p. 80.*

are the basis on which much of current bank regulation rests and the FDIC is predominant in enforcement of them and in the resolution of banks that fail to meet them.

A substantial portion of the law that currently applies to North Carolina banks – Articles 1 through 14 of Chapter 53 of the General Statutes – has its source in the actions of the General Assembly from 1921 through 1931. Additional provisions of Chapter 53 – Articles 17, 17B and 18 – relate to interstate banking and branching, the authority of banks headquartered in North Carolina to carry on operations in other states and for out-of-state banks to operate here. For all of the 19th Century and well into the 20th Century, it was not legally possible for banks from one state to branch into other states or acquire banks in other states. These barriers were weakened by the interstate compacts of the 1980's and the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal"), which resulted in industry consolidation that saw a number of North Carolina Banks grow dramatically. The Dodd-Frank Act of 2010 removed any remaining obstacles to interstate banking and branching.

As the result of changes in federal law regulating banks, North Carolina's banking law is out of date. It contains a number of provisions that are at once more restrictive than those contained in federal law and less effective. In addition, North Carolina banking law is much more restrictive than the Business Corporation Act, which was itself revised over twenty years ago. This has led bank managements to avoid the burden of the banking law by forming holding companies under the Business Corporation Act or other more liberal corporation law of another state. It is time to revise the banking law.

A Proposed Revision of the North Carolina Banking Law

Because of my view that a revision of the banking law has become not only desirable but necessary, I convened a small working group comprising the counsel to the North Carolina Bankers Association and the law firm that represents it, the senior leadership of OCOB and our counsel and completed the revision that I have submitted to you. It is the result of hours of discussion and debate regarding the needs of the industry, of the OCOB and of the public. After this work, I did a final review and editing of the draft. After the final edits, the proposal was circulated to representatives of stakeholders in the industry: the bar association, bank counsel, consumer advocates, academics. OCOB has set up a website for disclosure to the general public of information about the proposal.

The draft is presented as a whole text, rather than as proposed revisions to the current law in order to make it easier for those who review it to do so without undue complication. Anyone who has tried to determine how the Dodd-Frank Act has changed current federal law will know what I am talking about. Unlike the corporation law, there is no model act to which you or I can refer, nor is there any other state effort of which I am aware to do what this proposal attempts to

do. As you will see, the draft changes current law by revising a number of provisions to reflect the developments I have been discussing and reorganizing the text in a way that makes it easier to use, in a number of cases by moving existing provisions to new locations in the text. It is proposed that some outmoded provision of current law simply be dropped. All of these changes will be reviewed with you in detail in future meetings of this committee.

The proposed revision is organized as follows:

Article 1 contains provisions regarding the statute's scope and applicability and a definitions section applicable to the entire statute. This Article replaces Article 1 of current law, N.C.G.S. § 53-1. The proposed definitions provision – § 53C-1-4 – makes a number of material changes and additions, including:

- Replacement of definitions that reflect the accounting and supervisory capital restrictions of the current law (*e.g.,* surplus, undivided profits, unimpaired capital fund) with definitions relating to capital adequacy that reflect the "prompt corrective action" categories that are the real and effective measures under current law.

- Adding provisions relating to a bank's capitalization that are consistent with the Business Corporation Act.

- Including definitions that describe the various banking organizations affected by the statute and their federal and state supervisory and regulatory agencies.

- Adding definitions that reflect the inclusion of interstate banking in the law itself, rather than separate statutes.

The changes and additions are extensive and will be reviewed with you in full at a future meeting.

Article 2 of the proposal deals with the Commission and the Commissioner. It replaces portions of Article 8 of the current law, specifically N.C.G.S. §§ 53-92 – 53-99.1, that provide for the establishment of the Banking Commission and the Office of the Commissioner, governance of the Commission, operation of the OCOB and official records, including confidentiality of such records. The proposal also includes provisions regarding rule-making and administrative hearings. The following features of proposed Article 2 should be noted as a preliminary matter:

- The structure and governance of the Commission and Commissioner, which have served this State well for eighty years, remain intact.

- The proposal seeks to establish rule-making, hearing and official records provisions that are applicable to all of the statutes administered by the Commission and the Commissioner, not just the banking law.

- Provisions of the current Article 8 that deal with bank supervisory activities have been moved to Article 8 of the proposed statute.

Article 3 of the proposal contains the provisions governing the organization of a new bank. It replaces Article 2 of the current statute, N.C.G.S. §§ 53-2 – 53-17. The proposal attempts to simplify and clarify the role of the Commission and the Commissioner in the organization of new banks but does not, in my view, materially change the process or impede organization of banks. I expect a significant amount of comment from the banking bar on this Article nonetheless.

Article 4 of the proposal contains provisions regarding the governance of banks. The Article replaces Article 5 – N.C.G.S. §§ 53-39 – 53-42.1 – and Article 7 – N.C.G.S. §§ 53-78 – 53-91.3 – of current law. In general, proposed Article 4 continues the relatively broad governance approach of current law rather than adding state requirements to the growing body of federal law. Changes of note include:

- Repeal of the provision of current law that authorizes assessment of shareholders of banks whose capital is impaired. N.C.G.S. § 53-42.

- Proposed § 53C-4-5 liberalizes the director qualification requirements of current law by removing residency and investment requirements. The appointment and conduct of directors remain subject to both state and federal regulation, and directors are required to submit to service of process in Wake County. This change is proposed to remove potential obstacles to the raising of capital by our banks and to the appointment of directors who may be able to contribute to the bank but who do not have financial resources available to make meaningful initial investments.

- Proposed § 53C-4-10 adds a new provision to the banking law that makes a review of board composition, structure and conduct a factor in its examinations of the bank and its management.

Article 5 of the proposal contains provisions regarding bank powers and investments, including investments in subsidiaries. The proposed Article replaces Article 6 of current law, N.C.G.S. §§ 53-43 – 53-77.3. The proposal carries forward the liberal provisions of existing law and attempts to conform them to federal law, particularly the Gramm-Leach-Bliley Act.

Article 6 of the proposal deals with bank operations. It covers a number of subjects currently governed by existing law, including:

- *Lending restrictions; loans to one customer.* This provision has been amended to conform to the requirements of Section 611 of the Dodd-Frank Act, which provides that an insured state bank may participate in derivatives transactions only if the state where that bank is chartered has, as a part of its law on lending limits, a provision that requires that credit exposure to derivative transactions be taken into effect in applying these lending limits. This matter is so important to our banks that I will be submitting to you a provision amending current § 53-48 to the same effect.

- *Accounts.* The proposal contains provisions regarding bank accounts, replacing current Article 12, N.C.G.S. §§ 53-146 – 53-147. The proposal carries forward the General Assembly's recent revision of the provision on payable on death accounts.

- *Branching.* The proposal seeks to cover both branching by banks, North Carolina and out-of-state banks, within North Carolina and interstate. It also replaces the concept of a "limited service facility" with that of a "non-branch bank business office." These provisions replace N.C.G.S. § 53-62 and Articles 17 and 17B.

Article 7 of the proposal covers mergers, acquisitions and other control transactions. It is intended to replace current N.C.G.S. §§ 53-12 – 53-17.2 and to incorporate provisions regarding interstate transactions currently contained in Articles 17, 17B and 18 of Chapter 53.

Article 8 of the proposal authorizes the supervision of North Carolina banks by the Commissioner and OCOB. It replaces portions of Article 8 and all of Articles 9 and 10 of the current law. The proposal carries forward many provisions of prior law, updating supervisory enforcement powers to apply the proposed new capital provisions.

Article 9 of the proposal authorizes voluntary liquidations of banks and involuntary liquidation by the Commissioner in cases of a distressed bank. It replaces Articles 3 and 4 and part of Article 13 of current law. This Article carries forward in concept the provisions of current law and updates them.

Article 10 of the proposal authorizes supervision of bank holding companies. It is intended to replace Article 18 of current law.

Unfinished Business

The proposed revision of the banking law does not revise or repeal Article 11 (Industrial Banks) or 18A (International Banking) of the current law, nor does it revise Chapters 54B (Savings and Loan Associations) or 54C (Savings Banks). This is because revision of the basic banking law is a heavy enough lift and these other statutes are either sufficient for their present use (Chapters 54B and 54C), little used (Article 18A) or unused (Article 11). These statutes can be the subject of further legislative action if the General Assembly wishes to take them up.

Summary

Banking is important to North Carolina. Our State has always been a leader in banking, based in large part on the actions of the General Assembly. The current proposal is submitted to you with the intention of continuing that leadership. I greatly appreciate your willingness to take up this matter and to providing you with such assistance as you may require in your work. I would be happy to respond to any questions you may have and thank you for your attention.

EXHIBIT A



NC State Charter Banks and Trust Companies

Enter Bank Name or select Bank Charter and click [Search] to refine results. To reset the selected criteria click [Clear].

Bank Information

Bank Name : **Charter Type :** Search Clear

91 Matching Records

Bank Name/CEO	Headquarters	Links	Branches	Current Applications
Alliance Bank & Trust Company *Daniel C. Ayscue* *Chartered :9/8/2004*	916 E Garrison Blvd. Post Office Box 1099 Gastonia, NC 28054 Phone: (704) 865-1634 Fax: (704) 867-6155	Home Page	Branches	Current Applications
Anson Bank & Trust Co. *Dana A. Maness* *Chartered :12/4/1889*	211 S Greene St. Wadesboro, NC 28170 Phone: (704) 694-2122 Fax: (704) 694-6582	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Aquesta Bank *James C. Engel Jr.* *Chartered :8/1/2006*	19510 Jetton Rd. Post Office Box 700 Cornelius, NC 28031 Phone: (704) 439-4343 Fax: (704) 439-4344	Home Page	Branches	Current Applications
Asheville Savings Bank, SSB *Suzanne S. DeFerie* *Chartered :3/1/1936*	11 Church St. Asheville, NC 28801 Phone: (828) 254-7411 Fax: (828) 252-1512	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Bank of Commerce *Wesley W. Sturges* *Chartered :2/7/2006*	100 Queens Rd. Charlotte, NC 28204 Phone: (704) 971-7000 Fax: (704) 971-7011	Home Page	Branches	Current Applications
Bank of Granite *Chartered :10/12/1906*	23 N Main St. Granite Falls, NC 28630 Phone: (828) 496-2000 Fax: (828) 496-2116	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Bank of North Carolina *W. Swope Montgomery Jr.* *Chartered :12/3/1991*	831 Julian Ave. Thomasville, NC 27360 Phone: (336) 476-9200 Fax: (336) 476-5773	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Bank of Oak Ridge *Ronald O. Black* *Chartered :4/10/2000*	2211 Oak Ridge Rd. Oak Ridge, NC 27310 Phone: (336) 644-9944 Fax: (336) 644-6644	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Bank of Stanly *W. D. Lawhon Jr.* *Chartered :1/26/1984*	167 N Second St. Albemarle, NC 28001 Phone: (704) 983-6181 Fax: (704) 983-5548	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Bank of the Carolinas *Stephen R. Talbert* *Chartered :12/7/1998*	135 Boxwood Village Dr. Mocksville, NC 27028 Phone: (336) 751-5755 Fax: (336) 751-4222	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Black Mountain Savings Bank, SSB	200 E State St. Black Mountain, NC 28711	Home Page FDIC Data		

M. Wendell Begley *Chartered :4/4/1923*	Phone: (828) 669-7991 Fax: (828) 669-6974	FRB/NIC Data	Branches	Current Applications
blueharbor bank *Joe I. Marshall Jr.* *Chartered :1/8/2008*	106 Corporate Park Dr. Post Office Box 3546 Mooresville, NC 28117 Phone: (704) 662-7700 Fax: (704) 799-7096	Home Page	Branches	Current Applications
Boys, Arnold Trust Company *Thomas C. Arnold* *Chartered :11/1/2000*	1272 Hendersonville Rd. Post Office Drawer 5277 Asheville, NC 28803 Phone: (800) 286-8038 Fax: (828) 274-5568	Home Page FDIC Data	Branches	Current Applications
Branch Banking and Trust Company *Kelly S. King* *Chartered :1/1/1872*	200 W Second St. Post Office Box 1250 Winston-Salem, NC 27101 Phone: (336) 733-2000 Fax: (336) 733-2279	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Cabarrus Bank & Trust Company *Patricia K. Horton* *Chartered :4/10/2003*	25 Palaside Dr., NE Concord, NC 28025 Phone: (704) 262-3855 Fax: (704) 262-3910	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
CapStone Bank *Michael S. Patterson* *Chartered :8/1/2006*	4505 Falls of Neuse Rd., Suite 150 Raleigh, NC 27609 Phone: (919) 256-6800 Fax: (919) 871-1031	Home Page	Branches	Current Applications
Carolina Bank *Robert T. Braswell* *Chartered :10/1/1997*	107 N Spring St. Greensboro, NC 27401 Phone: (336) 288-1898 Fax: (336) 297-4105	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Carolina Premier Bank *John S. Kreighbaum* *Chartered :8/29/2007*	13024 Ballantyne Corporate Place, Suite 100 Charlotte, NC 28277 Phone: (704) 752-9292 Fax: (704) 697-5080	Home Page	Branches	Current Applications
Carolina Trust Bank *John Michael Cline* *Chartered :12/8/2000*	901 E Main St. Lincolnton, NC 28092 Phone: (704) 735-1104 Fax: (704) 735-1258	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Coastal Bank & Trust *Robert L. Norris Jr.* *Chartered :4/13/2009*	2414 N. Marine Blvd. Jacksonville, NC 28546 Phone: (910) 577-3200 Fax: (910) 577-3211	Home Page	Branches	Current Applications
Community Bank of Rowan *Bruce D. Jones* *Chartered :2/21/2006*	322 E. Innes St. Salisbury, NC 28144 Phone: (704) 639-0730 Fax: (704) 639-0736	Home Page	Branches	Current Applications
Cornerstone Bank *Norman B. Osborn* *Chartered :3/15/2000*	3710 Nash St. N Wilson, NC 27896 Phone: (252) 243-5588 Fax: (252) 243-7811	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Crescent State Bank *Michael G. Carlton* *Chartered :12/31/1998*	1005 High House Rd. Cary, NC 27513 Phone: (919) 467-7400 Fax: (919) 467-1024	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Davenport Trust Company *Eddie Eddins* *Chartered :1/1/2010*	628 Green Valley Rd., Suite 410 Greensboro, NC 27408 Phone: (804) 780-2119 Fax: (804) 549-4319		Branches	Current Applications
Farmers & Merchants Bank *Paul E. Fisher* *Chartered :7/15/1909*	138 N Salisbury Ave. Granite Quarry, NC 28072 Phone: (704) 279-7291 Fax: (704) 279-8919	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
	Post Office Box 508	Home Page		

First Bank *Jerry L. Ocheltree* *Chartered :8/23/1935*	Troy, NC 27371 Phone: (910) 576-6171 Fax: (910) 576-1070	FDIC Data FRB/NIC Data	Branches	Current Applications
First Carolina State Bank *Timothy N. Taylor* *Chartered :11/29/2000*	171 N Winstead Ave. Post Office Box 8469 Rocky Mount, NC 27804 Phone: (252) 937-2152 Fax: (252) 937-4567	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
First Carolina State Bank *William M. Griffith Jr.* *Chartered :11/29/2000*	171 N Winstead Ave. Post Office Box 8469 Rocky Mount, NC 27804 Phone: (252) 937-2152 Fax: (252) 937-4567	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
First South Bank *Thomas A. Vann* *Chartered :4/7/1997*	1311 Carolina Ave. Washington, NC 27889 Phone: (252) 946-4178 Fax: (252) 946-5909	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
First Trust Bank *James T. Bolt Jr.* *Chartered :1/19/1999*	1420 E Third St. Charlotte, NC 28204 Phone: (704) 377-3936 Fax: (704) 377-8869	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
First-Citizens Bank & Trust Company *Ed Willingham* *Chartered :1/1/1893*	239 Fayetteville St. Mall Post Office Box 27131 Raleigh, NC 27611 Phone: (919) 716-7520 Fax: (919) 716-2844	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Forest Commercial Bank *John D. Kimberly* *Chartered :3/5/2008*	1127 Hendersonville Rd. Asheville, NC 28803 Phone: (828) 255-5711 Fax: (828) 255-5713		Branches	Current Applications
Four Oaks Bank & Trust Company *Ayden R. Lee Jr.* *Chartered :6/24/1912*	6144 US 301 S Four Oaks, NC 27524 Phone: (919) 963-2177 Fax: (919) 963-2768	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Franklin Street Trust Company *M. Rex Teaney II* *Chartered :9/20/1993*	1450 Raleigh Rd., Suite 300 Chapel Hill, NC 27517 Phone: (919) 489-2600 Fax: (919) 489-1666	Home Page FDIC Data	Branches	Current Applications
Great State Bank *C. Greg Edwards* *Chartered :7/2/2008*	1422 US Hwy. 421 Business Wilkesboro, NC 28697 Phone: (336) 903-4948	Home Page	Branches	Current Applications
Greystone Bank *David H. Rupp* *Chartered :11/1/2005*	4700 Falls of Neuse Rd., Suite 190 Raleigh, NC 27609 Phone: (919) 882-2380 Fax: (919) 847-8732	Home Page	Branches	Current Applications
Harrington Bank (Proposed) *Chartered :*	5925 Farrington Rd. Chapel Hill, NC 27517 Phone: (919) 945-7800 Fax: (919) 945-7802		Branches	Current Applications
Hertford Savings Bank, SSB *Vivian D. Sutton* *Chartered :1/1/1923*	121 N Church St. Hertford, NC 27944 Phone: (252) 426-5403 Fax: (252) 426-5279	FDIC Data FRB/NIC Data	Branches	Current Applications
High Point Bank and Trust Company *Mark L. Williamson* *Chartered :9/2/1905*	300 N Main St. High Point, NC 27260 Phone: (336) 881-3300 Fax: (336) 885-2030	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Home Savings Bank of Albemarle, SSB *David L. Smith* *Chartered :1/1/1911*	103 N Second St. Post Office Box 489 Albemarle, NC 28001 Phone: (704) 982-9184 Fax: (704) 983-1308	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
	121 N Columbia St.	Home Page		

Investors Trust Company *Stephen E Pike* *Chartered :2/17/2004*	Chapel Hill, NC 27514 Phone: (919) 968-2200 Fax: (919) 968-4880		Branches	Current Applications
Jackson Savings Bank, SSB *Dennis L. Burrell* *Chartered :1/1/1955*	741 W Main St. Post Office Box 757 Sylva, NC 28779 Phone: (828) 586-2451 Fax: (828) 586-2055	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
KeySource Commercial Bank *Donald R. Draughon Jr.* *Chartered :3/19/2007*	280 S Mangum St., Suite 140 Durham, NC 27701 Phone: (919) 383-4200 Fax: (919) 383-4242	Home Page	Branches	Current Applications
KS Bank, Inc. *Harold T. Keen* *Chartered :4/28/1924*	1031 Brightleaf Blvd. Smithfield, NC 27577 Phone: (919) 938-3101 Fax: (919) 938-2681	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Live Oak Banking Company *James S. Mahan III* *Chartered :5/12/2008*	2605 Iron Gate Dr., Suite 100 Wilmington, NC 28412 Phone: (910) 790-5867 Fax: (910) 790-5868		Branches	Current Applications
Lumbee Guaranty Bank *Larry R. Chavis* *Chartered :12/22/1971*	403 E Third St. Pembroke, NC 28372 Phone: (910) 521-9707 Fax: (910) 521-6102	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Macon Bank, Inc. *Roger D. Plemens* *Chartered :1/1/1922*	220 One Center Ct. Franklin, NC 28734 Phone: (828) 524-7000 Fax: (828) 524-6590	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Mechanics and Farmers Bank *Kim D. Saunders* *Chartered :8/8/1908*	116 W Parrish St. Durham, NC 27701 Phone: (919) 683-1521 Fax: (919) 687-7807	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Mount Gilead Savings and Loan Association *Albert F. Johnson* *Chartered :1/1/1914*	Post Office Box 97 Mount Gilead, NC 27306 Phone: (910) 439-6165 Fax: (910) 439-4811	FDIC Data FRB/NIC Data	Branches	Current Applications
Mountain 1st Bank & Trust Company *Michael G. Mayer* *Chartered :4/30/2004*	101 Jack St. Hendersonville, NC 28792 Phone: (828) 692-8070 Fax: (828) 693-5008	Home Page	Branches	Current Applications
Nantahala Bank & Trust Company *James A. VanderWoude* *Chartered :10/4/2004*	120 Siler Rd. Franklin, NC 28734 Phone: (828) 369-2265 Fax: (828) 349-9559	Home Page	Branches	Current Applications
New Century Bank *William L. Hedgepeth II* *Chartered :5/24/2000*	700 W Cumberland St. Dunn, NC 28334 Phone: (910) 892-7080 Fax: (910) 892-8059	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
NewBridge Bank *Pressley A. Ridgill* *Chartered :7/5/1949*	1501 Highwoods Blvd., Suite 400 Greensboro, NC 27410 Phone: (336) 369-0900 Fax: (336) 369-0935	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
NewDominion Bank *C. John Hipp, III* *Chartered :1/10/2005*	1111 Metropolitan Ave. Post Office Box 37389 Charlotte, NC 28204 Phone: (704) 335-4030 Fax: (704) 335-4028	Home Page	Branches	Current Applications
North State Bank *Larry D. Barbour* *Chartered :6/1/2000*	6204 Falls of Neuse Rd. Raleigh, NC 27609 Phone: (919) 855-9925 Fax: (919) 855-9929	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Old North State Trust, LLC	106 W Raleigh St. Post Office Box 378	Home Page		

Denis R. de St. Aubin *Chartered :2/2/2004*	Siler City, NC 27344 Phone: (919) 663-3996 Fax: (919) 663-3254		Branches	Current Applications
Oldtown Bank *Charles D. Umberger* *Chartered :9/10/2007*	2045 S Main St. Waynesville, NC 28786 Phone: (828) 456-3006 Fax: (828) 456-4088	Home Page	Branches	Current Applications
Paragon Commercial Bank *Robert C. Hatley* *Chartered :5/10/1999*	3535 Glenwood Ave. Raleigh, NC 27612 Phone: (919) 788-7770 Fax: (919) 788-7755	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Park Sterling Bank *James C. Cherry* *Chartered :10/25/2006*	1043 E Morehead St., Ste 201 Charlotte, NC 28204 Phone: (704) 716-2134 Fax: (704) 716-2138	Home Page	Branches	Current Applications
Parkway Bank *James E. Sponenberg III* *Chartered :8/13/2001*	509 Wilkesboro Blvd., NE Lenoir, NC 28645 Phone: (828) 758-1414 Fax: (828) 758-9986	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Patriot State Bank *Michael Gregg Strickland* *Chartered :8/21/2006*	210 N Main St. Fuquay-Varina, NC 27526 Phone: (919) 577-2265 Fax: (919) 577-2278	Home Page	Branches	Current Applications
Peoples Bank *Tony W. Wolfe* *Chartered :1/1/1912*	518 W C St. Newton, NC 28658 Phone: (828) 464-5620 Fax: (828) 465-6780	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Piedmont Trust Company *R. Thomas Mayes Jr.* *Chartered :1/1/2004*	Post Office Box 20124 Greensboro, NC 27408 Phone: (336) 274-5471 Fax: (336) 272-8921		Branches	Current Applications
Pisgah Community Bank *Bill Sudyk* *Chartered :5/15/2008*	890 Hendersonville Rd., Suite 100 Asheville, NC 28803 Phone: (828) 277-7127 Fax: (828) 277-3403	Home Page	Branches	Current Applications
Premier Commercial Bank *Francis X. Gavigan Jr.* *Chartered :5/12/2008*	701 Green Valley Rd., Suite 102 Greensboro, NC 27408 Phone: (336) 323-1115 Fax: (336) 323-1113	Home Page	Branches	Current Applications
Providence Bank *John A. Barker* *Chartered :3/14/2006*	450 North Winstead Ave., P. O. Box 7727 Rocky Mount, NC 27804 Phone: (252) 443-9477 Fax: (252) 443-9242	Home Page	Branches	Current Applications
Randolph Bank & Trust Company *C. Michael Whitehead Jr.* *Chartered :11/3/1978*	175 N Fayetteville St. Asheboro, NC 27203 Phone: (336) 625-1000 Fax: (336) 625-3850	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
RBC Bank (USA) *W. James Westlake* *Chartered :11/5/1990*	301 Fayetteville St., Suite 1400 Raleigh, NC 27601 Phone: (919) 839-4400 Fax: (919) 788-6058	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Roanoke Rapids Savings Bank, SSB *Stephen K. Young* *Chartered :1/1/1914*	325 Becker Dr. Roanoke Rapids, NC 27870 Phone: (252) 537-8061 Fax: (252) 537-8431	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Roanoke Valley Savings Bank, SSB *J. William Gossip* *Chartered :1/1/1929*	828 Roanoke Ave. Roanoke Rapids, NC 27870 Phone: (252) 537-6146 Fax: (252) 537-0977	FDIC Data FRB/NIC Data	Branches	Current Applications
Roxboro Savings Bank, SSB *Jane D. Long*	313 S Main St. Roxboro, NC 27573 Phone: (336) 599-2137	Home Page FDIC Data FRB/NIC	Branches	Current Applications

Chartered :1/1/1923	Fax: (336) 597-5037	Data		
Security Savings Bank, SSB *Kenneth W. Mabe* *Chartered :10/11/1911*	101 N Howe St. Southport, NC 28461 Phone: (910) 457-5246 Fax: (910) 457-6022	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Select Bank & Trust Company *Mark A. Holmes* *Chartered :8/3/2004*	3600 Charles Blvd. Greenville, NC 27858 Phone: (252) 353-5730 Fax: (252) 353-8417	Home Page	Branches	Current Applications
Sound Banking Company *S. Phillip Collins* *Chartered :9/4/2001*	5039 Executive Dr. Morehead City, NC 28557 Phone: (252) 727-5558 Fax: (252) 727-5559	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Southern Bank and Trust Company *J. Grey Morgan* *Chartered :1/29/1901*	100 N Center St. Mount Olive, NC 28365 Phone: (919) 658-7000 Fax: (919) 658-7065	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Southern Community Bank and Trust *F. Scott Bauer* *Chartered :11/18/1996*	4605 Country Club Rd. Winston-Salem, NC 27104 Phone: (336) 794-7832 Fax: (336) 768-2552	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Square 1 Bank *Douglas H. Bowers* *Chartered :8/8/2005*	406 Blackwell St., Suite 240 Durham, NC 27701 Phone: (919) 314-3040 Fax: (919) 314-3080	Home Page	Branches	Current Applications
Surrey Bank & Trust *Edward C. Ashby III* *Chartered :7/22/1996*	145 N Renfro St. Mount Airy, NC 27030 Phone: (336) 719-2310 Fax: (336) 789-3687	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Tarboro Savings Bank, SSB *Ann G. Winstead* *Chartered :9/22/1906*	501 Main St. Tarboro, NC 27886 Phone: (252) 823-3116 Fax: (252) 823-0513	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Taylorsville Savings Bank, SSB *Timothy H. Keever* *Chartered :4/1/1921*	107 Main Ave. Dr. Taylorsville, NC 28681 Phone: (828) 632-4228 Fax: (828) 632-0065	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
The East Carolina Bank *A. Dwight Utz* *Chartered :1/20/1920*	35080 U.S. Hwy. 264 Post Office Box 337 Engelhard, NC 27824 Phone: (252) 925-9411 Fax: (252) 925-6361	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
The Fidelity Bank *Mary W. Willis* *Chartered :10/10/1909*	100 S Main St. Fuquay-Varina, NC 27526 Phone: (919) 552-2242 Fax: (919) 362-1968	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
The Heritage Bank *John T. Tilton* *Chartered :11/1/1916*	106 S Main St. Lucama, NC 27851 Phone: (252) 239-2000 Fax: (252) 239-0472	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
the little bank, incorporated *Vincent Robert Jones* *Chartered :11/9/1998*	1101 W Vernon Ave. Kinston, NC 28501 Phone: (252) 939-3900 Fax: (252) 939-1255	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
The Trust Company of the South *William H. Smith* *Chartered :8/28/1981*	3041 South Church Street Burlington, NC 27215 Phone: (336) 538-1000 Fax: (336) 538-1010	Home Page FDIC Data	Branches	Current Applications
TrustAtlantic Bank *James A. Beck* *Chartered :5/22/2000*	4801 Glenwood Ave. Raleigh, NC 27612 Phone: (919) 844-1698 Fax: (919) 277-8701	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications

Union Bank & Trust Company *Thomas M. Combs* *Chartered :4/3/2006*	108 College St. Oxford, NC 27565 Phone: (919) 603-5030 Fax: (919) 603-5130	Home Page	Branches	Current Applications
VantageSouth Bank *Steven Wayne Jones* *Chartered :3/13/2006*	3725 S Church St. Burlington, NC 27215 Phone: (336) 227-8000 Fax: (336) 227-8002	Home Page	Branches	Current Applications
Waccamaw Bank *Geoffrey E. Hopkins* *Chartered :9/2/1997*	110 N J. K. Powell Blvd. Whiteville, NC 28472 Phone: (910) 641-0044 Fax: (910) 641-0978	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications
Wakefield Trust Company *Anna Spangler Nelson* *Chartered :1/3/2000*	1110 E Morehead St. Charlotte, NC 28204 Phone: (704) 372-4500 Fax: (704) 372-8216	FDIC Data	Branches	Current Applications
Yadkin Valley Bank and Trust Company *Joseph H. Towell* *Chartered :10/16/1968*	110 W Market St. Elkin, NC 28621 Phone: (336) 526-6300 Fax: (336) 835-8858	Home Page FDIC Data FRB/NIC Data	Branches	Current Applications

Done

Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

North Carolina General Assembly
November 21, 2011

Joseph A. Smith, Jr.
north carolina
COMMISSIONER OF BANKS

EXHIBIT # 2

Objectives of Modernization the Banking Law

- Ensures that banking organizations have all of the tools necessary to compete effectively in a financial services marketplace that is now global in scope and driven by technology.
- Avoids duplication with federal law and maintains NC's reputation as among the most progressive banking states in America
- Access to capital markets and the amounts/types of capital a bank must maintain has changed substantially over the years. Reform of our banking law reduces the burden of regulatory compliance for these banks and facilitates their raising of capital in a way that is consistent with the public interest.

National Structure of Financial Institutions

		Total Assets in thousands
National	1,349	8,583,956,082
State	5,064	3,782,818,212
Total Commercial Banks	6,413	12,149,337,221
Federal	649	909,835,146
State	451	324,205,682
Total Savings Institutions	1,090	1,253,516,175
Federal	4,531	515,634,072
State	2,855	439,116,196
Total Credit Unions	7,386	954,750,268

Source: FDIC . NCUA as of 6/30/2011

Enumerated Consumer Laws: §1002(12) Dodd-Frank Act

Except as otherwise specifically provided in section 1029, subtitle G or subtitle H, the term "enumerated consumer laws" means—

(A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);

(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act;

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(G) the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.);

(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)–(f));

(J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802– 6809) except for section 505 as it applies to section 501(b);

(K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(O) the Truth in Lending Act (15 U.S.C. 1601 et seq.);

(P) the Truth in Savings Act (12 U.S.C. 4301 et seq.);

(Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8);

(R) and the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

Source: FDIC . NCUA as of 6/30/2011

Industry Consolidation

Bank Industry Information

Year	# of banks	Total assets (billions of dollars)	Total assets - 5 largest (billions of dollars)	Top 5 assets as a share of nominal GDP	Top 5 assets as a share of total banking industry assets
1913	21,484	$ 15.18	$ 0.98	2.6%	6%
1980	14,421	$ 1,391	$ 410	14%	29%
2010	6,526	$ 16,100	$ 8,469	57%	53%

Note: assets for 1913 are for banks, while assets for 1980 and 2010 are for bank holding companies. For 1913, the top 5 bank assets are as a share of estimated GNP.

Sources: Hoenig, FRB Kansas City

Structure of NC Financial Institutions

Banks with NC HQ		Total Deposits in millions
National	4	136,956
State	67	86,391
Total Commercial Banks	71	223,347
Federal	12	3,783
State	16	2,975
Total Savings Institutions	28	6,758
Federal	47	7,816
State	49	23,345
Total Credit Unions	96	31,161

Source: FDIC . NCUA as of 6/30/2011

NCCOB Regulated Entities

NCCOB Regulated Institutions	Number of Institutions
Commercial Banks	65 with 3,273 Branches
Savings Banks	15 with 54 branches
Savings and Loan Assn.	1
State Trust Companies	8
Bank Holding Companies	47 Regulated, 59 Registered
Consumer Finance Companies	80 with 407 branches
Mortgage Companies	1,315 with 718 branches
Mortgage Loan Originators	6,371
Refund Anticipation Loan Facilitators	584 with 1,337 branches
Check Cashers	325 with 1,511 locations
Money Transmitters	75
Reverse Mortgage Lenders	59

As of 10/31/2011

Timeline of NC Banking Law

- 1921 - North Carolina Banking laws were first codified
- 1931 - Substantially rewritten in response to Depression Era changes
- Only been amended from time to time in response to specific needs, such as:
  - 1933, 1989, requiring federal deposit insurance
  - 1956, 1991, 2001, regulation of bank holding companies
  - 1991, regulation of international Banking
  - 1995, 1997, regulation of interstate banking and branching

Proposed Draft Changes: Article 1

- Replaces Article 1 of current law.
- Replacement of definitions that reflect the accounting and supervisory capital restrictions of the current law with definitions relating to capital adequacy that reflect the "prompt corrective action" categories that are the real and effective measures under current law.
- Adding provisions relating to a bank's capitalization that are consistent with the Business Corporation Act.
- Including definitions that describe the various banking organizations affected by the statute and their federal and state supervisory and regulatory agencies.
- Adding definitions that reflect the inclusion of interstate banking.

Proposed Draft Changes: Article 2

- Replaces portions of Article 8 of the current law.
- The structure and governance of the Commission and Commissioner, which have served this State well for 80 years, remain intact.
- The proposal seeks to establish rule-making, hearing and official records provisions that are applicable to all of the statutes administered by the Commission and the Commissioner, not just the banking law.
- Provisions of the current Article 8 that deal with bank supervisory activities have been moved to Article 8 of the proposed statute.

Proposed Draft Changes: Article 3

Contains the provisions governing the organization of a new bank. It replaces Article 2 of the current statute. The proposal attempts to simplify and clarify the role of the Commission and the Commissioner in the organization of new banks. Changes are not intended to materially change the process or impede organization of banks.

Proposed Draft Changes: Article 4

- Contains provisions regarding the governance of banks. The proposed Article replaces Article 5 and Article 7 of current law.
- Repeal of the provision of current law that authorizes assessment of shareholders of banks whose capital is impaired.
- Liberalizes the director qualification requirements of current law by removing residency and investment requirements.
- Adds a new provision to the banking law that makes a review of board composition, structure and conduct a factor in its examinations of the bank and its management.

Proposed Draft Changes: Article 5

Contains provisions regarding bank powers and investments, including investments in subsidiaries. The proposed Article replaces Article 6 of current law. The proposal carries forward the provisions of existing law and attempts to conform them to federal law, particularly the Gramm-Leach-Bliley Act.

Proposed Draft Changes: Article 6

- Addresses bank operations.
- *Lending restrictions; loans to one customer.* This provision has been amended to conform to the requirements of Section 611 of the Dodd-Frank Act.
- *Accounts.* The proposal contains provisions regarding bank accounts, replacing current Article 12. The proposal carries forward the General Assembly's recent revision of the provision on payable on death accounts.
- *Branching*. The proposal seeks to cover both branching by banks (North Carolina and out-of-state banks), within North Carolina and interstate. It also replaces the concept of a "limited service facility" with that of a "non-branch bank business office." These provisions replace N.C.G.S. § 53-62 and Articles 17 and 17B.

Proposed Draft Changes: Article 7 & 8

- Article 7 covers mergers, acquisitions and other control transactions. It is intended to replace current N.C.G.S. §§ 53-12 – 53-17.2 and to incorporate provisions regarding interstate transactions currently contained in Articles 17, 17B and 18 of Chapter 53.
- Article 8 authorizes the supervision of North Carolina banks by the Commissioner and OCOB. It replaces portions of Article 8 and all of Articles 9 and 10 of the current law. The proposal carries forward many provisions of prior law, updating supervisory enforcement powers to apply the proposed new capital provisions.

Proposed Draft Changes: Article 9 & 10

- Article 9 authorizes voluntary liquidations of banks and involuntary liquidation by the Commissioner in cases of a distressed bank. It replaces Articles 3 and 4 and part of Article 13.
- Article 10 authorizes supervision of bank holding companies. It is intended to replace Article 18 of current law.

What modernization doesn't do...

- Does not revise or repeal Article 11 (Industrial Banks) or 18A (International Banking) of the current law.
- Does not revise Chapters 54B (Savings and Loan Associations) or 54C (Savings Banks).

Questions or Comments

EXHIBIT #3

First Draft of Proposed Revision of North Carolina Banking Law
November 9, 2011

Chapter 53C.

Banks and Banking.

(Numbering convention 53C-1-1 for Article 1, section 1; 53C-2-1 for Article 2, section 1.)

Article 1. General Provisions.

1. Title.
2. Scope and applicability of chapter.
3. Existing banks; prohibitions; injunctions.
4. Definitions and application of terms.
5. Severability.

Article 2. Commission and Commissioner

1. The Commission.
2. The Commissioner.
3. The Office of the Commissioner of Banks.
4. Administration of the Office of Commissioner of Banks.
5. Rulemaking.
6. Hearings and appeals.
7. Official records.

Article 3. Organization of a Bank.

1. Application to organize a bank.
2. Permission to organize a bank.
3. Articles of incorporation of a proposed bank.
4. Commissioner's approval of charter issuance.
5. Notice; public hearing.
6. Commission decision.
7. Issuance of charter.

Article 4. Governance of Banks.

1. Banks – form of organization.
2. Banks controlled by boards of directors.
3. Committees of boards of directors.
4. Minutes of meetings of directors and committees.
5. Qualifications of bank directors.
6. Liability of directors.
7. Directors may declare distributions.
8. Officers and employees shall give bond.
9. Affiliate transactions.

10. Examination of board composition, structure and conduct.
11. Reserve fund.
12. Compliance review committee.

Article 5. Powers of Banks.

1. Powers.
2. Investment authority.

Article 6. Bank Operations.

1. Loans and extensions of credit.
2. Deposits.
3. Securing deposits.
4. Minors.
5. Trust accounts; limited documentation required; certification of trust.
6. Joint accounts.
7. Payable on death (POD) accounts.
8. Personal agency accounts.
9. Accounts opened by adults for minors.
10. Payment of balance of deceased person or person under disability to personal representative or guardian.
11. Powers of attorney; notice of revocation; payment after notice.
12. Account statement from bank to depositor deemed final adjustment if not objected to within one year; account statements to be rendered annually or on request.
13. Safe deposit boxes; unpaid rentals; procedure; escheats.
14. Reproduction and retention of records; admissibility of copies in evidence; disposition of originals; record production generally.
15. Establishment of branches.
16. Change of location of a branch or principal office.
17. Branch closings.
18. Nonbranch bank business offices.
19. Operations; suspension.
20. Interstate branching.

Article 7. Control Transactions; Combinations; Conversions; Interstate Branching.

Part 1. Change in Control.

101. Control transactions.
102. Application regarding a control transaction.
103. Public notice.
104. Actions on control transaction applications.
105. Appeal.

Part 2. Combinations.

201. Combination authority.
202. Combination application and investigation.
203. Decision on application.
204. Interim banks.
205. Surviving depository institution.
206. Combination with federally chartered institution.
207. Combination with a subsidiary.
208. Fiduciary powers and liabilities of combining banks.
209. Appeal.

Part 3. Charter Conversions.

301. Conversion to a North Carolina bank charter.
302. Appeal.
303. Conversion by North Carolina bank.

Article 8. Bank Supervision.

1. Commissioner has authority to supervise banks.
2. Assessments and fees.
3. Reports required of banks.
4. Examination by Commissioner.
5. Examination of nonbanking affiliates.
6. Access to books and records; right to issue subpoenas, administer oaths, and examine witnesses.
7. Examiner making false report.
8. Examiner disclosing confidential information.
9. Loans or gratuities forbidden.
10. Willfully and maliciously making derogatory reports.
11. Missappropriation, embezzlement of funds, etc.
12. Enforcement of the banking laws.
13. Immediate action orders.
14. Supervisory control.
15. Removal of directors, officers, and employees.
16. Emergency powers.
17. Interstate regulatory agreements.

Article 9. Supervisory Liquidation; Voluntary Dissolution and Liquidation.

Part 1. General Provisions.

101. Supervisory combinations.
102. Distributions; assignments restricted.
103. Cancellation of charter.

Part 2. Voluntary Dissolution and Liquidation.

201. Voluntary dissolution prior to receipt of charter.
202. Voluntary dissolution.
203. Voluntary dissolution and liquidation procedures.

Part 3. Receivership; Involuntary Dissolution.

301. Receivership.

Part 4. Provisions Relating to Any Dissolution or Receivership.

401. Statute relating to receivers applicable to insolvent banks.
402. Storage and destruction of records.
403. Trust terminated on insolvency of trustee bank.
404. Petition for new trustee; service upon parties interested.
405. Appointment of substitute trustee where no objection made.
406. Hearing where objection made; appeal from order.
407. Registration of final order.
408. Petition and order applicable to all instruments involved.
409. Additional remedy.

Article 10. Holding Companies.

1. Holding companies.
2. Holding company control transaction.
3. Actions on control transaction and combination applications.
4. Appeal.
5. Cease and desist order.
6. Other control changes.

Chapter 53C.

Banks and Banking.

Article 1.

General Provisions.

§ 53C-1-1. Title.

This Chapter shall be known and may be cited as "Banks and Banking."

§ 53C-1-2. Scope and applicability of chapter.

(a) This Chapter, unless the context otherwise specifies, 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 3 of this Chapter;

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

(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 Chapter 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 Chapter was enacted as though the amendment or repeal had not occurred.

(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 or created under the laws of this State.

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

(a) After the effective date of this Chapter, 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 Chapter may continue operation under their existing organizational documents, but shall be subject to the 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 unless established as a depository 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

(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.

(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 subsections (a) and (b).

§ 53C-1-4. Definitions and application of terms.

Unless the context otherwise requires, 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 through a purchase of or share exchange for shares; 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; 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 or holding company for such common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

(3) Affiliate. – A person that, directly or indirectly, controls, is controlled by, or is under common control with another person. Each member of a group of persons acting in concert shall be deemed an affiliate of the group.

(4) Bank. – Any corporation, other than a credit union, savings institution, or trust company,that is organized under the laws of this State and is engaged in the business of receiving deposits (other than trust funds), paying monies and making loans.

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

(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.

(7) Bank Supervisory Agency. – "Bank supervisory agency" means:

(i) The CFPB, FDIC, Federal Reserve Board, OCC, and any successor to these agencies;

(ii) Any agency of another State with primary responsibility for chartering and supervising depository institutions organized under the laws of that State; and

(iii)Any agency of a sovereign nation with primary responsibility for chartering and supervising depository institutions organized under 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 nonbranch 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 "Tier 1 capital", as such term is defined in Part 325 of the Regulations of the FDIC or any successor regulation of the FDIC; provided, that if the term "Tier 1 capital" is replaced by a term including substantially the same components as "Tier 1 capital", the term "capital" as used in this Chapter shall mean an amount equal to 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 50 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 3 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. 53C-2-1.

(18) Commissioner. – The Commissioner of Banks provided for in G.S. 53C-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 10 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 nonbranch bank business office to a branch.

(24) Deposit. – A "deposit" as defined in Section 3(l) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(l).

(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 in G.S. 53C-2-3.

(28) Distribution. – With respect to a bank, "distribution" shall have 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; 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.

(35) Federal Savings Association. – A federal savings association or federal savings bank chartered under Section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464.

(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 or that controls a company that directly or indirectly controls a depository institution.

(39) Immediate Family. – An individual's spouse, father, mother, children, brothers, sisters, and grandchildren; the father, mother, brothers, and sisters of individual's spouse; and the spouse of individual's child, brother, or sister.

(40) Inadequate Capital. – Inadequate capital means an amount of capital equal to 75% or more, but less than 100%, of required capital.

(40) Individual. – A human being.

(41) Insufficient Capital. – Insufficient capital means an amount of capital less than 75% of required capital.

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

(43) National Bank. – A banking association organized under Section 21 of Title 12 of the United States Code (12 U.S.C. 21).

(44) Nonbranch 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, or a depository institution established under the laws of another State 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 nonbranch bank business office shall not be deemed to be a taking of deposits. Nonbranch bank business offices include loan production offices, mortgage loan offices, and insurance agency offices, or a combination thereof.

(45) North Carolina Financial Institution. – A bank, savings institution, or trust company organized under the laws of this State.

(46) OCOB. – The Office of the Commissioner of Banks provided for in G.S. 53C-2-3.

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

(48) 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.

(49) 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.

(50) 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.

(51) 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.

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

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

(54) Practical Banker. – An individual who at the time of appointment to the Commission, and at all times thereafter, is, or has been during the five years preceding the appointment, a president, chief executive officer, or director of a North Carolina financial institution.

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

(56) Public Member. – A member of the Commission who is not a practical banker.

(57) Public Notice. – Notice to the public by (a) 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 and (b) 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.

(58) 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).

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

(60) Required capital. – Required capital means:

(i) 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

(ii) 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.

(61) 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.

(62) Shareholder. – Any person that has an equity ownership interest in a bank or holding company and is entitled to vote such interest under the bank's or holding company's organizational documents.

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

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

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

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

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

(68) Trust Company. – A company that is formed primarily for the purpose of taking, executing, and administering trusts, and which is not a depository institution.

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

(70) Voting Securities. – "Voting Securities" means:

(i) Any equity ownership interest in a company that entitles the holder to vote on any matter presented to holders of equity ownership interests in the company for a vote; and

(ii) Any equity interest, right to acquire an equity ownership interest, debt instrument or other similar interest or instrument convertible into an equity ownership interest that entitles the holder to vote on any matter presented to holders of equity ownership interests in the company for a vote other than any such equity ownership interest which may be converted into a voting equity ownership interest.

§ 53C-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 2.

Commission and Commissioner

§ 53C-2-1. The Commission.

(a) The Commission, which has heretofore been created, shall consist of the State Treasurer, who shall serve as an *ex officio* member, 19 members appointed by the Governor, the two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon 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 five practical bankers and 11 public members of 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 public member. 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) 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, the State Government Ethics Act, 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 may review the exercise by the Commissioner of all powers, duties, and functions vested in or exercised by the Commissioner under the laws of this State. The Commission shall provide, by rules, to be approved in accordance with Article 2A of Chapter 150B of the General Statutes, the Administrative Procedure Act, for hearings for the

Commission upon any matter which may arise in connection with the administration of the banking laws by the Commissioner.

§ 53C-2-2. The Commissioner.

(a) On or about April 1, 2011, the quadrenially 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 shall have 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.

(c) The Commissioner shall have the power of 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 is empowered to 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 him for administration or in connection with any bank or the rights, liabilities, property or assets thereof, under his supervision; but 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.Provided further, 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.

§ 53C-2-3. The Office of the Commissioner of Banks.

(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 remove at his or her discretion any deputy commissioner.

(b) The Commissioner shall appoint, with the approval of the Governor, and may remove at his or her 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(5) only as it applies to hours and days of work, vacation and sick leave; G.S. 126(6) only as it applies to promotion and transfer; G.S. 126(10) only as it applied 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 on his staff 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 this attorney.

§ 53C-2-4. Administration of the Office of the Commissioner of Banks.

(a) As authorized in Chapters 53, 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. However, the OCOB may not levy assessments, fees, or other charges except as expressly provided by statute. The Commissioner is authorized, in the exercise of reasonable discretion, to establish the time, place, and method for the payment of the assessments, fees, charges and costs.

(b) Not less than 30 days prior to the commencement of each fiscal year, 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 it at the meeting.

§ 53C-2-5. Rulemaking.

(a) The Commissioner, subject to review and approval by the Commission, is hereby authorized, empowered and directed to make all necessary rules with respect to the establishment, operation, conduct, and termination of any and all activities and businesses that are subject to licensing, regulation, supervision, or examination by the Commissioner under this Chapter.

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

§ 53C-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) The Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of all powers, duties, and functions now vested in or exercised by the Commissioner under the banking laws of this State. 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 chairman of the Commission may appoint an appellate review panel of not less than five 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.

§ 53C-2-7. Official records.

(a) The Commissioner shall keep a record in the OCOB of the Commissioner's official acts, rulings, and transactions which, except as hereinafter 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 the names or other personal information of any customers of any person or revealing the collateral given by any such customers in connection with an extension of credit; 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 him or her 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 company, holding company, or any other firm or 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 a North Carolina financial 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 of 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 regulation;

(11) Records of information and reports submitted by any depository institution or trust companies, or its affiliates, holding company or subsidiaries, or any other firm or 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 OCOB;

(13) Any record which would disclose any information set forth in any of the confidential records referred to in subdivisions (1) through (12).

(c) For purposes of this section, "any firm or person subject to the Commissioner's jurisdiction" includes without limitation any person who is licensed or registered or should be licensed or registered under Chapter 53.

(d) Notwithstanding the provisions of subsection (b), 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) 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.

Article 3.

Organization of a Bank.

§ 53C-3-1. Application to organize a bank.

(a) The applicant shall file an application for permission to organize a bank and for a charter with the Commissioner. The application shall be in the form required by the Commissioner, and shall contain such information as the Commissioner requires, set forth in sufficient detail to enable the Commissioner to evaluate the applicant's satisfaction of the criteria set forth in G.S. 53C-3-4. The applicant shall pay a non-refundable application fee in the amount of $10,000 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 such examination. An applicant's failure to furnish all required information or to pay the required fee within 30 days after filing the application may be considered an abandonment of the application.

§ 53C-3-2. Permission to organize a bank.

(a) With the approval of the Commissioner, the organizers may file articles of incorporation for the proposed bank with the Secretary of State. The Commissioner shall authorize the continuation of the organization of the proposed bank if the Commissioner is satisfied that:

(1) The application is complete;

(2) The Commissioner's examination as provided for in G.S. 53C-3-1 indicates that the requirements for the issuance of a charter to the applicant are reasonably probable of satisfaction; and

(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 company operating in this State.

(b) If the Commissioner approves the continuation of 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 the proposed bank a charter:

(1) The proposed bank shall not transact any business except such as is incidental and necessary to its organization and the application for a charter;

(2) All funds paid for shares of the proposed bank shall be placed in escrow under an agreement, and with an escrow agent, approved by the Commissioner; and

(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.

(d) A proposed bank is subject to the jurisdiction of the Commissioner.

§ 53C-3-3. Articles of incorporation of a proposed bank.

(a) The articles of incorporation of a proposed bank shall be signed and acknowledged by or on behalf of an organizer and shall contain:

(1) The information required to be set forth in articles of incorporation under Chapter 55;

(2) Any provision consistent with Chapter 55 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; and

(3) Any provision the Commissioner requires or authorizes as a substitute for a provision that otherwise would be required by Chapter 55.

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

§ 53C-3-4. Commissioner's approval of charter issuance.

(a) The Commissioner may approve a charter for a proposed bank only when the Commissioner has determined that all the following requirements have been satisfied or are reasonably probable to be satisfied within a reasonable period of time specified by the Commissioner in the order of approval:

(1) The proposed bank has solicited or will solicit subscriptions for purchases of shares sufficient to provide an amount of required capital satisfactory to the Commissioner for the commencement of the business of banking;

(2) All prior public solicitations for purchases of shares, and all future solicitations will be, solicited with appropriate disclosure, taking into account all the circumstances of the public solicitation, including a prominent statement in any solicitation document to the effect that the solicitation has not been approved by the Commissioner or the Commission and that a representation to the contrary is a criminal offense;

(3) All payments for purchases of shares are made in legal tender of the United States;

(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 five percent of the voting securities of the proposed bank will command the confidence of the market that the bank intends to serve;

(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; and

(9) If the proposed bank intends to do "trust business", as that term is defined in Chapter 53, it appears that trust powers should be granted based on consideration of the various factors set forth in Chapter 53 for considering applications and setting capital for a trust company.

(b) The Commissioner's determination that the requirements described in subsection (a) are reasonably probable of satisfaction may be based on partial satisfaction of the requirements at a level set by the Commissioner as a prerequisite for approval of the charter, and also may be based on presentation of a plan for the full satisfaction of the requirements.

(c) If it appears to the Commissioner that the proposed bank has satisfied or is reasonably probable to satisfy the requirements for issuance of a charter, the Commissioner shall issue an order approving the application for a charter and such order shall be submitted to the Commission for its review at a public hearing.

(d) If it appears to the Commissioner that the proposed bank has not satisfied and is not reasonably probable of satisfying the requirements for issuance of a charter, the Commissioner shall issue an order denying approval of the application. The applicant may, within 10 days of issuance of the order, give notice of appeal of this decision to the Commission pursuant to G.S. 53C-2-6.

§ 53C-3-5. Notice; public hearing.

(a) Not less than 30 days before the public hearing of the Commission to review the Commissioner's approval of an application, the applicant shall cause to be published a public notice. 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; and

(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 the Commissioner may wish to give or be called upon to give. To the extent that the Commission deems the information and testimony relevant to its review of the Commissioner's order, the Commission shall receive information and hear testimony from the organizers, and shall hear from any other interested persons.

§ 53C-3-6. Commission decision.

(a) The Commission shall consider the findings and order of the Commissioner, oral testimony, and any other information and evidence, either written or oral, that comes before it at the public hearing to review the Commissioner's approval of an application for a charter. The Commission may adjourn and reconvene the public hearing in unusual circumstances. The Commission shall affirm or reverse the Commissioner's order. The Commission may adopt the Commissioner's recommendation with respect to conditions for issuance of a charter, or it may modify the recommended conditions. The Commission shall render its decision within 30 days after the completion of the public hearing, unless unusual circumstances require postponement of the decision. The Commission's review shall be limited to a determination of whether the criteria set forth in G.S. 53C-3-4 have been met and whether the provisions of this Article have been followed.

(b) If the Commission denies an application for a charter or if the Commission approves an application with conditions not set forth in the Commissioner's approval, the applicant may appeal such denial or approval containing such conditions as provided in G.S. 53C-2-6.

§ 53C-3-7. Issuance of charter.

(a) A proposed bank shall not engage in business, except as allowed under G.S. 53C-3-2(c)(1), until it receives a charter issued by the Commissioner. The Commissioner shall not issue the charter until the Commissioner is satisfied that the proposed bank:

(1) Has received cash 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) Has elected the proposed officers and directors named in the application or other officers and directors approved by the Commissioner;

(3) Has secured deposit insurance from the FDIC;

(4) Has complied with all requirements of the Commission's order approving the application for a charter; and

(5) In the reasonable discretion of the Commissioner upon a pre-opening examination, appears to be ready to commence the business of banking.

(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. 53C-2-12.

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

(1) The Commissioner does not recommend the issuance of a charter;

(2) The Commission denies approval of a charter; or

(3) The charter is revoked pursuant to G.S. 53C-3-7(c) or other applicable law.

Article 4.

Governance of Banks.

53C-4-1. Banks – form of organization.

(a) A bank shall be formed as, and shall maintain the form of, a corporation formed under the laws of this State.

(b) The provisions contained in Chapter 55 of the General Statutes shall apply to banks except where provisions of this Chapter provide differently, or where the Commissioner determines that any provision of Chapter 55 is inconsistent with the business of banking or the safety and soundness of banks.

53C-4-2. Banks controlled by boards of directors.

(a) The corporate powers of a bank shall be exercised by or under the authority of, and the business and affairs of the bank shall be managed by or under the direction of, its board of directors.

(b) A bank's board of directors shall consist of not 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 bank may appoint advisory 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.

53C-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 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 (b), 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.

53C-4-4. Minutes of meetings of directors and committees.

Minutes shall be recorded and retained for all meetings of the board of directors and board committees and kept on file at the bank. The minutes shall show a record of actions taken.

53C-4-5. Qualifications of bank directors.

(a) At least three-fourths of the directors of a bank shall be citizens of the United States of America.

(b) A director must satisfy eligibility requirements for bank directors imposed by federal law, including Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. 1829(a).

(c) A director must consent to service of process in Wake County, North Carolina prior to taking office.

53C-4-6. Liability of directors.

Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of such bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its stockholders or any other person shall have sustained in consequence of such violation.

53C-4-7. Directors may declare distributions.

Provided a bank does not make distributions that reduce its capital below its applicable required capital, the board of directors of a bank may declare such distributions as it deems proper.

53C-4-8. Officers and employees shall give bond.

(a) A bank shall require security in the form of a bond for the fidelity and faithful performance of duties by its officers, employees and agents. 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.

53C-4-9. Affiliate transactions.

A bank may extend credit to, and engage in transactions with, its affiliates, directors, executive officers, principal shareholders, and their respective immediate family members only to the extent permitted by, and subject to such restrictions and conditions as are imposed by, applicable State and federal laws and regulations.

§53C-4-10. Examination of Board Composition, Structure and Conduct.

As part of its examinations of a bank , OCOB shall assess the competence, composition, structure and conduct of such bank's board of directors, including, without limiting the generality of the foregoing: (i) number of directors; (ii) independence of directors; (iii) committee structure of the board; and (iv) education and training of board members. In making such assessment, OCOB shall take into consideration the size, complexity and business operations of the bank as well as publicly issued regulations and guidance of the Commissioner and the bank's primary federal supervisor. Such assessment shall be part of the overall assessment of the bank's management and of whether the bank is operating in a safe and sound manner.

53C-4-11. Reserve Fund.

(a) Each bank shall maintain a reserve fund as follows:

(1) If the bank is a member of the federal reserve system, it shall maintain a reserve fund in accordance with the requirements of the Federal Reserve Board; and

(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 such banks.

(c) The Commissioner shall include in establishing the required level of a reserve fund the following types of liquid reserves:

(1) Cash on hand, which shall include both lawful money of the United States 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 53C, in the event the reserve fund of a bank falls below the level required under subsection (b) of this section, the Commissioner may require such bank to:

(1) Discontinue the making of 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 10 days after the Commissioner directs it to do so, the Commissioner may take such actions under Article 8 of this Chapter 53C as the Commissioner deems necessary.

53C-4-12. Compliance review committee.

(a) A bank, including its holding company, may establish a compliance review committee to test, review, or evaluate the bank's conduct, transactions, or potential transactions for the purpose of monitoring and improving or enforcing compliance with:

(1) A statutory or regulatory requirement, including requirements arising from examination or actions of the Commissioner taken under Chapter;

(2) Financial reporting to a governmental agency;

(3) The policies and procedures of the bank, its holding company or subsidiaries of the bank or the holding company; or

(4) Safe, sound, and fair lending practices.

(b) Except as provided by subsection (c):

(1) A compliance review document (that is any document prepared for or created by the compliance review committee) is confidential and is not discoverable or admissible in evidence in a civil action nor shall a compliance review document be subject to inspection and copying by a shareholder of the bank or its holding company pursuant to Article 16 of Chapter 55 or otherwise;

(2) An individual serving on a compliance review committee or acting under the direction of a compliance review committee may not be required to testify in a civil action as to:

a. The contents or conclusions of a compliance review document; or

b. An action taken or discussions conducted by or on behalf of a compliance review committee; and

(3) A compliance review document or an action taken or discussion conducted by or on behalf of a compliance review committee that is disclosed to a governmental agency remains confidential and is not discoverable or admissible in a civil action.

(c) A bank shall have the power, at its option, to waive the confidentiality protection provided in subsection (b)(1) for a compliance review document. If the protection is waived and except as otherwise provided in G.S. 53C-2-7 and applicable federal law and regulations, the compliance review document shall be discoverable or admissible in evidence in a civil action and shall be subject to inspection and copying pursuant to Article 16 of Chapter 55.

(d) This section does not limit the discovery or admissibility in a civil action of a document that is not a compliance review document.

(e) A "compliance review document" shall mean records subject to the provisions of G.S. 53C-2-7 and records of bank supervisory agencies, in each case in the possession of the bank, and records of the bank obtained, created or maintained for any of the reasons set forth in subsection (a) of this section.

Article 5.

Powers of Banks.

§ 53C-5-1. Powers.

(a) Except as otherwise specifically provided by this Chapter, a bank shall have the powers conferred upon business corporations organized under the laws of this State. In addition, 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 interests in a loan;

(5) Make any investments authorized by G.S. 53C-5-2 or any other section of this Chapter;

(6) Through information technology systems, processes and capabilities, provide, deliver or otherwise make available banking services and products; enhance the effectiveness or efficiency of its operations; and, provide other benefits to its customers; and, additionally, 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 the trust business.; and

(5) 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) (1) 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.

(2) 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.

(3) For the purposes 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) (1) 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:

a. The new activity is one described in subsections (a) or (b) of this section;

b. The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent safety and soundness examination; and

c. No notice or application to engage in the new activity is required to be filed by the bank with any federal banking regulator.

(2) A bank permitted to commence a new activity without prior application and approval pursuant to this subsection 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 is to be conducted.

§ 53C-5-2. Investment authority.

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

(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 10 percent of the required capital of the bank making the investment; and

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 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 equal in market value to the amount of such deposits, and such bonds shall be valid security for all loans and deposits to the same extent as are any obligations of the United States;

(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; or

(3) DPC subsidiary.

(c) (1) An investment by a bank or a bank subsidiary pursuant to subsections (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.

(2) No investment shall be made by a bank or a bank subsidiary pursuant to subsections (b) or (d) hereof unless (A) such investment is approved by the board of directors of the bank; (B) the bank has carefully investigated the business or activity in which the subsidiary established by such investment will engage; (C) the bank has established the risk management and financial controls necessary to engage in such business or activity in a safe and sound manner; and (D) the bank has, and, following the making of such investment and the application of the provisions of subsection (c)(1), 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) (1) The prior notice requirement of subsection (e) shall not apply if:

a. The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent examination; and

b. Each activity of the subsidiary in which the investment is to be made is either:

i. 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

ii. One for which no prior notice or application for approval to any federal bank supervisory authority is required.

(2) 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, or national bank subsidiary which engages in an activity subject to licensure and/or regulation under the laws of this State, other than this Chapter 53C, 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 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 corporation organized under the laws of the United States for the purposes of insuring to depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors.

(i) (1) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:

a. As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith; or

b. 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.

(2) All real property referred to in (b) 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.

(k) 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 10% percent of its required Capital.



Article 6.

Bank Operations.

§ 53C-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. However:

(1) When a bank exercises its security interest in shares of the bank or its holding company, it shall dispose of all of such 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" shall have the meaning set forth in 12 C.F.R. Part 221, promulgated by the Federal Reserve Board.

(b) (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 firm the liabilities of the several members thereof, outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this subsection (b), 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 paragraph (i) of this subsection (b).

(3) The discount of bills of exchange drawn in good faith against actual existing values, the discount of solvent trade acceptances or other solvent commercial or business paper actually owned by the person negotiating the same, loans or extensions of credit secured by a segregated deposit account in the lending bank, the purchase of bankers acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other depository institutions, and the purchase of any notes and the making of any loans, secured by not less than a like face amount of bonds of the United States, or an agency of the United States, or other obligations guaranteed by the United States

Government, or State of North Carolina or certificates of indebtedness of the United States, or agency thereof, or other obligations guaranteed by the United States Government, shall not be considered as extensions of credit within the meaning of this section: Provided, however, that the limitations of this section shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same, made by any federal reserve bank or by the United States or any department, board, bureau, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States.

(4) For purposes of this subsection (b), the following definitions and conditions apply:

(A) the term "person" shall include an individual, or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any other form of entity not specifically listed herein; provided, however, the term "person" shall exclude (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 the purposes of this section, extensions of credit by a bank to a person shall include the bank's credit exposures to such person in derivative transactions with the bank.

(D) The term "derivative transaction" shall include 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) The term "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 that otherwise would be its loss if such 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.

The Commissioner of Banks shall monitor the lending activities of banks under this section for undue credit concentrations and inadequate risk diversification which could adversely affect the safety and soundness of such banks.

(c) 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.

§ 53C-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 it considers appropriate.

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

§ 53C-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 state government of this State or any other State, an agency or political subdivision of this State or any other State, the United States Government, an 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.

§ 53C-6-4. Minors.

(a) A bank may issue and operate a deposit account in the name of a minor or in the name of two or more individuals, one or more of whom are minors, and receive payments, pay withdrawals, accept a pledge of the account, issue automated teller machine (ATM) and debit cards, contract for overdraft protection, and act in any other manner with respect to the account on the order of the minor with like effect as if the minor were of full age and legal capacity. Any payment to or at the direction of a minor is a discharge of the bank to the extent thereof. The account shall be held for the exclusive right and benefit of the minor and any joint owners, free from the control of all other persons except creditors. A minor who obtains a deposit account from a bank under this subsection, whether individually or together with others, is bound by the terms of the deposit account agreement to the same extent as if the minor were of full age and legal capacity.

(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 withdrawal the funds on deposit and the bank is discharged to the extent of any withdrawal. If a minor with a safe deposit box dies, the provisions of G.S. 28A-15-13 shall control the opening, inventory, and release of contents of the safe deposit box.

(d) This section shall not affect the law governing transactions with minors in cases outside the scope of this section, including transactions that constitute an extension of credit to the minor.

§ 53C-6-5. Trust accounts; limited documentation required; certification of trust.

(a) A bank may accept and administer a deposit account and lease a safe deposit box:

(1) To one or more persons purporting to act as trustee or trustees for a trust; and

(2) For which further notice of the existence and terms of the trust is not given in writing to the bank.

(b) For any deposit account that is opened with any bank or any safe deposit box leased from any bank by one or more persons purporting to act as trustee or trustees pursuant to a written trust agreement, a trustee may provide the bank with a certification of trust, as described in Chapter 36C of the General Statutes, to evidence the trust relationship.

(c) Unless specifically otherwise agreed to by the bank in writing, the action of any one or more of the named trustees, acting alone and without the knowledge, consent or joinder of any other trustee or trustees, shall be binding upon the trust, all other trustees, and all trust beneficiaries.

(d) Upon the death, resignation, dissolution or adjudication of incompetence of all named trustees and successor trustees noted on a certification of trust, a bank may, regardless of its knowledge of competing claims, withhold disposition of any funds on deposit in the account and freeze any safe deposit box leased by the trustee or trustees until receipt of one of the following:

(1) An order by a court of competent jurisdiction directing the disposition of funds and any safe deposit box;

(2) A newly executed certification of trust from a person acting or purporting to act as a newly appointed successor trustee under the same trust; or

(3) Other documentation that establishes to the satisfaction of the bank the manner in which the funds and any safe deposit box are to be administered or distributed.

(e) Nothing in this section shall obligate a bank to establish a deposit account for, or lease a safe deposit box to, a trustee who refuses to furnish the bank with either a copy of a written trust agreement or a certification of trust.



§ 53C-6-6. Joint accounts.

(a) Any two or more individuals may establish a joint deposit account by written contract. The deposit account shall be held for them as joint tenants. The account may also be held pursuant to G.S. 41-2.1 and have the incidents set forth in that section. However, 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. 53C-6-6

We understand that by establishing a joint account under the provisions of North Carolina General Statute § 53C-6-6 that:

1. The bank (or name of institution) may pay the money in the account to, or on the order of, any person named as a joint holder of the account unless we have agreed with the bank that withdrawals require more than one signature; and

2. Upon the death of one joint owner, the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

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

(h) Any joint tenant may terminate a joint account.

(i) Where a joint account is held by two or more individuals and a joint tenant does not wish for the account to be terminated but requests to be removed from the account, the bank shall remove the joint tenant from the account. The joint account shall continue in the names of the remaining tenant or tenants. Any joint tenant who requested to be removed from an account remains liable for any debts incurred in connection with the joint account during the period in which the individual was a named joint tenant.

(j) Any joint account created under the provisions of G.S. 53-146.1 as it existed prior to 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.

§ 53C-6-7. Payable on death accounts.

(a) If any natural person or natural persons 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 or natural persons as owner or owners 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. 53-146.1.

(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 or beneficiaries are natural persons, 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 such owner shall be a total discharge of the bank's obligation as to the amount paid. 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. 53-146.1, 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. 53-146.1, 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 or natural persons 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 or persons establishing the account:

BANK (or name of institution)
PAYABLE ON DEATH ACCOUNT
G.S. 53-146.2A

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 53-146.2A 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 such accounts, nor any withdrawal, payment, or change of beneficiary, shall affect the nature of such accounts 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 laws relating to estate taxes.

§ 53C-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; and

(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. 53C-6-8

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

1. Sign checks drawn on the account; and

2. Make deposits into the account.

The undersigned also understands 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) terminates.

(d) The written contract referred to in subsection (a) shall provide that the principal may elect to extend the authority of the agent set out in subsection (a) 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 so 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 principal or the duly appointed attorney-in-fact for the incapacitated or incompetent principal, acting pursuant to a durable power of attorney (as defined in G.S. 32A-8) which grants to the attorney-in-fact that 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 so 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) 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 a 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, however, 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.

§ 53C-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.

§ 53C-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 such 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 such payment.

§ 53C-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 10 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.

§ 53C-6-12. Account statement from bank to depositor deemed final adjustment if not objected to within one year; 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, such 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 such 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.

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

(a) If the rental due on a safe deposit box is 90 or more days 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 by the lessor bank and the lessee. If the rental is not paid within such 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 shall be delivered to the State Treasurer as abandoned property under the provisions of Chapter 116B.

(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 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.

§ 53C-6-14. Reproduction and retention of records; admissibility of copies in evidence; disposition of originals; record production generally.

(a) Any bank may cause any or all records kept by it to be recorded, copied or reproduced by any photographic, reproduction, electronic, or digital process or method, or by any other records retention technology approved by rule or order of the Commissioner, of a kind which is capable of accurately converting such records into tangible form within a reasonable time. Each such converted tangible form of a record shall also be deemed a record.

(b) Any such 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, and the bank may destroy or otherwise dispose of the original form of such record; provided, however, that a bank shall retain either the originals or convertible form of its records for such period as may be required by law or by rule or order of the Commissioner. Any bank may dispose of any original or convertible form of a record that has been retained for the period prescribed by law or by rule or order of the Commissioner for its class.

(c) Originals and converted tangible forms of records shall not be held inadmissible in any court action or proceeding on the grounds that they lack certification, identification, or authentication, and shall be received as evidence if otherwise admissible in any court or quasi-judicial proceeding if they have been identified and authenticated by the live testimony of a competent witness or if the records are accompanied by a certificate substantially in the following form:

CERTIFICATE REGARDING BANK RECORDS

1. The accompanying documents are true and correct copies of the records of *[name of bank]*. The records were made in the regular course of business of the bank at or near the time of the acts, events, or conditions they reflect.

2. The undersigned is authorized to execute this certificate.

3. This certificate is issued pursuant to G.S. 53C-6-14.

I CERTIFY, under penalty of perjury under the laws of the State of North Carolina, that the foregoing statements are true and correct.

Date: _____ _____
Signature

_____
Print or type name

Title:_____

[Notarized as required by law for an affidavit]

(d) This section supplements and does not supersede G.S. 8-45.1.

§ 53C-6-15. Establishment of branches.

(a) A bank may establish one or more branches in this State, whether *de novo* or by acquisition of existing branches of another depository institution, with the prior written approval of the Commissioner. The Commissioner's approval may be given or withheld, in the Commissioner's discretion, in accordance with the provisions of subsection (c) of this section.

(b) A bank may establish branches in another State, whether *de novo* or by acquisition of existing branches of another depository institution, in accordance with the provisions of applicable federal law and the laws of the other State, upon prior written approval of the Commissioner. The Commissioner's approval may be given or withheld, in the Commissioner's discretion, in accordance with the provisions of subsection (c) of this section.

(c) A bank seeking authority to establish a branch shall make application to the Commissioner in a form acceptable to the Commissioner.

(1) Not more than 30 days before nor 10 days after the filing of an application with the Commissioner, the applicant shall publish public notice of the filing of the application. The public notice shall contain:

a. A statement that the application has been filed with the Commissioner;

b. The physical address or location of the proposed branch, including street, city or town; and

c. 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 G.S. 53C-6-15 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 regulation or order of the Commissioner applicable to the bank.

(2) 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's deems necessary to make a decision on the application. In deciding whether to approve a branch application, the Commissioner shall take into account, but not by way of limitation, such factors as the financial condition and history of applicant, the adequacy of its capital, the applicant's future earnings prospects, the character, competency and experience of its management, the probable impact of the branch on the condition of the applicant bank and existing depository institutions in the community to be served, and the convenience and needs of the community the proposed branch is to serve.

§ 53C-6-16. 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 to reach a decision in the matter.

(b) Not more than 30 days before nor 10 days later than 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:

(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; and

(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.

§ 53C-6-17. Branch closings.

A bank may close a branch upon first providing written notice to the Commissioner and the customers of the branch at least 90 days prior to the proposed closing, such notice to include the date the branch will close. However, the consolidation of two or more branches into a single location in the same vicinity shall not be considered a closure subject to the 90-day notice requirement 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.

§ 53C-6-18. Nonbranch bank business offices.

(a) A bank may establish one or more nonbranch bank business offices.

(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 10 days from 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 a product, service or other type 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.

§ 53C-6-19. Operations; suspension.

(a) A bank, any of its branches and any of its nonbranch bank 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 such 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 Commissioner as soon as practicable.

§ 53C-6-20. Interstate Branching.

(a) To the extent permitted by federal law, out-of-State banks may establish branches in this State. An out-of-State bank desiring to establish a branch in this State, whether by *de novo* establishment or by acquisition of an existing branch of another depository institution, shall provide the Commissioner with written notification of such intent not later than the date on which the out-of-State bank makes application to its federal bank supervisory authority for approval to establish or acquire the branch.

(b) An out-of-State bank that establishes and maintains one or more branches in this State may conduct any activities at the branch or branches that are authorized under the laws of this State for banks, except to the extent the activities may be prohibited by other laws, regulations, or orders applicable to the out-of-State bank. In addition to all other rights and powers provided under this Chapter, out-of-State banks which are engaged in the business of banking in this State and each of their subsidiaries, subject to the prior approval of the Commissioner, may make any extension of credit or investment, exercise any power, and engage in any activity which they could make, exercise, or engage in if incorporated or operating as federally chartered institutions, and they shall be entitled to all rights, privileges, and protections granted or available to federally chartered institutions.

Article 7.

Control Transactions; Combinations; Conversions; Interstate Branching.

Part 1. Change in Control.

§ 53C-7-101. Control transactions.

(a) Except as this section otherwise expressly permits, a person shall not engage in a control transaction 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 the receipt of the approval of the Commissioner.

(b) The Commissioner may require a person who is obligated to file an application under this Part to appoint an agent resident in this State for service of process upon the filing of such notice or as a condition to the acceptance of such application for review. The application for approval shall be in a form required by the Commissioner and shall be accompanied by a fee of $5,000.

(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 such 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 such permission and who is identified in the application submitted for such approval, 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 or affiliate thereof first votes or directs the voting of such 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 such acquisition or transfer at least 10 days before the acquiring person first votes or directs the voting of such voting securities;

(4) Proxy solicitations by or on behalf of the bank.

(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; or

(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 such 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 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 such voting securities;

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

(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.

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

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

(1) An application in the form prescribed by the Commissioner;

(2) All filing fees required by a rule of the Commissioner; and

(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 cord of the Commissioner and subject to G.S. 53C-2-8.

§ 53C-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 10 days after the filing of the application with the Commissioner. The public notice shall contain:

(a) A statement that the application has been filed with the Commission;

(b) The name of the applicable bank and the address of its principal office; and

(c) 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.

§ 53C-7-104. Actions on control transaction applications.

(a) The Commissioner shall examine the proposed control transaction, including the character, competence, and experience of the acquiring person and its proposed management personnel, to determine whether the interests of the customers and communities served by the bank would be adversely affected by the proposed control transaction. Not later than the 60th day following receipt of a completed application for approval of a control transaction unless extraordinary circumstances require a longer period of review, the Commissioner shall approve or deny such 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 such 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 effectiveness 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; or

(6) If the acquiring person solicits votes for the approval of or consents to such 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 such 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 such holders.

(c) If an application filed under this Part is approved by the Commissioner, the control transaction may be effected. 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 such approval.

§ 53C-7-105. Appeal.

Any order of the Commissioner denying an application for approval of a control transaction may be appealed to the Commission by the person filing the application denied as provided in G.S. 53C-2-6.

Part 2. Combinations.

§ 53C-7-201. Combination authority.

With the approval of the Commissioner, a bank may combine with one or more depository institutions. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee of $5,000.

§ 53C-7-202. Combination application and investigation.

(a) A bank seeking approval of a combination shall file with the Commissioner an application for approval, copies of the agreements 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 such 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 10 days after the filing of the application with the Commissioner. The public notice shall contains:

(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 officers; and

(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. 53C-2-7(b).

§ 53C-7-203. Decision on application.

Based on the application and the Commissioner's examination, the Commissioner shall enter an order approving or denying approval of the proposed combination, not later than the 60th day following the date the Commissioner notifies the parties that the application is complete, unless extraordinary circumstances require a longer period of review.

§ 53C-7-204. 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 such combination. The Commissioner may set forth in the order approving such organization such additional conditions with respect to the interim bank as the Commissioner deems necessary.

§ 53C-7-205. Surviving depository institution.

The depository institution resulting from a combination shall immediately be vested, by law and without any conveyance or transfer, with all rights, powers and duties of each other party to the combination, including contractual, property and fiduciary rights, powers and duties, except as otherwise provided by the order of the Commissioner approving such combination, the organizational documents of such resulting depository institution or the law of the United States, and shall be deemed a continuation of each party to the combination. Except for a combination effected as a transfer of substantially all of the assets and liabilities of a bank, the combination of a depository institution in which it is not the resulting bank shall not be deemed an assignment of contractual other rights or liabilities by the combined bank.

§ 53C-7-206. Combination with federally chartered institution.

A combination by a bank with a federally chartered institution in which the federally chartered institution will be the surviving party shall be subject to the provisions of this Part 2 and to approval by the chartering authority of the federally chartered institution in accordance with the laws of the United States and this Part.

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

(a) With the approval of the Commissioner, a bank may combine with a subsidiary so long as the bank is the resulting entity of such combination and may combine another company with a subsidiary so long as the subsidiary of the bank is the resulting entity of such combination. A combination of a subsidiary and another company shall be effected in accordance with organizational law applicable to each.

(b) The bank seeking approval of such a combination shall file with the Commissioner an application for approval, copies of the agreements under which the bank proposes to effect the combination, and such additional information as the Commission shall require by rule or as is required by the Commissioner in connection with such application in order to achieve the objectives of this Chapter. Such bank shall pay to the Commissioner a fee of $1,000.

(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.

(d) The bank resulting from a combination with a subsidiary shall immediately be vested, by law and without any conveyance or transfer, with all rights, powers and duties of the subsidiary, including contractual, property and fiduciary rights, powers and duties, except as otherwise provided by the order of the Commissioner approving such combination or the organizational documents of such resulting bank, and shall be deemed a continuation of each party to the combination. Any reference to a party to the combination in any writing, whether executed or taking effect before or after the combination is effective, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of such writing.

§ 53C-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.

§ 53C-7-209. Appeal.

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

Part 3. Charter Conversions.

§ 53C-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 such conversion. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee of $5,000.

(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; and

(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 such holders has 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; and

(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 subsections (f)(1) and (f)(2) shall be subject to the discretion of the Commissioner.

(g) Upon the effectiveness 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), 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.

§ 53C-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. 53C-2-6.

§ 53C-7-303. Conversion by North Carolina bank.

(a) A bank may convert to another form of depository institution under the laws of this State, of another State, or the United States in accordance with applicable law.

(b) Upon effectiveness of the conversion, the depository institution shall notify the Commissioner of such effectiveness 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 effectiveness of the conversion, the resulting depository institution shall cease to be a bank and shall cease to exist as an entity chartered under the laws of this State.

(d) Upon the effectiveness 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 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 8.

Bank Supervision.

§ 53C-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 through the employees and agents of the OCOB all laws relating to banks. All banks shall conduct their business in a manner consistent with all laws, regulations, and orders relating to banking.

(b)The Commissioner may enter into written agreements, cease and desist order stipulations, consensual cease and desist 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 consensual 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 such interpretations, opinions and guidance shall not have the force and effect of rules or law.

§ 53C-8-2. Assessments and fees.

(a) 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: (i) on the first $50,000,000 of assets, or fraction thereof, $10,000; (ii) on assets over $50,000,000, but not more than $250,000,000, $14.00 per $100,000, or fraction thereof; (iii) on assets over $ 250,000,000, but not more than $500,000,000, $11.00 per $100,000, or fraction thereof; (iv) on assets over $500,000,000, but not more than $1,000,000,000, $ 7.00 per $ 100,000, or fraction thereof; (v) on assets over $1,000,000,000, but not more than $10,000,000,000, $4.00 per $100,000, or fraction thereof; and (vi) on assets over $10,000,000,000, $2.00 per $ 100,000, or fraction thereof.

(2) Assessments on Trust Assets. – Each bank shall pay an assessment on trust assets held by it in the amount of $1.00 per $100,000 of trust assets, or fraction thereof; except that banks are not required to pay assessments on real estate held as trust assets.

(3) Special Assessments. – If the Commissioner determines that the financial condition or manner of operation of a bank warrants further examination or an increased level of supervision, or in the event of a combination or conversion, the Commissioner may

charge, and such 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.

§ 53C-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 by rule:

(1) annual reports of condition; and

(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), 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 applications and reports by the bank with its primary federal regulator.

(c) Nothing in this section shall be interpreted to limit the authority of the Commissioner to request and obtain other information that the Commissioner may deem necessary to discharge the duties of the Commissioner under this Chapter.

§ 53C-8-4. Examination by Commissioner.

(a) The Commissioner is hereby granted authority to examine everything relating to the business of a bank or its holding company, and to appoint examiners to make such examination. The examiners shall file with the Commissioner a full report of the findings resulting from such 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 the guidelines and requirements for such activity of the primary federal supervisor of the bank or holding company and published examination guidance of OCOB.

(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 such report to the primary federal regulator of such bank or its holding company and to the FDIC if not the bank's primary federal regulator.

§ 53C-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.

§ 53C-8-6. Access to books and records; right to issue subpoenas, administer oaths, and examine witnesses.

(a) The Commissioner and the Commissioner's examiners and agents:

(1) Shall have free access to all books and records of a bank, its holding company and their affiliates that relate to the business of the bank or the holding company, and the books and records kept by an officer, agent, or employee of the bank or holding company relating to or upon which any record is kept;

(2) May subpoena witnesses and administer oaths or affirmations in the examination of any director, officer, agent, or employee of a 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; and

(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, shall 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.

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

If any bank examiner shall knowingly and willfully make any false or fraudulent report of the condition of any bank which such examiner has examined with the intent to aid or abet the bank or its affiliates in committing violations of any provision of this Chapter 53C, or if any such 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.

§53C-8-8. Examiner disclosing confidential information.

If any examiner or other employee of the OCOB fails to keep secret the facts and information obtained in the course of an examination of a bank except as permitted or required by this Chapter 53C, the examiner shall be guilty of a Class 1 misdemeanor.

§53C-8-9. Loans or gratuities forbidden.

(a) No bank, or any officer, director, employee or affiliate thereof, shall make an extension of credit or grant any gratuity to the Commissioner, any deputy commissioner, or any bank examiner. Any person violating this provision shall be guilty of a Class 1 misdemeanor and may be fined a sum equal to the amount of the extension made or the gratuity given. If the Commissioner, any deputy commissioner, or any bank examiner accepts an extension of credit or gratuity from any bank, or from any officer, director, employee or affiliate thereof, he shall be guilty of a Class 1 misdemeanor, and may be fined a sum equal to the extension of credit made or the gratuity given.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commissioner may exempt from the application of subsection (a) to any deputy commissioner or any bank examiner with respect to any extension of credit existing upon the hiring of such 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 such extension of term or renewal has terms and conditions generally available to customers of the applicable bank having generally the same creditworthiness as such deputy commissioner or bank examiner.

§53C-8-10. Willfully and maliciously making derogatory reports.

Any person who shall willfully and maliciously make, circulate, transmit or otherwise communicate any statement, rumor, or suggestion to one or more other persons 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.

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

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 such bank, embezzles, converts or misapplies any of the money, funds, credit or property of such bank, whether owned by it or held in trust; who willfully and fraudulently issues or puts forth a certificate of deposit, draws an order or bill of exchange, makes an acceptance, assigns a note, bond, draft, bill of exchange, mortgage, judgment or decree, or fictitiously borrows or solicits, obtains or receives money for a bank not in good faith; who 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; who 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; or who makes or publishes, or knowingly permits to be made or published, a false report, statement or certificate as to the true financial condition of a bank, shall be guilty of a felony. If an offense committed under this section involves money, funds, credit, or property with a value of one hundred thousand dollars ($100,000) or more, it is a Class C

felony. If an offense committed under this section involves money, funds, credit, or property with a value of less than one hundred thousand dollars ($100,000), it is a Class H felony.

§ 53C-8-12. Enforcement of the banking laws.

(a) When the Commissioner believes that a violation of the banking laws has occurred or is continuing, the Commissioner may order an examination or investigation of the facts and circumstances relating to the suspected violation.

(b) Every bank failing to make and transmit any report which the Commissioner is authorized to require by this Chapter, and in and according to the form prescribed by said Commissioner, within 10 days after the receipt of a request or requisition therefor, or within the extension of time granted by the Commissioner heretofore provided or failing to publish the reports as required, shall forthwith be notified by the Commissioner, and if such failure continue for five days after the receipt of such notice, such delinquent bank shall be subject to a penalty up to one thousand dollars ($1,000). The penalty herein provided for shall be recovered in a civil action in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions.

(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 to cease and desist violating any provision of this Chapter or any lawful regulation issued thereunder; and
(2) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of a depositor.

(d) Consistent with Article 3A of Chapter 150B of the General Statutes, notice and opportunity for hearing shall be provided before any of the foregoing actions shall be undertaken by the Commissioner. Provided, however, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action, but shall promptly afford a subsequent hearing upon application to rescind the action taken.

(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) for each violation by any bank, trust company, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (1) of subsection (c) of this section. Provided further, the Commissioner may impose a civil money penalty of not more than five hundred dollars ($500.00) per day for each day that a bank, trust company, or subsidiary

thereof, or any director, officer, or employee violates a cease and desist order issued under subdivision (2) of subsection (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 of Banks 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 of Banks, the Commission may after notice of and opportunity for hearing, impose, enter judgment for, and enforce by appropriate process, a penalty of not more than ten thousand dollars ($10,000) against any bank, trust company, or subsidiary thereof, or against any of its directors, officers, or employees for violating any lawful orders 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.

§53C-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, such bank to take such corrective action as the Commissioner deems necessary or may order such bank, director, officer or employee to immediately cease such conduct, act or course of conduct, to refrain therefrom in the future.

(b) Any such order shall be effective upon issuance; provided, however, that the Commissioner shall promptly afford a subsequent hearing upon such order as provided in G.S. §53C-2-6.

§ 53C-8-14. Supervisory control.

(a) Whenever the Commissioner determines that a bank has insufficient capital and is conducting its business in an unsafe or unsound manner or in any fashion that threatens the financial integrity of the bank, the Commissioner may serve a notice of charges on the bank, requiring it to show cause why it should not be placed under supervisory control. The notice of charges shall specify the grounds for supervisory control, and set the time and place for a

hearing. A hearing before the Commissioner shall be held no earlier than seven days, and no later than 15 days, after issuance of the notice of charges.

(b) If, after the hearing provided in subsection (a) of this section, the Commissioner determines that supervisory control of the bank is necessary to protect the bank's customers, creditors, or the general public, the Commissioner shall issue an order taking supervisory control of the bank. The board of directors of the bank in office on the date of the issuance of the order may appeal the order of the Commissioner to the Commission pursuant to G.S. 53C-2-6 no later than 10 days after the date of the issuance of the order.

(c) The Commissioner may appoint an agent to supervise and monitor the operations of the bank during the period of supervisory control. During the period of supervisory control, the bank shall act in accordance with any instructions and directions as may be given by the Commissioner, directly or through such 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; and

(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.

§ 53C-8-15. Removal of directors, officers, and employees.

(a) If the Commissioner determines that a director, officer, or employee of a bank has participated in or consented to any violation of this Chapter or an order of the 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 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 with 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 prescribe time, the temporary remove order may be dissolved or made permanent in whole or in part.

(b) Any removal under this section is effective in all respects as if the removal had been made by the shareholders of the bank in question.

(c) Without the prior written approval of the Commissioner, no director, officer, or employee subject to an order under this section shall be eligible to be elected, reelected, or appointed to any position as a director, officer, or employee of that bank or any other North Carolina financial institution during the period of such order's effect.

(d) An individual who is the subject of an order of the Commissioner under this section may appeal the order to the Commission pursuant to G.S. 53C-2-6 no later than 10 days after the date of the issuance of the order.

§ 53C-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.

§ 53C-8-17. Interstate regulatory agreements.

The Commissioner may enter into cooperative, coordinating and information sharing agreements with (a) any bank supervisory agency having jurisdiction over an out-of-State bank that operates one or more branches in this State and (b) with 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 9.

Supervisory Liquidation; Voluntary Dissolution and Liquidation.

Part 1. General Provisions.

§ 53C-9-101. Supervisory combinations.

Notwithstanding any other provision of this Chapter, in order to protect the public, including depositors and creditors of a bank, the Commissioner, upon making a finding that a bank is unable to operate in a safe and sound manner and it is not reasonably likely to be able to resume safe and sound operations, may authorize or require a combination of the bank, a control transaction or any other transaction, whether or not the Commissioner has taken supervisory control pursuant to G.S. 53C-8-14. In ordering any such combination, control transaction or other transaction, the Commissioner may order that a vote of the bank's shareholders shall not be required to effect such combination, control transaction or other transaction.

§ 53C-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. 53C-9-301, and any other purported assignment by the bank for the benefit of its creditors shall be void.

§ 53C-9-103. Cancellation of charter.

Whenever a combination, dissolution, or other transaction occurs by which a bank ceases to exist or ceases to be eligible for a charter, the Commissioner shall by order cancel the bank's charter and shall publish such order in accordance with G.S. 53C-1-4(55). A copy of such 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.

§ 53C-9-201. Voluntary dissolution prior to receipt of charter.

A bank in formation may, prior to issuance of its charter, give notice to the Commissioner and, with the Commissioner's consent, abandon its application to the Commissioner and dissolve and liquidate by a majority vote of its board of directors and as provided under Chapter 55 of the General Statute.

§ 53C-9-202. Voluntary dissolution.

(a) With the approval of the Commissioner, a bank may engage in a voluntary dissolution and liquidation.

(b) If, by a majority vote, the board of directors of a bank should determine that in their judgment the bank should be dissolved and liquidated, then the board of directors shall 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; and

(4) Any notices or proxy solicitation materials proposed to be sent to shareholders.

(c) The Commissioner shall exam the documents submitted under subsection (b), and such other matters as he or she deems relevant, may issue an order authorizing the bank and its board of directors to proceed with dissolution and liquidation as provided in G.S. 53C-9-203. Examination by the Commissioner of the materials referred to in subsection (b)(4) shall not be deemed to be approval of such 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 matter resolve to dissolve and liquidate the bank in accordance with the order of the Commissioner issued under subsection (c).

(e) If a majority of the board of directors of a bank should determine that in their best judgment the bank should be dissolved and liquidated but deems it impractical or otherwise inadvisable to proceed with a vote upon voluntary dissolution by the shareholders, then the board of directors shall immediately forward a certified copy of its resolution to the Commissioner and the Commissioner shall place the bank in receivership pursuant to G.S. 53C-9-301.

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

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

(1) Inform the FDIC and the bank's federal supervisory agency if other than the FDIC;

(2) Select and appoint a receiver or receiver in liquidation, just as if the liquidation were involuntary under G.S. 53C-9-301;

(3) Attach a certificate of approval to the articles of dissolution, and the bank shall then file such 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 is authorized to place the bank in receivership pursuant to G.S. 53C-9-301.

Part 3. Receivership; Involuntary Dissolution.

§ 53C-9-301. Receivership.

(a) The Commissioner may take custody of the books, records, and assets of every kind and character of any bank in the instances established in Part 2 of this Article 9 or if it reasonably appears from one or more examinations made by the Commissioner that:

(1) The directors or officers of the bank, or the liquidators of the banks 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 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; or

(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 items (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 subsection (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 section (a), which receivers shall furnish 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 such receiver shall be permitted to serve without posting bond. In the event of such an appointment, the Commissioner shall thereafter be forever relieved from any and all responsibility and liability in respect to the receivership and the liquidation of such bank.

(e) In the event the Commissioner takes custody of a bank and then appoints a receiver for a bank, the Commissioner shall serve personally at the bank's principal office through the officer who is present and appears to be in charge, the Commissioner's order taking possession and, if applicable, the Commissioner's order appointing a receiver for the bank in liquidation. The Commissioner shall also mail a certified copy of the order taking possession and the appointment order by certified mail or by express delivery to any previous receiver or other legal custodian of the bank and to the Clerk of Superior Court of Wake County. The Commissioner shall give notice to the public of the Commissioner's actions by posting a notice summarizing the Commissioner's actions near the entrance to each branch of the bank, and the Commissioner shall issue a similar public notice as defined in GS 53C-1-4(55).

(f) Whenever a receiver for a bank is duly appointed and qualified under subsection (c) or (d) of this section:

(1) Tthe 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 (unless it is 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:

(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, chooses in action, bills, instruments, notes, intangible interests and property of every description of the bank;

(2) Foreclose mortgages, deeds of trust, and other liens granted to the bank to the extent the bank would have the right to do so;

(3) Seek injunctions and institute suits for the recovery of any property, damages, or demands existing in favor of the bank, and shall, upon the receiver's own application, be substituted as party plaintiff in the place of the bank in any suit or proceeding pending at the time of the receiver's appointment;

(4) Sell, convey, and assign any or all of the property rights and interests owned by the bank;

(5) Appoint agents and engage independent contractors;

(6) Examine papers and investigate persons;

(7) Make and carry out agreements with the FDIC for the payment or assumption of the bank's liabilities, in whole or in part, and to sell, convey, transfer, pledge, or assign assets as security or otherwise and to make guarantees in connection therewith; and

(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 regulations;

(4) Claims of general creditors; and

(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 depositors, remain 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 foregoing actions described in this subsection (l), the process of dissolution and liquidation of the bank shall be deemed complete, and the Commission shall issue a certification of completed liquidation to the Secretary of State.

(5) Upon the completion of the process of dissolution and liquidation, the Commissioner shall cause an examination of the receiver's activities and records to be conducted, with which the receiver shall assist. The accounts of the receiver shall then be ruled upon by the Commissioner, and, if approved, the receiver shall thereupon be given a final and complete discharge and release.

Part 4. Provisions Relating to Any Dissolution or Receivership.

§ 53C-9-401. Statute relating to receivers applicable to insolvent banks.

The provisions of G.S. 1-507.1 through 1-507.11, relating to receivers, when not inconsistent with the provisions of this Article, shall apply to the liquidation of banks under this Article.

§ 53C-9-402. Storage and destruction of records.

(a) Any record of a bank that is in or has completed the process of dissolution and liquidation may be kept in compliance with the provisions of G.S. 53C-6-14.

(b) All records of a bank which has completed the process of dissolution and liquidation shall be held in such place as in the Commissioner's judgment will provide for their proper safekeeping and protection.

(c) After the expiration of five years from the date of filing of the certificate of completed liquidation under G.S. 53C-9-301, the records of the liquidated bank may be destroyed by the Commissioner using commercially reasonable record destruction procedures.

(d) Nothing in this section shall be construed to authorize the destruction by the Commissioner any of the records of the OCOB made by it with reference to the dissolution, receivership or liquidation of any bank.

§ 53C-9-403. Trust terminated on insolvency of trustee bank.

Whenever any bank, which has been, or shall be, appointed trustee in any indenture, deed of trust or other instrument of like character, executed to secure the payment of any bonds, notes or other evidences of indebtedness, has been or shall be placed in receivership, the powers and duties of the bank as trustee in any such instrument shall, upon the entry of an order of the Clerk

of Superior Court having jurisdiction under G.S. 53C-9-405 appointing a successor trustee, upon a petition as described in this Part, immediately cease.

§ 53C-9-404. Petition for new trustee; service upon parties interested.

In all cases of dissolution, receivership and liquidation under this Article, the Clerk of Superior Court of any county in which an indenture, deed of trust or other instrument of like character is recorded shall, upon the verified petition of any person interested in any such trust, either as trustee, beneficiary or otherwise, which interest shall be set out in the petition, enter an order directing service, in the manner required by law for service of summons, on all interested parties of a notice requiring all persons having any interest in the trust, to appear at the Clerk's office at a day designated in the order and notice, not less than 30 days from the date of the first publication of the notice, and show cause why a new trustee shall not be appointed. The notice shall set forth the names of the parties to the indenture, deed of trust or other such instrument, and the date the documents were executed and the place of recording.

§ 53C-9-405. Appointment of substitute trustee where no objection made.

If, upon the day fixed in the notice, no person shall appear and object to the appointment of a substitute trustee, the Clerk of Superior Court shall, upon such terms as he 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.

§ 53C-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 case of special proceedings generally.

§ 53C-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.

§ 53C-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.

§ 53C-9-409. Additional remedy.

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



Article 10.

Holding Companies

§ 53C-10-1. Holding companies.

Every holding company of a bank shall register with the Commissioner and maintain that registration on an annual basis in the form prescribed by the Commissioner.

§ 53C-10-2. Holding company control transaction.

(a) A person seeking to engage in a control transaction or combination to which a holding company formed under the laws of this State and having a bank as a subsidiary is a party 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; and

(3) Such other information as is required by a rule of the Commissioner or as is required 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.

§ 53C-10-3. Actions on control transaction and combination applications.

(a) Not later than the 60th day following receipt of an application for approval of a control transaction or a combination under G.S. 53C-10-2, the Commissioner shall approve or deny such application.

(b) The Commissioner may deny an application for approval of a control transaction or combination to which a holding company is a party for any of the following reasons:

(1) The financial condition of the person seeking approval of a control transaction or a combination could jeopardize the financial stability of the bank that is a subsidiary of the holding company or the financial interests of the bank's customers;

(2) The Commissioner's examination of the character, competence or experience of any acquiring person shows that it would not be in the interest of the depositors of the bank that is a subsidiary of the holding company or in the interest of the public to permit such person to control the holding company;

(3) The plans or proposals of the person seeking approval of a control transaction or a combination to which a holding company is a party would not be in the best interests of the subsidiary bank's customers;

(4) Upon the effectiveness of such proposed control transaction or combination, the bank that is a subsidiary of the holding company would have inadequate equity or not be in compliance with this Chapter or rules of the Commissioner;

(5) The application for approval is incomplete; or

(6) If the person seeking approval solicits votes for the approval of or consents to such control transaction or combination from the holders of the voting securities of the holding company, adequate and complete disclosures of all material information about the proposed control transaction or combination, together with a prominent statement that neither such control transaction or combination nor any solicitation of such holders' votes or consents has been approved by the Commissioner or the Commissioner and that any representation to the contrary is a criminal offense, have not been made to such holders.

(c) If an application filed under this Article is approved by the Commissioner, the control transaction or combination may be effected. 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 such approval.

§ 53C-10-4. Appeal.

Any order of the Commissioner denying an application for approval of a control transaction or combination to which a holding company is a party may be appealed to the Commission by the person filing the application denied as provided in G.S. 53C-2-6.

§ 53C-10-5. Cease and desist order.

Upon a finding that any action of a holding company subject to this Article may be in violation of any laws of this State, 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 such decision within 10 days of the date of the issuance of the order in accordance with G.S. 53C-2-6 and continues to engage in such 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) for each day it remains in violation of the laws of this State. 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 such civil money penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

§ 53C-10-6. Other Control Changes.

Each holding company 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.



EXHIBIT #1
EXHIBIT #3

State of North Carolina

OFFICE OF THE COMMISSIONER OF BANKS

BEVERLY E. PERDUE
GOVERNOR

JOSEPH A. SMITH, JR.
COMMISSIONER OF BANKS

November 10, 2011

The Honorable Harry Brown
Member of the North Carolina Senate
300 North Salisbury Street, Room 300-B
Raleigh, NC 27603-5925

The Honorable Harold J. Brubaker
Member of the North Carolina House of Representatives
300 North Salisbury Street, Room 302
Raleigh, NC 27603-5925

Re: Joint Committee to Study the Modernization of the North Carolina Banking Laws

Dear Senator Brown and Representative Brubaker:

Thank you again for agreeing to lead the Joint Committee to Study the Modernization of the North Carolina Banking Laws and for scheduling the first meeting of the Committee for November 21, 2011.

In my letter to you of October 12, 2011, with regard to this matter, I agreed at that meeting to summarize the history of our banking laws, recommend changes to such laws, and offer a working draft of suggested revisions for the Committee's consideration. In furtherance of that undertaking, I enclose a draft revision of the banking law for the review and use of the Committee and Committee staff. The draft is submitted as a complete revision, rather than as revisions to current law, in order to allow review and comment on the proposal as a whole and to facilitate comparisons with current law. I understand that a bill to revise the banking law will probably be in a different format.

LOCATION: 316 W. EDENTON STREET, RALEIGH, NC 27603
MAILING ADDRESS: 4309 MAIL SERVICE CENTER, RALEIGH, NC 27699-4309
(919) 733-3016 • FAX (919) 733-6918 • INTERNET: WWW.NCCOB.ORG
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

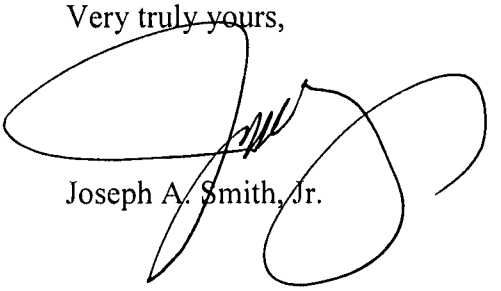
The enclosed draft is the product of the hard work of a number of dedicated and talented people. That said, the last revisions of the text before now was mine alone and I am solely responsible for its content, including any errors and omissions it may contain. While I have discussed the enclosed draft in concept with the North Carolina Banking Commission, the Commission has not been involved in its preparation and, accordingly, the draft has not been reviewed or endorsed by the Commission.

In order to ensure that the draft is thoroughly reviewed and commented on, I am today circulating it to a broadly representative group of lawyers and scholars with an interest in banking and will soon post it on the web site of the Office of the North Carolina Commissioner of Banks. My colleagues and I will collect comments on the draft as they are submitted and will share them with the Committee and staff. Interested parties will, of course, be able to attend Committee meetings and to participate to the extent you deem appropriate.

I look forward to seeing you on November 21.

Please accept my very best regards.

Very truly yours,



Joseph A. Smith, Jr.

cc: Hon. Janet Cowell
Ms. Karen Cochrane-Brown
Ms. Ha Nguyen
Mr. McNeil Chestnut
Mr. Paul Stock

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

November 4, 2011

MEMORANDUM

TO: Members, JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS

FROM: Rep. Harold J. Brubaker (Co-Chair)
Sen. Harry Brown (Co-Chair)

SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Monday	November 21, 2011	10:00 am	544 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Cindy Coley at (919)715-4946, Darryl Black at (919)715-3034..

cc: Committee Record _X_
Interested Parties _X_

Cindy Coley (Rep. Brubaker)

From: Cindy Coley (Rep. Brubaker)
Sent: Friday, November 04, 2011 4:48 PM
To: Cindy Coley (Rep. Brubaker)
Subject: Banking Laws Modernization, Jt. Leg. Study Comn. (2011)

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

November 4, 2011

MEMORANDUM

TO: Members, JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS

FROM: Rep. Harold J. Brubaker (Co-Chair)
Sen. Harry Brown (Co-Chair)

SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Monday	November 21, 2011	10:00 am	544 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Cindy Coley at (919)715-4946, Darryl Black at (919)715-3034..

cc: Committee Record _X_
Interested Parties _X_

MINUTES

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

Monday, December 19, 2011

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws met on Monday, December 19, 2011 at 10:00 a.m., Room 544 Legislative Office Building, Raleigh, North Carolina.

In attendance were Senator Brown (Chairman) and Representative Brubaker (Chairman); Senators Blue and Blake; Representatives Daughtry, Jordan, McComas and Earle; Christopher Kukla, Gray Reed, Charles Whitehead, Jr., and Andrea Young. Ryan Blackledge (Bill Drafting Staff), Drupti Chauhan (Research Staff), Karen Cochrane-Brown (Research Staff) and Greg Roney (Research Staff) were present. Committee Assistants Darryl Black and Cindy Coley were present.

Senator Brown, Chairman, called the meeting to order and recognized House Sergeant-At-Arms Staff Larry Elliott and Reggie Sills; and Senate Sergeant-At-Arms Staff William Fritscher and Steve Wilson.

Senator Blake made a motion to approve the minutes from the Nov 21, 2011 meeting. Mr. Charles Whitehead seconded the motion and the motion was approved unanimously.

Three documents were included in committee member notebooks and distributed for review related to the presentation:

- Attachment 1 - Summary of Proposed Changes to N.C. Banking Law (Articles 1A - 3A)
- Attachment 2 - Current Banking Law Sections Corresponding to Proposed Changes to NC Banking Law
- Attachment 3 - Banking Law Modernization Act (Bill Draft 2011-ROz-10 [v.2])

Documents related to this presentation have been placed on the Banking Commission public website.

Presentation

Senator Brown, Chairman, introduced North Carolina Commissioner of Banks Joseph A. Smith, Jr.

Commissioner Smith emphasized the importance of this effort and thanked staff for their assistance. Commissioner Smith stated that this meeting's focus would be:

- To provide a section-by-section review of draft legislation for Articles 1A, 2A and 3A of the Banking Statutes
- To address any questions that may arise
- To cover comments that have been received from the public circulation of work
- To review any substantive changes the Banking Commission recommends

Commissioner Smith stated that a number of discussions with stakeholders have been held and requested that commission members inform his organization whether there are any missing stakeholders. Several comments have been reviewed and it is likely more will be received in the future. Current stakeholders contacted by the Banking Commission include:

- NC Department of State Treasurer (Treasurer is the Chairwoman of the Banking Commission)
- NC Department of Commerce
- NC Center of Responsible Lending (represented on committee)
- NC Justice Center
- NC Banker's Association
- NC Manufactured Housing Association
- NC Association of Realtors
- NC Department of Justice
- NC Bar Association (primarily the Business Law Section)
- NC Homebuilders Association
- NC Association of Mortgage Professionals (trade group for mortgage brokers)
- Mortgage Bankers Association of the Carolinas

Chairman Brubaker requested clarification on stakeholder feedback. Commissioner Smith replied that there was some feedback from the Justice Center that will be discussed later in this meeting. Commissioner Smith replied that the Banker's Association has provided several drafting points which are immaterial that will be discussed in later provisions and that a few other stakeholders has produced comments that are not being discussed in today's agenda.

Commissioner Smith stated that the pending bill has been framed as an amendment to the existing Chapter 53 law and that today's presentation will focus on Articles 1A, 2A and 3A **(See Attachment 1)**. Commissioner Smith then proceeded to discuss proposed provisions related to Article 1A "General Provisions".

- § 53-1-1. "Title" consists of a slight chapter title change to "Regulation of Banks and Other Financial Services".

- § 53-1-2 "Scope and applicability of Chapter" is essentially a non-controversial transition clause or jurisdictional statement.

- § 53-1-3 "Existing banks; prohibitions, injunctions" states that a bank cannot be a NC charter bank without complying with this statute. It also clearly defines what institutions can be called a "bank".

- § 53-1-4 "Definitions and application of terms" have increased from 11 1931-era definitions used before the FDIC or modern banking-era terms to over 70 updated specific terms consistent with current federal definitions. Some examples follow. There will now be defined measures of a level on a capital balance sheet. The term "capital" now means tier 1 capital or equity as covered by the FDIC regulations. "Required Capital" means the amount needed to create a bank. "Inadequate Capital" is the amount when some concern occurs. "Insufficient Capital" is even a lower measure. Additional terms will not be further defined upfront and will be covered during their application at a later time.

- § 53-1-5 "Severability." Referred to Attachment 1.

Chairman Brown asked Commissioner Smith to discuss capital challenges banks are currently facing. Commissioner Smith stated that many state chartered banks, along with those located in the southeast and national banks, share a capital deficiency. This is in part due to a large concentration of commercial real estate lending associated with acquisition and development of land with the intent to subdivide for housing that would be eventually sold. Due to a large influx of standing inventory, a capital deficiency has occurred. Since assets have dropped in value then the liability side must also be impacted - meaning less equity. Banks must then raise capital in a challenging environment. To address this matter, the Banking Commission has been working with industry representatives in attracting capital investments. These investments enable banks to take losses and restructure loans so banks can perform better, resulting in future lending opportunities. This is a large reason why credit is tight today. It is also a major reason why the Banking Commission is currently looking at updating state banking laws and streamlining provisions since it would enable the state to responsibly attract future capital investment. Existing depression-era provisions for surplus and capital-raising for struggling banks are punitive for shareholders and have deterred investors who in many cases are attracted to the state's economy.

Chairman Brown asked Commissioner Smith whether any banks over the past year have been successful raising capital or had a successful stock offering. Commissioner Smith replied that some money has been raised around board tables and through private equity investments (especially from out-of-state firms); however, he was unsure regarding public equity investment. The most impressive recent investment was the FNB United and Bank of Granite $310 million recapitalization effort. Though a state bank was lost (it is now national), the bank was able to secure capital in order to survive. Recommended law updates will essentially be "setting the table"; however, state banks will still be responsible in securing actual funding.

Senator Blake wanted to know whether the TARP funding program was complete. Commissioner Smith stated that though many of the larger banks such as BB&T have

repaid their TARP funds, there are still a number of banks that have outstanding treasury investments with a fixed interest rate of 5% that can be deferred. A deferral beyond six payments enables the U.S. Treasury to be able to appoint directors (it does not take over bank or put it out of business). After five years the dividend rate would increase from 5% to 9%. The Banking Commission advised banks that wished to participate in the TARP capital program to have an exit strategy. All stated that they did and this has not been the case. There are still a number of banks carrying TARP capital. Some banks have secured financing from the Treasury Small Business Loan lending program ($30 billion capacity, $11 billion requested in U.S., and $4 billion invested in U.S.). North Carolina banks have obtained over $100 million of small business loans with two-thirds of this funding being used to refinance TARP capital, resulting in even more criticism. Though TARP has a fair number of critics, it did help many banks and overall has not cost taxpayers anything since the large banks have rapidly paid back loans.

Senator Blake remarked that balance sheets indicate that some banks have received about $50 million to $60 million from the federal government. Senator Blake asked whether this was normal. Commissioner Smith replied that the US Treasury did not necessarily want to offer limited-term investments in banks and that the ultimate goal was to help small businesses by having an attractive cost of investment (in some cases the rate can go down to 1%). Commissioner Smith then emphasized that banks are looking for capital from anywhere.

Chairman Brown then added he understood that only about six banks have participated. This figure was confirmed by Commissioner Smith.

Senator Blake inquired whether the program was actually working. Commissioner Smith believes it is still too early to tell. Some banks prefer using the state Rural Center's capital access initiative as an additional guarantee program for small business lending. Outside of the real estate community, including developers which still has lending problems; small operating businesses have so far produced a weak demand for lending services.

Commissioner Smith then discussed the proposed provisions related to Article 2A. "Commission and Commissioner".

- § 53-2-1. "The Commission." The existing structures for the Commission and Commissioner are good since they provide an adequate mixture of independence and accountability with regards to the chartering of banks. After serving as Chairman of the Conference of State Bank Supervisors, Commissioner Smith realized that state banking commissioners who are appointed by the Governor often come and go simply at a governor's discretion. He stated that in North Carolina, a banking commissioner is appointed to serve for a number of years by the Governor who is an elected official and must be confirmed by both legislative bodies. Oversight of the banking commissioner comes from an independent agency with members appointed by the elected officials who also serve for a number of years. The Banking Commission is also subject to legislative priorities.

As a result, this section has not changed significantly. This section would drop the current requirement of two CEOs from state savings institutions. This measure originated about 2002 with the Savings Institution Division merger. Currently there are about 80 banks of which 20 are savings institutions of which most of their presidents have already served, therefore creating a mismatch. Nobody from other industries serve on the commission. Public members are members who are not practical bankers whereas practical bankers must now have served in a leadership role. The new definitions of "practical banker" and "public member" are meaningful in the context of this section.

Chairman Brubaker inquired whether 19 members were appropriate or perhaps too many. Commissioner Smith believes that the number of commission members may have increased after the merger with the savings and loan division. Commissioner Smith did not have a preferable number in mind and felt recommending the number of members was inappropriate. In the past, the Banking Commission has had to act as an "appellate court" with a number of panels.

Chairman Brubaker inquired about the number of commission members in other states. Commissioner Smith used Virginia as an example. There the Virginia State Corporation Commission consisting of three judges oversees a banking commissioner. North Carolina once had a Corporation Commission that was dissolved in the 1930s. Commissioner Smith said that most other states do not have a similar banking commission structure and that he would need time to research this request.

Chairman Brown inquired whether the composition that included practical bankers and public members was reasonable. Commissioner Smith stated that he was satisfied with the composition of the board and again stated that this was not a priority. The intent was to keep items that did not have to be changed the same and to stay away from political matters such as recommending the number of appointments an elected official could make.

- § 53-2-2. "The Commissioner." This provision carries forward existing law and will permit the Banking Commission to continue enforcement of consumer protection laws. There are two reasons for this. First the Banking Commission already has a consumer outreach group that is not authorized by legislation that the Banking Commissioner considers of value. Next there is currently a federal consumer protection department that is currently without a director. Though the impact on state banking from this federal agency is still somewhat unclear, consumer compliance should be viewed as a risk management tool for potential intensified federal review in the future.

Senator Blue wanted to know the amount of coordination between the NC Department of Justice and the Banking Commission. Commissioner Smith stated that their consumer compliance teams often work together. Commissioner Smith

then stated that much of the recent attention in the consumer area has not necessarily been focused directly on banking but on the mortgage and check cashing industries. Though there is currently a long list of federal consumer requirements that have in large been supported with federal agencies, Commissioner Smith does not see his group's efforts as being redundant since they are essentially risk management related. The Banking Commission has worked with Attorney General's office and local law enforcement on criminal matters such as employee theft, fraud and embezzlement.

- § 53-2-3 "The Office of the Commissioner of Banks." This provision simply pulls together provisions of existing laws.

- § 53-2-4 "Administration of the Office of the Commissioner of Banks." discusses general capacity and maintains the current timetable for developing the annual budget.

- § 53-2-5 "Rulemaking." This provision discusses rulemaking with little substantive change. It clarifies that the final agency action is when the Banking Commission approves the proposed regulatory rules. In the past, the Chairman and the Commission may have had different opinions towards rulemaking authority, in part due to shifting law. Though the Commissioner can propose rules, these rules must still be approved prior to going to the Rules Review Commission. This measure provides proper oversight without requiring an excessive number of rules.

  Representative McComas wanted confirmation that the Banking Commission was still subject to Rules Review Commission. This was confirmed by Commissioner Smith.

- § 53-2-6 "Hearings and Appeals." This provision provides little change and just streamlines rules.

- § 53-2-7 "Official records." Commissioner Smith stated as a regulator, the Banking Commission must maintain documentation in a confidential manner. Examples of some documents not public record include private financial transactions that are not yet public or personal financial information such as net worth and social security numbers. The recommended change would carry forward the provision of current law allowing sharing of records with other governmental agencies, including law enforcement agencies or by subpoena. Due to the retention of these records, some private groups have found the Banking Commission to be a good source of information. Commissioner Smith is concerned that without such updates, the Banking Commission could inadvertently get in the middle of future private or civil litigation matters, areas that can be discovered in another more appropriate manner. Public disclosure can have an adverse impact on potential enforcement actions. States, such as Florida which has a sunshine act, can present a challenge with multi-state actions.

Senator Blue inquired whether this measure would adversely affect a judicial official from imposing a confidential order then allowing discovery. Commissioner Smith believes though there have been times the Banking Commission has wanted to resist such discovery, whenever so ordered; the Banking Commission has always produced requested records. L. McNeil Chestnut, Special Deputy Attorney General, Banking Commission, further added that he has defended several of these actions and this measure is strictly focused on private civil litigation matters involving bank examination reports that can contain highly confidential information. A judge will still be able to require that confidential information not be publicly disclosed prior to discovery. This is also important since sometimes these confidential reports may involve joint state and federal action.

Senator Blue asked whether the information is available directly from the source. Mr. Chestnut stated that financial institutions often have a report of examination and that a plantiff's attorney may attempt to discover this report. This can result in a motion to intervene by the Banking Commission counsel since the report has confidential information such as rating and sensitive examiner notes. If the official records of the Office of the Commissioner of Banks were public, it may affect how examiners express themselves.

Senator Blue then asked whether the underlying information would still be available. Mr. McNeill confirmed that the underlying information would still be available directly from the banks. Commissioner Smith reiterated that though private parties may sue each other or make motions, the Banking Commission would rather not be the vehicle in which this type of discovery is made.

Mr. Christopher Kukla asked whether this measure could potentially hide complaints. Commissioner Smith replied that consumer complaints may contain private confidential information such as financial matters. That if consumers or legal counsels wish to obtain this data, they could still go directly to the source, since the information had to be provided to the banks in the first place. The Banking Commission always suggests to interested parties that if they are dissatisfied, that they should consider legal counsel. With regards to overall complaints, the Banking Commission publishes aggregate complaints not by institution which has its own issues. The main interest here is consumer protection.

Ms. Andrea Young asked with regards to confidentiality, whether there could be a policy distinction between depository and non-depository institutions. Commissioner Smith stated that the Banking Commission has received a suggestion in this area especially with regards to loan servicers. The Banking Commission has been working with the Justice Center to look into this matter. One challenge with consolidating confidentiality requirements is that it could

inadvertently sweep up different areas. Commissioner Smith agreed to follow-up on this matter.

Commissioner Smith then discussed the following proposed provisions in Article 3A "Organization of a Bank".

- § 53-3-1 "Application to organize a bank." Commissioner Smith stated that though banks are incorporations- corporations are not necessarily banks. The charter is the document conferred that gives one the authority to open and serve the public. This provision permits an applicant to be a Limited Liability Corporation or LLC. The Banking Commissioner conducts an examination. The application information includes information on investors. Documentation now matches up to federal and FDIC-standard forms with local requirements. Since rulemaking has gotten more stringent and time-consuming, the fee schedule is now included within statute. If changes are needed, the Banking Commission will return to the General Assembly.

- § 53-3-2 "Permission to organize a bank." Commissioner Smith referred to Attachment 3, page 11, and discussed how after examination, organizers as individuals, can file and continue organization work. They cannot start banking until a charter is received and during the organizational process, the Banking Commissioner is in charge.

- § 53-3-3 "Articles of incorporation of a proposed bank." Commissioner Smith referred to Exhibit 1.

- § 53-3-4 "Commissioner's approval of charter issuance." Commissioner Smith referred to Attachment 3, page 12, and briefly covered the nine requirements required before charter approval.

- § 53-3-5 "Notice; public hearing." Commissioner Smith states that a hearing is available if there is opposition.

- § 53-3-6. "Commission decision." Commissioner Smith referred to Exhibit 1 and stated that applicants may follow an appeals process through the courts.

- § 53-3-7 "Issuance of charter." Commissioner Smith stated that this provision provides the Banking Commission's role for making inquiry, authorizing or denying a charter. Though more explicit with the separation of incorporation matters for establishing a charter, it has similar provisions as previous law. This provision also refers to markets instead of communities with the intent that some banks may be established for a special purpose such as venture capital firms that are not necessarily local.

Commissioner Smith then invited further discussion from committee members.

Mr. Christopher Kukla had a question regarding the characterization of organizers and wanted to know if proposed changes may preclude someone from making public comments about a bank officer who had not effectively served a previous community. Commissioner Smith stated that he believes consumer confidence is important and would like to address any such concerns.

Chairman Brown asked that Commissioner Smith to further discuss capital requirements. Commissioner Smith stated that he is hopeful that over time, there can be a return to a level of capitalization in the industry that will make it a more attractive investment. The industry still needs some restructuring to occur and there may be an issue of what is considered a sufficient amount of capital. It is difficult and expensive to raise additional capital. Many current investors are looking for a good value with a decent return that may sometimes need to be squeezed out of existing operations. We still need to figure this out. He further added that savings banks and S&L laws are not included in this statute, mainly because this statute focuses on stockholder-based efforts and does not allow for mutual-owned organizations. There may be a point in time in which a review of mutual organizations that serve small communities and specialized markets or firms not focused on capital markets needs to occur. Commissioner Smith proposed that the needs of the main body be currently considered and that other laws be addressed in the future.

Chairman Brown requested an update about the regulatory side involving the FDIC and Federal Reserve. Commissioner Smith expressed that some bankers believe that the federal government wants to "put them out of business". He added that last year the FDIC fund did not have any money and now is in pretty good shape. Federal regulators were badly burned by critical federal Inspector General reports identifying weaknesses in controls and concentrations of real estate that had not been recognized. Unfortunately this is pro-cyclical which means that when regulators should have loosened up, enforcement instead increased. When things were great, perhaps someone should have stepped on the brakes. The only cure for this is to work through the situation.

Senator Blake stated that he has heard that FDIC-imposed fees are presenting a challenge. Commissioner Smith stated that there were years in which depositors essentially obtained insurance for little or nothing. He said that many thought that this was not a good idea in the first place and the FDIC now bases the amount of insurance cost assessed on the risk of a bank. Ray Grace, North Carolina Banking Commission Chief Deputy, further added that the FDIC has indeed changed to a risk-based premium. A big problem community banks had was when after the FDIC fund was "challenged", one solution included a move to a three-year prepayment of deposit insurance. This was a big expense for banks when they could least afford it. The federal Dodd-Frank Act brought some relief for smaller banks, while larger banks had an increased burden to bear.

Senator Blake stated his concern about how foreclosures are being handled often through large national banks. Senator Blake believed that some level of consumer protection in this matter should be handled by the state. Senator Blake added that in many cases, current property values are below previous values and there is a potential for the problem

to get worse in the future since many foreclosures are still on the books. He also believes that the state should look at somehow encouraging banks to expedite the foreclosure process by either writing them off or allowing consumer resolution. Commissioner Smith replied that he commended the General Assembly for an existing statute that has allowed for the restructuring of about 1,000 loans a month. Commissioner Smith then stated that one area being considered is the exemption of mortgage servicing firms from confidentiality provisions. There are many problems pending and there is some discussion of a forthcoming settlement with many attorneys general. The Office of Comptroller of the Currency has them under public orders to change their processes. Again there is much activity in this area and Commissioner Smith stated he would be glad to look into this issue further.

Mr. Charles Whitehead, Jr. added that though he supports a risk-based approach, community banks have experienced difficulty with the timing and amount of the FDIC premium increases. As a matter of perspective, his bank which is a small $300 million institution was once assessed about $40,000 in premiums which has now jumped to $678,000 per year. This occurred in the April-May timeframe, several months after budgets were in place and included an expectation of profitability. In addition, to make matters worse, in order to bring the fund back up, a three-year prepayment assessment of $1.3 million in cash by the end of 2010 was required, presenting a challenge to a small profit-based institution. Commissioner Smith stated that the issue wasn't necessarily one of lack of liquidity since the FDIC could have borrowed against a US Treasury line of $500 billion. However the chairwoman wanted to keep this a bank-funded matter especially following previous bailouts.

Senator Blake stated he is nervous about the federal government telling national banks to absorb bad paper and stated that the federal government should have instead taken a more proactive approach. Though Senator Blake supports institutional profits, he is concerned that risk may be inadvertently shifted back to the public taxpayer. Commissioner Smith replied that it is unlikely that the federal government in the near future will intervene in the mortgage market, but again this is a complicated matter.

Representative Jordan asked Commissioner Smith to talk about the composition of the Banking Commission. Representative Jordan stated that under existing law the Governor has 19 appointees (11 public, 5 practical bankers and 2 CEOs of state savings institutions) and the Speaker of the House and the Senate Pro-Tem each have 1 appointment. Representative Jordan wanted to know where the other 1 came from. Commissioner Smith believed that the difference may have come about from earlier amendments; however, under the proposed law believed this matter would go away.

Chairman Brubaker requested staff to strike 19 to 21 figures and go back to a figure of 15 using previous law before the S&L merger. Representative Jordan stated that he believed under the proposed law there now appears to be three wild cards (19 governor appointees of which 5 practical and 11 public members) and wanted to make sure that any amendment would care of a discrepancy. Commissioner Smith will make sure that this point is addressed.

Representative Jordan then made a point that the proposed law appears to define practical bankers as being defined as banking leaders and public members as not being practical bankers. Commissioner Smith stated under the proposed language, in theory, a bank staff individual could be a public member and that this was never the intent. Representative Jordan then stated he believed it appears perhaps some language may have been stripped out that needs to be reviewed. Commissioner Smith replied that he would be receptive to inserting language that a public membership be further defined as a public member not affiliated with a bank.

Chairman Brubaker and Chairman Brown announced that the next meeting will be held on January 20, 2012, 10:00 a.m., 544 Legislative Office Building, Raleigh, North Carolina. There being no further business, the meeting adjourned at 11:30 a.m.

The following is a reminder of the tentative Committee schedule for the recommended revisions to the Banking Statute:

January:	Articles 4 and 5
February:	Articles 6 and 7
March:	Articles 8 and 9
April:	Article 10

Senator Harry Brown, Chairman

Representative Harold Brubaker, Chairman

ATTEST:

Darryl Black, Committee Assistant

ATTENDANCE

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

(Name of Committee)

DATES	Nov. 21, 2011	Dec. 19, 2011					
Rep. Brubaker, - House Chair	Yes	Yes					
Sen. Harry Brown, Senate Chair	No	Yes					
Rep. Leo Daughtry	Yes	Yes					
Rep. Beverly Earle	Yes	Yes					
Rep. Jonathan Jordan	N	Yes					
Rep. Daniel McComas	N	Yes					
Sen. Thomas Apodaca	N	N					
Sen. Harris Blake	N	Yes					
Sen. Dan Blue	Yes	Yes					
Sen. Thom Goolsby	N	N					
Charles Whitehead (House Bank)	Yes	Yes					
Gray Reed (Senate Bank)	N	Yes					
Christopher Kukla (House)	Yes	Yes					
Andrea Young (Senate)	Yes	Yes					
Rep. Darryl McCormick							

Committee Sergeants at Arms

NAME OF COMMITTEE JT. STUDY MODERNIZATION OF BANK LAWS

DATE: 12-19-11 **Room:** 544

House Sgt-At Arms:

1. **Name:** LARRY ELLIOTT
2. **Name:** REGGIE SILLS
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

Senate Sgt-At Arms:

1. **Name:** Billy Fritscher
2. **Name:** Steve Wilson
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — December 19, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	PS
Lauren Whaley	NCCUL
Daniel Blum	Troutman Sanders
Cody Thomas	NCAR
David McGowan	NCAR
Courtney Denning	NCBA
Aubrey Incorvaia	NC DOC
SOLARI	DST
Lisa McDougald	BB&T
Meghan Best	NCBA (Bankers)
Scarlette Gardner	Secretary of State

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — December 19, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Stock	NCCUB
Daniel Garner	"
Charlie Fields	"
Elizabeth Hammond	NCCOB
Patrick Brennan	"
Ha Nguyen	"
Ray Grace	"
Fred Bone	Bone Asso.
Al Rapley	NCJC
Noelle Spicer	"

Cindy Coley (Rep. Brubaker)

m: Elise Quick (Sen. Brown)
t: Monday, November 21, 2011 2:53 PM
To: @InterimCommitteeNotice; Andrea B. Young; Ann Raeford (Rep. Earle); Anna Kidd (Sen. Blake); Bonnie McNeil (Sen. Blue); Brian Mullis (Rep. Jordan); Carolyn Gooden (Sen. Apodaca); Charles Whitehead, Jr.; Christopher Kukla; Cindy Coley (Rep. Brubaker); Darryl Black (Sen. Harry Brown); Drupti Chauhan (Research); Elise Quick (Sen. Brown); Gray Reed; Greg Roney (Research); Joseph Kyzer (Sen. Goolsby); Judy Lowe (Rep. McComas); Karen Cochrane-Brown (Research); Margaret Dockery (Rep. Daughtry); Rep. Beverly Earle; Rep. Danny McComas; Rep. Harold "Bru" Brubaker; Rep. Jonathan Jordan; Rep. Leo Daughtry; Ryan Blackledge (Bill Drafting); Sen. Dan Blue; Sen. Harris Blake; Sen. Harry Brown; Sen. Thom Goolsby; Sen. Tom Apodaca; Susanne Gunter (Sen. Brown)
Subject: <NCGA> Modernization of North Carolina Banking Laws, Jt. Leg. Study Commission (2011)

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

November 21, 2011

MEMORANDUM

TO: Members, Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

FROM: Senator Harry Brown, Co-Chair
Representative Harold J. Brubaker, Co-Chair

SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Monday	December 19, 2011	10:00 a.m.	544 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Darryl Black or Elise Quick at (919)715-3034.

cc: Committee Record _X_
Interested Parties _X_

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

Senator Harry Brown, Co-Chair ***Representative Harold J. Brubaker, Co-Chair***

AGENDA

Monday, December 19, 2011
10:00 am.
Room 544 LOB

1. **Welcome and Introductions**
   Senator Harry Brown, Co-Chair

2. **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*

3. **Committee Discussion**

4. **Adjourn**

EXHIBIT #1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-ROz-10 [v.2] (12/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/7/2011 5:41:01 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.

The General Assembly of North Carolina enacts:

SECTION 1. Articles 1 through 14, 17, 17B and 18A of Chapter 53 of the General Statutes are repealed.

SECTION 2. Chapter 53 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 3 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.

(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.

"**§ 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 unless established as a depository 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

(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.

(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 company, that is organized under the laws of this State and is engaged in the business of receiving deposits (other than trust funds), paying monies and making loans.

(5) Bank Operating Subsidiary. – A subsidiary 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.

(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 "Tier 1 capital" as that term is defined in Part 325 of the Regulations of the FDIC or any successor regulation of the FDIC; provided, that if the term "Tier 1 capital" is replaced by a term including substantially the same components as "Tier 1 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 3 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.

(35) Federal Savings Association. – A federal savings association or federal savings bank chartered under Section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464.

(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 or that controls a company that directly or indirectly controls a depository institution.

(39) 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.

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

(41) Individual. – A human being.

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

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

(44) National Bank. – A banking association organized under 12 U.S.C. 21.

(45) 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, or a depository institution established under the laws of another state 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 officers, mortgage loan offices, and insurance agency offices, or a combination thereof.

(46) North Carolina Financial Institution. – A bank, savings institution, or trust company organized under the laws of this State.

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

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

(49) 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.

(50) 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.

(51) Organizers. – One or more individuals who are the organizers of a proposed ban 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, and at all times thereafter, is, or has been during the five years preceding the appointment, a president, chief executive officer, or director 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 practical banker.

(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 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 that has an equity ownership interest in a bank or holding company and is entitled to vote such interest under the bank's or holding company's organizational documents.

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

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

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

(69) Trust Company. – A company that is formed primarily for the purpose of taking, executing, and administering trusts, and which is not a depository institution.

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

(71) Voting Securities. –Voting Securities means:

a. Any equity ownership interest in a company that entitles the holder to vote on any matter presented to holders of equity ownership interests in the company for a vote, and

b. Any equity interest, right to acquire an equity ownership interest, debt instrument or other similar interest or instrument convertible into an equity ownership interest that entitles the holder to vote on any matter presented to holders of equity ownership interest which may be converted into a voting equity ownership interest.

"**§ 53-1-5. Severability.**

If any provision of this Chapter is found by any court of competent jurisdiction to be in valid 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 the State Treasurer, who shall serve as an ex officio member, 19 members appointed by the Governor, 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 five practical bankers and 11 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 public member. 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) 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 may review the exercise by the Commissioner of all powers, duties, and functions vested in or exercised by the Commissioner under the laws of this State. The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B of the General Statutes, for hearings held before the Commission upon any matter which may arise in connection with the administration of the banking laws by the Commissioner.

"**§ 53-2-2. The Commissioner.**

(a) Effective April, 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 Commission 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.

(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 him for administration or in connection with any bank or the rights, liabilities, property or assets thereof, under his 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.

"**§ 53-2-3. The Office of the Commissioner of Banks.**

(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 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.

"**§ 53-2-4. Administration of the Office of the Commissioner of Banks.**

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

"**§ 53-2-7. Official record.**

(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 the names or other personal information of any customers of any person or revealing the collateral given by any such customers in connection with an extension of credit; 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 company, 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 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 institution or trust companies, 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.

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 in the amount of ten thousand dollars ($10,000) 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 company 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 and the application for a charter.

(2) All funds paid for shares of the proposed bank shall be placed in escrow under an agreement, and with an escrow agent approved by 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.

(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.

(b) 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 or the Commission and that a representation to the contrary is a criminal offense.

(3) All payments for purchases of shares are made in legal tender of the United States.

(4) The proposed bank has an operational expense fund from which to 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 five percent of the voting securities of the proposed bank will command the confidence of the market that the bank intends to serve.

(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 do "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 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.

(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 recommended conditions. The Commission shall render its decision within 30 days after the completion of 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 cash 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 G.S. 53-3-7(c) or other applicable law."

Summary of Proposed Changes to N.C. Banking Law
Articles 1A-3A

Proposed Section	Current Section	New Title	Change(s)
Article 1A			
§ 53-1-1	No corresponding §	"Title"	The new Chapter title is "Regulation of Banks and Other Financial Services."
§ 53-1-2	No corresponding §	"Scope and applicability of Chapter"	§ 53-1-2 states that the Chapter applies to existing and new state banks, all persons who subject themselves to its provisions and persons subject to the penalties in the Chapter by virtue of violations they commit. It clarifies that the Chapter does not invalidate acts taken that were valid under prior law. It also provides that national banks and out of state banks operating in NC have the same exemptions and immunities as banks created under state law.
§ 53-1-3	§ 53-127	"Existing banks; prohibitions, injunctions"	§ 53-1-3 provides that banks, whenever chartered, are subject to the new Chapter. The Commissioner may seek an injunction against improper use of the words "bank," "savings bank," "savings and loan association," or trust company in a corporate name; under existing law, the limitations are enforced by any "banking entity" and violations are currently Class 3 misdemeanors. The new law requires a risk of confusion to the public to be a violation and is enforceable only by injunction. The new Section addresses the use of the specified terms in a more concise manner than § 53-127, which it replaces.
§ 53-1-4	§ 53-1	"Definitions and application of terms"	This section replaces the current definitions that reflect accounting and supervisory capital restrictions with definitions relating to capital adequacy consistent with the "prompt corrective action" categories that are the real and effective measures under current law. There are many more defined terms under the proposed law, consistent with modern statutory drafting best practices. The new definitions will be discussed as appropriate in connection with the sections of the new Chapter where they are applied.
§ 53-1-5	No corresponding §	"Severability."	A court's declaration of the invalidity of any provision of the Chapter will not affect the validity of the remaining provisions.

EXHIBIT # 2

Summary of Proposed Changes to N.C. Banking Law
Articles 1A-3A

Proposed Section	Current Section	New Title	Change(s)
Article 2A			
§ 53-2-1	§ 53-92	"The Commission."	This section would drop the current requirement that the Commission include two CEOs of state savings institutions and replaces language in the current law that deals with conflicts of interest with incorporation of the provisions of the State Ethics Act. New definitions of "practical banker" and "public member" are meaningful in the context of this section.
§ 53-2-2	§§ 53-92, -93, -94, -98, -104, -107.1	"The Commissioner."	§ 53-2-2 reorganizes numerous provisions; it clarifies the Commissioner's authority to enforce those state or federal consumer protections laws with respect to which the Commissioner has enforcement jurisdiction.
§ 53-2-3	§§53-93.1, -96, -96.1, -101	"The Office of the Commissioner of Banks."	This section reorganizes provisions only.
§ 53-2-4	§53-122	"Administration of the Office of the Commissioner of Banks."	§ 53-2-4 contains a general statement of the Office's authority to assess categories of licensees under various chapters; although the specific assessment provisions are moved to Article 8 of the new Chapter. It maintains the current timetable for developing the annual budget.
§ 53-2-5	§§ 53-115	"Rulemaking."	This section restates current law to provide that the Commissioner, subject to review and approval by the Commission, issues rules. Current law states that the Commission makes rules. The proposed change conforms to actual current practice while retaining the authority of the Commission with regard to rules.
§ 53-2-6	§ 53-92	"Hearings and Appeals."	Uniform provisions for hearings and appeals for all statutes administered by the Commission and the Commissioner, not just those applicable to banks.

Summary of Proposed Changes to N.C. Banking Law
Articles 1A-3A

Proposed Section	Current Section	New Title	Change(s)
§ 53-2-7	§ 53-99	"Official records."	This provision revises and expands current § 53-99 to apply to all of the entities regulated by the Commissioner, rather than just to banks, and to extend the legally required confidentiality to legal discovery as well as other requests. The proposal carries forward the provision of current law allowing sharing with other governmental agencies, including law enforcement agencies.
Article 3A			
§ 53-3-1	§§ 53-2, -4	"Application to organize a bank."	This section authorizes an application to organize a bank by an "applicant," rather than five individual organizers as under current law. The applicant my be a "person" (as that term is defined in §53-1-4(52) other than an individual or group (a LLC for example) if the Commissioner approves its application. The Commissioner will review the application to determine whether the organizational process will continue. The applicant is required to pay a non-refundable $10,000 application fee. The current application fee is $8000, but is set forth by rule, not in the statutes.
§ 53-3-2	§ 53-4	"Permission to organize a bank."	With the Commissioner's permission, the "organizers" may file articles of incorporation with the Secretary of State. The term "organizers" is defined in §53-1-4(50) to be "one or more individuals who are ... responsible for the business of the proposed bank from the filing of the application to the Commission's final decision." If requirements set forth in proposed §53-3-2 are met, the Commission authorizes continuation of the organizational process. Upon receipt of the Commissioner's certification of this authorization, the Secretary of State returns a copy of the articles of incorporation to the Commissioner. After completion of this process, the bank's organization can be done through the corporation with funds held in an escrow account approved by the Commissioner.

Summary of Proposed Changes to N.C. Banking Law
Articles 1A-3A

Proposed Section	Current Section	New Title	Change(s)
§ 53-3-3	§ 53-3	"Articles of incorporation of a proposed bank."	This section provides that the proposed bank's articles of incorporation shall contain information required by Chapter 55 of the North Carolina General Statutes (the Business Corporation Act) and such other provisions as the Commissioner may require. The articles are stated to be authority enough for the bank to apply for federal deposit insurance.
§ 53-3-4	§§ 53-2, -4, -5	"Commissioner's approval of charter issuance."	Upon the filing of its articles of incorporation, the proposed bank begins its corporate existence; however, it is only upon the issuance of a charter that this corporation can begin the business of banking. This section sets out the conditions for the Commissioner's approval of the issuance of a charter. It carries forward many of the provisions of current law with several changes. The tests of character and fitness and of likelihood of success are now based on an assessment of the "market that the bank intends to serve" rather than "the community." In addition, the provisions relating to required capital have been updated to conform to modern corporate and regulatory practice. If the Commissioner approves issuance of a charter, the Commissioner submits his order approving issuance to the Commission for its review; if not, the Commissioner issues an order of denial, subject to review by the Commission and the courts.
§ 53-3-5	§ 53-4	"Notice; public hearing."	Current law merely states that the decision of the Commissioner of Banks is subject to the review of the Banking Commission which has the authority to approve, modify or disapprove of any action taken by the Commissioner. The approach adopted in the new Chapter is to set out the procedure that is currently followed in more detail. The proposal also adds a definition of "public notice" that includes both traditional publication and posting on the OCOB web site.

Summary of Proposed Changes to N.C. Banking Law
Articles 1A-3A

Proposed Section	Current Section	New Title	Change(s)
§ 53-3-6	§ 53-4	"Commission decision."	This Section sets forth the procedure used by the Commission to review the recommendation of the Commissioner. It codifies current practice, including the applicant's right to appeal adverse decisions of the Commission.
§ 53-3-7	§ 53-6, -7, -8, -9, -9.1	"Issuance of charter."	§ 53-3-7 sets forth the final requirements for issuance of the charter and provides that the Commissioner may dissolve and liquidate the proposed bank or order the organizers to do so if (1) the Commissioner does not recommend issuance of a charter; (2) the Commission denies approval of a charter; or (3) if the charter is revoked because the bank does not open within 6 months or for other reasons.

EXHIBIT #3

Current Banking Law Sections Corresponding to Proposed Changes to NC Banking Law

Current Sections Corresponding to New Article 1A:

Article 1.
Definitions.

§ 53-1. "Bank," "surplus," "undivided profits," and other words defined.

Except as otherwise specifically provided in this Chapter, the following definitions shall be applied to the terms used in this Chapter:

(1) Bank. – The term "bank" shall be construed to mean any corporation, other than savings and loan associations, savings banks, industrial banks, and credit unions, receiving, soliciting or accepting money or its equivalent on deposit as a business.

(1a) Branch. – The term "branch" means an office of any bank in which deposits are received, monies are paid, and loans are made. Any of the functions or services authorized to be engaged in by a bank may be carried out in a branch.

(2) Demand Deposits. – The term "demand deposits" means all deposits, the payment of which can be legally required within 30 days.

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

a. When a bank cannot meet its deposit liabilities as they become due in the regular course of business;

b. When the actual cash market value of its assets is insufficient to pay its liabilities to depositors and other creditors;

c. When its reserve shall fall under the amount required by this Chapter, and it shall fail to make good such reserve within 30 days after being required to do so by the Commissioner of Banks; or

d. Whenever the undivided profits and surplus shall be inadequate to cover losses of the bank, whereby an impairment of the capital stock is created.

(3a) Limited Service Facility. – The term "limited service facility" means an office of a bank in which deposits are received, monies are paid, or other duties and functions of a teller are performed. Loan applications shall be taken in a limited service facility but notes may not be executed nor loan proceeds disbursed in a limited service facility.

(4) Net Earnings. – The term "net earnings" means the excess of the gross earnings of any bank over the expenses and losses chargeable against such earnings during any dividend period.

(5) Practical Banker. – The term "practical banker" means an officer or employee of a bank actively engaged in performing duties in managing or supervising or assisting in managing or supervising the conducting

of a banking business, including any such banker who is in a retired status from such duties.

(6) Surplus. – The term "surplus" means a fund created pursuant to the provisions of this Chapter by a bank from payments by stockholders or from its net earnings or undivided profits which, to the amount specified and by any additions thereto set apart and designated as such, is not available for the payment of dividends, and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

(7) Time Deposits. – The term "time deposits" means all deposits, the payment of which cannot be legally required within 30 days.

(8) Undivided Profits. – The term "undivided profits" means the credit balance of the profit and loss account of any bank.

(9) Unimpaired Capital Fund. – The term "unimpaired capital fund" means the total of the amount of unimpaired common stock, preferred stock, surplus, undivided profits, reserve for contingencies and other capital reserves (excluding accrued dividends on preferred stock and limited life preferred stock), mandatory convertible instruments, allowance for possible loan losses, and the amount of capital debentures or notes, convertible or otherwise, having an average original maturity of at least seven years, which have been specifically designated as part of the bank's unimpaired capital fund by resolution duly adopted by the board of directors of the bank; provided, that upon payment of such capital debentures or notes or upon accumulation of funds in a sinking fund for amortization of such debentures or notes, unimpaired capital fund shall be reduced by the amount of such payment or accumulation. The terms and conditions of any issue of or prepayment of capital debentures or notes must have the prior written approval of the Commissioner of Banks affirming that in his opinion such issue or prepayment is in the best interest of the depositors, creditors and stockholders of the bank. (1921, c. 4, s. 1; C.S. s. 216(a); 1927, c. 47, s. 1; 1931, c. 243, s. 5; 1945, c. 743, s. 1; 1967, c. 789, s. 21; 1979, c. 483, s. 2; 1983, c. 214, s. 1; 1985, c. 677, s. 3; 1989, c. 187, s. 1; 1995, c. 129, s. 1; 2001-263, s. 6.)

Article 10.
Penalties.

(This section is currently included within Article 10)

§ 53-127. Unlawful use of terms indicating that business is bank or trust company; unauthorized use of name of banking entity.

(a) Definitions. The following definitions apply in this section.

(1) Banking. – The business of receiving or soliciting money on deposit.

(2) Banking entity. – A person, partnership, corporation, or other entity that is engaged in the banking or trust business in North Carolina and is (i) subject to the supervision of the Commissioner of Banks under this Chapter, (ii) subject to supervision by the Commissioner of Banks

under Chapter 54B or Chapter 54C, or (iii) a banking or savings institution authorized to transact a banking or trust business in this State under federal law. The term "banking entity" includes a credit union chartered under the laws of this State or under federal law, but only with regard to subsections (c1), (d), (e), and (f) of this section.

(3) Nonbanking entity. – A person, partnership, corporation, or other entity that is not a banking entity.

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

(c) Exceptions.

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

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

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

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

(c1) No person shall use the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity.

(d) Penalty. Violation of subsections (a) through (c1) of this section is a Class 3 misdemeanor, punishable only by a fine of up to five hundred dollars ($500.00).

(e) Any banking entity may file an action to enjoin the use of the banking entity's name or logo in connection with the sale, offering for sale, distribution, or advertising of any financial product or service without the express written consent of the banking entity. Any court of competent jurisdiction may grant injunctions to restrain the use and may require the defendants to pay to the banking entity all profits derived from, and all damages suffered by, reason of the wrongful use of the name or logo.

(f) The provisions of this section are not exclusive remedies and do not preclude the use of any other remedy by law. (1921, c. 4, s. 81; C.S., s. 224(c); 1931, c. 243, s. 5; 1943, c. 543; 1985, c. 677, s. 6; 1989 (Reg. Sess., 1990), c. 805, s. 1; 1991, c. 680, s. 4; 1993, c. 539, s. 422; 1994, Ex. Sess., c. 24, s. 14(c); 2001-193, s. 16; 2005-162, s. 1.)

Current Sections Corresponding to New Article 2A:

Article 8.

Commissioner of Banks and State Banking Commission.

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

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

(b) The State Banking Commission, which has heretofore been created, shall consist of the State Treasurer, who shall serve as an ex officio member thereof, 19 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 five practical bankers, 11 persons selected primarily as representatives of the borrowing public, and two chief executive officers of State savings institutions. The person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be a practical banker. The person appointed by the General Assembly upon the recommendation of the Speaker of the House shall be a person selected primarily as a representative of the borrowing public. The persons selected primarily as representatives of the borrowing public shall not be employees or directors of any financial institution nor shall they have any interest in any regulated financial institution other than as a result of being a depositor or borrower. Under this section, no person shall be considered to have an interest in a financial institution whose interest in any financial institution does not exceed one-half of one percent (1/2 of 1%) of the capital stock of that financial institution. These members of the Commission shall be selected so as to fully represent the consumer, industrial, manufacturing, professional, business and farming interests of the State. No person shall serve on the Commission for more than two complete consecutive terms. As the terms of office of the appointive members of the Commission expire, their successors shall be appointed by the person appointing them, for terms of four years each. 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. The subsistence and travel expenses shall be paid from the fees collected from the examination of banks as provided by law.

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

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

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

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

(d) The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this State. Upon an appeal to the Banking Commission by any party from an order entered by the Commissioner of Banks following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, the chairman of the Commission may appoint an appellate review panel of not less than five 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 of Banks may, within 20 days after the order and upon written notice to the Commissioner, appeal the Commissioner's order to the Banking 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 Banking 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 Banking Commission shall also constitute grounds to dismiss the appeal. Upon receipt of a notice of appeal, the Commissioner of Banks shall, within 30 days of the notice, certify to the Commission the record on appeal. Any party to a proceeding before the Banking 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 Banking Commission." A copy of the petition for judicial review shall be served upon

the Commissioner of Banks 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 Banking Commission shall be as provided in G.S. 150B-51(b). (1931, c. 243, s. 1; 1935, c. 266; 1939, c. 91, s. 1; 1949, c. 372; 1953, c. 1209, ss. 4, 6; 1961, c. 547, s. 2; 1967, c. 789, s. 16; 1969, c. 844, s. 6; c. 920; 1979, c. 478, s. 1; 1981, c. 884, s. 1; 1983, c. 328, ss. 1, 3; 1985, c. 318; 1989, c. 781, s. 41.1; 1995, c. 490, s. 9; 2001-193, s. 14; 2003-63, s. 2; 2006-203, s. 16; 2009-57, s. 1.)

§ 53-93. Powers and duties of Commissioner.

The Commissioner of Banks shall have the powers, duties and functions herein given, and in addition thereto such other powers and rights as may be necessary or incident to the proper discharge of the Commissioner's duties. The Commissioner may appoint and assign a member of the staff of the Office of the Commissioner of Banks to preside at administrative hearings required by Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, and make a recommended decision to the Commissioner. (1931, c. 243, s. 2; 2003-63, s. 3.)

§ 53-93.1. Deputy commissioners.

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

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

(b) In addition to the chief deputy commissioner authorized by subsection (a) of this section, the Commissioner of Banks may appoint deputy commissioners to serve at the Commissioner's pleasure. The deputy commissioners authorized by this subsection shall perform any duties and exercise any powers directed by the Commissioner. (1959, c. 273; 1983, c. 717, s. 8; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1989, c. 752, s. 39(c); 1995, c. 129, s. 20; 2001-193, s. 1.)

§ 53-94. Right to sue and defend in actions involving banks; liability to suit.

As Commissioner of Banks he is empowered to 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 him for administration or in connection with any bank or the rights, liabilities, property or assets thereof, under

his supervision; but nothing herein shall be construed to render the Commissioner of Banks liable to be sued except as other departments and agencies of the State may be liable under the general law. (1931, c. 243, s. 3.)

§ 53-96. Salary of Commissioner; legal assistance.

The salary of the Commissioner of Banks shall be fixed by the General Assembly in the Current Operations Appropriations Act. The Attorney General shall assign an attorney on his staff to work full time with the Banking 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 this attorney. (1931, c. 243, s. 6; 1957, c. 541, s. 3; 1979, 2nd Sess., c. 1137, s. 53; 1983, c. 717, s. 9; 1991 (Reg. Sess., 1992), c. 1039, s. 22; 1993, c. 321, s. 206(b), c. 561, s. 83.)

§ 53-96.1. Salaries, promotions, and leave of employees of the Office of the Commissioner of Banks.

(a) Repealed by Session Laws 2007-484, s. 9(a), effective August 30, 2007.

(b) The exemptions to Chapter 126 of the General Statutes authorized by G.S. 126-5(c11) for the Office of the Commissioner of Banks and its employees shall be used to develop organizational classification and compensation innovations that will result in the enhanced efficiency of operations. The Office of State Personnel shall assist the Commissioner of Banks in the development and implementation of an organizational structure and human resources programs that make the most appropriate use of the exemptions, including (i) a system of job categories or descriptions tailored to the agency's needs; (ii) policies regarding paid time off for agency personnel and the voluntary sharing of such time off; and (iii) a system of uniform performance assessments for agency personnel tailored to the agency's needs. The Commissioner of Banks may, under the supervision of the Office of State Personnel, develop and implement organizational classification and compensation innovations having the potential to benefit all State agencies. (2005-284, s. 1; 2007-484, s. 9(a).)

§ 53-98. Seal of office of Commissioner; certification of documents.

The Commissioner of Banks shall have a seal of office bearing the legend "State of North Carolina – Commissioner of Banks," with such other appropriate device as he may adopt. (1931, c. 243, s. 9.)

§ 53-99. Official records.

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

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

(1) Records compiled during or in connection with an examination, audit or investigation of any bank, banking office, bank holding company or

its nonbank subsidiary, or trust department which operates or has applied to operate under the provisions of this Chapter;

(2) Records containing information compiled in preparation or anticipation of litigation, examination, audit or investigation;

(3) Records containing the names of any borrowers from a bank or revealing the collateral given by any such borrower: Provided, however, that every report of insider transactions made by a bank which report is required to be filed with the appropriate State or federal regulatory agency by either State or federal statute or regulation shall be filed with the Commissioner of Banks in a form prescribed by him and shall be open to inspection, examination and copying by any person;

(4) Records prepared during or as a result of an examination, audit or investigation of any bank, bank affiliate, bank holding company or its nonbank subsidiary, data service center or banking practice by an agency of the United States, or jointly by such agency and the Commissioner of Banks, if such records would be confidential under federal law or regulation;

(4a) Records prepared during or as a result of an examination, audit or investigation of any bank, bank affiliate, bank holding company or its nonbank subsidiary, data service center or banking practice by a regulatory agency of jurisdiction of the region defined in G.S. 53-210(11) if these records would be confidential under that jurisdiction's law or regulation;

(5) Records of information and reports submitted by banks to federal regulatory agencies, if such records would be confidential under federal law or regulation;

(6) Records of complaints from the public received by the banking department and concerning banks under its supervision if such complaints would or could result in an investigation;

(7) Records of examinations and investigations of consumer finance licensees;

(7a) Records of examinations and investigations of licensees under the Money Transmitters Act, Article 16A of this Chapter;

(7b) Records of applications, examinations, and investigations of applicants, licensees, and exempt persons under the Mortgage Lending Act, Article 19A of this Chapter;

(7c) Records of applications and investigations of registrants under the Refund Anticipation Loan Act, Article 20 of this Chapter;

(8) Records of pre-need burial contracts maintained pursuant to Article 13B of Chapter 90 of the General Statutes including investigations of such contracts and related credit inquiries;

(9) Any letters, reports, memoranda, recordings, charts, or other documents which would disclose any information set forth in any of the confidential records referred to in subdivisions (1) through (8).

(c) Notwithstanding the provisions of subsection (b), the Commissioner of Banks may, by written agreement with any state or federal regulatory agency, share with that agency any confidential information set out in subsection (b) on the condition that the information shared shall be treated as confidential under the applicable laws and regulations governing the recipient agency.

(d) Nothing in this section of the law shall prohibit a bank, upon approval of the Commissioner of Banks, from disclosing to an insurance carrier, for the purpose of obtaining insurance coverage required by Chapter 53 of the General Statutes, the bank's regulatory rating prepared by the Commissioner's office. Provided however, the insurance underwriter must agree in writing to maintain the confidentiality of such information and to not disclose the same in any manner whatsoever. (1931, c. 243, s. 10; 1977, 2nd Sess., c. 1181, s. 2; 1979, c. 255, s. 1; 1989, c. 9, s. 1; 1989 (Reg. Sess., 1990), c. 881, s. 3; 1995, c. 129, s. 21; 2001-393, s. 3; 2001-443, s. 3; 2004-171, s. 3.)

§ 53-101. Clerical help.

The Commissioner of Banks is empowered to employ sufficient clerical and secretarial help, and other necessary labor to conduct the affairs of the Commissioner's office efficiently and effectively. (1931, c. 243, s. 12; 2005-284, s. 2.)

§ 53-104. Commissioner of Banks shall have supervision over, etc.

Every bank or corporation transacting the business of banking, or doing a banking business in connection with any other business, under the laws of and within this State, and any individual, partnership, association, or corporation which undertakes or attempts to transact the business of banking, or do a banking business in connection with any other business, shall be under the supervision of the Commissioner of Banks. It shall be his duty to execute and enforce through the State bank examiners and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to banks as defined in this Chapter. For the more complete and thorough enforcement of the provisions of this Chapter, the State Banking Commission is hereby empowered to promulgate such rules not inconsistent with the provisions of this Chapter, as may, in its opinion, be necessary to carry out the provisions of the laws relating to banks and banking as herein defined, and as may be further necessary to insure safe and conservative management of the banks under its supervision taking into consideration the appropriate interest of the depositors, creditors, stockholders, and the public in their relations with such banks. All banks doing business under the provisions of this Chapter shall conduct their business in a manner consistent with all laws relating to banks and banking, and all rules, regulations, and instructions that may be promulgated or issued by the State Banking Commission. (1921, c. 4, s. 63; C.S., s. 222(a); 1931, c. 243, s. 5; 1939, c. 91, s. 2; 1945, c. 743, s. 1; 1979, c. 483, s. 10.)

§ 53-107.1. Administrative orders; penalties for violation.

(a) In addition to any other powers conferred by this Chapter, the Commissioner shall have the power to:

(1) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee to cease and desist violating any provision of this Chapter or any lawful regulation issued thereunder; and

(2) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of a depositor.

(b) Consistent with Article 3A of Chapter 150B of the General Statutes, notice and opportunity for hearing shall be provided before any of the foregoing actions shall be undertaken by the Commissioner. Provided, however, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action, but shall promptly afford a subsequent hearing upon application to rescind the action taken.

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

(d) The Commissioner may impose a civil money penalty of not more than one thousand dollars ($1,000) for each violation by any bank, trust company, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (1) of subsection (a) of this section. Provided further, the Commissioner may impose a civil money penalty of not more than five hundred dollars ($500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any director, officer, or employee violates a cease and desist order issued under subdivision (2) of subsection (a) of this section.

The clear proceeds of civil money penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1991, c. 677, s. 6; 1998-215, s. 29.)

§ 53-115. State Banking Commission to adopt rules.

(a) The State Banking Commission is hereby authorized, empowered and directed to make all necessary rules with respect to the establishment, operation, conduct, and termination of any and all activities and businesses that are subject to licensing, regulation, supervision, or examination by the Commissioner of Banks under this Chapter.

(b) The rule-making authority conferred on the State Banking Commission by this section shall be in addition to and not in derogation of any specific rule-making authority by any other provision of this Chapter. (1933, c. 120, s. 4; 1939, c. 91, s. 2; 1979, c. 483, s. 15; 2004-171, s. 4.)

Article 9.
Bank Examiners.

(This section is currently included within Article 9)

§ 53-122. Fees and assessments.

(a) For the purpose of operating and maintaining the office of the Commissioner of Banks, banks and consumer finance licensees doing business under the authority of Chapter 53 of the General Statutes shall pay the following fees and assessments into the office of the Commissioner of Banks within 10 days after the assessment:

(1) Banks. – Each bank shall pay a cumulative assessment based on its total assets, as shown on its report of condition made to the

Commissioner of Banks as of December 31 each year or the date most nearly approximating the same, not to exceed the amount determined by applying the following schedule: (i) on the first fifty million dollars ($50,000,000) of assets, or fraction thereof, ten thousand dollars ($10,000); (ii) on assets over fifty million dollars ($50,000,000), but not more than two hundred fifty million dollars ($250,000,000), fourteen dollars ($14.00) per one hundred thousand dollars ($100,000), or fraction thereof; (iii) on assets over two hundred fifty million dollars ($250,000,000), but not more than five hundred million dollars ($500,000,000), eleven dollars ($11.00) per one hundred thousand dollars ($100,000), or fraction thereof; (iv) on assets over five hundred million dollars ($500,000,000), but not more than one billion dollars ($1,000,000,000), seven dollars ($7.00) per one hundred thousand dollars ($100,000), or fraction thereof; (v) on assets over one billion dollars ($1,000,000,000), but not more than ten billion dollars ($10,000,000,000), four dollars ($4.00) per one hundred thousand dollars ($100,000), or fraction thereof; and (vi) on assets over ten billion dollars ($10,000,000,000), two dollars ($2.00) per one hundred thousand dollars ($100,000), or fraction thereof. Additionally, each bank shall pay an assessment on trust assets held by it in the amount of one dollar ($1.00) per one hundred thousand dollars ($100,000) of the assets, or fraction thereof; except that banks are not required to pay assessments on real estate held as trust assets.

(2) Consumer Finance Licensees. – Each consumer finance licensee shall pay an assessment not to exceed eighteen dollars ($18.00) per one hundred thousand dollars ($100,000) of assets, or fraction thereof, plus a fee of three hundred dollars ($300.00) per office; provided, however, a consumer finance licensee shall pay a minimum annual assessment of not less than five hundred dollars ($500.00). The assessment shall be determined on a consumer finance licensee's total assets as shown on its report of condition made to the Commissioner of Banks as of December 31 each year, or the date most nearly approximating the same.

(3) Special Assessment. – If the Commissioner of Banks determines that the financial condition or manner of operation of a bank or consumer finance licensee warrants further examination or an increased level of supervision, or in the event of a merger or conversion of a savings institution organized under State or federal law into a bank, or conversion of a federally chartered bank into a State bank, the institutions may be subject to assessment not to exceed the amount determined in accordance with the schedule set forth in subdivision (1) of subsection (a) of this section for banks or subdivision (2) for consumer finance licensees.

(b) The State Banking Commission may by rule set the amount to be collected for processing any application or proceeding required by law to be filed with the Commissioner and for obtaining copies of any public record of the Banking Commission.

(c) In all civil and criminal cases tried in any of the courts of this State wherein any of the employees of the Commissioner of Banks are used as witnesses, a fee per day, to be determined by the presiding judge, and actual expenses incurred shall be allowed such witnesses and the same shall be paid to the Commissioner of Banks by the clerk of the court of the county in which the case is tried and thereafter charged in bill of costs as are other costs incurred in the matter.

(d) The total expenses of the office of the Commissioner of Banks shall not in any one year exceed the total fees collected under the provisions of this section, provided the expenses may exceed the total fees collected in any year when surplus funds are available.

(e) In the first half of each calendar year, the State Banking Commission shall review the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. If the estimated fees and assessments provided for under this section shall exceed the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may reduce by uniform percentage the fees and assessments provided for in this section. If the estimated fees and assessments provided for under this section shall be less than the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may increase by uniform percentage the fees and assessments provided for in this section to an amount which will increase the amount of the fees and assessments to be collected to an amount at least equal to the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. The State Banking Commission shall report to the Joint Legislative Commission on Governmental Operations its conclusion that the estimated fees and assessments should be reduced or increased. Any reduction or increase of estimated fees and assessments provided for under this section shall become effective July 1 of the next fiscal year.

(f) The Commissioner of Banks may collect the assessments provided for in subsection (a) of this section annually or in periodic installments as approved by the State Banking Commission. (1921, c. 4, s. 77; C.S., s. 223(f); 1927, c. 47, s. 15; 1931, c. 243, s. 5; 1943, c. 733; 1945, c. 467; 1955, c. 640, ss. 1, 2; 1957, c. 1443, s. 1; 1969, c. 229; 1979, c. 483, s. 1; 1981, c. 671, s. 13; 1989, c. 561, s. 1; 1997-285, s. 1; 2007-55, s. 1; 2009-451, s. 14.20.)

Current Sections Corresponding to New Article 3A:

Article 2.
Creation.

§ 53-2. How incorporated.

Any number of persons, not less than five, who may be desirous of forming a company and engaging in the business of establishing, maintaining, and operating banks of discount and deposit to be known as commercial banks, shall be incorporated in the manner following and in no other way; that is to say, such persons shall, by a certificate of incorporation under their hands and seals set forth:

(1) The name of the corporation; no name shall be used already in use by another existing corporation organized under the laws of this State or of the Congress, or so nearly similar thereto as to lead to uncertainty or confusion.

(2) The location of its principal office in this State.

(3) Whether it will do trust business as well as the business of a commercial bank.

(4) The amount of its authorized common capital stock, the number of shares into which it is divided, the par value of each share; and the amount of common capital stock with which it will commence business. The amount of capital required to charter a bank shall be determined as herein set forth by the Commissioner of Banks who shall give due consideration to (i) the population of the proposed bank's trade area, (ii) the total deposits of those depository financial institutions already operating in the proposed bank's trade area, (iii) the economic conditions and outlook within the proposed bank's trade area, (iv) the business experience and reputation of the proposed bank's management, (v) the business experience and reputation of the proposed bank's incorporators and proposed directors, (vi) the type and nature of business activities proposed to be engaged in, and (vii) the proposed bank's projected deposit growth and profitability. Except as otherwise provided, the amount of common capital stock required to charter a bank shall not be less than two million dollars ($2,000,000); provided, however, such amount of capital may be increased or decreased in the discretion of the Commissioner of Banks who, after considering the above enumerated criteria, determines that a greater capital requirement is necessary or that a smaller capital requirement will provide a sufficient capital base. In addition to the required capital, every bank shall have a paid in surplus of at least fifty percent (50%) of its common capital stock. The capital and paid in surplus required to charter a bank shall be exclusive of any organizational expenses. This subdivision shall not apply to banks organized and doing business prior to its adoption or amendment; provided, however, the Banking Commission is hereby authorized and directed to adopt rules to keep any original required minimum capital funds intact to the

end that they remain in and with the bank as a protection for depositors.

(5) The names and post-office addresses of subscribers for stock, and the number of shares subscribed by each; the aggregate of such subscriptions shall be the amount of the capital with which the company will commence business.

(6) Period, if any, limited for the duration of the company. (1921, c. 4, s. 2; C.S., s. 217(a); 1927, c. 47, s. 2; 1929, c. 72, s. 1; 1947, c. 781; 1953, c. 1209, s. 3; 1963, c. 793, s. 2; 1967, c. 789, s. 1; 1985, c. 677, s. 4; 1989, c. 187, s. 2; c. 770, s. 42; 1989 (Reg. Sess., 1990), c. 1024, s. 44; 2001-263, s. 2.)

§ 53-3. Certificate of incorporation; how signed, proved and filed.

The certificate of incorporation shall be signed by the original incorporators, or a majority of them, and shall be proved or acknowledged before an officer duly authorized under the laws of this State to take proof or acknowledgment of deeds, and shall be filed in the office of the Secretary of State. The Secretary of State shall forthwith transmit to the Commissioner of Banks a copy of said certificate of incorporation, and shall not issue or record the same until duly authorized so to do by the Commissioner of Banks as hereinafter provided. (1921, c. 4, s. 3; C.S., s. 217(b); 1931, c. 243, s. 5.)

§ 53-4. Examination by Commissioner; when certification to be refused; review by Commission.

Upon receipt of a copy of the certificate of incorporation of the proposed bank, the Commissioner of Banks shall at once examine into all the facts connected with the formation of such proposed corporation including its location and proposed stockholders, and if it appears that such corporation, if formed, will be lawfully entitled to commence the business of banking, the Commissioner of Banks shall so certify to the Secretary of State, unless upon examination and investigation he finds that

(1) The proposed corporation is formed for any other than legitimate banking business; or

(2) That the character, general fitness, and responsibility of the persons proposed as stockholders in such corporation and directors, officers, and other managerial officials are not such as to command the confidence of the community in which said bank is proposed to be located; or

(3) That the probable volume of business and reasonable public demand in such community is not sufficient to assure and maintain the solvency of the new bank and of the then existing bank or banks in said community; or

(4) That the name of the proposed corporation is likely to mislead the public as to its character or purpose; or

(5) That the proposed name is the same as the one already adopted or appropriated by an existing bank in this State, or so similar thereto as to be likely to mislead the public.

Upon such certification the Secretary of State shall issue and record such certificate of incorporation.

Notwithstanding any other provisions of this section, the Commissioner of Banks shall not make the certification to the Secretary of State described above until he shall have ascertained that the establishment of such bank will meet the needs and promote the convenience of the community to be served by the bank. Any action taken by the Commissioner of Banks pursuant to this section shall be subject to review by the State Banking Commission which shall have the authority to approve, modify or disapprove any action taken or recommended by the Commissioner of Banks. (1921, c. 4, s. 4; Ex. Sess. 1921, c. 56, s. 1; C.S., s. 217(c); 1931, c. 243, s. 5; 1953, c. 1209, s. 1; 1963, c. 793, s. 1; 1967, c. 789, s. 2.)

§ 53-5. Certificate of incorporation, when certified.

Upon receipt of such certificate from the Commissioner of Banks, the Secretary of State shall, if said certificate of incorporation be in accordance with law, cause the same to be recorded in his office in a book to be kept for that purpose, and known as the corporation book, and he shall, upon the payment of the organization tax and fees, certify under his official seal two copies of the said certificate of incorporation and probates, one of which shall forthwith be recorded in the office of the register of deeds of the county where the principal office of said corporation in this State shall or is to be located, in a book to be known as the record of incorporations, and the other certified copy shall be filed in the office of the Commissioner of Banks, and thereupon the said persons shall be a body politic and corporate under the name stated in such certificate. The said certificate of incorporation, or a copy thereof, duly certified by the Secretary of State or the register of deeds of the county in which the same is recorded, or by the Commissioner of Banks, under their respective seals, shall be evidence in all courts and places, and shall, in all judicial proceedings, be deemed prima facie evidence of the complete organization and incorporation of the company purporting thereby to have been established. The charter of any bank which fails to complete its organization and open for business to the public within six months after the date of filing its certificate of incorporation with the Secretary of State shall be void: Provided, however, the Commissioner of Banks may for cause extend the limitation herein imposed. (1921, c. 4, s. 5; C.S., s. 217(d); 1931, c. 243, s. 5; 1967, c. 823, s. 3.)

§ 53-6. Payment of capital stock.

The capital stock of every bank shall be fully paid in, in cash, before it shall be authorized by the Commissioner of Banks to commence business and the full payment in cash of the capital stock shall be certified to the Commissioner of Banks under oath by the president, cashier, or secretary of the said bank. (1921, c. 4, s. 6; C.S., s. 217(e); 1927, c. 47, s. 3; 1931, c. 243, s. 5; 1989, c. 20.)

§ 53-7. Statement filed before beginning business.

Before such company shall begin the business of banking, banking and trust, fiduciary, or surety business, there shall be filed with the Commissioner of Banks a statement under oath by the president, cashier, or secretary, containing the names of all the directors and officers, with the date of their election or appointment, term of office,

residence, and post-office address of each, the amount of capital stock of which each is the owner in good faith and the amount of money paid in on account of the capital stock. Nothing shall be received in payment of capital stock but money. (1921, c. 4, s. 7; C.S., s. 217(f); 1931, c. 243, s. 5; 1989, c. 187, s. 3.)

§ 53-8. Authorized to begin business.

Upon filing of such statement, the Commissioner of Banks shall examine into its affairs, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each director, the amount of capital stock of which each is the owner in good faith, and whether such corporation has complied with all the provisions of law required to entitle it to engage in business. If upon such examination it appears to the Commissioner of Banks that it is lawfully entitled to commence the business of banking, banking and trust, fiduciary, or surety business, he shall give to such corporation a certificate signed by the Commissioner of Banks, that such corporation has complied with all the provisions of the law required to be complied with, before commencing the business of banking, and that such corporation is authorized to commence business. (1921, c. 4, s. 8; C.S., s. 217(g); 1931, c. 243, s. 5.)

§ 53-9. Transactions preliminary to beginning business.

No such corporation shall transact any business except such as is incidental and necessarily preliminary to its organization until it has been authorized to do so by the Commissioner of Banks. (1921, c. 4, s. 9; C.S., s. 217(h); 1931, c. 243, s. 5.)

§ 53-9.1. Deposit insurance.

(a) Notwithstanding any other provision of law, no bank established under this Article shall engage in the business of banking without first securing insurance on its deposits from the Federal Deposit Insurance Corporation or any successor corporation created by an act of Congress.

(b) In order to secure deposit insurance as required by this section, a bank may enter into such contracts, incur such obligations, and generally do anything as may be necessary or appropriate in order to take advantage of any memberships, loans, subscriptions, contracts, grants, rights, or privileges that may at any time be available to banks or to their depositors, creditors, stockholders, conservators, receivers, or liquidators, as provided in Section 8 of the Federal Banking Act of 1933 (Section 12B of the Federal Reserve Act as amended) or in any other act or resolution of Congress, to aid, regulate, or safeguard banking institutions and their depositors. In order to secure deposit insurance as required by this section, a bank may also subscribe for and acquire stock, debentures, bonds, or any other securities of the Federal Deposit Insurance Corporation and may comply with the lawful regulations and requirements that may be imposed by the Federal Deposit Insurance Corporation. (1989, c. 187, s. 4.)

MINUTES

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

Friday, January 20, 2012

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws met on Friday, January 20, 2012 at 10:10 a.m., Room 544 Legislative Office Building, Raleigh, North Carolina. In attendance were Representative Brubaker (Chairman); Representatives Jordan, McComas and McCormick; Senator Brown (Chairman), Senator Blake and Blue; Christopher Kukla, Gray Reed, Charles Whitehead, Jr., and Andrea (Beth) Young. Ryan Blackledge (Bill Drafting Staff), Drupti Chauhan (Research Staff), Karen Cochrane-Brown (Research Staff) Greg Roney (Research Staff), and Committee Assistants Darryl Black and Cindy Coley were present.

Rep. Brubaker, Chairman, called the meeting to order and recognized House Sergeant-At-Arms Staff Bill Bass, Martha Gadison, and Martha Parrish; and Senate Sergeant-At-Arms Staff Billy Jim Blackburn, Jon Fitchette and Billy Fritcher.

Representative Brubaker called for adoption of the December 19, 2011 Minutes. Upon a motion by Senator Blue and seconded by Rep. Jordan, the December 19, 2011 Minutes were unanimously approved.

Rep. Brubaker, Chairman, introduced North Carolina Commissioner of Banks Joseph A. Smith, Jr. who reviewed the OCOB Proposed Substantive Corrections dated January 20, 2012 for Article 1A – 3A (Exhibit #1) which covers the following Sections:

1. 53-1-4 amends 53-1-4(55) – ("Definitions of Practical Banker" and 53-1-4(57) – "Definitions of Public Member").

   The members of the Study Commission unanimously adopted the recommended changes to 53-1-4(55) 53-1-4(57).

2. 53-2-1 (The Commission) amends Subsection (a) to reduce the number of members of the Banking Commission from 22 to 15.

   (This amended Subsection 53-2-1(a) reducing members of the Banking Commission to 15 was approved by the Study Commission members.)

   However, the Banking Commissioner, at the request of the Banking Commission, wants to set aside 53-2-1(a) and 53-2-1(e) for further input and comments by the Banking Commission.

3. 53-2-6 (b) (Hearings and Appeals) removes the first sentence and replaces it with "The Commission has the authority to conduct public hearings on matters within its purview".

   This amended Subsection 53-2-6 (b) was approved by the Study Commission members.

4. 53-2-2 (b) (The Commissioner) removes the first sentence and inserts "The Commissioner shall act as the executive officer of the Commission" at the end of the paragraph.

   This amended Subsection 53-2-2 (b) was approved by the Study Commission members.

5. 53-2-7 (Official Records) deals with making examination information about mortgage servicers confidential.

   At the request of Ms. Andrea B. Young, Commissioner Smith recommends setting this Section aside, reexamine 53-2-7 dealing with keeping examination information about mortgage servicers confidential, and report back to the Study Commission members at a later date. Rep. Jordan requests clarification of leading nationwide mortgage investigations.

6. 53-3-4 (a)(6) (Commissioner's Approval of Charter Issuance) deals with "confidence of the market". After discussions with Mr. Kukla, Commissioner Smith recommends striking the current wording "market that the bank intends to serve" and inserting the word "public".

   This rewording was approved by the Study Commission members.

53-3-4c) (Commissioner's Approval of Charter Issuance). The following sentence should be added at the end: "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."

This rewording was approved by the Study Commission members.

7. 53-2-7 Rewrite and add new subsection (e) replacing the omitted language from current 53-99: "(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 OCOB; provided however, that the insurance carrier must agree in writing to maintain the confidentiality of such information and to not disclose it in any manner whatsoever."

   After comments by Mr. Whitehead and Mr. Reed, the addition of this new wording for 53-2-7 (e) was set aside for further review by the Study Commission members.

Commissioner Smith provided Study Commission members with answers to previous questions raised at the December 19, 2011 meeting by Study Commission members (Exhibit #2).

A proposed draft of the Banking Modernization Act was distributed to Study Commission and is attached to these Minutes as Exhibit #3.

Commissioner Smith discussed and provided Study Commission members with recommended changes to Chapter 53 of the General Statutes, Article 4A (Governance of a Bank) and Article 5A (Bank Powers) which is attached to these Minutes as Exhibit #4:

Article 4A Governance

1. 53-4-1 New Section – **Further discussion needed.**

2. 53-4-2 New Section –**Further Discussion needed.**

3. 53-4-3 New Section – **Further discussion needed.**

   Readdress the recommended number of committees and the names of these committee.

4. 53-4-4 New Section - No further discussion needed. Members in agreement to requirements of Minutes of Meetings.

5. 53-4-5 New Section - **Further discussion needed**. Members requested the nationalities owning US Banks and the percentages of foreign Board of Director members. At the request of Study Commission members, **Commissioner Smith will get information on number of foreign ownerships of US and NC banks and percentages of foreign directors on those Boards. Brubaker asked if the Feds had addressed percentages of foreign nationals being on US banks Boards of Directors. Rep. McCormick has concerns on removing the Director's Oath.**

6. 53-4-6 New Section - **Further discussion needed. Rep. Jordan requested Commissioner Smith to provide information on statutory reference to the NC Business Corporation Act provision.**

7. 53-4-7 New Section - No further discussion needed. Members in agreement.

8. 53-4-8 New Section - **Further discussion needed.**

9. 53-4-9 New Section - No further discussion needed. Members in agreement.

10. 53-4-10 New Section - No further discussion needed. Members in agreement. This new section allows the Commissioner to assess the composition, background and education of Directors.

11. 53-4-11 New Section - **Further discussion needed** on whether or not Dodd-Frank will be repealed and the effect of the BASEL 3 requirements on reserve funds and liquidity.

12. 53-4-12 New Section – No further discussion needed. Members in agreement.

Article 5A Powers

13. 53-5-1 New Section - **Further discussion needed.**

Summary

The following Statutes have been reinstated:

14. 53-43.1
15. 53-43.2
16. 53-43.3
17. 53-43.4
18. 53-43.5
19. 53-43.7

The following Statutes will be or have been repealed:

20. 53-43.6
21. 53-81
22. 53-83
23. 53-84
24. 53-85
25. 53-86
26. 53-88
27. 53-89 **Will be added back to revised law.**
28. 53-91.1 **Will be added back to revised law.**

Chairman Brubaker reminded the committee members that Article 4 and Article 5 of the Banking Statutes would continue to be discussed at the February 14, 2012 meeting. Article 6 will be discussed at the February 14, 2012 meeting

Chairman Brubaker announced the next meeting is scheduled for Tuesday, February 14, 2012, 10:00 a.m., 421 Legislative Office Building, Raleigh, North Carolina. There being no further business, the meeting adjourned at 11:25 a. m.

Rep. Harold J. Brubaker, Chairman

Sen. Harry Brown, ~~Chairman~~

ATTEST:

Cindy Coley, Committee Assistant

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

Senator Harry Brown, Co-Chair *Representative Harold J. Brubaker, Co-Chair*

AGENDA

Friday, January 20, 2012
10:00 am.
Room 544 LOB

1. **Welcome and Introductions**
   Representative Harold Brubaker, Co-Chair

2. **Approve Minutes from December 19, 2011 Meeting**

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

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

5. **Committee Discussion**

6. **Adjourn**

ATTENDANCE

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

(Name of Committee)

DATES	Nov. 21, 2011	Dec. 19, 2011	Jan. 20, 2012	Feb. 14, 2012			
Rep. Brubaker, - House Chair	Yes	Yes	Yes				
Sen. Harry Brown, Senate Chair	No	Yes	Yes				
Rep. Leo Daughtry	Yes	Yes	N				
Rep. Beverly Earle	Yes	Yes	N				
Rep. Jonathan Jordan	N	Yes	Yes				
Rep. Daniel McComas	N	Yes	Yes				
Sen. Thomas Apodaca	N	N	N				
Sen. Harris Blake	N	Yes	Yes				
Sen. Dan Blue	Yes	Yes	Yes				
Sen. Thom Goolsby	N	N	N				
Charles Whitehead (House Bank)	Yes	Yes	Yes				
Gray Reed (Senate Bank)	N	Yes	Yes				
Christopher Kukla (House)	YES	YES	YES				
Andrea Young (Senate)	YES	YES	YES				
Rep. Darryl McCormick			Yes				

Committee Sergeants at Arms

NAME OF COMMITTEE Banking

DATE: 1-20-12 **Room:** 544

House Sgt-At Arms:

1. **Name:** Bill Bass
2. **Name:** Martha Gadson
3. **Name:** Martha Parrish
4. **Name:** _____
5. **Name:** _____

Senate Sgt-At Arms:

1. **Name:** Jim Blackburn
2. **Name:** Jon Fitchette
3. **Name:** Billy Fritcher
4. **Name:** _____
5. **Name:** _____

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — JANUARY 20, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	PS
Fred Baker	Baker & Assoc.
Mitch Leonard	SEANC
Dan Carlton	ctt
Solari	DST
Will Pannythin	NCHFA
Lauren Whaley	NCCUL
Meredith Pace	NCCUL
Ken Crouch	NCBA
Tommy Sawyer	Moore and Van Allen
Mont Engel	NMRS

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — JANUARY 20, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Al Kirby	NC Justice Ctr
Bob Snyder	UPS
Fred Morris	UPS
J Beverly	LRA

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — JANUARY 20, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Klein	BB&T
Lisa McDowell	BB&T
Elizabeth Biser	Brooks Pierce/NCBA
Ben Davis	Brooks Pierce/NCBA
Rose Conner	NC Credit Union Division
[illegible]	TRAC
[illegible]	SOS
[illegible]	[illegible]
Margaret Schlueter	TRAC

#1

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

OCOB Proposed Substantive Corrections
January 20, 2012

The recommendations set forth below for substantive changes in the first three articles of the proposed rewrite are derived from OCOB staff analysis and discussion at the December Commission meeting. Commissioner Smith will explain recommendations for substantive changes in Articles 4A and 5A as part of his review of those Articles.

- § 53-1-4: Changes to the definitions of "Practical Banker" and "Public Member" were discussed at the December meeting with concern expressed that a bank employee might be appointed to serve as a public member. In reviewing the matter, it was observed that principal shareholders should be included as practical bankers, if they are to serve on the Banking Commission. OCOB recommends the following changes.

    - Amend § 53-1-4(55) to read: "(55) Practical Banker. – An individual who at the time of appointment to the Commission, and at all times thereafter, is, or has been during the five years preceding the appointment, a president, chief executive officer, ~~or~~ director, or holder of 5% or more of any class of voting securities of a North Carolina financial institution."
    - Amend § 53-1-4(57) to read: "(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."

- § 53-2-1: Subsection (e) of this Section and subsection (b) of § 53-2-6 cover much of the same territory. The correction should be to delete the second sentence of (e) and rewrite the first sentence to read: "The Commission is hereby vested with full power and authority 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 laws of this State."

- §53C-2-2: The current draft omits the statement from current law that the Commissioner acts as executive officer of the Commission. The correction is to add the following sentence at the end of § 53-2-2(b) to read: "The Commissioner shall act as the executive officer of the Commission."

- § 53-2-6(b): This is the second half of the issue raised in § 53-2-1 above. The first sentence should be deleted to be consistent with the change made above. In addition, the following sentence should be added: "The Commission has the authority to conduct public hearings on matters within its purview."

- § 53-2-7: A question was raised by Ms. Young at the last meeting about the reason for making examination information about mortgage servicers confidential. Commissioner Smith promised to investigate the issue and report back. Based upon the CSBS Model SAFE Act language, which was incorporated into the NC SAFE Act in § 53-244.120, OCOB has signed agreements such as the CSBS/AARMR Nationwide Cooperative Agreement for Mortgage Supervision (Cooperative Agreement). In Article 4 of the Protocol/Cooperative Agreement (available if desired), OCOB is required to keep confidential any confidential supervisory information that is shared by other regulators. To participate in inter-state enforcement activities, which we believe are extremely important, we must be in a position to keep this information confidential.

- § 53-3-4:

    - Mr. Kukla questioned the change in § 53-3-4(a)(6) that would require the principles in the proposed bank to command the confidence of the "market" the bank plans to serve instead of the "community." OCOB recommends using the word "public" as follows: Amend § 53-3-4(a)(6) by deleting the phrase "market that the bank intends to serve" at the end of that subdivision and substituting the word "public".

- It would be prudent to provide explicit authority to the Commissioner to add conditions to his order of approval of a charter. The following sentence should be added at the end of § 53-3-4(c): "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."

- Current law permits an exception to the rule of non-disclosure of CAMELS ratings for a bank informing its insurance company of its rating. Elimination of this provision was an oversight that should be corrected by adding to § 53-2-7 a new subsection (e) replacing the omitted language from current § 53-99: "(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 OCOB; provided however, that the insurance carrier must agree in writing to maintain the confidentiality of such information and to not disclose it in any manner whatsoever."

#2

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

Follow-up Items from the December 19, 2011 Meeting

Mr. Darryl Black of Chairman Brown's office provided us a helpful list of follow up questions to address with the Commission. Responses to some of these questions are in our handout to you entitled "OCOB Proposed Substantive Corrections, January 20, 2011." The remaining inquiries are addressed below.

Have any successful private equity investments recently occurred? (Chairman Brown)

Private equity groups have invested $768 million in North Carolina state-chartered banks over the past three years. Please see attachment for additional details.

TARP (Rep. Blake)

How many North Carolina state-chartered banks still have to repay TARP funds? The attached document provides details regarding the status of TARP funds.

Methods to encourage banks to expedite the foreclosure process by either writing them off or allowing consumer resolution should be explored. (Sen. Blake)

The Obama administration and participating state regulators, have entered a consent agreement with the 14 largest loan servicers concerning certain foreclosure procedural misconduct. In addition, a large number of state attorneys general (including Attorney General Cooper) are in the process of negotiating a settlement with the five largest bank servicers regarding alleged violations of consumers' rights in their foreclosure practices. Additional changes to foreclosure practices are being pursued at the federal level. Currently, the Commissioner of Banks has the authority to extend the allowable filing date for any foreclosure proceeding on a primary residence one time for a period of up to 30 days and, in certain circumstances, additional time under legislation originally adopted by the General Assembly in 2008. This provides additional time for the homeowner to pursue a resolution with the mortgage servicer. The state also has two separate programs to help North Carolina residents faced with foreclosure. With all of this activity, foreclosures are still taking place at a terribly high level. However, it does not appear that additional steps at the state level are appropriate at this time.

Outreach Regarding Input from Interested Parties to the Banking Law Rewrite

The current list of parties from whom input has been solicited is as follows:

1. N.C. Department of State Treasurer
2. N.C. Department of Commerce
3. Center for Responsible Lending
4. N.C. Justice Center
5. N.C. Bankers Association

6. N.C. Manufactured Housing Association
7. N.C. Association of Realtors
8. N.C. Department of Justice
9. N.C. Bar Association
10. N.C. Homebuilders Association
11. N.C. Association of Mortgage Professionals
12. Mortgage Bankers Association of the Carolinas
13. State Banking Commission (which includes public members and bankers)
14. BB&T
15. First-Citizens Bank & Trust

Other banking commissions (Chairman Brubaker)

At the last meeting of the Study Commission, the question was raised about the number of members of banking or financial services commissions in other states. To answer this question, OCOB has reviewed the Survey of State Chartered Banking published by the Conference of State Bank Supervisors and has reviewed the websites of agencies that appeared to have a commission form of organization. On the basis of this investigation, it appears that three states have commission oversight. They are:

Florida. A Financial Services Commission, made up of the Governor, Chief Financial Officer, Attorney General and Commissioner of Agriculture oversees the Departments of Financial Services and Insurance. The Department of Financial Services regulates banking, finance and securities. It is headed by a Commissioner of Financial Services who is appointed by the Financial Services Commission and serves at its pleasure.

Texas. The Finance Commission of Texas oversees the Texas Department of Banking, Department of Savings and Mortgage and Office of Consumer Credit. The Commission comprises nine members appointed by the Governor and confirmed by the Senate. The Texas Commissioner of Banks is appointed by the Finance Commission and serves at its pleasure.

Virginia. The Virginia Corporations Commission regulates financial institutions, business organizations (including UCC), and utilities. The Commission has three members elected by the General Assembly for terms of six years. The Bureau of Financial Institutions is a division of the Corporations Commission and is headed by a Commissioner of Financial Institutions who is appointed by the Corporations Commission and serves at its pleasure.

N.C. State Banking Commission composition (Chairman Brubaker, Rep. Jordan)

Rep. Jordan noted that the number of State Banking Commission members that can be appointed by the Governor is 19, with 11 of those appointees being public members and 5 practical bankers, does not equal 19. It appears that the Nov. 9, 2011 draft of the proposed bill removed the requirement that 2 members be Savings & Loan CEOs, but did not redefine how they should be replaced. Also, there is one appointee that is not defined in either the existing law or the proposed bill
(http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_53/GS_53-

92.html). However, Chairman Brubaker mentioned that he would like the number of members to be 15, which was the original number of members prior to the consolidation of the Banking Commission with the Savings and Loan Division in 2001. Legislation accomplishing the merger of the Banking Commission and the Savings and Loan Division in 2001, which reflects the prior Banking Commission composition, has been sent to the NCGA Research Division Staff.

Since 2009 Capital Raises

			Date
BCAR - Bank of the Carolinas	$	7,700,000	2009
Bank of Granite/Community One	$	310,000,000	2011
Bank of NC - BNCN	$	35,000,000	2011
Carolina Trust - CART	$	6,300,000	2010
Carolina Bank - CLBH	$	9,300,000	2010
East Carolina Bank - ECBE	$	89,700,000	2010
Park Sterling Bank - PSTB	$	157,045,000	2010
Piedmont Community Bank Holdings (Community Bank of Rowan)	$	6,760,000	2009
Piedmont Community Bank Holdings (Crescent State Bank)	$	105,600,000	2011/2012
Piedmont Community Bank Holdings (Vantage South Bank)	$	8,000,000	2011
Yadkin Valley Bank - YAVY	$	6,400,000	2009
Waccamaw Bank - WBNK	$	25,785,000	2009/2011
Total	**$**	**767,590,000**	

			Repaid
Alliance Bank & Trust Company	$	3,500,000	
Bank of Commerce	$	3,000,000	
Bank of North Carolina	$	31,260,000	
Bank of Oak Ridge	$	7,700,000	
Bank of the Carolinas	$	13,179,000	
Branch Banking and Trust Company	$	3,133,640,000	Yes
Capital Bank	$	41,279,000	Yes
Carolina Bank	$	16,000,000	
Carolina Trust Bank	$	4,000,000	
Crescent State Bank	$	24,900,000	
Farmers and Merchants Bank	$	17,000,000	
First Bank	$	65,000,000	Refi to SBLF
KS Bancorp, Inc	$	4,000,000	
M&F Bancorp	$	11,735,000	
Mountain 1st Bank & Trust Company	$	16,369,000	
NewBridge Bank	$	52,372,000	
Peoples Bank	$	25,054,000	
Providence Bank	$	4,000,000	Refi to SBLF
Randolph Bank & Trust	$	6,229,000	
Sound Banking Company	$	3,070,000	
Southern Community Bank and Trust	$	42,750,000	
Surrey Bank & Trust	$	2,000,000	Yes
The Bank of Currituck	$	4,021,000	Yes
The East Carolina Bank	$	17,949,000	
The Little Bank, Incorporated	$	7,500,000	
TriStone Community Bank	$	3,490,000	Yes
Uwharrie Capital Corp	$	10,000,000	
Union Bank and Trust	$	3,194,000	Refi to SBLF
Yadkin Valley Bank and Trust Company	$	49,312,000	
	$	**3,623,503,000**	

Unrepaid investment TARP	$	366,879,000
SBLF	$	25,345,000
Total	**$**	**392,224,000**

#3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-ROz-10 [v.5] (12/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/9/2012 4:37:00 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.

The General Assembly of North Carolina enacts:

SECTION 1. Articles 1 through 14, 17, 17B and 18A of Chapter 53 of the General Statutes are repealed.

SECTION 2. Chapter 53 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 3 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.

(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.

"**§ 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 unless established as a depository 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

(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.

(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 company, that is organized under the laws of this State and is engaged in the business of receiving deposits (other than trust funds), paying monies and making loans.

(5) Bank Operating Subsidiary. – A subsidiary 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.

(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 "Tier 1 capital" as that term is defined in Part 325 of the Regulations of the FDIC or any successor regulation of the FDIC; provided, that if the term "Tier 1 capital" is replaced by a term including substantially the same components as "Tier 1 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 3 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.

(35) Federal Savings Association. – A federal savings association or federal savings bank chartered under Section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464.

(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 or that controls a company that directly or indirectly controls a depository institution.

(39) 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.

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

(41) Individual. – A human being.

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

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

(44) National Bank. – A banking association organized under 12 U.S.C. 21.

(45) 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, or a depository institution established under the laws of another state 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 officers, mortgage loan offices, and insurance agency offices, or a combination thereof.

(46) North Carolina Financial Institution. – A bank, savings institution, or trust company organized under the laws of this State.

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

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

(49) 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.

(50) 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.

(51) Organizers. – One or more individuals who are the organizers of a proposed ban 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, and at all times thereafter, is, or has been during the five years preceding the appointment, a president, chief executive officer, or director 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 practical banker.

(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 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 that has an equity ownership interest in a bank or holding company and is entitled to vote such interest under the bank's or holding company's organizational documents.

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

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

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

(69) Trust Company. – A company that is formed primarily for the purpose of taking, executing, and administering trusts, and which is not a depository institution.

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

(71) Voting Securities. –Voting Securities means:

a. Any equity ownership interest in a company that entitles the holder to vote on any matter presented to holders of equity ownership interests in the company for a vote, and

b. Any equity interest, right to acquire an equity ownership interest, debt instrument or other similar interest or instrument convertible into an equity ownership interest that entitles the holder to vote on any matter presented to holders of equity ownership interest which may be converted into a voting equity ownership interest.

"**§ 53-1-5. Severability.**

If any provision of this Chapter is found by any court of competent jurisdiction to be in valid 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 the State Treasurer, who shall serve as an ex officio member, 12 members appointed by the Governor, 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 five practical bankers, and seven 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 public member. 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) 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 may review the exercise by the Commissioner of all powers, duties, and functions vested in or exercised by the Commissioner under the laws of this State. The Commission shall adopt rules, in accordance with Article 2A of Chapter 150B of the General Statutes, for hearings held before the Commission upon any matter which may arise in connection with the administration of the banking laws by the Commissioner.

"**§ 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 Commission 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.

(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 him for administration or in connection with any bank or the rights, liabilities, property or assets thereof, under his 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.

"**§ 53-2-3. The Office of the Commissioner of Banks.**

(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 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.

"**§ 53-2-4. Administration of the Office of the Commissioner of Banks.**

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

"**§ 53-2-7. Official record.**

(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 the names or other personal information of any customers of any person or revealing the collateral given by any such customers in connection with an extension of credit; 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 company, 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 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 institution or trust companies, 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.

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 in the amount of ten thousand dollars ($10,000) 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 company 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 and the application for a charter.

(2) All funds paid for shares of the proposed bank shall be placed in escrow under an agreement, and with an escrow agent approved by 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.

(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.

(b) 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 or the Commission and that a representation to the contrary is a criminal offense.

(3) All payments for purchases of shares are made in legal tender of the United States.

(4) The proposed bank has an operational expense fund from which to 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 five percent of the voting securities of the proposed bank will command the confidence of the market that the bank intends to serve.

(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 do "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 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.

(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 recommended conditions. The Commission shall render its decision within 30 days after the completion of 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 cash 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 G.S. 53-3-7(c) or other applicable law."

Article 4A

Governance of Banks

§ 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 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 consent to service of process in Wake County, North Carolina prior to taking office.

"**§ 53-4-6. Liability of directors.**

Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of the bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its stockholders or any other person shall have sustained in consequence of such violation.

"**§ 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, employees and agents. 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 shall 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.

(b) In making the assessment authorized by subsection (a) of this section, the OCOB shall take into consideration the size, complexity and business operations of the bank as well as publicly issued regulations and guidance of the Commissioner and the bank's primary federal supervisor. The assessment shall be part of the overall assessment of the bank's management and of whether the bank is operating in a safe and sound manner.

"**§ 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 lawful money of the United States 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) A bank, including its holding company, may establish a compliance review committee to test, review, or evaluate the bank's conduct, transactions, or potential transactions for the purpose of monitoring and improving or enforcing compliance with:

(1) A statutory or regulatory requirement, including requirements arising from examination or actions of the Commissioner taken under this Chapter.
(2) Financial reporting to a governmental agency.
(3) The policies and procedures of the bank, its holding company or subsidiaries of the bank or the holding company.
(4) Safe, sound, and fair lending practices.

(b) For purposes of this section, a compliance review document is any document prepared for or created by the compliance review committee. Except as provided by subsection (c) of this section:

(1) A compliance review document is confidential and is not discoverable or admissible in evidence in a civil action nor shall a compliance review document be subject to inspection and copying by a shareholder of the bank or its holding company pursuant to Article 16 of Chapter 55 of the General Statutes or otherwise.
(2) An individual serving on a compliance review committee or acting under the direction of a compliance review committee may not be required to testify in a civil action as to the contents or conclusions of a compliance review document, or an action taken or discussions conducted by or on behalf of a compliance review committee.
(3) A compliance review document or an action taken or discussion conducted by or on behalf of a compliance review committee that is disclosed to a governmental agency remains confidential and is not discoverable or admissible in a civil action.

(c) A bank shall have the power, at its option, to waive the confidentiality protection provided in subsection (b)(1) for a compliance review document. If the protection is waived and except as otherwise provided in G.S. 53-2-7 and applicable federal law and regulations, the compliance review document shall be discoverable or admissible in evidence in a civil action and shall be subject to inspection and copying pursuant to Article 16 of Chapter 55 of the General Statutes.

(d) This section does not limit the discovery or admissibility in a civil action of a document that is not a compliance review document.

(e) A compliance review document includes records subject to the provisions of G.S. 53-2-7 and records of bank supervisory agencies, in each case in the possession of the bank, and records of the bank obtained, created or maintained for any of the reasons set forth in subsection (a) of this section.

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, 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 provided 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 the trust business.

(5) 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) or (b) 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 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 equal in market value to the amount of such deposits, and such bonds shall be valid security for all loans and deposits to the same extent as are any obligations of the United States.

(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, or national bank subsidiary 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 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 corporation organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors.

(i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:

(1) As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith.

(2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real property acquired under this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made.

(j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government, or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent of its required capital.

PROPOSED CHANGES TO THE
NORTH CAROLINA BANKING LAWS – CHAPTER 53 OF THE GENERAL STATUTES
ARTICLE 4A ADDRESSES GOVERNANCE OF A BANK AND ARTICLE 5A ADDRESSES BANK POWERS.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
Article 4A. Governance of a Bank.				
No Corresponding Section	N/A	53-4-1	**New 53-4-1. Banks – Form of Organization.** This section provides that a bank shall be formed as a corporation under NC law and that the provisions of the NC Business Corporations Act shall apply except where they are inconsistent with the business of banking or the safety and soundness of a bank.	This new section ensures that the NC corporation laws apply generally to banking except where the banking law is more specific or differs for reasons of safety and soundness. This minimizes conflicts and unnecessary duplications between the statutes. In addition, it removes the incentive to form a bank holding company to obtain the benefit of a more modern corporation law.
53-91.3. Directors defined; appointment of advisory directors.	The current section simply provides for election of directors and appointment of advisory directors. Advisory board members are allowed to participate in loan approvals relating to their markets, if authorized by the bank's board.	53-4-2	**New 53-4-2. Banks Controlled by Board of Directors.** This section provides that: (i) a bank shall operate under authority of the board of directors; (ii) board membership shall not be less than five, unless approved by the Commissioner; (iii) the board shall meet at least quarterly (with executive committee meetings during months when the board does not meet and monthly meetings of the loan committee); (iv) the duties, authorities and liabilities of a director shall be those imposed under Chapter 55, the NC Business Corporations Act, unless a different standard is imposed by other state or federal law; and (v) that the board may appoint an advisory board for bank branches. The authority and liability of the advisory board is limited by the extent to which such board has been delegated the authority by the bank board or directors.	This new section provides more clearly that a bank is under the control of the board of directors which may not be less than five, unless approved by the Commissioner, and provides for the frequency of meetings. Director authority and liability are consistent with NC corporation law unless a different standard is required for bank directors. Advisory directors do not have liability for acts or omissions unless that director undertakes delegated authority as a bank director.
53-78. Appointment of executive and loan committees by directors. 53-83. Examining committee of directors.	53-78 provides generally for an executive committee but a loan committee is optional. 53-83 provides that directors or shareholders shall annually appoint an examining committee.	53-4-3	**New 53-4-3. Committees of Board of Directors.** This section requires at minimum audit, executive, and loan committees (the latter of which may be the executive committee or the board as a whole) and such other committees as are appropriate. The Commissioner may require additional committees if they are reasonably necessary for good corporate governance, for safety and soundness reasons or to ensure compliance with applicable laws and regulations. Subsection (b) sets out factors for requiring additional committees.	The new section provides for certain minimum committees and for additional committees as may be necessary for safety and soundness. It also includes standards for requiring additional committees.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
53-79. Minutes of meetings of directors and executive and loan committees.	53-79, last amended in 1951, is a more lengthy provision of law requiring minutes of the board and committees to be recorded and maintained.	53-4-4	**New 53-4-4. Minutes of Meetings of Directors and Committees.** As rewritten, this provision more simply requires that minutes, and actions taken, be recorded and maintained for all board and board committees	The new provision is much clearer and to the point regarding minutes and action taken by the board and committees.
53-80. Qualification of directors. 53-81. Directors shall take oath.	53-80 requires directors to own "$1,000" in book value of bank stock, unpledged and unencumbered, and one-half of the directors are required to be NC residents. Those who fail to hold the requisite shares lose their seat on the board, with exceptions for banks doing business before February 21, 1921. 53-81 requires directors to take an oath.	53-4-5	**New 53-4-5. Qualification of Directors.** This substantially rewrites G.S. 53-80. It removes the requirement that a director must own shares equal to "$1,000 book value" of bank stock and that one-half of the directors must be residents of NC or a state in which a branch is located. The proposed provision of law requires three-quarters of the directors to be U.S. citizens and to meet the eligibility requirements for a director under Section 19 of the FDIC Act. Additionally, a director must consent to service of process in Wake County.	The reason for these changes is to eliminate the requirement to own "$1,000 in book value," an arcane practice that is essentially meaningless in today's banking practices. It also eliminates the distinction to banks organized before or after 1921. Additionally, the qualification for directors is being revised consistent with Section 19 of the FDIC Act. This will open up the pool of potential directors. The directors oath has been eliminated.
53-82. Liability of directors.	53-82 currently provides for personal and individual liability to the bank, its shareholders or other persons if the director knowingly violates or permits officers, employees or agent to violate provisions of Chapter 53. As currently written, an aggrieved shareholder in any bank liquidation may bring an action to enforce this provision of law.	53-4-6	**New 53-4-6. Liability of Directors.** This provision carries forward the personal and individual liability language but eliminates the right of an aggrieved shareholder to bring an action for enforcement of this provision.	The change eliminates the option for an aggrieved shareholder to bring a cause of action to enforce this provision of law in the event of liquidation. Shareholders of banks have rights to sue under the NC Business Corporations Act. Further, in cases of liquidation, the FDIC retains significant power to subject directors found liable of malfeasance or negligence to significant fines and, in the worst cases, criminal referral.
53-87. Directors may declare dividends.	53-87 currently provides a dividend formula based on a surplus with banks having capital stock of less than $15,000 and an alternate formula with those having a capital stock of more than $15,000. This formula dates back to 1931.	53-4-7	**New 53-4-7. Directors May Declare Distributions.** This section replaces an outdated dividend formula in 53-87 and simply provides that if it does not reduce the bank's capital below the required level, the board may declare "distributions." By cross-reference to Chapter 55, a distribution is essentially payment of a dividend. See G.S. 55-1-40(6).	The purpose for this change is to bring the dividend formula into compliance with current banking and accounting practices. As more fully discussed below, reduction of a bank's capital below "required capital" will lead to significant heightened supervision.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
53-90. Officers and employees shall give bond.	53-90 currently requires officers and employees to give bond to the bank from a bonding company authorized to do business in NC. It also gives the bank a private right of action for any damages sustained.	53-4-8	**New 53-4-8. Officers and Employees Shall Give Bond.** This essentially restates the requirements for officers and employees to give a bond and requires a bond to be given by an agent of a bank.	The only difference between the current and proposed sections is that it adds a bond requirement for an agent and eliminates redundant language stating that the bank has the right to enforce the bond in court.
53-91.2. Loan to executive officers.	53-91.2 prohibits an extension of credit to executive officers unless it is on terms and conditions equal to employees and customers.	53-4-9	**New 53-4-9. Affiliate Transactions.** This section provides that a bank may extend credit and engage in transactions with affiliates, directors, executive officers, principal shareholders, and their respective immediate families only to the extent allowed under state or federal laws and regulations.	This is drafted to conform NC law to federal banking law which regulates this matter extensively.
No corresponding section	N/A	53-4-10	**New 53-4-10. Examination of Board Composition, Structure and Conduct.** This section adds a new provision of law that allows the Commissioner, as part of the examination process, to assess the competence, composition, number, independence, education and training of bank directors. The assessment is to be based on the size, complexity and nature of the bank's business as well as compliance with state and federal regulations.	This is a new provision of law that allows the Commissioner to assess the composition, background and education of the board of directors. It is intended to assure that boards use the latitude that the new law gives them appropriately and that they follow best practices.
53-50. Requirement of reserve fund. 53-51. Reserve and cash defined.	53-50 provides that banks which are not members of the Federal Reserve System (FRS) must maintain reserve requirements established by the Banking Commission by rule. Member banks must comply with FRS rules. There is a notice requirement if the bank falls below the required reserve fund. 53-51 defines the items in the reserve fund.	53-4-11	**New 53-4-11. Reserve Fund.** Member banks of the Federal Reserve must follow the limits imposed by the Federal Reserve Board. Non-member banks, which include most NC state-chartered banks, must meet the requirements established by the Commissioner. Subsections (b) and (c) require a reserve fund necessary for the safe and sound operation of a bank and determine which assets qualify for inclusion in the reserve fund. Subsection (d) provides that a bank that fails to meet its required reserve fund may not extend credit and the Commissioner may require it to fund reserves up to the required minimum. Finally, subsection (e) provides that if the reserve fund is not restored, the Commissioner may take regulatory action as provided under Article 8 (Supervision of Banks).	As rewritten, this provision expressly defines which assets qualify for the reserve fund and puts the bank on notice of what action may be taken against it if it fails to meet the reserve requirement.

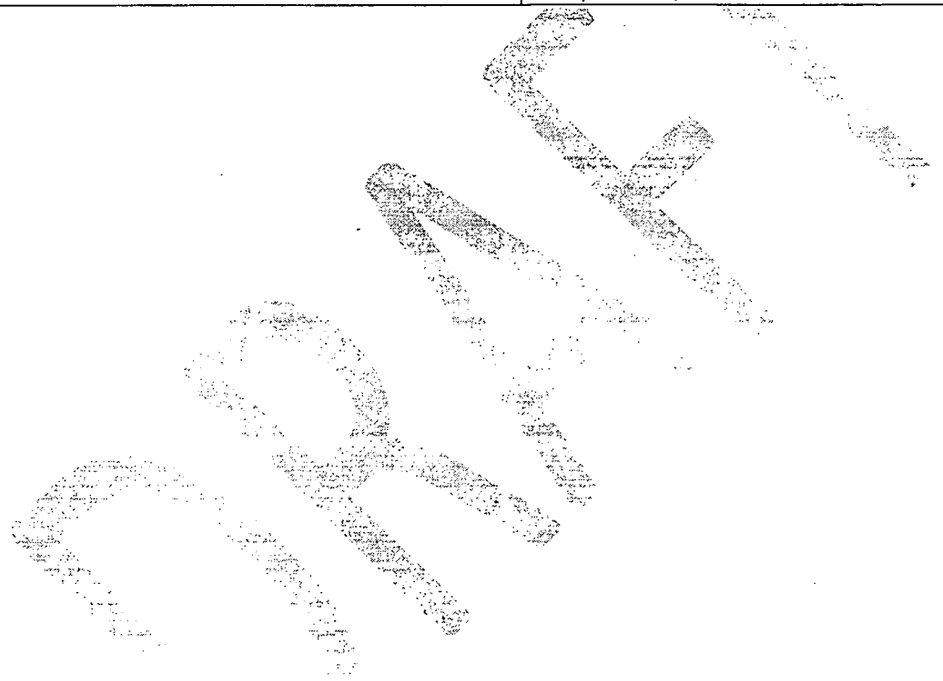
Current Section(s)	Summary	New Section	Summary	Explanation of Change
53-99.1. Confidential records.	53-99.1 defines a compliance review committee and prescribes its functions. It further provides that compliance review documents are not open for public inspection and are not discoverable or admissible in evidence in an action against a bank, its directors, officers, or employees, unless a court finds that the interests of justice require discovery or admission into evidence.	53-4-12	**New 53-4-12. Compliance Review Committee.** This section rewrites G.S. 53-99.1, "Confidential records." Subsection (a) provides that a bank or holding company may establish a compliance committee for the purpose of monitoring and reviewing state and federal laws, regulations, policies, government reporting and safe and sound banking practices. Subsection (b), consistent with current law, provides that compliance review documents are confidential and are not discoverable or admissible into evidence in a civil action. It also adds that review documents are not subject to inspection and copying, consistent with the NC Business Corporations Act, Article 16, and the members of the compliance review committee, or those acting under their direction, may not be required to testify as to contents and conclusions or actions taken or discussions conducted. If the documents are disclosed to a government agency, they retain their confidentiality. Subsection (c) allows a bank to waive this privilege except for documents confidential under the "Official Records" provisions of proposed G.S. 53-2-7. Waiver would also open the documents for inspection and copying under Article 16 of Chapter 55. Subsection (d) confirms that this confidentiality provision does not otherwise limit the discovery of non-confidential documents; and subsection (e) defines "compliance review documents."	This provision carries forward the current practice of requiring a bank to conduct internal compliance reviews and to prohibit discovery or admissibility of these reports. Additionally, members of the compliance review committee, or those acting under their direction, may not be called upon to testify as to the contents and conclusions. Consistent with Article 16 of the NC Business Corporations Act, review documents are not subject to inspection and copying. The bank can waive confidentiality except for confidential documents provided to the Commissioner. The policy is to encourage boards and managements to address problems. Disclosure could increase liability, which would discourage good conduct.
Article 5A. Powers of Banks.				
53-43. General powers.	53-43 provides a comprehensive list of powers which a state-chartered bank in NC may exercise in the course of their business.	53-5-1	**New 53-5-1. Powers.** This section lists seven express powers mostly adopted from the current law, including authority to engage in activities approved by the Commissioner, by rule, order or interpretation and authority, to engage in activities permissible for banks under the FDIC Act. Additionally, banks may engage in traditional bank activities, including powers of savings institutions and activities permitted for national banks. It also confirms that a bank has all powers "necessary and incident" to carry out the business of banking – a power long held by nationally chartered banks. There is an approval process for the grant of new powers, which may be waived for banks that are "well-capitalized and well-managed," and a notice process to begin a new business activity where prior federal approval is not required.	Traditional bank powers are carried forward; state-chartered bank powers are put on equal footing with national bank powers; and a process is put in place for new bank authority. This process can be waived for well-capitalized and well-managed banks.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
53-44 through 46.1. Various investment powers.	These sections provide a comprehensive list of permissible investments which may be made by state-chartered banks in NC. The list includes state and federal agency bonds, mutual funds, and limitations on investments in stocks.	53-5-2	**New 53-5-2. Investment Authority.** This provision restates, for the most part, the investment authority for banks at G.S. 53-44 through 46.1. Subdivision (a)(1) permits investments in depository institutions, other specialized financial institutions, and federally chartered institutions under federal law or regulation, order or interpretation of the OCC. Subdivisions (a)(2) through (6) authorize investments in a variety of state and federal bonds; and subsection (b) permits investments in defined bank subsidiaries, subject to the terms and conditions in subdivisions (c)(1) and (2), and subsection (d). Subsection (e) has a notice provision for investment in operating subsidiaries and subsection (f) provides an exception, under stated circumstances, to the notice requirement for "well-capitalized and well-managed" banks. Subdivision (f)(2) nonetheless provides a notice requirement for operating subsidiaries established under an exception for prior approval. Subsection (g) provides that out-of-state bank subsidiaries which are subject to licensure or regulation other than under Chapter 53 are entitled to licensure on a non-discriminatory basis as any other non-bank entity engaged in the same activity.	As rewritten, this section codifies into one section the authority of a bank to invest in state and federal obligations, and authority to invest in bank subsidiaries. Since the original draft of the bill, further analysis needs to be considered. We will bring this section back to you at the February meeting for clarification.

OTHER STATUTORY REVISIONS
STATUTES WHICH HAVE BEEN REPEALED AND STATUTES WHICH HAVE BEEN REINSTATED

Current Statute	Explanation
53-43.1. Obligations of agencies supervised by Farm Credit Administration as securities for deposits of public funds. **53-43.2.** Obligations of agencies supervised by Federal Home Loan Bank Board as securities for deposits of public funds.	Authority to collateralize public fund deposits is contained in new 53-6-3.
53-43.3. Officers and employees; share purchase and option plans .	55-3-02 General Powers, subdivision (12) broad authorization for benefit plans.
53-43.4. Issuance of capital notes and debentures.	55-3-02 General Powers, subdivision (7) broad authorization for borrowing.
53-43.5. Minors' deposits and safe-deposit agreements. **53-43.7.** Safe deposit boxes; unpaid rentals; procedures; escheats.	Minors' accounts and safe deposit boxes are in 53-6-4; Safe deposit boxes more generally are addressed in 53-6-13.
53-43.6. School thrift or savings plans.	This section will be eliminated as unnecessary.
53-81. Directors shall take oath.	This section will be eliminated as unnecessary. Directors clearly have fiduciary duty to bank.

Current Statute	Explanation
53-83. Examining committee of directors.	This section will be eliminated because the subject matter will be carried forward in 53-4-3.
53-84. Depository designated by directors.	This section will be eliminated as unnecessary detail.
53-85. Shareholders' book.	This section will be eliminated as obsolete.
53-86. Directors, officers, etc., accepting fees, etc.	This section will be eliminated because the requirements of Regulation O cover this subject well.
53-88. Use of surplus.	This section will be eliminated as obsolete.
53-89. Overdrafts, payment by officer, etc.	This provision, while eliminated in the initial draft, will be added back to the revised law in Article 6A.
53-91.1. Assets to be written off.	This provision, while eliminated in the initial draft, will be added back to the revised law in Article 6A.



Ex #5

"§ 53-2-1. The Commission.

(a) The Commission consists of the State Treasurer, who shall serve as an ex officio member, ~~19~~ 12 members appointed by the Governor, 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 five practical bankers, and ~~11~~ seven 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 public member. 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.

Cindy Coley (Rep. Brubaker)

From: Cindy Coley (Rep. Brubaker)
Sent: Monday, December 19, 2011 4:57 PM
To: Cindy Coley (Rep. Brubaker)
Subject: Banking Laws Modernization, Jt. Leg. Study Comn. (2011)

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

December 19, 2011

MEMORANDUM

TO: Members, Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

FROM: Representative Harold J. Brubaker, Co-Chair
Senator Harry Brown, Co-Chair

SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Friday	January 20, 2012	10:00 a.m.	544 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Cindy Colley at (919) 715-4946.

cc: Committee Record _X_
Interested Parties _X_

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

December 19, 2011

MEMORANDUM

TO: Members, Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

FROM: Representative Harold J. Brubaker, Co-Chair
Senator Harry Brown, Co-Chair

SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Friday	January 20, 2012	10:00 a.m.	544 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Cindy Colley at (919) 715-4946.

cc: Committee Record _X_
Interested Parties _X_

MINUTES

JOINT LEGISLATIVE STUDY COMMISSION

ON

THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS

Tuesday, February 14, 2012

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws met on Tuesday, February 14, 2012 at 10:00 a.m., Room 421 Legislative Office Building, Raleigh, North Carolina.

In attendance were Senator Brown (Chairman) and Representative Brubaker (Chairman); Senator Blue; Representative Jordan; Christopher Kukla, Gray Reed, Charles Whitehead, Jr., and Andrea Young. Ryan Blackledge (Bill Drafting Staff), Drupti Chauhan (Research Staff), Karen Cochrane-Brown (Research Staff) and Greg Roney (Research Staff) were present. Committee Assistants Darryl Black and Cindy Coley were present.

Senator Brown, Chairman, called the meeting to order and recognized House Sergeant-At-Arms Staff John Brandon and Martha Parrish and Senate Sergeant-At-Arms Staff Charles Marsalis and Steve Wilson.

Chairman Brubaker made a motion to approve the minutes from the January 20, 2012 meeting. Mr. Charles Whitehead, Commission Member, seconded the motion and the motion was approved unanimously.

Four documents were included in committee member notebooks and distributed for review related to the presentation:

- Attachment 1- Follow up items from the January 20, 2012 Meeting
- Attachment 2- Article 6A Summary
- Attachment 3- Office of Commissioner of Banks Proposed Substantive Corrections to Articles 6A
- Attachment 4- Banking Law Modernization Act. Bill Draft 2011-ROz-10 [v.12] (12/05)

Documents related to this presentation have been placed on the Banking Commission public website.

Presentation

Senator Harry Brown, Chairman, introduced North Carolina Commissioner of Banks Joseph A. Smith, Jr.

Commissioner Smith started off with a brief review of Attachment 1- Follow-up Items from January 20, 2012 Meeting. A following list includes item discussed, resolution status and any related discussion.

• § 53-2-1 (The Commission) – This provision is pending future discussion and comments by a State Banking Commission (SBC) subcommittee. Commissioner Smith added that the authority in determining the composition and number of commission members resides with the NCGA.

• § 53-2-7 (Official Records) – There have been meetings held with consumer advocacy groups. Issue has been addressed from OCOB perspective.

• § 53-3-4 (Commissioner's approval of charter issuance) – Issue addressed.

• § 53-4-4 (Committees of Board of Directors) – Issue addressed.

• § 53-4-5 (Qualifications of Directors) - Issue addressed. Looked into Chairman Brubaker's request about citizenship.

• § 53-4-6 (Liability of Directors) - Issue addressed. Per Rep. Jordan request.

• § 53-4-11 (Reserve Fund) - Issue addressed. OCOB recommends addressing matter by amending proposed 53-4-11 (c)(3).

• § 53-5-2 (Investment Authority) – Pending future discussion.

• § 53-86 (Directors, officers, etc. accepting fees) - Issue addressed.

• § 53-4-2 (Banks controlled by board of directors) - Issue addressed. OCOB believes leaving the matter to the discretion of the bank's board seems appropriate so long as the Commissioner has the authority to address any perceived weaknesses.

• § 53-4-8 (Officers and employees shall give bond) - Issue addressed. OCOB concluded that the requirement to bond agents should be dropped and recommends that the first sentence of 53-4-8 be rewritten.

• § 53-4-10 (Examination of Board Composition, Structure, and Conduct) - Issue addressed.

• § 53-4-12 (Compliance review committee) - Issue addressed.

Chairman Brubaker suggested that § 53-4-12 (a) (1) (b) (4) include the term "risk assessment" after "ethical" and before "and".

Commissioner Smith then proceeded to review Article 6A which addresses bank operations. (Attachment 2- Article 6A Summary).

• § 53-6-1 (New) Loans and Extensions of Credit. Substantive corrections added. Incorporated language regarding derivatives as called for by the Dodd-Frank Act. Commissioner Smith then referred to Attachment 3- Office of Commissioner of Banks Proposed Substantive Corrections to Articles 6A. Language prevents banks from other states from importing higher interest rates into the State. Paragraph (f) requires that banks must write off bad loans.

Chairman Brubaker asked what time frames are in place. Commissioner Smith stated that current law does provide some guidance. Mr. Charles Whitehead, Commission Member, referenced the overdraft protection program. Commissioner Smith replied that the intent is to prevent bank officers circumventing bank policy to allow for overdrafts. Will review this provision again.

• § 53-6-2 (New) Deposits. This section broadly authorizes banks to offer all types of deposit accounts and requires that the bank obtain FDIC insurance of accounts. The new provision includes a blanket authorization to offer all types of deposit accounts.

• § 53-6-3 (New). Securing deposits. Prohibits a bank from putting a lien on assets or securing deposits except as authorized by law.

• § 53-6-4 (New). Minors. Does not preempt any other statute that protects minors. More specific transactions and deals with death of a minor how deposits are handled.

• § 53-6-5 (New). Trust accounts; limited documentation required; certification of trust. No current provision. This provision focused on administrative roles of trustees. It gets the bank out of the middle.

• § 53-6-6 (New). Joint accounts. Similar to existing law with clarifying the right to survivorship.

• § 53-6-7. (New). Payable on death accounts. Makes no changes to existing law.

• § 53-6-8. (New). Personal agency accounts. Agents may establish and administer accounts. There is some concern in the industry whether a corporation or trust (non-individual) can open a personal agency account.

• § 53-6-9. (New). Accounts opened by adults for minors. New provision established an informal way for adults to open up an account allowing minors to have access to funds sooner.

Representative Jordan requested an explanation on existing gap. Commissioner Smith stated that this allows for a less formal account and does not supersede treatment of minor's provisions in other statutes. Paul Stock, Legislative Specialist for the NCCOB, stated current law calls for a signature. As a result, it can be difficult for young children to be able to have an account. Banks have had trouble accommodating these types of requests from parents in the past.

• § 53-6-10. (New). Payment of balance of deceased person under disability to personal representative or guardian. This provision clarifies the bank's role once an individual has lost the capacity to make a decision.

• § 53-6-11. (New). Powers of attorney; notice of revocation; payment after notice. This provision is focused on how banks deal with power of attorney and does not supersede Chapter 32A which covers this area in more detail.

Chairman Brown had a question about how difficult it can be to use a power of attorney in the auto retail business. Mr. Gray Reed, Commission Member, replied that often there may be multiple POAs and there could be a question regarding unknown revisions. He then stated that the more banks can clearly define this area, the better opportunity for a safe harbor for banks. Commissioner Smith replied that powers of attorney documents have presented operational questions for banks in the past and banks are being asked to do more especially with an aging population. Commissioner Smith further added, that the intent is to make the law more flexible and fair. However, there are risks when you do this that need to be assessed.

• § 53-6-12. (New). Account statement from bank to depositor deemed final adjustment if not objected to within one year; account statements to be rendered annually or on request. Commissioner Smith stated that banks often issue accounts more than once a year. Though many now access their accounts online, there is still a legal implication related to a customer's review of account statements. Though a reasonable time is needed by the customer to note mistakes, a five-year limit may be somewhat excessive. The new provision shortens the period during which a depositor may raise issues reflected on a statement.

Mr. Charles Whitehead, Commission Member, questioned the relationship between this provision and the Uniform Commercial Code (U.C.C.). Mr. Paul Stock replied that a reasonable time period to find mistakes in a statement is unclear since statement complexity can change dramatically. A statement for a customer's checking may have

reasonable 30-day review period; however, more complex accounting statements can require longer review times. There is case law related to complex accounting. Mr. Ben Davis, a regulatory and transactional lawyer with the Bankers Association added that the U.C.C. has set up an outer limit of 1-year by law that can be altered by agreement with the bank. This provision still allows the U.C.C. to operate in this area.

• § 53-6-13. (New). Safe deposit boxes, unpaid rentals; procedure, escheats. This section sets forth the procedure for dealing with safe deposit boxes that are abandoned or for which the rental payments have not been made for at least 3 months. The new provision retains previous methods of delivery and also permits the bank and the lessee to agree in writing to other means of delivery of any required notices such as email.

• § 53-6-14. (New). Reproduction and retention of records; admissibility of copies as evidence; disposition of originals; record production generally. This section provides the rules for maintenance of records by banks. Commissioner Smith stated that the new provision provides a model that banks can use. This was not intended to supersede the provisions of § 8-45.1 North Carolina rules of evidence regarding admissibility of documents converted from electronic form.

Mr. Christopher Kukla, Commission Member, asked whether this provision would prohibit someone from challenging the authenticity of a document for a court proceeding. Mr. Daniel Garner, Executive Legal Specialist with the Commissioner's Office, responded that the intent of this effort was to state that if a document is challenged, the sole purpose for that challenge cannot be simply due to it being in an electronic medium. Mr. McNeil Chesnut, Assistant Attorney General, and Commissioner Smith confirmed this. Commissioner Smith agreed to take another look at this provision.

• § 53-6-15. (New). Establishment of branches. This section sets forth the process for establishment of branches. The significant change is that it relates to the establishment of NC banks not only in NC but also in other states due to virtual interstate branching. This new provision is important to banks and citizens since it encourages competition.

• § 53-6-16. (New). Change of location of a branch or principal office. The new provision will clarify the steps required for the opening, closing, relocating and combining of branches and non-branch business offices (the new term for limited service facilities). This provision leaves it to the discretion of the Banking Commissioner whether to define change as a "move" versus a "closing".

Chairman Brubaker asked whether there should be an established timeframe to move things along. Ray Grace, the Chief Deputy of the Commissioner of the Banks, replied that the reason for existing time constraints is related to the 14-day upfront notice period and 14-day upset period, 28-day total which is inside the federal timeframe. This measure

enables the public to have time to provide input and the Commissioner time to consider changes.

• § 53-6-17. (New). Branch closings. This section requires 90 days notice to the Commissioner and the branch's customers of a branch closing. Commissioner Smith stated that the consolidation of nearby branches in the same market is not typically considered a closing. The new provision leaves the means of notifying its customers or public disclosure of the pending closing within the discretion of the bank and provides customers the opportunity to voice concerns. Commissioner Smith has only experienced a few issues in this area before. The Commissioner sometimes hears about these issues (has heard about two or three branch issues in nine years) though not as often as before.

• § 53-6-18. (New). Nonbranch bank business office. Commissioner Smith stated that these are non-branch bank business offices (NBBOs) which do not take deposits. These were once called limited service facilities. This provision carries forward much of current law. Since this area is not related to deposits, it does not have as much impact to the general public.

Chairman Brubaker asked about further clarification. Commissioner Smith stated that if the product or service to be offered in the NBBO is not currently offered with the bank, the Commissioner may need to become involved. This is unnecessary for products or services already offered. Commissioner Smith further added that provisions for branching are needed to protect the public's interest while enabling banks to carry on with their day-to-day activities. The need to regulate should be focused where regulation is most needed.

• § 53-6-19. (New). Operations; suspension. This provision does make some changes though the substance of existing law is maintained. Bank management, in consultation with the Commissioner, would be able to more readily assess necessary emergency activities that impact banking operations and reduce burdensome paperwork. For example a bank would be able to suspend operations in emergency conditions without a Commissioner's approval if the emergency prevents the bank's officials from communicating with the Commissioner.

• § 53-6-20. (New). Interstate Branching. This provision requires that an out-of-state bank establishing or buying a branch in North Carolina first notify their intent to the Commissioner. No jurisdictional authority is implied over other state banks. This reflects widespread virtual interstate branching activities.

Chairman Brubaker asked if this would apply to both state and federal charter banks. Commissioner Smith replied it applies to both but will cover mainly state charter banks. The effectiveness of this step will be uncertain until it happens.

Commissioner Smith then briefly covered Sections Proposed to be Carried Forward from Existing Law (as noted at the end of the Summary of Article 5A)

• § 53-6-1(d) (New). Unauthorized payment of overdrafts; liability. Commissioner Smith stated this was discussed previously and will be added.

• § 53-6-1(e). (New). Assets to be written off. Commissioner Smith stated this was discussed previously and will be added.

Chairman Brown asked if there were any further comments, recommendations or changes. None were offered. Chairman Brown then proposed that all recommended changes be adopted except the provisions that required additional review. Chairman Brubaker added that now is the time to include any comments and that April will be the time to finalize previous input.

Chairman Brown announced that the next two meetings will be scheduled for March 6th (Articles 7 and 8) and March 27th (Article 9). In April, it is expected everything will be finalized. Chairman Brubaker then thanked Commissioner Smith for his service.

There being no further business, the meeting adjourned at 11 am.

Senator Harry Brown, Chairman

Representative Harold Brubaker, Chairman

ATTEST:

Darryl Black, Committee Assistant

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

Senator Harry Brown, Co-Chair *Representative Harold J. Brubaker, Co-Chair*

AGENDA

Tuesday, February 14, 2012
10:00 am.
Room 421 LOB

1. **Welcome and Introductions**
   Senator Harry Brown, Co-Chair

2. **Approve Minutes from January 20, 2012 Meeting**

3. **Review of Follow-Up Items from the January 20, 2012 Meeting**
   Joseph A. Smith, Jr. North Carolina Commissioner of Banks

4. **Review of Draft Legislative Proposal and OCOB Proposed Substantive Corrections**
   Joseph A. Smith, Jr., North Carolina Commissioner of Banks
   - *Article 6A – Bank Operations*

5. **Committee Discussion**

6. **Adjourn**

ATTENDANCE

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

(Name of Committee)

DATES	Nov. 21, 2011	Dec. 19, 2011	Jan. 20, 2012	Feb. 14, 2012			
Rep. Brubaker, - House Chair	Yes	Yes	Yes	Yes			
Sen. Harry Brown, Senate Chair	No	Yes	Yes	Yes			
Rep. Leo Daughtry	Yes	Yes	N	N			
Rep. Beverly Earle	Yes	Yes	N	N			
Rep. Jonathan Jordan	N	Yes	Yes	Yes			
Rep. Daniel McComas	N	Yes	Yes	N			
Sen. Thomas Apodaca	N	N	N	N			
Sen. Harris Blake	N	Yes	Yes	N			
Sen. Dan Blue	Yes	Yes	Yes	Yes			
Sen. Thom Goolsby	N	N	N	N			
Charles Whitehead (House Bank)	Yes	Yes	Yes	Yes			
Gray Reed (Senate Bank)	N	Yes	Yes	Yes			
Christopher Kukla (House)	Yes	Yes	Yes	Yes			
Andrea Young (Senate)	Yes	Yes	Yes	Yes			
Rep. Darryl McCormick			Yes	N			

Committee Sergeants at Arms

NAME OF COMMITTEE N.C. Banking Laws

DATE: 2-14-'12 **Room:** 421

House Sgt-At Arms:

1. **Name:** John Brandon
2. **Name:** Martha Parnell
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

Senate Sgt-At Arms:

1. **Name:** Charles Marsalis
2. **Name:** Steve Wilson
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

VISITOR REGISTRATION SHEET

Jt Comm. Banking Laws 2-14-12

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Solari	DSI
Jeff Wolfe	Smith Anderson
Geoffrey Adams	Smith Anderson
DANIEL GARNER	NC OCOB
RAY GRACE	NC COS
Paul Stam	" "
Elizabeth Hammond	NCCOB
Patricia Brennan	"
Charlie Fields, Jr.	"
Nathan Batts	NCBA
Eddy Thomas	NC Assn of Realtors

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ben Davis	Brooks, Pierce for NC Bankers Association
Elizabeth Biser	"
Dirk Carlton	atty
Scott Sanders	
Lisa McDougald	BB&T
Eric Williams	BB&T
Jeff Klein	BB&T
Lauren Whaley	NC Credit Union League
Elliot D. Rushing	NC Dept. of Secretary of State
Sh Roberts	NCBOA

VISITOR REGISTRATION SHEET

Joint Comm. Banking Laws 2-14-10

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Al Ripley	NC JC
Rochelle Sparks	"

ATTACHMENT # 1

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

Follow up items from the January 20, 2012 Meeting

1. 53-2-1 (The Commission) – Leave open the membership of State Banking Commission (SBC) for discussion. Joe mentioned that we expect comments from SBC members and the Treasurer. Rep. Jordan also suggested the new language regarding the SBC state: "The Commission comprises 15 members..."

   Update:
   A subcommittee of the SBC is reviewing and will recommend to the Study Commission its position on the size and composition of the SBC.

2. 53-2-7 (Official records) – Hold open for discussion. The N.C. Office of the Commissioner of Banks (OCOB) will meet with Ms. Beth Young and consumer advocates during week of 1/30/12 for further discussion.

   Update:
   OCOB has met with Ms. Young and other consumer advocates. It is understood that OCOB has concluded that there are no changes in the proposed bill that need to be considered at this time.

3. 53-3-4 (Commissioner's approval of charter issuance) – Rep. Jordan asked how we propose to evaluate character confidence of the public.

   Update:
   A. OCOB requires and carefully reviews a fairly exhaustive (federal) form that seeks answers to questions about each person's background, educational and professional attainments, and financial standing and commitments, including financial statements and income information.
   B. OCOB requires each such individual to sign an authorization for a criminal and credit background check, which is then run and reviewed.
   C. FDIC requires submission of fingerprints (from local law enforcement), which they run through the FBI center.
   D. Either the Chief Deputy Commissioner or another OCOB agent visits with CEOs and city executives of financial institutions serving the community, and interviews them, asking specific (confidential) questions about each such individual's background, standing and reputation in the community. (A great deal of information is gathered in this fashion.)
   E. The Chief Deputy Commissioner interviews each applicant personally.

4. 53-4-4 (Committees of Board of Directors) – Sen. Blue suggested that consideration should be given to a list of topics for committees.

   Update:
   Industry input has led OCOB to conclude that the existing language strikes an appropriate balance. The committee structure of a large, complex bank should be very different from the structure at a smaller or simpler company. Unless the Commissioner identifies a deficiency at a particular bank raising concerns about safety and soundness, the committee structure should be left to the discretion of the board of directors.

5. 53-4-5 (Qualification of Directors) – Hold open for discussion. Rep. Brubaker asked if the feds address requirements for citizenship. Rep. McCormick had concerns about removing the director oath.

   Update: The Office of the Comptroller of the Currency requires that a director of a national bank:
   "Be a citizen of the United States throughout his or her term of service, except that the OCC may waive this requirement for a minority of the total number of directors."
   Regarding the oath requirement, OCOB is unable to find such requirement in federal law or regulations for banks or in Chapter 55 with respect to corporations generally.

6. 53-4-6 (Liability of Directors) – Rep. Jordan asked about NC Business Corporation Act provisions that cover 53-4-6.

   Update:
   Chapter 55 limits the extent to which a director may have his liability restricted or indemnified. While the limitations appear in more than one place, the law governing the articles of incorporation, set forth in § 55-2-02 treats the topic in depth in subdivision (b)(3) as follows:

   > "(3) A provision limiting or eliminating the personal liability of any director arising out of an action whether by or in the right of the corporation or otherwise for monetary damages for breach of any duty as a director. No such provision shall be effective with respect to (i) acts or omissions that the director at the time of such breach knew or believed were clearly in conflict with the best interests of the corporation, (ii) any liability under G.S. 55-8-33 [liability for unlawful distributions], (iii) any transaction from which the director derived an improper personal benefit, or (iv) acts or omissions occurring prior to the date the provisions became effective. As used herein, the term "improper personal benefit" does not include a director's reasonable compensation or other reasonable incidental benefit for or on account of his service as a director, officer, employee, independent contractor, attorney, or consultant of the corporation. A provision permitted by this Chapter in the articles of incorporation, bylaws, or a contract or resolution indemnifying or agreeing to indemnify a director against personal liability shall be fully effective whether or not there is a provision in the articles of incorporation limiting or eliminating personal liability."

7. 53-4-11 (Reserve Fund) – Hold open for discussion, because Dodd-Frank requirements involving Basel III, which cover liquidity among a host of other things, need to be considered.

   Update:
   Industry input underscored the fact that Dodd-Frank, in several instances, has moved away from reliance on rating agencies to determine the investment quality of various securities. OCOB recommends addressing this matter by amending proposed 53-4-11 (c)(3) to read:

   "(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 or that meets alternative standards of credit-worthiness established and promulgated by the Commissioner."

8. 53-5-2 (Investment Authority) – Hold open for discussion. Mr. Gray Reed suggested we make sure it's consistent with Basel and federal law.

   Update:
   OCOB continues to solicit and receive input on 53-5-2. A full discussion of this section, including the ramifications of Basel III and federal law, will be held at a future meeting.

9. 53-86 (Directors, officers, etc., accepting fees, etc.) – This was eliminated. The question was raised regarding whether prohibition of fees and gifts was covered anywhere in the proposed statute or in Chapter 55.

   Update:
   The proposed bill does not contain specific references to prohibitions on fees and gifts; nor does Chapter 55.

Other Recommended Changes to Article 4A

1. **53-4-2 Banks controlled by board of directors –**

Subsection (c) raised concerns among those who submitted comments as being too prescriptive and unrelated to current actual practice. OCOB concluded that the appropriate frequency of meetings will vary greatly depending on the size and complexity of the bank and its business model. Leaving the matter to the discretion of the bank's board seems appropriate so long as the Commissioner has the authority to address perceived weaknesses. OCOB recommends that 53-4-2(c) be rewritten to read:

"(c) The board of directors, the executive committee and other board committees shall meet ~~at least quarterly, provided that the executive committee shall meet in any month in which there is no meeting of~~ with such frequency as the board of directors ~~and~~

~~the loan committee shall meet monthly~~ shall determine to be appropriate within the context of the bank's complexity and business plan; provided, however, the Commissioner may requires more frequent meetings of the board of directors or specific committees if, upon examination, he determines that a different schedule is necessary for the safe and sound operation of the bank."

2, 53-4-8 Officers and employees shall give bond

Subsection (a) adds the requirement that agents of a bank must now be bonded, in addition to officers and employees. Upon request, OCOB reviewed the implications of this additional requirement and determined that it was almost impossible to evaluate the extent to which this might add costs to a bank's operations. As there have not been any significant problems under the current bonding requirement for officers and employees, OCOB concluded that the requirement to bond agents should be dropped and recommends that the first sentence of 53-4-8 be rewritten to read:

"(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 ~~and agents~~."

3. 53-4-10 – Examination of Board Composition, Structure, and Conduct

This section grants broad authority to the OCOB to assess competence, composition, structure, and conduct of the board of directors. This is a provision that does not exist in current law. With greater flexibility given to the board of directors to oversee a bank's operations, it was felt that OCOB needed appropriate tools to make sure that boards of directors are mindful of and appropriately administering their oversight responsibilities. However, the amendments suggested below for a revised 53-4-10 will help make the section adhere more closely to its original intent.

"53-4-10. Examination of Board Composition, Structure, and Conduct

As part of its examinations of a bank, OCOB ~~shall~~ may assess the competence, composition, structure and conduct of such bank's board of directors, including, without limiting the generality of the foregoing: (i) number of directors; (ii) independence of directors; (iii) committee structure of the board; and (iv) education and training of board members. In making such assessment, OCOB shall take into consideration the size, complexity and business operations of the bank as well as publicly issued regulations and guidance of the Commissioner and the bank's primary federal supervisor. ~~Such assessment shall be part of the overall assessment of the bank's management and of whether the bank is operating in a safe and sound manner.~~"

4. 53-4-12 – Compliance review committee

This section seeks to protect the work product of any compliance review committee within a bank from disclosure other than to regulatory bodies or other government agencies. It is substantively quite similar to existing law. Upon the receipt of numerous questions about the meaning and terminology of the new section, OCOB reviewed the existing law and concluded

that, with a few conforming changes to utilize defined terms, it is actually better written than the proposed 53-4-12. Therefore, OCOB recommends replacing proposed 53-4-12 with the conforming version of the existing law as follows:

"**53-4-12 – Compliance review committee**

(a) As used in this section:

(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 a compliance review 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 and financial standards; or RISK MGMT.

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 laws 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, but not by way of limitation, 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."

ATTACHMENT #2

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

OCOB Proposed Substantive Corrections to Articles 6A February 14, 2012

The recommendations set forth below for substantive changes to Article 6A of the proposed rewrite are derived from OCOB staff analysis and input from and discussions with various stakeholders. These recommendations for changes to Article 6A will be included in the Commissioner's explanation of those sections:

- § 53-6-1(d): This subsection is designed to ensure competitive equality between state banks and their federally chartered peers. However, it has been pointed out that there may be circumstances in which the state regulator is able to more quickly identify a program or product with negative impacts than federal regulators. Subsection (c) should be rewritten to enable the Commissioner to act appropriately in such a situation. The Commissioner recommends that 53-6-1(d)be rewritten to read:
  - "(d) A bank may make any extension of credit that is a permitted extension of credit for a federally chartered institution, unless the Commissioner, by rule or order, identifies a type of extension of credit as inconsistent with sound lending practices or in conflict with the purposes of this Chapter."

- § 53-6-1: In his review of Articles 4A and 5A during the January 20 meeting of the Commission, the Commissioner pointed out that two sections of current law, §§ 53-89 and 53-91.1, would be carried forward and added to Article 6A. The appropriate place for those two items is at the end of § 53-6-1. The Commissioner makes the following recommendations:
  - § 53-89 should be revised and inserted as a new subsection (e) of § 53-6-1 to read:
    - "(e) Any officer ~~(other than a director),~~ or employee of a bank, who ~~shall~~ permits ~~any~~ customer or other person to overdraw his account, or who ~~shall~~ pays any check or draft~~, the paying of which shall overdraw any account~~ that causes an account to be

Hold Aside per Smith & Mitchell

overdrawn, unless the ~~same shall be authorized by the board of directors or by a committee of such board authorized to act,~~ account is covered by an overdraft protection program of the bank, shall be personally and individually liable to ~~such~~ the bank for ~~the amounts of such~~ any losses incurred by the bank from the overdrafts."

- § 53-91.1 should be revised and inserted as a new subsection (f) of § 53-6-1 to read:
  - "(f) Every bank doing business under this Chapter shall be required to write off any asset, or portion thereof, which~~,~~ ~~following the most recent report of examination~~ is classified as uncollectable in a report of examination issued by the Commissioner ~~of Banks, is classified as uncollectible~~. Provided, however, such asset need not be written off if the same is secured by collateral acceptable to the Commissioner."

PROPOSED CHANGES TO THE
NORTH CAROLINA BANKING LAWS – CHAPTER 53 OF THE GENERAL STATUTES
ARTICLE 6A ADDRESSES BANK OPERATIONS.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
		Article 6A. Bank Operations.		
53-48. Limitation of loans. 53-64. Loans secured by bank's own stock or stock of parent bank holding company.	53-48 provides limitations on the amount of loans that a bank may grant to a single borrower: a maximum of 15% plus an additional 10% if secured by readily marketable securities. It directs the Commissioner to monitor lending activities of banks for undue credit concentrations and inadequate risk diversification. 53-64 authorizes a bank to accept its stock or that of its parent holding company as security for a loan, but requires the bank to dispose of any stock it acquires by virtue of a loan default within six months (which may be extended up to another six months by the Commissioner). In general, a bank is precluded from buying its stock or that of its parent holding company.	**53-6-1**	**New 53-6-1. Loans and Extensions of Credit.** This section governs numerous aspects of a bank's lending function. Subsection (a) authorizes a bank to extend credit secured by the pledge of its own stock or that of its holding company, but limits how long such shares may be held if they come into the bank's possession. It prohibits loans to finance the purchase of the bank's stock or "to carry the stock as that phrase is defined in 12 C.F.R. Part 221. Subsection (b) provides the rules for the maximum amount of loans that may be made to a single borrower. Subsection (c) restricts the Commissioner from adopting rules that would preclude a state bank from making an extension of credit that would be permitted to a federally chartered institution.	For the most part, the new section is a combination of the two old sections. It includes an important definition of "derivative transaction" necessary under the federal Dodd-Frank Act to permit state banks to continue to engage in such activities. It prohibits the Commissioner from issuing rules that would bar a state bank from making loans that would be permissible to a federally chartered institution.
53-9.1. Deposit insurance.	53-9.1 requires FDIC insurance before an entity may engage in banking. It authorizes a bank to take such actions as may be necessary to obtain such insurance.	**53-6-2**	**New 53-6-2. Deposits.** This section broadly authorizes banks to offer all types of deposit accounts and requires that the bank obtain FDIC insurance of accounts.	The new provision includes a blanket authorization to offer all types of deposit accounts. It does not detail, as unnecessary, all the steps a bank may take to obtain deposit insurance.
53-43.1. Obligations of agencies supervised by Farm Credit Administration as securities for deposits of public	53-43.1 and 53-43.2 specifically authorize banks to invest in the securities listed in their respective titles for the sole purpose of securing public deposits.	**53-6-3**	**New 53-6-3. Securing deposits.** As a general rule, subsection (a) prohibits a bank from putting a lien on assets or securing deposits except as authorized by law. Subsection (b) does permit a bank to secure the deposits of state and federal governments or an agency of the same, including Indian tribes recognized by the Secretary of the	The new law approaches collateralization differently. Rules adopted by the State Treasurer (20 NCAC 07 .0201) set forth which securities may be pledged as collateral for public deposits. To the extent those securities are permissible investments for banks, they may be pledged to secure public deposits.

ATTACHMENT # 3

Current Section(s)	Summary	New Section	Summary	Explanation of Change
funds. 53-43.2. Obligations of agencies supervised by Federal Home Loan Bank Board as securities for public funds.			Interior. Subsection (c) allows the pledge of assets to secure repayment of money and subsection (d) voids acts, deeds, conveyances and contracts in violation of this section of law.	
53-43.5. Minors' deposits and safe-deposit agreements.	53-43.5 authorizes a bank to deal with a minor like an adult for purposes of deposit accounts (subsection (a)) or safe deposit boxes (subsection (b)). Subsection (c) authorizes rental of a safe-deposit box to a married minor and spouse, whether the spouse is a minor or not, jointly. Each subdivision states that it does not affect laws governing transactions with minors outside the scope of the section.	**53-6-4**	**New 53-6-4. Minors.** Subsection (a) authorizes a bank to deal with a minor like an adult for purposes of deposit accounts. Subsection (b) authorizes a bank to deal with a minor like an adult regarding safe deposit boxes. Subsection (c) authorizes the bank to pay money from an account of a deceased minor to that minor's parent or guardian, except joint accounts with right of survivorship or payable on death accounts, which provide by their terms for passage of the funds upon the death of the account holder. If a deceased minor is the lessee of a safe deposit box, the provisions of G.S. §28A-15-13 govern the handling of the safe deposit box. Subsection (d) states that the provisions of the Section do not affect the law governing contracts with minors beyond the scope of the Section.	The new provision provides a broader listing of the types of transactions with respect to which the bank may contract with the minor regarding deposit accounts, including: receipt of payments, acceptance of pledges of accounts, issuance of ATM and debit cards, and provision of overdraft protection. Both the deposit and safe deposit box provisions are more clearly written. In addition, the new provision includes guidance for dealing with the death of a minor depositor or safe deposit box lessee.
No corresponding section.	N/A	**53-6-5**	**New 53-6-5. Trust accounts; limited documentation required; certification of trust.** This section addresses broad issues presented by dealings with trustees. Subsection (a) authorizes the bank to establish deposit accounts or lease a safe deposit box to persons purporting to be trustees without requiring or seeing further documentation. Subsection (b) allows the bank to take deposits and lease boxes to trustees under a written trust upon provision of a trust certification pursuant to Chapter 36C of the	This new provision was drafted to address problem situations that have arisen in dealing with trustees where there has been no specific statutory guidance.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
			General Statutes as evidence of the trust. Subsection (c) permits the bank to act upon the direction of any one of multiple trustees with binding effect on the other trustees and the beneficiaries. Subsection (d) provides how to address the absence of all trustees and successor trustees and the documentation that will permit the bank to release the funds or contents of the box. Subsection (e) permits a bank to refuse to open an account or lease a box to a trustee that refuses to provide documentation.	
53-146. Deposits in two names. 53-146.1. Joint accounts.	53-146 generally authorizes the creation of joint accounts with or without right of survivorship. 53-146.1 provides the incidents of joint accounts established pursuant to its provisions. It has specific requirements for joint accounts with right of survivorship and provides a model disclosure form for such accounts. It also provides that the section is not exclusive and joint accounts that do not conform to its provisions are governed by other applicable provisions of statutory or common law, as appropriate.	**53-6-6**	**New 53-6-6. Joint accounts.** This section provides the incidents of joint accounts that are established pursuant to the provisions of the section. Joint accounts are subject to withdrawals by any joint owner. It has specific requirements for joint accounts with right of survivorship and provides a model disclosure form for such accounts. It also provides that the section is not exclusive and joint accounts that do not conform to its provisions are governed by other applicable provisions of statutory or common law, as appropriate. It authorizes any joint tenant to terminate the account. It authorizes a joint tenant to ask that they be removed from the account. It provides for the application of the new law to accounts opened under prior 53-146.1.	The new provision modifies the model disclosure form by deleting the line that says "We DO elect to create the right of survivorship in the accounts." As everything in the model disclosure form is about the right of survivorship, this language is superfluous. It also adds the provisions about one joint owner terminating the account or having his or her name removed from the account. These situations arise frequently and the previous statute was silent as to how they should be addressed.
53-146.2A. Payable on Death (POD) accounts.	G3-146.2A provides the incidents of payable on death (POD) accounts that are established pursuant to the provisions of the section. POD accounts permit the owner to use the account during his or her lifetime and the account passes to the named beneficiaries upon the death of the owner. The section provides a model	**53-6-7**	**New 53-6-7. Payable on death accounts.** This section provides the incidents of payable on death (POD) accounts that are established pursuant to the provisions of the section. POD accounts permit the owner to use the account during his or her lifetime and the account passes to the named beneficiaries upon the death of the owner. The section provides a model disclosure form for establishment of payable on death	The new provision makes no changes to existing law, which was modified in 2011 to permit charities and other entities to be beneficiaries of POD accounts. Only natural persons could be beneficiaries prior to those amendments.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	disclosure form for establishment of POD accounts. It also provides that the section is not exclusive and POD accounts that do not conform to its provisions are governed by other applicable provisions of statutory or common law, as appropriate. The last subsection states that the section does not modify or repeal any provisions relating to estate taxes.		accounts. It also provides that the section is not exclusive and POD accounts that do not conform to its provisions are governed by other applicable provisions of statutory or common law, as appropriate. The last subsection states that the section does not modify or repeal any provisions relating to estate taxes.	
53-146.3. Personal agency accounts.	53-146.3 provides the incidents of personal agency accounts that are executed pursuant to its provisions. Personal agency accounts permit one person, an agent, to act for the owner, but confer no ownership rights on the agent. The section specifies those banking acts that a personal agent may perform on behalf of the owner. The section provides a model disclosure form for establishment of personal agency accounts. It provides how to establish a personal agency account that endures beyond a determination of incompetence or incapacity of the owner.	**53-6-8**	**New 53-6-8. Personal agency accounts.** This section provides the incidents of personal agency accounts that are executed pursuant to its provisions. Personal agency accounts permit one person, an agent, to act for the owner, but confer no ownership rights on the agent. The section specifies those banking acts that a personal agent may perform on behalf of the owner. The section provides a model disclosure form for establishment of personal agency accounts. It provides how to establish a personal agency account that endures beyond a determination of incompetence or incapacity of the owner. It provides for the continuing validity of personal agency accounts established under former § 53-146.3.	The new provision allows the establishment of a personal agency account by an entity other than a natural person, such as a partnership authorizing an employee to act as its agent. It also states that a personal agency account may have only one owner and one agent. It also provides for the continuing validity of personal agency accounts established under former § 43-146.3.
No corresponding section.	N/A	**53-6-9**	**New 53-6-9. Accounts opened by adults for minors.** This section provides the structure for a simple account that an adult may open for a minor. The custodial deposit account will be transferred to the control of the minor upon his or her reaching the age of majority if not transferred sooner by the custodian. The section states that it is not exclusive and specifically mentions the Uniform Transfer to Minors Act, G.S. Chapter 33A.	This provision is designed to address a gap in existing law by providing for a simple way to address the common desire of persons to open accounts for minors, especially very young ones. This does not replace the more formal Uniform Transfer to Minors Account.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
No corresponding section.	N/A	**53-6-10**	**New 53-6-10. Payment of balance of deceased person under disability to personal representative or guardian.** This section deals with payment of account balances for deceased persons who were under a disability. It allows the bank to discharge its responsibilities to the decedent by paying the balance to the qualified personal representative, collector or public administrator of the decedent qualified under the laws of any state. Similarly, the bank may pay the account balance of any person judicially declared incompetent to the appropriately qualified guardian or representative, qualified under the laws of any state. Presentation of documents issued or certified by the appointing court are conclusive proof of the jurisdiction of the court and sufficient authority for the bank to make payment.	Banks have traditionally struggled to identify the proper procedure for dealing with accounts of decedents who were under a disability or had been found incompetent. This section provides a safe harbor for dealing with those circumstances.
No corresponding section.	N/A	**53-6-11**	**New 53-6-11. Powers of attorney; notice of revocation; payment after notice.** This section establishes parameters within which a bank may rely upon powers of attorney without liability: until the time of receipt of actual notice of the principal's death or a written notice of revocation signed by the principal. It also allows the bank to honor items up to 10 days after receipt of notice if they were executed before receipt of notice and are otherwise valid acts of the attorney-in-fact.	Powers of attorney have long presented operational questions for banks. Though generally covered in G.S. Chapter 32A, this provision addresses some of the more commonly encountered areas of ambiguity.
53-75. Statement of account from bank to depositor deemed final adjustment if not objected to within five years; statements of	53-75 provides that a depositor is barred from objecting to matters reflected in a statement from the bank five years after the statement is rendered. It requires that statements be provided at least annually, except for time deposits, or on request. Statements are to be mailed to the last	**53-6-12**	**New 53-6-12. Account statements to be rendered annually or on request.** This section requires banks to issue statements for deposit accounts at least annually, except for time deposits, and upon requests for all accounts, including time deposits. It provides for both mail and online statements and states that it does not relieve the depositor of the duty to review	It provides for alternative methods of delivering statements, including electronically or as agreed upon with the customer.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
account to be rendered annually or on request. 53-76. Depositor not relieved from exercising diligence as to errors.	known address of the depositor. 53-76 says that § 53-75 does not relieve the depositor of his duty to exercise due diligence in the examination of account statements.		statements and to timely notify the bank of any errors.	
53-43.7. Safe-deposit boxes; unpaid rentals; procedure; escheats.	53-43.7 sets forth the procedure for dealing with safe deposit boxes that are abandoned or for which the rental payments have not been made for at least 3 months. It provides for a notice to the lessee that the box will be opened if the rent is not paid within 30 days. After 30 days, the bank may open the box in the presence of a bank officer and an unaffiliated notary. The contents are sealed with the notary writing on the outside the name of the lessee and the date of the opening of the box. If the contents are unclaimed for two years, upon sending a further notice, the bank may escheat the contents to the State Treasurer. The section sets out the steps to be taken in escheating the property. It requires that the contract for leasing the box contain an explanation of the consequences of default.	**53-6-13**	**New 53-6-13. Safe deposit boxes, unpaid rentals; procedure, escheats.** This section sets forth the procedure for dealing with safe deposit boxes that are abandoned or for which the rental payments have not been made for at least 3 months. It provides for a notice to the lessee that the box will be opened if the rent is not paid within 30 days. After 30 days, the bank may open the box in the presence of a bank officer and an unaffiliated notary. The contents are sealed with the notary writing on the outside the name of the lessee and the date of the opening of the box. If the contents are unclaimed for two years, upon sending a further notice, the bank may escheat the contents to the State Treasurer. The section sets out the steps to be taken in escheating the property. It requires that the contract for leasing the box contain an explanation of the consequences of default.	The new provision mirrors the old one with one exception. Under the existing law, all notices must be sent by either registered mail or certified mail, return receipt requested. The new provision retains those methods of delivery as permissible but also permits the bank and the lessee to agree in writing to other means of delivery of any required notices.
53-110. Banking Commission to prescribe books, records, etc.; retention, reproduction and disposition of records.	53-110 authorizes the issuance of rules regarding the keeping of books and records; it directs the issuance of rules providing a retention schedule for different types of records; it permits the conversion of records to any other medium which may in turn be used to create a tangible copy of the record; it	**53-6-14**	**New 53-6-14. Reproduction and retention of records; admissibility of copies as evidence; disposition of originals; record production generally.** This section provides the rules for maintenance of records by banks. Subsection (a) authorizes banks to convert original records to any medium "capable of accurately converting such records into tangible form within a	The new provision provides a model certificate that a bank my use to establish a document converted from an electronic form as a valid document to be introduced into evidence; and it specifies that the provisions of the section supplement and do not supersede the provisions of § 8-45.1 which is from the North Carolina rules of evidence regarding

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	provides that such tangible copy is admissible in any court of law; and it authorizes a bank to dispose of records that have been kept for the prescribed period of time.		reasonable time." Subsection (b) provides that all such converted records shall be treated like originals for all legal purposes and authorizes the bank to dispose of the original documents. It also requires the bank to keep original records or converted records for the period of time required for each record by law, rule or order of the Commissioner. Subsection (c) details the procedure for rendering converted records admissible as evidence and sets forth a model form for certifying a bank record.	admissibility of documents converted from electronic form. RELOOK per SMITH ON AUTHENTICITY
53-62. Establishment of branches; limited service facilities; and off-premises customer-bank communications terminals.	53-62 addresses the establishment of branches, limited services facilities and ATM and similar terminals. It requires the Commissioner's approval and sets out the criteria upon which to base that determination. It authorizes the conversion of a limited services facility to a branch and the bank may close the limited services facility upon 30 days notice to the Commissioner, unless it had been a branch within the previous five years; in which case it must follow the branch closing provisions. It authorizes ATMs and similar equipment. It sets forth the process for closing a branch, subject to notifying the Commissioner and its customers (by posting in the branch for 30 days and mailing to each customer in a statement or otherwise). The branch closing must be approved by the Commissioner. It states that actions by the Commissioner under this section are subject to the review of the Commission.	**53-6-15**	**New 53-6-15. Establishment of branches.** This section sets forth the process for establishment of branches. The Commissioner's approval is required to open a branch in North Carolina (subsection (a)) or out of state (subsection (b)). Subsection (c) sets forth the matters that must be addressed in the public notice required before a new branch may be opened. Subsection (d) authorizes a branch of a state bank established in another state to conduct any activities that are permissible for a bank chartered by that other state except to the extent that the activities are expressly prohibited by the laws of this state or the regulation or order of the Commissioner. Subsection (e) sets forth the criteria upon which the Commissioner should base his decision including (i) the financial condition and history of the applicant, (ii) the adequacy of its capital, (iii) the applicant's future earnings prospects, (iv) quality of management, (v) impact of the branch on the condition of the applicant bank and the existing institutions in the market to be served, and (vi) the convenience and needs of the community the bank is to serve.	The new provision, and the ones that follow it, set forth more clearly all the steps required for the opening, closing, relocating and combining of branches and non-branch business offices (the new term for limited service facilities). The section makes it clear that the approval process is required for the establishment of a branch in this state or another state. It is specific about the information that must be included in the notice concerning the proposed opening of the branch. The criteria for consideration are the same as current law. The new section also authorizes a branch of a state bank established in another state to conduct any activities that are permissible for a bank chartered by that other state except to the extent that the activities are expressly prohibited by the laws of this state or the regulation or order of the Commissioner.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
No corresponding section.	N/A	**53-6-16**	**New 53-6-16. Change of location of a branch or principal office.** This section sets forth the process for seeking the Commissioner's approval to change the location of a bank office. It requires publication of a notice to the public of the intention to move the office including a statement that any interested party may send a comment to the Commissioner. It sets forth the criteria to be considered by the Commissioner in making a decision on the application.	This new provision addresses an issue of branch location not specifically covered in current law.
53-62. Establishment of branches; limited service facilities; and off-premises customer-bank communications terminals, subsection (e).	53-62(e) provides that to close a branch, the bank must notify the Commissioner at least 90 days before the proposed closing, including the reasons for the decision and statistical information in support of the decision. At least 90 days before closing, the bank must notify its customers by posting notice in the branch for 30 days and either put it in a statement or send it in a separate mailing. The branch may not be closed without the Commissioner's approval. Consolidation of two branches is not considered a closing.	**53-6-17**	**New 53-6-17. Branch closings.** This section requires 90 days notice to the Commissioner and the branch's customers of a branch closing. Consolidation of nearby branches is not considered a closing. Determination of whether consolidated banks are close enough to each other to be treated as a consolidation rather than a closing is within the discretion of the Commissioner with consideration of the distance involved and the nature of the market.	The new provision leaves the means of notifying its customers of the pending closing within the discretion of the bank. It provides additional guidance about consolidations, requiring the bank to request consolidation treatment from the Commissioner and directs the Commissioner to consider the distance between the two branches and the nature of the market in which the branches are situated.
53-62. Establishment of branches; limited service facilities; and off-premises customer-bank communications terminals.	53-62 governs the establishment of branches, limited service facilities, and ATMs and similar devices in a single section. In terms of the process for gaining the Commissioner's approval, there is no distinction drawn between branches and limited service facilities. See the discussion above of 53-62 as it relates to **new 53-6-15, establishment of branches.**	**53-6-18**	**New 53-6-18. Nonbranch bank business office.** This section sets forth the rules for banks establishing nonbranch bank business offices (NBBOs). If the NBBO will house a product, service or other offering not currently offered within the bank, notice must be sent to the Commissioner prior to opening the NBBO. If the Commissioner does not request additional information or object within 10 days, the NBBO is deemed approved. If the NBBO will house a product or service already offered within the bank, it need only notify the Commissioner of its intent to open the office. An out-of-state bank	Limited service facilities are now referred to as nonbranch bank business offices (NBBOs). The new provision sets forth the process for opening NBBOs. If the product or service to be offered in the NBBO is not currently offered with the bank, notice must be sent to the Commissioner prior to opening the office. If the Commissioner does not object or ask for more information within 10 days, the NBBO is deemed approved. If the bank is already offering the product or service, the Commissioner only needs to be notified of the opening of the NBBO. An out-of-state bank

Current Section(s)	Summary	New Section	Summary	Explanation of Change
			may open a NBBO upon written notice to the Commissioner. Notice is not required for closing NBBOs. Deposits may not be accepted at NBBOs.	may open a NBBO upon written notice to the Commissioner. Deposits may not be accepted at NBBOs.
53-77. Governor empowered to proclaim bank holidays 53-77.1A, Days and hours of operation 53-77.3 Banks suspending business during an emergency.	53-77 authorizes the Governor to declare banking holidays and validates the banking holidays declared in 1933. 53-77.1A states that a bank, limited service facility or branch may operate on such days and during such hours and observe such holidays as its board of directors shall designate. 53-77.3 addresses the process for banks suspending business during an emergency. It authorizes the Commissioner, in his discretion, to declare emergencies warranting the closing of one or more banks or bank offices and for the suspension of banking activities. It authorizes the bank to close without a declaration by the Commissioner if communication with the Commissioner is disrupted.	**53-6-19**	**New 53-6-19. Operations; suspension.** This section places within the discretion of bank management the days and hours of the bank's operations. It empowers the Commissioner to authorize banks to suspend operations in areas where emergency conditions exist. It also authorizes a bank to suspend operations in emergency conditions without the Commissioner's approval if the emergency prevents the bank's officials from communicating with the Commissioner.	The new provision does not carry forward the governor's authority to declare a banking holiday. Otherwise, the substance of the existing law is maintained.
Article 17B. Interstate Branch Banking, §§ 53-224.9 et seq.	Article 17B was adopted at a time when substantial controversy swirled around interstate branching activities. Some states sought to encourage it; others, like South Carolina, sought to limit it. Since then, federal law has eliminated virtually all barriers to interstate branching so extensive treatment in state law is no longer required.	**53-6-20**	**New 53-6-20. Interstate Branching.** This section requires notice to the Commissioner of intent by an out-of-state bank to establish or buy a branch in North Carolina. Notice must be given no later than the date the bank makes application to its federal bank supervisory agency for approval for the branch. It also provides that out-of-state banks may conduct the activities that a North Carolina bank could conduct if not prohibited by laws, regulations or orders applicable to the out-of-state bank. Such bank may also engage in activities permitted for federally chartered institutions.	The new provision merely seeks to assure that out-of-state banks branching into North Carolina notify the Commissioner of their intention to do so. State banks branching into another state, either *de novo* or by acquisition, would follow the branching procedures set forth in 53-6-15.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
Sections Proposed to be Carried Forward from Existing Law (as noted at the end of the Summary of Article 5A)				
53-89. Overdrafts, payment by officer, etc.	53-89 renders liable to the bank any officer or employee of a bank who authorizes payment of a customer's overdraft that results in a loss, unless payment of the overdraft is authorized by the board of directors or a committee of the board.	**53-6-1(d)**	**New 53-6-1(d). Unauthorized payment of overdrafts; liability.** This section renders liable to the bank any officer or employee of a bank who authorizes payment of a customer's overdraft that results in a loss, unless the account is covered by a program of the bank under which overdrafts are to be paid.	The new provision modernizes the statute. It rewrites the title and changes the circumstances that protect the officer or employee from liability from approval of the overdraft payment by the board or one of its committees to accounts that are covered by an overdraft protection program offered by the bank.
53-91.1. Assets to be written off.	53-91.1 provides that banks are required to write off any asset that is classified as uncollectible during an examination, unless the asset is secured by collateral acceptable to the Commissioner.	**53-6-1(e)**	**New 53-6-1(e). Assets to be written off.** This section provides that banks are required to write off any asset that is classified as uncollectible during an examination, unless the asset is secured by collateral acceptable to the Commissioner.	The new provision merely carries forward the existing substance with only slightly revised language.

ATTACHMENT # 4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

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

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/7/2012 2:17:08 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.

The General Assembly of North Carolina enacts:

SECTION 1. Articles 1 through 14, 17, 17B and 18A 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 3 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.

(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.

"**§ 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 unless established as a depository 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

(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.

(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 company, that is organized under the laws of this State and is engaged in the business of receiving deposits (other than trust funds), paying monies and making loans.

(5) Bank Operating Subsidiary. – A subsidiary 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.

(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 "Tier 1 capital" as that term is defined in Part 325 of the Regulations of the FDIC or any successor regulation of the FDIC; provided, that if the term "Tier 1 capital" is replaced by a term including substantially the same components as "Tier 1 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 3 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.

(35) Federal Savings Association. – A federal savings association or federal savings bank chartered under Section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464.

(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 or that controls a company that directly or indirectly controls a depository institution.

(39) 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.

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

(41) Individual. – A human being.

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

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

(44) National Bank. – A banking association organized under 12 U.S.C. 21.

(45) 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, or a depository institution established under the laws of another state 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 officers, mortgage loan offices, and insurance agency offices, or a combination thereof.

(46) North Carolina Financial Institution. – A bank, savings institution, or trust company organized under the laws of this State.

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

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

(49) 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.

(50) 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.

(51) Organizers. – One or more individuals who are the organizers of a proposed ban 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, and at all times thereafter, is, or has been during the five years

preceding the appointment, a president, chief executive officer, director, or [redacted] 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 practical banker [redacted] nor was within [redacted] 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 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 that has an equity ownership interest in a bank or holding company and is entitled to vote such interest under the bank's or holding company's organizational documents.

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

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

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

(69) Trust Company. – A company that is formed primarily for the purpose of taking, executing, and administering trusts, and which is not a depository institution.

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

(71) Voting Securities. –Voting Securities means:

a. Any equity ownership interest in a company that entitles the holder to vote on any matter presented to holders of equity ownership interests in the company for a vote, and

b. Any equity interest, right to acquire an equity ownership interest, debt instrument or other similar interest or instrument convertible into an equity ownership interest that entitles the holder to vote on any matter presented to holders of equity ownership interest which may be converted into a voting equity ownership interest.

"**§ 53-1-5. Severability.**

If any provision of this Chapter is found by any court of competent jurisdiction to be in valid 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 five practical bankers, and seven 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 public member. 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) 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 Commission 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 him for administration or in connection with any bank or the rights, liabilities, property or assets thereof, under his 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.

"**§ 53-2-3. The Office of the Commissioner of Banks.**

(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 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.

"**§ 53-2-4. Administration of the Office of the Commissioner of Banks.**

(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 by statute. 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.

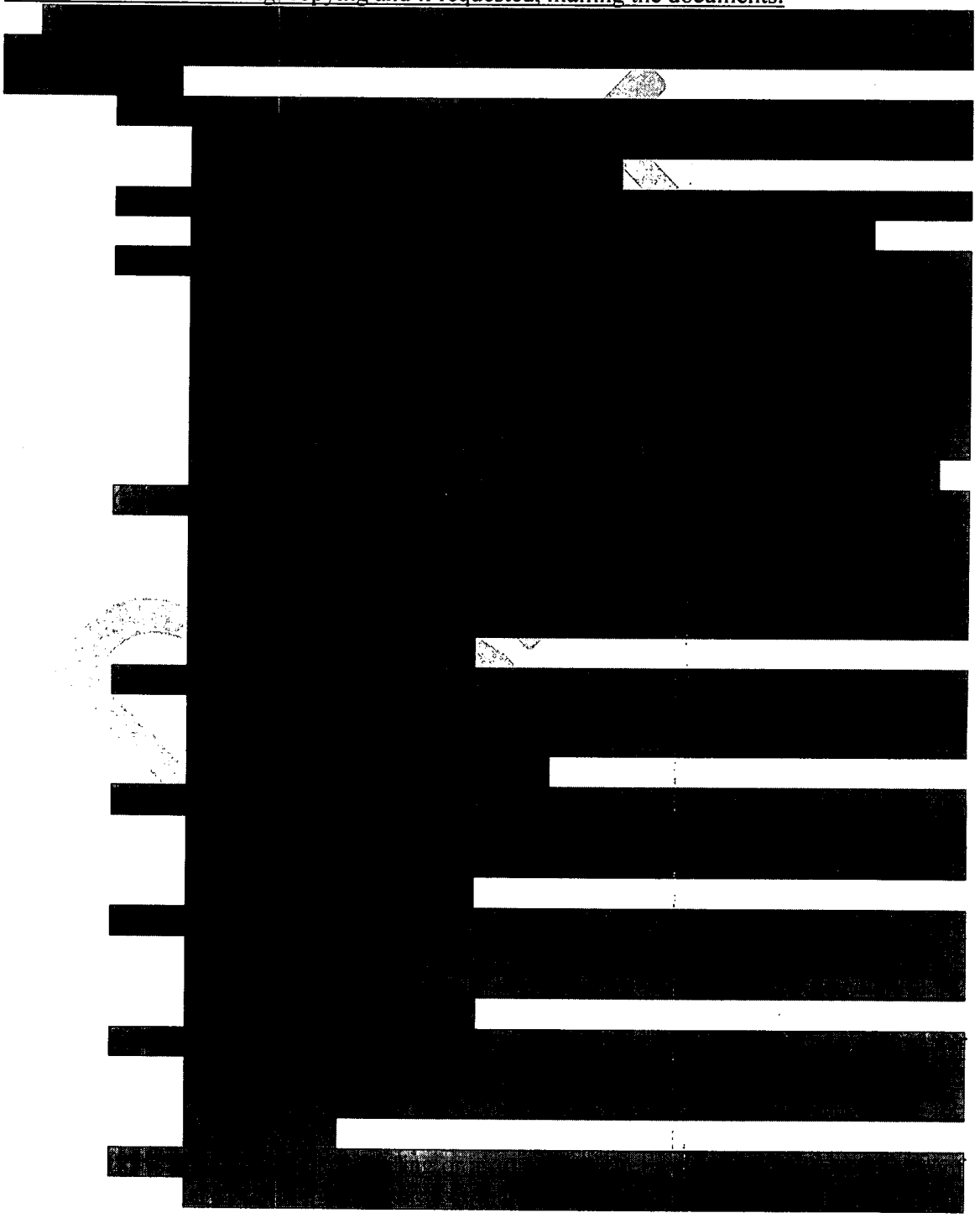
(b) Upon an appeal to the Commission by any party from an order entered by the Commissioner following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, the chair of the Commission may appoint an appellate review panel of not less than five members to review the 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.

"**§ 53-2-7. Official record.**

(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.



[redacted]

(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.

[redacted]

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 in the amount of ten thousand dollars ($10,000) 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 company 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 and the application for a charter.

(2) All funds paid for shares of the proposed bank shall be placed in escrow under an agreement, and with an escrow agent approved by 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.

(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.

(b) 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 or the Commission and that a representation to the contrary is a criminal offense.

(3) All payments for purchases of shares are made in legal tender of the United States.

(4) The proposed bank has an operational expense fund from which to 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 five 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 do "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 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. [redacted]

(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 recommended conditions. The Commission shall render its decision within 30 days after the completion of 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 cash 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 G.S. 53-3-7(c) or other applicable law."

Article 4A

Governance of Banks

§ 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 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 consent to service of process in Wake County, North Carolina prior to taking office.

"**§ 53-4-6. Liability of directors.**

Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of the bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its stockholders or any other person shall have sustained in consequence of such violation.

"**§ 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, employees and agents. 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 shall 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.

(b) In making the assessment authorized by subsection (a) of this section, the OCOB shall take into consideration the size, complexity and business operations of the bank as well as publicly issued regulations and guidance of the Commissioner and the bank's primary federal supervisor. The assessment shall be part of the overall assessment of the bank's management and of whether the bank is operating in a safe and sound manner.

"**§ 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 lawful money of the United States 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) A bank, including its holding company, may establish a compliance review committee to test, review, or evaluate the bank's conduct, transactions, or potential transactions for the purpose of monitoring and improving or enforcing compliance with:

(1) A statutory or regulatory requirement, including requirements arising from examination or actions of the Commissioner taken under this Chapter.

(2) Financial reporting to a governmental agency.

(3) The policies and procedures of the bank, its holding company or subsidiaries of the bank or the holding company.

(4) Safe, sound, and fair lending practices.

(b) For purposes of this section, a compliance review document is any document prepared for or created by the compliance review committee. Except as provided by subsection (c) of this section:

(1) A compliance review document is confidential and is not discoverable or admissible in evidence in a civil action nor shall a compliance review document be subject to inspection and copying by a shareholder of the bank or its holding company pursuant to Article 16 of Chapter 55 of the General Statutes or otherwise.

(2) An individual serving on a compliance review committee or acting under the direction of a compliance review committee may not be required to testify in a civil action as to the contents or conclusions of a compliance review document, or an action taken or discussions conducted by or on behalf of a compliance review committee.

(3) A compliance review document or an action taken or discussion conducted by or on behalf of a compliance review committee that is disclosed to a governmental agency remains confidential and is not discoverable or admissible in a civil action.

(c) A bank shall have the power, at its option, to waive the confidentiality protection provided in subsection (b)(1) for a compliance review document. If the protection is waived and except as otherwise provided in G.S. 53-2-7 and applicable federal law and regulations, the compliance review document shall be discoverable or admissible in evidence in a civil action and shall be subject to inspection and copying pursuant to Article 16 of Chapter 55 of the General Statutes.

(d) This section does not limit the discovery or admissibility in a civil action of a document that is not a compliance review document.

(e) A compliance review document includes records subject to the provisions of G.S. 53-2-7 and records of bank supervisory agencies, in each case in the possession of the bank, and records of the bank obtained, created or maintained for any of the reasons set forth in subsection (a) of this section.

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, 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 provided 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 the trust business.

(5) 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) or (b) 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 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 equal in market value to the amount of such deposits, and such bonds shall be valid security for all loans and deposits to the same extent as are any obligations of the United States.

(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, or national bank subsidiary 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 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 corporation organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors.

(i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:

(1) As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith.

(2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real property acquired under this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made.

(j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government, or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent of its required capital.

Article 6A

Bank Operations.

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

(a) Subject to the provisions of the subsection, a bank may make a loan or extension of credit secured by the pledge of it 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 firm the liabilities of the several members of the firm, 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, ort 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.

(d) This section shall not affect the law governing transactions with minors in cases outside the scope of this section, including transactions that constitute an extension of credit to the minor.

"**§ 53-6-5. Trust accounts; limited documentation required; certification of trust.**

(a) A bank may accept and administer a deposit account and lease a safe deposit box:

(1) To one or more persons purporting to act as trustee or trustees for a trust; and

(2) For which further notice of the existence and terms of the trust is not given in writing to the bank.

(b) For any deposit account that is opened with any bank or any safe deposit box leased from any bank by one or more persons purporting to act as trustee or trustees pursuant to a written trust agreement, a trustee may provide the bank with a certification of trust, as described in Chapter 36A of the General Statutes, to evidence the trust relationship.

(c) Unless specifically otherwise agreed to by the bank in writing, the action of any one or more of the named trustees, acting alone and without the knowledge, consent or joinder of any other trustee or trustees, shall be binding upon the trust, all other trustees, and all trust beneficiaries.

(d) Upon the death, resignation, dissolution or adjudication of incompetence of all named trustees and successor trustees noted on a certification of trust, a bank may, regardless of its knowledge of competing claims, withhold disposition of any funds on deposit in the account and freeze any safe deposit box leased by the trustee o trustees until receipt of one of the following:

(1) An order by a court of competent jurisdiction directing the disposition of funds and any safe deposit box.

(2) A newly executed certification of trust from a person acting or purporting to act as a newly appointed successor trustee under the same trust.

(3) Other documentation that establishes to the satisfaction of the bank the manner in which the funds and any safe deposit box are to be administered or distributed.

(e) Nothing in this section shall obligate a bank to establish a deposit account for, or lease a safe deposit box to, a trustee who refuses to furnish the bank with either a copy of a written trust agreement or a certification of trust.

"**§ 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

(2) Upon the death of one joint owner, the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

_____

_____

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

(h) Any joint tenant may terminate a joint account.

(i) Where a joint account is held by two or more individuals and a joint tenant does not wish for the account to be terminated but requests to be removed from the account, the bank shall remove the joint tenant from the account. The joint account shall continue in the names of the remaining tenant or tenants. Any joint tenant who requested to be removed from an account remains liable for any debts incurred in connection with the joint account during the period in which the individual was 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 total discharge of the bank's obligation as to the amount paid. 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 band 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 actins 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 ban'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.

"**§ 43-6-14. 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, 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 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 of 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 to reach a decision in the matter.

(b) No more than 30 days before nor 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 first 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. 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 notice requirement 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.

"**§ 53-6-18. Nonbranch bank business offices.**

(a) A bank may establish one or more nonbranch bank business offices as defined by G.S. 53-1-4(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 a product, service or other type 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.

"**§ 53-6-20. Interstate branching.**

(a) To the extent permitted by federal law, out-of-state banks may establish branches in this State. An out-of-state bank desiring to establish a branch in this State, whether by de novo

establishment or by acquisition of an existing branch of another depository institution, shall provide the Commissioner with written notification of the intent not later than the date on which the out-of-state bank makes application to its federal bank supervisory authority for approval to establish or acquire the branch.

(b) An out-of-state bank that establishes and maintains one or more branches in this State may conduct any activities at the branch or branches that are authorized under the laws of this State for banks, except to the extent the activities may be prohibited by other laws, regulations, or orders applicable to the out-of-state bank. In addition to all other rights and powers provided under this Chapter, out-of-state banks which are engaged in the business of banking in this State and each of their subsidiaries, subject to the prior approval of the Commissioner, may make any extension of credit or investment, exercise any power, and engage in any activity which they could make, exercise or engage in if incorporated or operating as federally chartered institutions, and they shall be entitled to all rights, privileges, and protections granted or available to federal chartered institutions.

MINUTES

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

Tuesday, March 6, 2012

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws met on Tuesday, March 6, 2012 at 12:10 p.m., Room 643 Legislative Office Building, Raleigh, North Carolina. In attendance were Representative Brubaker (Chairman); Representatives Daughtry, Earle, Jordan, McComas and McCormick; Senator Brown (Chairman) and Senator Blake; Christopher Kukla, Gray Reed, Charles Whitehead, Jr., and Andrea (Beth) Young. Ryan Blackledge (Bill Drafting Staff), Drupti Chauhan (Research Staff), Karen Cochrane-Brown (Research Staff) Greg Roney (Research Staff), and Committee Assistants Darryl Black and Cindy Coley were present.

Rep. Brubaker, Chairman, called the meeting to order and recognized House Sergeant-At-Arms Staff John Brandon, Martha Gadison, and Doug Harris; and Senate Sergeant-At-Arms Staff Robert Young and Jon Fitchette.

Representative Brubaker called for adoption of the February 14, 2012 Minutes. Upon a motion by Senator Brown, the December 19, 2011 Minutes were unanimously approved.

Rep. Brubaker, Chairman, welcomed and introduced Acting North Carolina Commissioner of Banks Ray Grace who reviewed the OCOB Follow-Up Items from the February 14, 2012 meeting which is attached to the Minutes as Exhibit #1

An updated proposed draft of the Banking Modernization Act was distributed to Study Commission members which is attached to these Minutes as Exhibit #2.

Commissioner Grace discussed and provided Study Commission members with recommended changes to Chapter 53 of the General Statutes, Article 7A (Control Transactions, Combinations, Conversions, and Interstate Banking) and Article 8A (Bank Supervision) which are attached to these Minutes as Exhibit #3.

Commissioner Grace also provided Study Commission members with OCOB Proposed Substantive Corrections to Articles 7A and 8A which is attached to these Minutes as Exhibit #4.

Commissioner Grace reviewed 53-8-13 which is a new provision to the Banking Laws wherein he requested the Study Commission Members guidance.

The following are questions and concerns of Study Commission Members.

1. Rep. Jordan inquired about the rationale for the word "discretion" deletion in #5.

2. Sen. Brown inquired about the $5,000 fee explained in 53-7-201. Rep. Brubaker advised he also has concerns with this fee.

   No approval. Staff and Acting Banking Commissioner to rewrite this section removing fee.

3. Mr. Whitehead inquired about the wording of "a simple authority" in 53-7-202,

4. Mr. Reed noted and approved of the wording of "(iii)" in 53-7-202.

5. Commissioner Grace wants guidance from Study Committee Members on a new 53-8-19.

   Approval pending. Further discussion recommended.

6. Ms. Young expresses her agreement with 53-8-14 Supervising Control.

Chairman Brubaker reminded the members that the next meeting is scheduled for Tuesday, March 27, 2012, 10:00 a.m., 544 Legislative Office Building, Raleigh, North Carolina. There being no further business, the meeting adjourned at 1:10 p. m.

Rep. Harold J. Brubaker, Chairman

Sen. Harry Brown, Chairman

ATTEST:

Cindy Coley, Committee Assistant

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

Senator Harry Brown, Co-Chair ***Representative Harold J. Brubaker, Co-Chair***

AGENDA

Tuesday, March 6, 2012
12:00 pm.
Room 643 LOB

1. **Welcome and Introductions**
   Representative Harold J. Brubaker, Co-Chair

2. **Approve Minutes from February 14, 2012 Meeting**

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

4. **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*

5. **Committee Discussion**

6. **Adjourn**

ATTENDANCE

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

(Name of Committee)

DATES	Nov. 21, 2011	Dec. 19, 2011	Jan. 20, 2012	Feb. 14, 2012	March 6, 2012		
Rep. Brubaker, - House Chair	Yes	Yes	Yes	Yes	✓		
Sen. Harry Brown, Senate Chair	No	Yes	Yes	Yes	✓		
Rep. Leo Daughtry	Yes	Yes	N	N	✓		
Rep. Beverly Earle	Yes	Yes	N	N	✓		
Rep. Jonathan Jordan	N	Yes	Yes	Yes	✓		
Rep. Daniel McComas	N	Yes	Yes	N	✓		
Sen. Thomas Apodaca	N	N	N	N	N		
Sen. Harris Blake	N	Yes	Yes	N	✓		
Sen. Dan Blue	Yes	Yes	Yes	Yes	N		
Sen. Thom Goolsby	N	N	N	N	N		
Charles Whitehead (House Bank)	Yes	Yes	Yes	Yes	✓		
Gray Reed (Senate Bank)	N	Yes	Yes	Yes	✓		
Christopher Kukla (House)	Yes	Yes	Yes	Yes	✓		
Andrea Young (Senate)	Yes	Yes	Yes	Yes	✓		
Rep. Darryl McCormick			Yes	N	✓		

Committee Sergeants at Arms

NAME OF COMMITTEE BANKING LAWS

DATE: MARCH 6, 2017 **Room:** 643

House Sgt-At Arms:

1. **Name:** John Brandon
2. **Name:** MARTHA GADDISON
3. **Name:** Doug HARRIS
4. **Name:** _____
5. **Name:** _____

Senate Sgt-At Arms:

1. **Name:** Robert Young
2. **Name:** Jon Fitch ETT
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — MARCH 6, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Scarlette Gardner	Sec of State
Asanka Pathiraja	BB&T
Lisa McDougald	BB&T
Jeff Klein	BB&T
Elizabeth Biser	Brooks Pierce/NCBA
Ben Davis	Brooks Pierce/NCBA
Indira Puri	Page program
Kerri Burns	NWC
John Merritt	NWC
Robert Wilson	SAS
David Lyon	SA

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — MARCH 6, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David McGowan	NC Realtors
Al Ripley	NC Justice Center
Rochelle Spanno	NC Justice Center
Heather Barrett	Williams Mullen
Lauren Whaley	NCBA
Jeff Wolfe	Smith Anderson
Todd Eveson	GAETA & EVESON, P.A.
Geoffrey Adams	Smith Anderson
Christopher Copel	Smith Anderson
Kim Brandt	NC Bar Assn
Fred Bone	Bone & Asso.

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — MARCH 6, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jake Cashion	NC Chamber
Solari	DST
Daniel Baum	Troutman Sanders

Ex #1

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

Follow up items from the February 14, 2012 Meeting

The items set forth below address issues raised at the last meeting (Item #1) and through input to OCOB from interested parties.

1. Mr. Kukla questioned whether the language of § 53-6-14(c) might be construed to limit the ability of a party in litigation to challenge the admissibility of a document solely on the basis that it was accompanied by a bank certificate that complied with the requirements of the section.

   UPDATE:
   As that was not the intention in drafting the statute, OCOB conferred with Mr. Kukla and others and recommends rewriting the introductory language of § 53-6-14(c) to read:

   "(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:"

2. It was suggested that the introductory language in § 53-6-4, as well as in the other sections dealing with deposit accounts could be improved and made consistent among the sections.

   UPDATE:
   OCOB agrees with this suggestion and recommends that the Commission rewrite the first sentence of proposed § 53-6-4(a) to read:

   "(a) A bank may ~~issue and operate~~ establish 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."

3. OCOB received a suggestion to rewrite § 53-6-5(a) for greater clarity.

   UPDATE:
   OCOB agrees with this suggestion and recommends that the Commission rewrite § 53-6-5(a) to read:

   ~~(a) A bank may accept and administer a deposit account and lease a safe deposit box:~~

~~(1) To one or more persons purporting to act as trustee or trustees for a trust; and~~

~~(2) For which further notice of the existence and terms of the trust is not given in writing to the bank.~~

"(a) A bank may establish a deposit account and lease a safe deposit box to one or more persons purporting to act as trustee or trustees without requiring proof of the existence or terms of the trust documentation."

4. A technical correction was suggested with respect to § 53-6-5(d)(1).

UPDATE:

OCOB agrees and recommends that the Commission rewrite § 53-6-5(d)(1) to read:

"(1) An order by a court of competent jurisdiction directing the disposition of funds and any contents of the safe deposit box;"

5. One comment expressed concern that § 53-6-5(e) could be misinterpreted to deny a bank discretion in determining whether or not to open a particular trust account.

UPDATE:

OCOB agrees and recommends that the Commission rewrite § 53-6-5(e) to read:

"(e) Nothing in this section shall obligate a bank to establish a deposit account for, or lease a safe deposit box to, ~~a~~ any trustee ~~who refuses to furnish~~ regardless of whether or not the trustee furnishes the bank with either a copy of a written trust agreement or a certification of trust."

6. As suggested in #2 above, one commenter encouraged rewriting the beginning of § 53-6-6 to harmonize it with the other statutory provisions on deposit accounts.

UPDATE:

OCOB agrees and recommends that the Commission rewrite the first sentence of § 53-6-6(a) to read:

"(a) ~~Any two or more individuals may establish a joint deposit account by written contract.~~ A bank may establish a joint deposit account in the name of any two or more individuals by written contract."

7. The death of a joint tenant in an account with right of survivorship passes ownership of funds in the account to any surviving owner or owners, subject to the right of a personal representative to collect funds as provided in Chapter 28A. The process to be followed by the personal representative is not clearly established, but is beyond the scope of this rewrite. OCOB has asked the State Bar Association to consider analyzing Chapter 28A in this

context and they have agreed to do so. OCOB will work with that organization to develop relevant legislative recommendations. However, some clarification in the proposed § 53-6-6(c) might also be helpful.

UPDATE:
OCOB agrees and recommends that the Commission rewrite § 53-6-6(c) to read:

"(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. Payment by the bank to the personal representative shall be a complete discharge of the bank to the extent of the funds so paid, but shall not be determinative of the rights between the surviving joint tenants and the personal representative."

8. Subsection (i) of § 53-6-6 was a new provision intended to provide greater flexibility in dealing with changes in joint accounts. However, from comments received, it appears that the provision would create far more problems than it would solve.

UPDATE:
OCOB agrees and recommends that the Commission amend § 53-6-6 by deleting subsection (i).

9. As with #s 2 and 6 above, it was recommended that the introductory language of § 53-6-7 be revised for consistency.

UPDATE:
OCOB agrees and recommends that the Commission rewrite the first sentence of § 53-6-7 to read:

"(a) ~~If any natural person or natural persons establishing a deposit account~~ A bank may establish a deposit account for any natural person or persons who 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 or natural persons as owner or owners for one or more beneficiaries, the account and any balance thereof shall be held as a Payable on Death account."

10. In § 53-6-7(a)(1), OCOB received a suggestion to rewrite the subsection for greater clarity.

UPDATE:
OCOB agrees with this suggestion and recommends that the Commission rewrite § 53-6-7(a)(1) to read:

"(1) Any owner during the owner's lifetime may change any designated beneficiary by a written direction to the bank which is received by the bank during the owner's lifetime."

11. It was suggested that language in § 53-6-7(a)(4)b. regarding payment of funds to a minor beneficiary be consistent with the language in the "Minors" account provision in § 53-6-4(c) wherein payment can be made to a "parent or legal guardian".

UPDATE:
OCOB agrees with this suggestion and recommends that the Commission rewrite § 53-6-7(a)(4)b. to read:

"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~~ parent or legal 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."

12. Subdivision § 53-6-7(a)(6) does not contain language releasing the bank from liability to the extent of payments made to a surviving beneficiary. The joint account statute has such a provision.

UPDATE:
OCOB believes it is reasonable to use language similar to that in the joint account statute about discharge of the bank from liability to the extent of payments made to beneficiaries. OCOB recommends that the Commission amend § 53-6-7 by rewriting subdivision (a) (6) to read:

"(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. 53-146.1, in the case of multiple owners. Payment by the bank to any surviving beneficiary shall be a complete discharge of the bank to the extent of the funds so paid."

13. As with #s 2, 6, and 9 above, it was recommended that the introductory language of § 53-6-8 be revised for consistency. Also, it was suggested that personal agency deposit accounts

be limited to natural persons as in existing law, because of confusion likely to be generated by trying to make an account designed for natural persons function for businesses.

UPDATE:

OCOB agrees that it would be preferable to retain the existing approach where personal agency accounts may only be established for natural persons, and recommends that the Commission amend § 53-6-8 to read:

"(a) ~~Any person may establish a personal agency account~~ The bank may establish a personal agency account for any natural person 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.

"(b) A natural 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. 53C-6-8

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

1. Sign checks drawn on the account; and

2. Make deposits into the account.

The undersigned also understands 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) terminates.

"(d) The written contract referred to in subsection (a) shall provide that the principal may elect to extend the authority of the agent set out in subsection (a) 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~~ so 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 principal or the duly appointed attorney-in-fact for the incapacitated or incompetent principal, acting pursuant to a durable power of attorney (as defined in G.S. 32A-8) which grants to the attorney-in-fact that 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 so 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) 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 a 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, however, 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."

14. It was suggested that § 53-6-8(d) include language that clarifies the timing of the effectiveness for notice of termination under a personal agency account.

UPDATE:

OCOB agrees and recommends that the Commission amend § 53-6-8(d) to read:

"(d) The written contract referred to in subsection (a) shall provide that the principal may elect to extend the authority of the agent set out in subsection (a) 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 so 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 principal or the duly appointed attorney-in-fact for the incapacitated or incompetent principal, acting pursuant to a durable power of attorney (as defined in G.S. 32A-8) which grants to the attorney-in-fact that 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. The bank may rely on the authority granted to the agent under this section until it receives the notice of termination from the guardian or attorney-in-fact. 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 so 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) terminates.

15. As with #s 2, 6, 9, and 13 above, it was recommended that the introductory language of § 53-6-9 be revised for consistency.

UPDATE:

OCOB agrees and recommends that the Commission amend § 53-6-9 to read:

"(a) ~~One or more adults may open and maintain a custodial deposit account.~~ A bank may establish a custodial deposit account for one or more adults for or in the name of a minor and using the minor's taxpayer identification number."

16. One comment suggested that it was not clear under proposed § 53-6-9(a)(3) what steps a bank could take in transferring ownership of an account for a minor who has reached the aged of majority.

UPDATE:

OCOB agrees and recommends that the Commission amend § 53-6-9(a)(3) to read:

"(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.~~ When the minor beneficiary reaches the age of majority, if the custodian has not already transferred control to the

beneficiary, the bank may permit, if requested by the beneficiary, transfer of ownership of the account to the beneficiary by removal of the named custodian or by closing the account and disbursing the funds to the beneficiary."

17. It was suggested that the language in § 53-6-10(c) be amended to provide some flexibility since some states do not have the same requirements for court issued documents.

UPDATE:

OCOB agrees and recommends that the Commission amend § 53-6-10(c) to read:

"(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 such payment or as otherwise permitted under applicable state statute or procedure."

Ex#2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-ROz-10 [v.18] (12/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/24/2012 3:15:22 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.

The General Assembly of North Carolina enacts:

SECTION 1. Articles 1 through 14, 17, 17B and 18A 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 3 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.

(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.

"**§ 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 unless established as a depository 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

(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.

(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 company, that is organized under the laws of this State and is engaged in the business of receiving deposits (other than trust funds), paying monies and making loans.

(5) Bank Operating Subsidiary. – A subsidiary 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.

(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 "Tier 1 capital" as that term is defined in Part 325 of the Regulations of the FDIC or any successor regulation of the FDIC; provided, that if the term "Tier 1 capital" is replaced by a term including substantially the same components as "Tier 1 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 3 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.

(35) Federal Savings Association. – A federal savings association or federal savings bank chartered under Section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464.

(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 or that controls a company that directly or indirectly controls a depository institution.

(39) 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.

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

(41) Individual. – A human being.

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

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

(44) National Bank. – A banking association organized under 12 U.S.C. 21.

(45) 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, or a depository institution established under the laws of another state 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 officers, mortgage loan offices, and insurance agency offices, or a combination thereof.

(46) North Carolina Financial Institution. – A bank, savings institution, or trust company organized under the laws of this State.

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

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

(49) 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.

(50) 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.

(51) Organizers. – One or more individuals who are the organizers of a proposed ban 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, and at all times thereafter, 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 practical banker and who is, at the time of appointment to the Commission, not and within the two 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 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 that has an equity ownership interest in a bank or holding company and is entitled to vote such interest under the bank's or holding company's organizational documents.

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

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

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

(69) Trust Company. – A company that is formed primarily for the purpose of taking, executing, and administering trusts, and which is not a depository institution.

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

(71) Voting Securities. –Voting Securities means:

a. Any equity ownership interest in a company that entitles the holder to vote on any matter presented to holders of equity ownership interests in the company for a vote, and

b. Any equity interest, right to acquire an equity ownership interest, debt instrument or other similar interest or instrument convertible into an equity ownership interest that entitles the holder to vote on any matter presented to holders of equity ownership interest which may be converted into a voting equity ownership interest.

"**§ 53-1-5. Severability.**

If any provision of this Chapter is found by any court of competent jurisdiction to be in valid 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 five practical bankers, and seven 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 public member. 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) 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 Commission 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 him for administration or in connection with any bank or the rights, liabilities, property or assets thereof, under his 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.

"**§ 53-2-3. The Office of the Commissioner of Banks.**

(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 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.

"**§ 53-2-4. Administration of the Office of the Commissioner of Banks.**

(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 by statute. 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 five 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) [illegible] matters within its purview.

"**§ 53-2-7. Official record.**

(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 the names or other personal information of any customers of any person or revealing the collateral given by any such customers in connection with an extension of credit; 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 company, 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 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 institution or trust companies, 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 to not 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 in the amount of ten thousand dollars ($10,000) 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 company 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 and the application for a charter.

(2) All funds paid for shares of the proposed bank shall be placed in escrow under an agreement, and with an escrow agent approved by 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.

(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.

(b) 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 or the Commission and that a representation to the contrary is a criminal offense.

(3) All payments for purchases of shares are made in legal tender of the United States.

(4) The proposed bank has an operational expense fund from which to 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 five 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 do "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 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 recommended conditions. The Commission shall render its decision within 30 days after the completion of 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 cash 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 G.S. 53-3-7(c) or other applicable law."

Article 4A

Governance of Banks

§ 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 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 consent to service of process in Wake County, North Carolina prior to taking office.

"**§ 53-4-6. Liability of directors.**

Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of the bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its stockholders or any other person shall have sustained in consequence of such violation.

"**§ 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.

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

"**§ 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 lawful money of the United States 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 a compliance review 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 made by the bank, for the purpose of assessing the credit quality of the loans, prior to 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, 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 provided 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 the trust business.

(5) 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) or (b) 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 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 equal in market value to the amount of such deposits, and such bonds shall be valid security for all loans and deposits to the same extent as are any obligations of the United States.

(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, or national bank subsidiary 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 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 corporation organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors.

(i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:

(1) As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith.

(2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real property acquired under this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made.

(j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government, or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent of its required capital.

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 it 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 firm the liabilities of the several members of

the firm, 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.

(d) This section shall not affect the law governing transactions with minors in cases outside the scope of this section, including transactions that constitute an extension of credit to the minor.

"**§ 53-6-5. Trust accounts; limited documentation required; certification of trust.**

(a) A bank may accept and administer a deposit account and lease a safe deposit box:

(1) To one or more persons purporting to act as trustee or trustees for a trust; and

(2) For which further notice of the existence and terms of the trust is not given in writing to the bank.

(b) For any deposit account that is opened with any bank or any safe deposit box leased from any bank by one or more persons purporting to act as trustee or trustees pursuant to a written trust agreement, a trustee may provide the bank with a certification of trust, as described in Chapter 36A of the General Statutes, to evidence the trust relationship.

(c) Unless specifically otherwise agreed to by the bank in writing, the action of any one or more of the named trustees, acting alone and without the knowledge, consent or joinder of any other trustee or trustees, shall be binding upon the trust, all other trustees, and all trust beneficiaries.

(d) Upon the death, resignation, dissolution or adjudication of incompetence of all named trustees and successor trustees noted on a certification of trust, a bank may, regardless of its knowledge of competing claims, withhold disposition of any funds on deposit in the account and freeze any safe deposit box leased by the trustee o trustees until receipt of one of the following:

(1) An order by a court of competent jurisdiction directing the disposition of funds and any safe deposit box.

(2) A newly executed certification of trust from a person acting or purporting to act as a newly appointed successor trustee under the same trust.

(3) Other documentation that establishes to the satisfaction of the bank the manner in which the funds and any safe deposit box are to be administered or distributed.

(e) Nothing in this section shall obligate a bank to establish a deposit account for, or lease a safe deposit box to, a trustee who refuses to furnish the bank with either a copy of a written trust agreement or a certification of trust.

"**§ 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

(2) Upon the death of one joint owner, the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

_____

_____

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

(h) Any joint tenant may terminate a joint account.

(i) Where a joint account is held by two or more individuals and a joint tenant does not wish for the account to be terminated but requests to be removed from the account, the bank shall remove the joint tenant from the account. The joint account shall continue in the names of the remaining tenant or tenants. Any joint tenant who requested to be removed from an account remains liable for any debts incurred in connection with the joint account during the period in which the individual was 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 total discharge of the bank's obligation as to the amount paid. 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 band 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 actins 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, 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 of 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 first 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. 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 notice requirement 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.

"**§ 53-6-18. Nonbranch bank business offices.**

(a) A bank may establish one or more nonbranch bank business offices as defined by G.S. 53-1-4(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 a product, service or other type 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.

"**§ 53-6-20. Interstate branching.**

(a) To the extent permitted by federal law, out-of-state banks may establish branches in this State. An out-of-state bank desiring to establish a branch in this State, whether by de novo establishment or by acquisition of an existing branch of another depository institution, shall provide the Commissioner with written notification of the intent not later than the date on which the out-of-state bank makes application to its federal bank supervisory authority for approval to establish or acquire the branch.

(b) An out-of-state bank that establishes and maintains one or more branches in this State may conduct any activities at the branch or branches that are authorized under the laws of

this State for banks, except to the extent the activities may be prohibited by other laws, regulations, or orders applicable to the out-of-state bank. In addition to all other rights and powers provided under this Chapter, out-of-state banks which are engaged in the business of banking in this State and each of their subsidiaries, subject to the prior approval of the Commissioner, may make any extension of credit or investment, exercise any power, and engage in any activity which they could make, exercise or engage in if incorporated or operating as federally chartered institutions, and they shall be entitled to all rights, privileges, and protections granted or available to federal chartered institutions.

Article 7A

Control Transactions; Combinations; Conversions.

Part 1. Change in Control.

"**§ 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.

(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 a fee of five thousand dollars ($5,000.00).

(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) Proxy solicitations by or on behalf of the bank.

(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 less 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.

(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.

"**§ 53-7-105. 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. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee of five thousand dollars ($5,000.00).

"**§ 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 less 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 manes of the parties to the proposed combination and the addresses of their principal officers.

(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. Surviving depository institution.**

The depository institution resulting from a combination shall immediately be vested, by law and without any conveyance or transfer, with all rights, powers and duties of each party to the combination, including contractual, property and fiduciary rights, powers and duties, except as otherwise provided by the order of the Commissioner approving the combination, the organizational documents of the resulting depository institution or the law of the United States, and shall be deemed a continuation of each party to the combination. Except for a combination effected as a transfer of substantially all of the assets and liabilities of a bank, the combination of a depository institution in which it is not the resulting bank shall not be deemed an assignment of contractual other rights or liabilities by the combined bank.

"**§ 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 the provisions of this Part and to approval by the chartering authority of the federally chartered institution in accordance with the laws of the United States and this Part.

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

(a) With the approval of the Commissioner, a bank may combine with a subsidiary so long as the bank is the resulting entity of the combination and may combine another company with a subsidiary so long as the subsidiary of the bank is the resulting entity of the combination. A combination of a subsidiary and another company shall be effected in accordance with organizational law applicable to each.

(b) The bank seeking approval of the 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 Commission 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 of one thousand dollars ($1,000.00).

(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.

(d) The bank resulting from the combination with a subsidiary shall immediately be vested, by law and without any conveyance or transfer, with all rights, powers and duties of the subsidiary, including contractual, property and fiduciary rights, powers and duties, except as otherwise provided by the order of the Commissioner approving the combination or the organizational documents of the resulting bank, and shall be deemed a continuation of each party to the combination. Any reference to a party to the combination in any writing, whether executed or taking effect before or after the combination is effective, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of the writing.

"**§ 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.

Part 3. Charter Conversion.

"**§ 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 is 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 of five thousand dollars ($5,000.00).

(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 and shall cease to exist as an entity chartered under the laws of this State.

(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 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 through the employees and agents of the OCOB all laws relating to banks. All banks shall conduct their business in a manner consistent with all laws, rules, and orders relating to banking.

(b) The Commissioner may enter into written agreements, cease and desist order stipulations, consensual cease and desist 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 consensual 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.

"**§ 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 by rule:

(1) Annual repots 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 the guidelines and requirements for such activity of the primary federal supervisor of the bank or holding company and published examination guidance of the OCOB.

(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, shall 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 1 misdemeanor and may be fined a sum equal to the amount of the extension made or the gratuity given. If the Commissioner, any deputy commissioner, or any bank examiner accepts an extension of credit or gratuity from any bank, or from any officer, director, employee or affiliate thereof, that individual shall be guilty of a Class 1 misdemeanor, and may be fined a sum equal to the extension of credit made or the gratuity given.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commissioner may exempt from the application of subsection (a) any deputy commissioner, or any bank examiner with respect to any extension of credit existing upon the hiring of the deputy commissioner or bank examiner by the OCOB and any extension of the term or renewal of such extension of credit made thereafter, so long as the extension of term or renewal has terms and conditions generally available to customers of the applicable bank having generally the same creditworthiness as the deputy commissioner or bank examiner.

"**§ 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:

(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 days after the receipt of a request or requisition therefor, or within the extension of time granted by the Commissioner, or failing to publish the reports as required, shall be notified by the Commissioner, and if the failure continues for five 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 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 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 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 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 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 actin 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.

"**§ 53-8-15. Removal of directors, officers, and employees.**

(a) If the Commissioner determines that a director, officer, or employee of a bank has participated in or consented to any violation of this Chapter or an order of the 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.



PROPOSED CHANGES TO THE
NORTH CAROLINA BANKING LAWS – CHAPTER 53 OF THE GENERAL STATUTES
ARTICLE 7A ADDRESSES CONTROL TRANSACTION, COMBINATIONS, CONVERSIONS, AND INTERSTATE BANKING.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
Article 7A Control transactions; combinations; conversions; interstate banking.				
53-42.1.Change in bank control or management.	53-42.1 addresses change of control, defined as acquiring 10% or more of the voting stock of a bank, requiring the Commissioner's approval. It mandates that an application for approval be filed 60 days before the proposed acquisition of stock and directs the Commissioner to approve the application unless he finds that the competence, general fitness, experience or integrity of the acquiring person shows that it would not be in the best interest of the depositors of the bank or the public to approve the application or that the financial condition of any acquiring person might jeopardize the financial stability of the bank. It renders all information acquired about the applicant confidential. It lists those transactions that are exempt from the section. It requires the CEO of the bank to approve loans which are secured by 10% or more of a bank's stock, with certain exceptions. It also requires notification of the Commissioner of a change of the CEO or a director of a bank within 24 hours.	**53-7-101**	**New 53-7-101. Control transactions.** This section requires the approval of the Commissioner before a person may engage in a control transaction (as defined in § 53-1-4(20) and (21)) with a bank. Subsection (a) 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. Subsection (b) authorizes the Commissioner to require an applicant to appoint an agent resident in North Carolina for service of process and provides for an application fee of $5000. Subsection (c) lists six categories of transactions that are excluded from the definition of control transactions, including (i) acquiring securities in connection with a debt previously contracted as long as the person acquiring the shares notifies the Commissioner at least 10 days before the first time he or she votes the stock, (ii) acquiring additional securities in a bank over which the person has already received approval from the Commissioner for a control transaction as long as the person acquiring the shares notifies the Commissioner at least 10 days before the first time he or she votes the stock, (iii) acquiring securities by operation of law or inheritance as long as the person acquiring the shares notifies the Commissioner at least 10 days before the	The new provision and those that follow substantially restructure the current statute on change of control. New items include authority to contract for a change of control as long as consummation is contingent on the Commissioner's approval; the 10-day notice provision for certain otherwise exempt transactions; the requirement to appoint a resident agent for service of process; the $5000 filing fee (currently in rules); some of the exempt transactions are new (i.e. proxy solicitations and transactions exempted by rules, orders or declaratory rulings of the Commissioner); the 10-day period during which the Commissioner must object to the claimed exemption or it is deemed approved; and the provision stating that acquired stock pending approval of the Commissioner is to be treated as authorized but unissued shares.

Ex #3

Current Section(s)	Summary	New Section	Summary	Explanation of Change
			first time he or she votes the stock, (iv) proxy solicitations, (v) a transaction exempted by rules, orders or declaratory rulings of the Commissioner, and (vi) an acquisition of control governed by Section 3 of the Bank Holding Company Act (12 U.S.C. 1842). Subsection (d) sets forth the procedure to be followed upon receipt of a notice under subsection (c). The Commissioner has 10 days to object and in so doing may either require more information or a full control transaction application. Subsection (e) states that acquired stock in a pending control transaction shall be treated like authorized but unissued stock, and may not be voted, until the Commissioner's approval is received or it is determined that it is not needed under subsection (c).	
53-42.1. Change in bank control or management.	53-42.1 addresses change of control, defined as acquiring 10% or more of the voting stock of a bank, requiring the Commissioner's approval. It mandates that an application for approval be filed 60 days before the proposed acquisition of stock and directs the Commissioner to approve the application unless he finds that the competence, general fitness, experience or integrity of the acquiring person shows that it would not be in the best interest of the depositors of the bank or the public to approve the application or that the financial condition of any acquiring person might jeopardize the financial stability of the bank. It renders all information acquired about the applicant confidential. It lists those	**53-7-102**	**New 53-7-102. Application regarding a control transaction.** This section requires a control transaction applicant to file with the Commissioner an application, filing fees, and any additional information required by the Commissioner. If there is more than one person involved, the Commissioner may require that information be provided about each of them. Information about the individuals involved is to be treated as a confidential record under § 53-2-8. It does not address changes in bank management.	The new provision specifies that the application for approval of a control transaction must be accompanied by appropriate filing fees and such information as may be required by the Commissioner. If the applicant is a group of persons, the Commissioner may require information about each of them.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	transactions that are exempt from the section. It requires the CEO of the bank to approve loans which are secured by 10% or more of a bank's stock, with certain exceptions. It also requires notification of the Commissioner of a change of the CEO or a director of a bank within 24 hours.			
No corresponding section.	N/A	**53-7-103**	**New 53-7-103. Public Notice.** This section requires a control transaction applicant to publish a public notice containing a statement that the application has been filed, the name of the bank and the address of its principal office and that interested parties have 14 days to submit comments to the Commissioner. It must also include the Commissioner's current address.	There is no public notice requirement under existing law.
53-42.1. Change in bank control or management.	53-42.1 addresses change of control, . . . defined as acquiring 10% or more of the voting stock of a bank, requiring the Commissioner's approval. It mandates that an application for approval be filed 60 days before the proposed acquisition of stock and directs the Commissioner to approve the application unless he finds that the competence, general fitness, experience or integrity of the acquiring person shows that it would not be in the best interest of the depositors of the bank or the public to approve the application or that the financial condition of any acquiring person might jeopardize the financial stability of the bank. It renders all information acquired about the applicant confidential. It lists those	**53-7-104**	**New 53-7-104. Actions on control transaction applications.** This section sets forth the process for acting on control transaction applications. Upon receipt of the application, the Commissioner is directed (subsection (a)) to examine the character, competence and experience of the acquiring person and proposed management team to determine if the interests of the customers and communities served by the bank would be adversely affected by the proposed transaction. The Commissioner has 60 days to act, barring extraordinary circumstances. Subsection (b) lists criteria upon which the Commissioner may base denial of the application: (i) financial condition of the applicant; (ii) concerns about the character, competence and experience of any acquiring person or proposed management personnel; (iii) the proposed plan is not in the best interests of	The existing law does not set forth a detailed procedure for taking action on control transaction applications, but does list criteria upon which the Commissioner may decide to deny the application. The new law is more detailed in that regard, including the substance of the existing provisions and adding that the application may be denied if, upon consummation of the transaction, the bank would be undercapitalized or otherwise out of compliance with the statutes or rules; the application is incomplete; or required disclosures were not made in soliciting votes of the holders of the voting securities of the bank. The new provision adds a statement that the transaction may proceed upon receipt of the Commissioner's approval and provides that any conditions imposed by the Commissioner are enforceable against each

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	transactions that are exempt from the section. It requires the CEO of the bank to approve loans which are secured by 10% or more of a bank's stock, with certain exceptions. It also requires notification of the Commissioner of a change of the CEO or a director of a bank within 24 hours.		the bank's customers; (iv) upon consummation of the transaction, the bank would be undercapitalized or otherwise out of compliance with Chapter 53 or the rules of the Commissioner; (v) the application is incomplete; or (vi) required disclosures were not made in soliciting the votes of the holders of the voting securities of the bank. Subsection (c) authorizes the transaction to proceed upon approval by the Commissioner and states that any conditions imposed by the Commissioner are enforceable against each member of the group of persons receiving the approval.	member of the group of individuals receiving the approval.
No corresponding section.		**53-7-105**	**New 53-7-105. Appeal.** This section authorizes appeal of the Commissioner's denial of a control transaction application to the Commission pursuant to § 53-2-6.	While there is no specifically corresponding provision, § 53-95 states that all actions of the Commissioner are taken under the supervision of the Commission.
53-12. Merger or consolidation of banks and savings associations.	53-12 governs mergers and consolidations among banks and savings institutions. It requires the Commissioners approval for such actions.	**53-7-201**	**New 53-7-201. Combination authority.** This section authorizes combinations of one or more depository institutions with the approval of the Commissioner and establishes the application fee at $5000. – Maybe a Problem	The new provision adds the requirement of the application fee of $5000 to the statute. Fee provisions are currently in the rules.
53-12(a). Merger or consolidation of banks and savings associations.	53-12(a) requires that in applying to the Commissioner for approval of a merger or consolidation, the banks involved must submit certified copies of the actions of their boards of directors and shareholders. Those proceedings must reflect (i) a two-thirds majority vote in favor of the transaction; and (ii) in the case of savings institutions, whatever voting requirements exist must have been met. The contract under which the transaction is to occur must be included in the filing. The Commissioner is directed to make an investigation into	**53-7-202**	**New 53-7-202. Combination application and investigation.** This section sets forth the process for dealing with combination applications. Subsection (a) requires the applicant to submit with the application copies of agreements under which the combination is proposed to be effectuated along with any other information required by the Commissioner or the relevant rules. Subsection (b) requires the applicant to publish a public notice setting forth (i) that an application has been filed with the Commissioner; (ii) the names of the parties to the proposed combination and the addresses of their principal officers; and (iii) that the	The new provision changes the manner and specifies the substance of the public notice of the transaction. The fee is substituted for the requirement that the parties pay for the investigation by the Commissioner. The new provision is more explicit about the substance of the Commissioner's investigation. As part of the investigation is into the character, competency and experience of the proposed directors and executive officers of the surviving party, the section renders the findings of the investigation confidential.

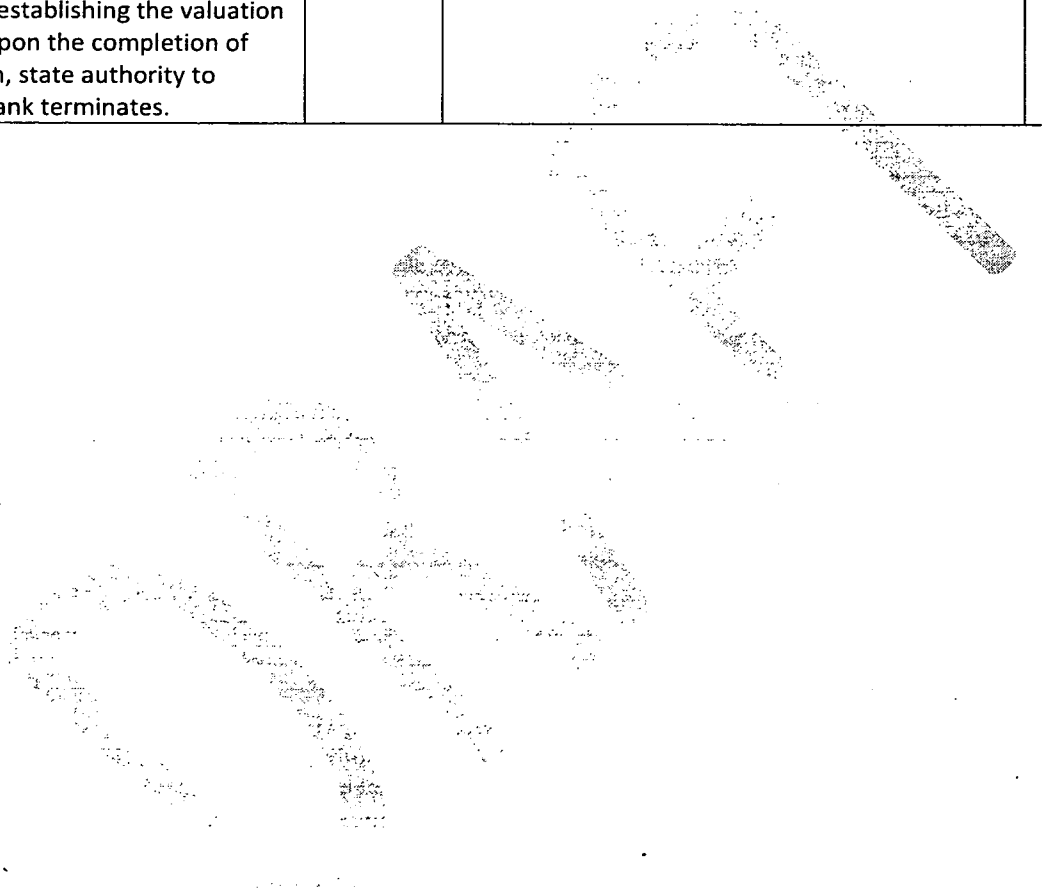
Current Section(s)	Summary	New Section	Summary	Explanation of Change
	the proposed transaction. The Commissioner is to determine (i) if the interests of the customer and owners are protected; (ii) if it is in the public interest; (iii) and is it taking place for legitimate purposes. The expenses of the investigation are to be paid by the parties to the transaction. Notice must be published once a week for four consecutive weeks before the effective date of the transaction, in a newspaper of general circulation in the markets of the parties. A certified copy of the notice is to be filed with the Commissioner. Creditors rights are to be preserved unimpaired.		Commissioner will consider written comments received within 14 days of the publication. Subsection (c) directs the Commissioner to examine the proposed transaction, including the character, competency and experience of the proposed directors and executive officers of the surviving party to determine if the customers and communities served by the combining institutions would be adversely affected by the combination. Subsection (d) renders confidential information gathered by the Commissioner about the directors and executive officers pursuant to § 53-2-7(b).	
No corresponding section.	N/A	**53-7-203**	**New 53-7-203. Decision on application.** This section provides that the Commissioner shall enter a decision approving or denying a combination application within 60 days after notifying the parties that their application is complete, absent extraordinary circumstances.	The new provision is part of a more transparent procedure for dealing with these transactions.
No corresponding section.	N/A	**53-7-204**	**New 53-7-204. Interim banks.** This section authorizes the Commissioner to permit the establishment of an interim bank for use in effectuating the combination; such interim bank is not to conduct any business, except as is necessary and incidental to its formation and the combination.	It is often necessary for purposes of corporate or tax law to form an interim (or temporary) bank that exists only as long as needed to consummate the transaction.
53-13. Merged or consolidated banks and savings associations deemed one bank or savings association.	53-13 provides that when all procedural steps have been completed, the parties to the transaction are one company with the rights, privileges, powers and franchises of the original parties. It specifies that the directors and officers named in the agreement will serve until	**53-7-205**	**New 53-7-205. Surviving depository institution.** This section provides that the surviving institution succeeds to all of the rights, powers, duties, etc. of the combining institutions.	The new provision is similar in substance, but not language, to the current law. It does not address the duration of service of the officers and directors.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	the next annual meeting.			
53-16. Consolidation, conversion or merger of State banks or trust companies with national banks.	53-16 governs mergers, consolidations, and conversions of banks or trust companies with national banks. It requires approval by a two-thirds majority of the voting securities of the state bank. It provides that the resultant national bank stands in the shoes of the merged, consolidated or converted state bank or banks. It provides for dissenting shareholders to have the right to have their stock purchased for cash, and provides the procedure for establishing the valuation of the stock. Upon the completion of the transaction, state authority to operate as a bank terminates.	**53-7-206**	**New 53-7-206. Combination with federally chartered institution.** This section provides that a merger with a federally chartered institution that is to be the surviving institution is subject both to these provisions governing combinations and to approval by the chartering authority of the federally chartered institution.	The new provision merely states that a combination with a federally chartered institution is governed by the procedures set forth in Part 2 of Article 7A and those of the rules of the relevant federal chartering agency.
No corresponding section.	N/A	**53-7-207**	**New 53-7-207. Combination with a subsidiary.** This section sets forth the rules for a combination between a bank subsidiary and the bank or another company. Subsection (a) states that either type of combination may take place with the Commissioner's approval, but if the combination is with the parent bank, the bank must be the survivor. If the combination is with another company, the bank subsidiary must be the survivor. Subsection (b) requires the applicant to submit with the application copies of agreements under which the combination is proposed to be effectuated along with any other information required by the Commissioner or the relevant rules. It sets forth the application fee of $1000. Subsection (c) directs the Commissioner to examine the proposed combination to determine whether (i) the interests of the customers and communities served by the bank	Activities conducted in subsidiaries are sometimes brought into the bank by merging with the subsidiary. This provision fills a gap in the current law.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
			would be adversely affected; (ii) the transaction would cause the bank to be undercapitalized or otherwise in violation of the laws or regulations; or the combination presents other risks to the safe and sound operation of the bank. Subsection (d) provides that the surviving bank succeeds to all of the rights, powers, duties, etc. of the combining institutions.	
53-17. Fiduciary powers and liabilities of banks or trust companies merging or transferring assets and liabilities.	53-17 states that following merger (or transfer of assets and liabilities) between two financial institutions or trust companies, all fiduciary rights, powers, duties and liabilities are vested in the surviving or transferee institution. The surviving or transferee institution is deemed to be substituted for the merged or transferring one.	**53-7-208**	**New 53-7-208. Fiduciary powers and liabilities of combining banks.** This section states that when a bank combines with another depository institution and the other institution is the survivor of the combination, the fiduciary rights, powers and duties of the bank immediately vest in the resulting depository institution, which shall be deemed substituted for the combining bank for all fiduciary purposes.	The current and new provisions are substantively the same.
No corresponding section.		**53-7-209**	**New 53-7-209. Appeal.** This section authorizes appeal of the Commissioner's denial of a combination application to the Commission pursuant to § 53-2-6.	While there is no specifically corresponding provision, § 53-95 states that all actions of the Commissioner are taken under the supervision of the Commission.
53-14. Reorganization. 53-17.2. Conversion of savings association to a State bank.	53-14 authorizes and governs the dissolution or a national or state bank and the subsequent rechartering of the bank as a state bank. Such a procedure may be necessary or advisable for supervisory or tax purposes. **[IS THIS LAST STATEMENT TRUE?]** 53-17.2 provides the procedure for the conversion of a savings association to a state bank. The conversion requires action by the company's board of directors, submission of a plan of conversion to the Commissioner, the necessary findings that must be made by the commissioner to recommend	**53-7-301**	**New 53-7-301. Conversion to a North Carolina bank charter.** This section sets forth the process by which a financial institution may convert to a North Carolina bank charter. Subsection (a) authorizes a financial institution to apply to the Commissioner for approval to convert to a state bank and sets the fee at $5000. Subsection (b) requires the application to be accompanied by a plan of conversion. Subsection (c) lists the findings the Commissioner must make to approve the plan: (i) the bank will commence operations in a safe, sound, prudent manner with adequate capital, etc.; (ii) the directors and officers are qualified; (iii) the interests of the customers, creditors and shareholders will not	The new provision is broader than the current sections in that it provides a standardized process for any company seeking to convert to a state bank charter. It sets forth the fee at $5000, which is currently contained in the rules. **[IS THE FEE NOW $5000 AND IS IT SET FORTH IN RULES?]** The fee must be accompanied by a plan of conversion. The findings that must be made for approval are similar to those prescribed in current 53-17.2 for conversion of savings associations to state banks. The new law requires the Commissioner to monitor the conversion process as it is implemented following approval. Generally, consistent with the

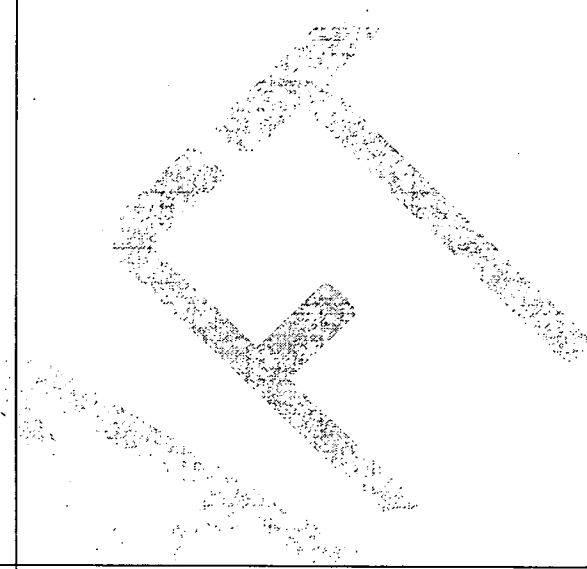
Current Section(s)	Summary	New Section	Summary	Explanation of Change
	approval to the Commission, which is empowered to approve, modify or disapprove the recommendation. The section provides the process for approval by the stockholders or members of the company if the Commission authorizes the conversion to proceed. It provides for the surviving company to be deemed a continuation of the converting one.		be materially and adversely affected; (iv) the plan is not in violation of the converting institution's applicable organizational law; and (v) the appropriate disclosures have been or will be made to the converting institution's equity ownership interest holders. Subsection (d) directs the Commissioner to monitor the conversion process as it is implemented following approval. Subsection (e) directs the Commissioner to authorize the consummation of the conversion, issue a charter, and permit the filing of appropriate documents with the Secretary of State when all appropriate steps have been taken. Subsection (f) authorizes the Commissioner to provide in his order authorizing the conversion for the winding up of activities or disposal of assets or liabilities that were permitted for the converting institution but are not permissible for a state bank. The Commissioner may provide for a transition period. Subsection (g) says the converting institution will continue in existence as a bank and all rights, liabilities and obligations of the converting institution shall continue.	approach taken throughout this article, the new provision provides a clear process for accomplishing the desired conversion. Old Fee was $2500.
No corresponding section.		**53-7-302**	**New 53-7-302. Appeal.** This section authorizes appeal of the Commissioner's denial of a conversion application to the Commission pursuant to § 53-2-6.	While there is no specifically corresponding provision, § 53-95 states that all actions of the Commissioner are taken under the supervision of the Commission.
53-16. Consolidation, conversion or merger of State banks or trust companies with national banks.	53-16 governs mergers, consolidations, and conversions of banks or trust companies with national banks. It requires approval by a two-thirds majority of the voting securities of the state bank. It provides that the resultant national bank stands in the shoes of the merged, consolidated or	**53-7-303**	**New 53-7-303. Conversion by North Carolina bank.** This section authorizes a state bank to convert to another type of institution. Upon completion of its conversion, the depository institution is to notify the Commissioner of the conversion and file a copy of its authorization to operate as a different type of depository institution. Upon effectiveness of the	The new provision deals specifically with conversions of state banks to other types of financial institution charters. The conversion is governed by the laws and regulations of the chartering authority that will supervise the company following the conversion. The company is required to notify the Commissioner upon completion of the

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	converted state bank or banks. It provides for dissenting shareholders to have the right to have their stock purchased for cash, and provides the procedure for establishing the valuation of the stock. Upon the completion of the transaction, state authority to operate as a bank terminates.		conversion, the depository institution will cease to be a state bank. All rights, responsibilities of the bank will continue to exist in the new form of depository institution.	conversion and to file a copy of its authorization to operate as a different type of depository institution.



PROPOSED CHANGES TO THE
NORTH CAROLINA BANKING LAWS – CHAPTER 53 OF THE GENERAL STATUTES
ARTICLE 8A ADDRESSES BANK SUPERVISION

Current Section(s)	Summary	New Section	Summary	Explanation of Change
			Article 8A Bank Supervision.	
53-104. Commissioner of Banks shall have supervision over, etc.	53-104 places anyone conducting a banking business in North Carolina under the supervision of the Commissioner. It tasks the Commissioner with enforcement of all state laws pertaining to banking. It authorizes the Commission to promulgate rules necessary to implement the laws for the protection of the various stakeholders. Banks are required to conduct their business in accordance with all relevant laws and regulations.	**53-8-1**	**New 53-8-1. Commissioner has authority to supervise banks.** Subsection (a) states that every bank is under the supervision of the Commissioner, whose duty it is to enforce all laws relating to banks and requires banks to conduct their business in accordance with all relevant laws, regulations and orders. Subsection (b) sets forth the Commissioner's authority to enter various types of consensual corrective arrangements with banks and holding companies. Subsection (c) authorizes the Commissioner, upon request, to issue interpretations in different forms and stipulates that such interpretations shall not have the force and effect of rules or law.	The new provision speaks more thoroughly than- current law about the Commissioner's authority. It also clearly authorizes the Commissioner to issue interpretations and issue rulings to explain or clarify laws and regulations.
53-122. Fees and assessments.	53-122(a) provides that banks and consumer finance licensees shall pay the assessments set forth in the section within 10 days after the assessment for the purpose of operating and maintaining OCOB. Subdivision (1) sets forth the assessment brackets for banks, including a separate assessment for trust assets. Subdivision (2) places an asset-based assessment and a per office assessment on consumer finance licensees. Subdivision (3) permits special assessments when examinations require extra time of when there are	**53-8-2**	**New 53-8-2. Assessments and fees.** This section deals with bank assessments. Subdivision (1) sets forth the assessment brackets. Subdivision (2) provides the assessments applicable to trust assets. Subdivision (3) authorizes special assessments if extra work is required or if there is a conversion or consolidation transaction. The Commissioner's determination of the amount of a special assessment is deemed reasonable in the "absence of manifest error."	The new provision does not deal with consumer finance licensees, just banks. The general assessment provision is unchanged. The special assessment provision is substantively unchanged except for the presumption of reasonableness set forth for the Commissioner's determination of special assessments. The new provision does not contain the authority to discount the assessment fees, which may be done under current law following presentation to the GOV OPS Committee.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	transactions that require special examinations. Subsection (b) gives the Commission authority to set fees for processing any applications required to be filed and for receiving copies of any public records. Subsection (c) provides that OCOB shall be reimbursed a fee and expenses when OCOB staff is called to testify in civil and criminal proceedings. Subsection (d) ties the cost of operating OCOB to the fees collected in that year plus any surplus on hand. Subsection (e) provides the process for collecting the assessment from banks and discounting any excess under the statutory formula. Subsection (f) permits collection of assessments annually or in periodic installments as approved by the Commission.			
53-105. Reports of condition. 53-106 Special reports. 53-117(c) and (d). Appointment by Commissioner of Banks; examination of banks.	53-105 requires banks to file reports of condition at least four times per year, within 10 days of a request or requisition for such report, which time period the Commissioner may extend by up to 30 days. The Commissioner may also order the bank to publish in a newspaper a summary of its annual report. 53-106 authorizes the Commissioner to require any special reports he deems necessary and to require their publication as in 53-105. 53-117(c) and (d) authorize the Commissioner to accept, as part of an examination, reports prepared by independent accountants or federal	**53-8-3**	**New 53-8-3. Reports required of banks.** This section requires banks to file annual and periodic reports of condition. It also requires banks to file copies of all federal reports and applications with the Commissioner. It stipulates that it does not limit the authority of the Commissioner to request and obtain other information that is deemed necessary to carry out his or her duties under the Chapter.	The new provision reorganizes the material of the current law, but is substantively quite similar. It does not contain the authority to require publication in newspapers of annual or special reports. It more broadly states the authority of the Commissioner to obtain from a bank any information needed to carry out the Commissioner's responsibilities.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	supervisory agencies.			
53-117(a) and (b). Appointment by Commissioner of Banks; examination of banks. 53-118. Duties and powers.	53-117(a) and (b) authorizes the Commissioner to appoint examiners and other agents as needed to examine every bank as often as necessary, but at least once every year, except, under emergency conditions, when that period may be extended to 18 months. The Commission is directed to adopt rules and regulations concerning examinations. 53-118 imposes on examiners the duty to verify all reports banks make to the Commissioner. Bankers are required to surrender all relevant documents to examiners who may keep them as long as necessary. If any officer refuses to comply or to be examined under oath by an examiner, the Commissioner is authorized to take possession of the bank and liquidate its affairs.	**53-8-4**	**New 53-8-4. Examination by Commissioner.** Subsection (a) is a broad grant of authority to the Commissioner to examine a bank and its holding company and to appoint examiners to do so. The examiners are to file a full report of the findings of the examination including any violation of law or any unsafe or unsound practices. Subsection (b) requires that examinations must be carried out in conformity with the rules of the bank's primary federal supervisor and published examination guidance of OCOB. Subsection (c) requires the Commissioner to provide a copy of the report to the bank or holding company and, upon request, to the primary federal supervisor and the FDIC if it is not the primary federal supervisor.	The new provision imposes similar duties on examiners, but is less specific about a schedule for examinations. It requires conformity with examination guidelines of the primary federal supervisor of the bank and published OCOB examination guidance. It directs the Commissioner to furnish a copy of the report of examination to the bank or holding company examined and authorizes the provision of one to the primary federal supervisor or FDIC, upon request.
53-104.1. Examination of nonbanking affiliates.	53-104.1 authorizes the Commissioner to examine the affiliates of a state bank to the extent it is necessary to safeguard the interest of the depositors and creditors of the bank and the general public and to enforce the provisions of Chapter 53. It defines "affiliate" and authorizes cooperation with other regulatory agencies.	**53-8-5**	**New 53-8-5. Examination of affiliates. This section** authorizes the Commissioner to examine the affiliates of a state bank to the extent it is necessary to safeguard the interest of the depositors and creditors of the bank and the general public and to enforce the provisions of Chapter 53.	The new provision carries forward the substantive provisions of current law. "Affiliate" is defined in the definition section of the new law, so there is no definition in 53-8-5.
53-120. Examiners may administer oath; summoning witnesses.	53-120 authorizes examiners to administer oaths to examine bank officers, directors, agents, employees, customers or shareholders for the purpose of making examinations as required by Chapter 53. The examiner	**53-8-6**	**New 53-8-6. Access to books and records; right to issue subpoenas, administer oaths, and examine witnesses.** Subsection (a) grants the Commissioner, examiners or agents (1) access to all books and records of the bank, its holding company or affiliates that relate to the business	The new provision clarifies that the authority to examine books and records, compel testimony, etc., extends not only to the bank but to the parent holding company and to affiliates as well. It also provides specificity as to the Commissioner's course of action when

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	is authorized to summon in writing such persons to appear before him or her.		of the bank; (2) authority to subpoena witnesses and administer oaths to officers, directors or employees of the bank, its holding company or affiliates or any other person in relation to the affairs of the bank, affiliates or holding company; (3) authority to require production of records or documents; and (4) may order the correction of improper entries in the books or records of the bank, holding company or affiliates. Subsection (b) authorizes the Commissioner to issue subpoenas *duces tecum*. Subsection (c) provides that when a person fails to comply with a subpoena so issued or a party or witness refuses to testify, a court of competent jurisdiction, upon application of the Commissioner, may compel compliance by proceedings for contempt.	a person fails to comply under the provisions of the section.
53-124. Examiner making a false report.	53-124 makes it a Class H felony for an examiner to knowingly or willfully make a false or fraudulent report of a bank after an examination with the intent to aid or abet officers, owners or agents of the bank to operate an insolvent bank, or to keep or accept any bribe given to induce a failure to file a report of examination.	**53-8-7**	**New 53-8-7. Examiner making a false report.** This section makes it a Class H felony for an examiner to knowingly or willfully make a false or fraudulent report of a bank after an examination with the intent to aid the bank or its affiliates in committing violations of any provision of Chapter 53 or to keep or accept any bribe given to induce a failure to file a report of examination.	The new provision is somewhat broader in that the intent may be to violate any provision of Chapter 53, not merely to operate an insolvent bank.
53-125. Examiner disclosing confidential information.	53-125 makes it a Class 1 misdemeanor for an examiner to divulge confidential information obtained in the course of an examination except for exchanging information with other bank regulators, or other authorities, "or others with whom a proper exchange of information is wise or necessary."	**53-8-8**	**New 53-8-8. Examiner disclosing confidential information.** This provision makes it a Class 1 misdemeanor for an examiner or other employee of OCOB fails to keep secret facts or information obtained in an examination, except as permitted or required by Chapter 53.	The new provision broadens the class of persons to whom it applies to all OCOB employees and limits permitted disclosures to those permitted or required by Chapter 53.
53-126. Loans or gratuities forbidden.	53-126 makes it a Class 1 misdemeanor for a bank or an officer, employee or director of a state bank to make any	**53-8-9**	**New 53-8-9. Loans or gratuities forbidden.** Subsection (a) of the new provision makes it a Class 1 misdemeanor for a bank or an officer,	Subsection (a) of the new provision carries forward the existing law. Subsection (b) which permits an exemption for any deputy

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	loan or give any gratuity to the Commissioner or any examiner. A fine is permitted equal to the amount of the loan or gratuity. It also makes it a misdemeanor with a similar fine for the Commissioner or examiner to accept such a loan or gratuity.		employee or director of a state bank to make any loan or give any gratuity to the Commissioner or any examiner. A fine is permitted equal to the amount of the loan or gratuity. It also makes it a misdemeanor with a similar fine for the Commissioner or examiner to accept such a loan or gratuity. Subsection (b) permits the Commissioner to exempt from the provisions of subsection (a) any deputy commissioner or examiner who has a loan from a state bank at the time of their hiring. The loan may be extended after the hiring, if it is done on such terms as would be available to the general public.	commissioner of examiner with respect to pre-existing loans, is new.
53-128. Willfully and maliciously making derogatory reports.	53-128 makes it a Class 1 misdemeanor to transmit false statements about the financial condition of a bank.	**53-8-10**	**New 53-8-10. Willfully and maliciously making derogatory reports.** This section makes it a Class 1 misdemeanor to transmit false statements about the financial condition of a bank.	The new provision makes no substantive change in the existing law.
53-129. Misapplication, embezzlement of funds, etc.	53-129 sets forth as broadly as possible the criminal acts involved in committing fraud upon or embezzling from a bank. The crime is a Class C felony if the amount of money involved is $100,000 or more and a Class H felony if less than $100,000.	**53-8-11**	**New 53-8-11. Misappropriation, embezzlement of funds, etc.** This section sets forth as broadly as possible the criminal acts involved in committing fraud upon or embezzling from a bank. The crime is a Class C felony if the amount of money involved is $100,000 or more and a Class H felony if less than $100,000.	The new provision is substantively the same as the old. It utilizes newly defined terms to improve clarity (i.e., "person" includes both an individual and a corporation).
53-130. Making false entries in banking accounts; misrepresenting assets and liabilities of banks. 53-131. False certification of a check. 53-132. Receiving deposits in insolvent	53-130, -131, and -132, all render the offenses listed in their captions felonies. False certification of a check and receiving deposits in insolvent banks are Class I felonies punishable with a fine of up to $5000. Making false entries, etc., is a Class H felony. 53-134 covers any other offense against the banking laws and makes such crimes Class 1 misdemeanors.	**53-8-12**	**New 53-8-12. Enforcement of the banking laws.** Subsection (a) authorizes the Commissioner to order an examination or investigation if he believes that a violation of the banking laws has occurred or is occurring. Subsection (b) provides a civil penalty of $1000 for any bank that fails to provide a report requested by the Commissioner within 10 days of the request or any additional time granted by the Commissioner. The Commissioner must notify the bank of the failure and the bank has 5 days to cure it. Failing to do	The new approach to violations of the banking laws is set forth in 53-8-12. The Commissioner is authorized to order an examination or investigation if he believes a violation of the banking laws has been or is being committed. Failure to respond can lead to a $1000 civil penalty, and the statute sets forth the procedure for levying and appealing such a penalty. The Commissioner is authorized to issue cease and desist orders and the statute provides penalties for

Current Section(s)	Summary	New Section	Summary	Explanation of Change
banks. 53-133. Advertising larger amount than that paid in capital stock. § 53-134. Offenses declared misdemeanors; prosecution; employment of counsel; punishment.			so subjects the bank to the fine. Subsection (c) contains authority to issue cease and desist orders with respect to violations of laws or rules or from a course of conduct that is unsafe or unsound and which likely to cause insolvency or dissipation of assets. Subsection (d) affords the right for a hearing on enforcement matters, but authorizes the Commissioner to act first and hold the hearing promptly thereafter under extraordinary circumstances. Subsection (e) authorizes the Commissioner to subpoena witnesses, compel their attendance and require the production of evidence. Subsection (f) authorizes civil fines of $1000 for violating cease and desist orders with respect to violations of laws or rules and up to $500 per day for violations of cease and desist orders involving a course of conduct that is unsafe or unsound.	violating such orders. Appropriate procedural protections are provided for those subject to the penalties authorized.
No corresponding provision.	N/A	**53-8-13**	**New 53-8-13. Immediate action orders.** This section authorizes the Commissioner to take immediate action requiring a bank to conduct its business in a safe and sound manner or any of its directors, officers or employees to cease or desist from an act or course of conduct that threatens or is reasonably probable of threatening the financial integrity of the bank. Such action may be taken if the Commissioner determines that the bank suffers capital deficiencies. Though effective upon issuance, the order may be appealed promptly to the Commission.	This new provision is designed to give the Commissioner comparable tools for dealing with an emergency situation as those authorized to federal agencies as "prompt corrective actions." Though similar authority probably exists under current law, it is not explicit.
53-19. When Commissioner of Banks may take charge.	53-19 authorizes the Commissioner to take possession of the business and property of a state bank whenever any of the ten listed criteria are met: (i) violation of the banks charter or related	**53-8-14**	**New 53-8-14. Supervisory control.** Subsection (a) authorizes the Commissioner, when he believes a bank has insufficient capital or is being operated in an unsafe or unsound manner that threatens the financial integrity of the bank, may	The current statute sets forth the first step of what is anticipated to be a liquidation of a bank. Both the current law and the proposed law (in Article 9A) set forth a detailed process to accomplish such a resolution of a failing

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	laws; (ii) the bank is operating in an unauthorized or unsafe manner; (iii) the bank is in an unsafe or unsound condition to transact its business; (iv) the bank has an impairment of its capital stock; (v) the bank has refused to honor its commitments to depositors or other investors; (vi) the bank has otherwise become insolvent; (vii) the bank has neglected or refused to comply with a lawful order of the Commissioner; (viii) the bank has refused to properly submit to an examination; (ix) the bank's officers have refused to be examined under oath concerning the bank's affairs; or (x) the bank has made a voluntary assignment of its assets to trustees.		serve a notice of charges on the bank requiring it to show cause why it should not be placed under supervisory control. The order must state the grounds for supervisory control and set forth the time and place for a hearing on the order, not less than 7 days nor more than 15 from the date of the order. Subsection (b) provides that after the hearing, if necessary to protect the bank's customers, creditors or the general public, the Commissioner may take supervisory control of the bank. The bank's board of directors may appeal the Commissioner's decision to the Commission no later than 10 days after the date of the order. Subsection (c) provides that during the period of supervisory control, the Commissioner may appoint an agent to guide the operations of the bank and the bank must follow the directions of the agent unless to do so would violate orders of its primary federal supervisor or the FDIC, if it is not the primary federal regulator. Subsection (d) gives the Commissioner 180 days after taking supervisory control to issue an order approving the plan of termination of supervisory control on the 30th day following issuance of the order. The plan may provide for (i) issuance by the bank of debt instruments or shares; (ii) the appointment or removal or one or more officers or directors; (iii) reorganization or combination of the bank; (iv) a control transaction with regard to the bank; or (v) the dissolution and liquidation of the bank. Subsection (e) directs the bank to cover the Commissioner's reasonable costs of taking supervisory control and provides that the determination of those costs by the Commissioner, absent manifest error, is dispositive of the issue of reasonableness.	institution. The new provision sets forth a detailed procedure which may lead to the rehabilitation of the bank or to liquidation. It provides a timeline for holding hearings and for taking supervisory control of the bank. The Commissioner has 180 days after taking control of a bank to issue an order approving the plan of termination of supervisory control. The plan may provide for steps to rehabilitate the bank or for the dissolution and liquidation of it. The bank is directed to cover the Commissioner's expenses incurred during the period of supervisory control.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
53-119. Removal of officers and employees.	53-119 authorizes the Commissioner to require immediate removal from office of any officer, director or employee of any bank found to be dishonest, incompetent or reckless in management of the affairs of the bank or who persistently violates laws or rules.	53-8-15	**New 53-8-15. Removal of directors, officers, and employees.** Subsection (a) authorizes the Commissioner to issue an order temporarily removing an officer, director or employee of a bank from office if the Commissioner finds that such person has participated or consented in any violation of Chapter 53 or an order of the Commissioner or has engaged in any unsafe or unsound practice in the operation of the state, or is found to be dishonest, incompetent or reckless in management of the affairs of the bank or who persistently violates laws or rules. The temporary order of removal must state the time and place for a hearing on the order. For good cause shown, the Commissioner may extend the time of the hearing for up to 10 days. Upon the hearing, the temporary order may be dissolved or made permanent in whole or in part. Subsection (b) states that a removal under this section is as effective as if accomplished by the bank's shareholders. Subsection (c) renders any person subject to an order issued under this section ineligible to serve as an officer, director or employee of any bank without the prior written approval of the Commissioner. Subsection (d) authorizes an appeal from the order of the Commissioner to the Commission within 10 days of the issuance of the order.	The new provision is somewhat broader in its listing of causes for which an officer, director or employee of a bank may be removed by the Commissioner. It provides the procedure which must be followed to make such a removal permanent and sets forth the right of appeal, which would be deemed to exist under current law as the Commission has the right to review all actions of the Commissioner.
53-77.3. Banks suspending business during an emergency.	53-77.3 addresses the process for banks suspending business during an emergency. It authorizes the Commissioner, in his discretion, to declare emergencies warranting the closing of one or more banks or bank offices and for the suspension of banking activities. It authorizes the	53-8-16	**New 53-8-16. Emergency powers.** This section grants the Commissioner discretion to waive or suspend requirements for compliance by one or more banks with provisions of Chapter 53 in the event of a natural disaster, or other national, regional, state, or local emergency.	The new provision is much broader in that it authorizes the Commissioner to suspend or waive compliance with any provision of Chapter 53, while the existing law deals only with suspending operations.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	bank to close without a declaration by the Commissioner if communication with the Commissioner is disrupted.			
No corresponding section.	N/A	**53-8-17**	**New 53-8-17. Interstate regulatory agreements.** This provision authorizes the Commissioner to enter cooperative supervisory and information-sharing agreements with bank regulatory agencies in other states with respect to out-of-state banks with branches here and North Carolina banks with branches in those other states.	This section is consistent with current practice which has grown essential with the evolution of interstate branching by banks of all sizes and charters.

Ex #4

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

OCOB Proposed Substantive Corrections to Articles 7A and 8A March 6, 2012

The recommendations set forth below for substantive changes to Articles 7A and 8A of the proposed rewrite are derived from OCOB staff analysis and input from and discussions with various stakeholders. These recommendations for changes will be included in the OCOB staff's explanation of those sections:

- In current law, as part of requirements surrounding changes of control, a bank is required to notify the Commissioner within 24 hours of changes in directors or senior executive officers. In the proposal, the notice requirement exists for directors and officers of holding companies but not banks. This was an oversight and OCOB recommends adding the notice requirement back to 53-7-101. The notice requirement for holding companies is within two days, and OCOB thinks that the same should hold true for bank directors and key officers. OCOB recommends adding the following sentence at the end of 53-7-101(a): "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."

- Proposed 53-7-102(a) refers to "all filing fees required by a rule of the Commissioner"; however, the fees are actually set forth in the new statute. OCOB recommends deleting the phrase "by a rule of the Commissioner" from 53-7-102(a).

- Proposed 53-7-206 deals with combinations between state banks and federally chartered institutions. When the federally

chartered institution is the survivor, OCOB believes that the procedures of the federal supervisory agency that regulates the surviving entity should be followed in accomplishing the combination and that this provision should reflect that approach. OCOB recommends rewriting proposed 53-7-206 to read: **"§ 53C-7-206. Combination with federally chartered institution.**

"A combination by a bank with a federally chartered institution in which the federally chartered institution will be the surviving party shall be subject to ~~the provisions of this Part 2 and to~~ approval by the chartering authority of the federally chartered institution in accordance with the laws of the United States ~~and this Part~~."

- Proposed 53-7-207 governs various combinations with bank subsidiaries. OCOB does not believe that a bank should have to file an application or pay a fee for a combination between two subsidiaries of the same bank and recommends exempting such combinations from the requirements of 53-7-207 by adding the following at the end of subsection 53-7-207(a): "<u>The merger of two or more subsidiaries of the same bank is exempt from the provisions of this section.</u>"

- Proposed 53-8-3(a), in requiring banks to file reports says that the reports shall "be on such forms and in such formats as the Commissioner may require by rule". Changes in forms may be necessitated by a wide variety of circumstances and requiring that any such change be accomplished through the rulemaking process is excessively burdensome. OCOB recommends that the phrase "by rule" be deleted from proposed 53-8-3(a).

- Proposed 53-8-4(b) is unclear about the interaction between state examination guidelines and those of a bank's principle federal supervisory agency. OCOB recommends rewriting 53-8-4(b) to read:

"(b) Examinations under subsection (a) of this section shall be conducted pursuant to <u>practices and procedures established by</u>

OCOB , provided, the Commissioner may, in his discretion, take into consideration the guidelines and requirements for such activity of the primary federal supervisor of the bank or holding company. ~~and published examination guidance of OCOB.~~"

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

February 14, 2012

MEMORANDUM

TO:	Members, Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws
FROM:	Representative Harold J. Brubaker, Co-Chair Senator Harry Brown, Co-Chair
SUBJECT:	Meeting Notice

DAY	DATE	TIME	ROOM
Tuesday	March 6, 2012	12:00 PM	643 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Cindy Coley at (919) 715-4946.

cc: Committee Record _X_
Interested Parties _X_

Cindy Coley (Rep. Brubaker)

From: Cindy Coley (Rep. Brubaker)
Sent: Tuesday, February 14, 2012 12:58 PM
To: Cindy Coley (Rep. Brubaker); Darryl Black (Sen. Harry Brown)
Subject: Banking Laws Modernization, Jt. Leg. Study (2012)

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

February 14, 2012

MEMORANDUM

TO: Members, Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

FROM: Representative Harold J. Brubaker, Co-Chair
Senator Harry Brown, Co-Chair

SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Tuesday	March 6, 2012	12:00 PM	643 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Cindy Coley at (919) 715-4946.

cc: Committee Record _X_

Interested Parties _X_

MINUTES

JOINT LEGISLATIVE STUDY COMMISSION

ON

THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS

Tuesday, March 27, 2012

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws met on Tuesday, March 27, 2012 at 10:00 a.m., Room 544 Legislative Office Building, Raleigh, North Carolina.

In attendance were Senator Brown (Chairman) and Representative Brubaker (Chairman); Senators Apodaca and Blake; Representatives Daughtry, Jordan and McComas; Mr. Christopher Kukla, Mr. Gray Reed, Mr. Charles Whitehead, Jr., and Ms. Andrea Young. Ryan Blackledge (Bill Drafting Staff), Drupti Chauhan (Research Staff), Karen Cochrane-Brown (Research Staff) and Greg Roney (Research Staff) were present. Committee Assistants Darryl Black and Cindy Coley were present.

Senator Brown, Chairman, called the meeting to order and recognized House Sergeant-At-Arms Staff Reggie Seals, Larry Elliot and Doug Harris and Senate Sergeant-At-Arms Staff Ronald Spann, Robert Young and Donna Blake.

Chairman Brown called for the adoption of the minutes from the March 6, 2012 meeting. Sen. Blake seconded motion that was approved unanimously.

Six documents were included in committee member notebooks and distributed for review related to the presentation:

Exhibit 1 - Explanation of Mortgage Assessment Bill

Exhibit 2 - Mortgage assessments bill 3-20-12

Exhibit 3 – Banking Commission Memo 03_16_2011

Exhibit 4 – Follow up questions from 3-6-12 meeting for NCGA

Exhibit 5 - Art 9A Summary

Exhibit 6 - Art 10A Summary

Presentation

Mr. L. McNeil Chestnut, Special Deputy Attorney General and Senior Counsel to the Commissioner of Banks, began the presentation by discussing the mortgage assessment proposal. Mr. Chestnut referred to Exhibit 1 and stated that the monitoring of the mortgage industry by the Banking Commission is fee supported. Fees have not recently increased and since 2002 with the Mortgage Lending Act, monitoring costs have exceeded fees received. Furthermore, the loss of four banks and the RBC merger have reduced assessments $1 million. Current mortgage supervision exceeds the costs of license regulation by $1.5 million each year. He feels that each industry should pay for its cost of regulation. Mr. Chestnut then referred to Exhibit 2 and the proposed fee scheduled. He stated that this will result in a reduction for 85% of mortgage companies and an increase for 15% of mostly larger companies that work on a nationwide basis. The Banking Commission has reached out the eight largest mortgage companies and the Mortgage Bankers Association has not objected. For example, over 1,000 enforcement orders are on website that had a cost associated with it either through a settlement or trial. Furthermore, the number of full-time employees has been reduced from 30 to 22, telecommuting encouraged and information technology-related efficiencies leveraged wherever possible. Major mortgage companies have been notified.

Mr. Whitehead wanted to know what the average decrease for the 85% of companies would be. Mr. Chestnut was unsure about the exact amount of decrease but said there is a schedule available based on loan volume. He further added that 15% of larger companies would experience a fairly large increase which is fair since they require the most work. The proposed assessment would be less than those in Virginia and George. Mr. Chestnut then stated that a few years ago, the Safe Mortgage Lending Act resulted in an increased regulation of that industry and added that the National Mortgage Licensing system has been working well.

Sen. Blake requested clarification on the proposed $2,000 minimal assessment. Mr. Chesnutt stated that the proposed mortgage assessment has little to do with banks and is focused on the regulatory side of mortgage business and would stop the ongoing subsidization of the mortgage business. He further clarified that banks have a separate assessment that is not being impacted. Mr. George Teague, representing the Mortgage Bankers Association, further added that the mortgage industry recognizes the importance of regulation and have been working with the Banking Commission to make a few helpful changes. He stated that there are some fairly dramatic changes for some companies-companies that have been notified.

Mr. Chesnutt then discussed the recommendation to reduce the number of Banking Commission commissioners from 21 to 15 members, through attrition if possible. He then reviewed Exhibit 3 with regards to further recommendations that appear to be consistent with the intent of this commission.

Mr. Paul Stock, Legal Specialist, Office of North Carolina Commissioner of Banks discussed follow-up items from the March 6, 2012 meeting. His presentation reviewed Exhibit 4.

Mr. Ray Grace, Commissioner of Banks, then discussed Article 9A – Supervisory Liquidation; Voluntary Dissolution and Liquidation. He started the presentation by providing a brief history including a handful of supervisory and voluntary liquidations. Commissioner Grace stated that there were no supervisory liquidations from 1943 that involved the Bank of Black Mountain until 1992 with the Wilmington-based Bank of Hanover. He then reviewed to Exhibit 5.

Rep. Jordan requested that a comparison between § 53-19. When Commissioner of Banks may take charge and equivalent language in proposed law (§ 53-9-301. Receivership.) be made. Commissioner Grace stated that it may be difficult to perform an exact comparison due to language differences and that he would get back with an answer by the next meeting.

Chairman Brown briefly recognized former Banking Commissioner Joseph Smith.

Commissioner Grace then discussed Article 10A – Bank Holding Companies. He referred to Exhibit 6 during this presentation.

Chairman Brown commented that the provision that increases the civil money penalty from a flat $1,000 to $20,000 per day for holding companies violating a cease and desist order should receive some attention.

Chairman Brown then requested if there was any further discussion. Sen. Harris Blake requested if there has been any feedback from the banks regarding the revised changes. Mr. Gray Reed stated that there has been much work behind the scenes between the industry and the Banking Commission addressing potential concerns. Mr. Charles Whitehead believed that the additional clarification will help versus the use of arbitrary terms. Mr. Chesnutt then stated they have also meeting with the Bar Association to discuss clarifying changes.

Chairman Brown asked if there were any further discussion items. None were offered. Chairman Brown stated that the next meeting will be held on April 12th at 1 p.m. with the last meeting tentatively scheduled for April 26th at 10 a.m.

There being no further business, the meeting adjourned at 11 a.m.

Sen. Harry Brown, Chairman

Rep. Harold Brubaker, Chairman

ATTEST:

Darryl Black, Committee Assistant

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

Senator Harry Brown, Co-Chair ***Representative Harold J. Brubaker, Co-Chair***

AGENDA

Tuesday, March 27, 2012
10:00 am.
Room 544 LOB

1.	**Welcome and Introductions** *Senator Harry Brown, Co-Chair*
2.	**Approve Minutes from March 6, 2012 Meeting**
3.	**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*
4.	**Review of Follow-Up Items from the March 6, 2012 Meeting** *Paul Stock, Legal Specialist, Office of North Carolina Commissioner of Banks*
5.	**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*
6.	**Committee Discussion**
7.	**Adjourn**

ATTENDANCE

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

(Name of Committee)

DATES	Nov. 21, 2011	Dec. 19, 2011	Jan. 20, 2012	Feb. 14, 2012	March 6, 2012	March 27, 2012	April 12, 2012
Rep. Brubaker, - House Chair	Yes	Yes	Yes	Yes	Yes	Yes	
Sen. Harry Brown, Senate Chair	No	Yes	Yes	Yes	Yes	Yes	
Rep. Leo Daughtry	Yes	Yes	N	N	Yes	Yes	
Rep. Beverly Earle	Yes	Yes	N	N	Yes	N	
Rep. Jonathan Jordan	N	Yes	Yes	Yes	Yes	Yes	
Rep. Daniel McComas	N	Yes	Yes	N	Yes	Yes	
Sen. Thomas Apodaca	N	N	N	N	N	Yes	
Sen. Harris Blake	N	Yes	Yes	N	Yes	Yes	
Sen. Dan Blue	Yes	Yes	Yes	Yes	N	N	
Sen. Thom Goolsby	N	N	N	N	N	N	
Charles Whitehead (House Bank)	Yes	Yes	Yes	Yes	Yes	Yes	
Gray Reed (Senate Bank)	N	Yes	Yes	Yes	Yes	Yes	
Christopher Kukla (House)	Yes	Yes	Yes	Yes	Yes	Yes	
Andrea Young (Senate)	Yes	Yes	Yes	Yes	Yes	Yes	
Rep. Darryl McCormick			Yes	N	Yes	N	

ATTENDANCE

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

(Name of Committee)

DATES	Nov. 21, 2011	Dec. 19, 2011	Jan. 20, 2012	Feb. 14, 2012	March 6, 2012	March 27, 2012	
Rep. Brubaker, - House Chair	Yes	Yes	Yes	Yes		✓	
Sen. Harry Brown, Senate Chair	No	Yes	Yes	Yes		✓	
Rep. Leo Daughtry	Yes	Yes	N	N		✓	
Rep. Beverly Earle	Yes	Yes	N	N			
Rep. Jonathan Jordan	N	Yes	Yes	Yes		✓	
Rep. Daniel McComas	N	Yes	Yes	N		✓	
Sen. Thomas Apodaca	N	N	N	N		✓	
Sen. Harris Blake	N	Yes	Yes	N		✓	
Sen. Dan Blue	Yes	Yes	Yes	Yes			
Sen. Thom Goolsby	N	N	N	N			
Charles Whitehead (House Bank)	Yes	Yes	Yes	Yes		✓	
Gray Reed (Senate Bank)	N	Yes	Yes	Yes		✓	
Christopher Kukla (House)	Yes	Yes	Yes	Yes		✓	
Andrea Young (Senate)	Yes	Yes	Yes	Yes		✓	
Rep. Darryl McCormick			Yes	N			

Committee Sergeants at Arms

NAME OF COMMITTEE Modernization of NC Banking

DATE: 3-27-2012 **Room:** 544

House Sgt-At Arms:

1. **Name:** Reggie Sills
2. **Name:** Larry Elliot
3. **Name:** Doug Harris
4. **Name:**
5. **Name:**

Senate Sgt-At Arms:

1. **Name:** Ronald Spann
2. **Name:** Robert Young
3. **Name:** Donna Blake
4. **Name:**
5. **Name:**

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — MARCH 27, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Carlton	atty
Fred Baron	Baron Assoc.
Jeff Wolfe	Smith Anderson
Kim Crowell	NCPA
David McGowan	NC Realtors
Mel Black	
Lauren Wheaty	NCCUA
Mark Sanders	UNC
John Merritt	Policy Group
Daniel Bauer	Troutman Sanders

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — MARCH 27, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bruce Thompson	Parker Poe
Ellen Harnick	Center for Responsible Lending
Ben Davis	Brooks Pierce / NC Bankers Assoc.
Elizabeth Bise	Brooks Pierce / NCBA
Joe Smith	Poyner Spruill LLC
Lisa McDougald	BGT
Daniel Garner	OCOB
Patricia Brannan	OCOB
Vicki Miller	OCOB
Teresa Browning	OCOB
Ha Nguyen	OCOB

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — MARCH 27, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NMRS

McNeal Chestnut
#1

Brief Explanation of the Need for a Mortgage Assessment Bill

The N.C. Office of the Commissioner of Banks is a fee supported agency. It does not get a legislative appropriation. Since the Mortgage Lending Act was passed in 2002, licensing fees have not funded the cost of regulation. Bank assessments have subsidized mortgage regulation. Consolidation within the banking industry and the acquisition of a large state-chartered bank have reduced bank assessments to the extent that they will no longer be sufficient to do so. Currently, the cost of mortgage supervision exceeds by approximately $1.5 million the cost of licensing and examination of those companies.

We recommend a change in the funding mechanism for mortgage regulation by replacing all license and examination fees for mortgage companies with a sustainable assessment. The assessment will include a minimum level of $2,000 plus an additional amount based on loan and servicing volume. This will result in a reduction in cost for approximately 85% of the mortgage companies, but it will be an increase for 15%. We have reached out to the 8 largest mortgage companies and the Mortgage Bankers Association, and there is widespread understanding of the need for this change.

Office of the Commissioner of Banks

McNeal Chestnut
Ex. # 2

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.

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 Article 19B, each mortgage lender, mortgage broker, and mortgage servicer licensed under this Article shall pay into the Office of the Commissioner of Banks an assessment as provided in this subsection. The annual assessment shall consist of a base amount of $2,000.00 for volumes of no more than $1,500,000.00, plus an additional sum, calculated on the loan and servicing dollar volume reported by the company to the Office of the Commissioner of Banks for the previous calendar year. If a company has both loan and servicing volume, those amounts shall be added together and the assessment shall be calculated from the table below as follows:

Loan and/or Servicing Dollar Volume		Per Thousand
$1,500,001.00 to	$2,500,000.00	$0.07
$2,500,001.00 to	$5,000,000.00	$0.06
$5,000,001.00 to	$10,000,000.00	$0.05
$10,000,001.00 to	$30,000,000.00	$0.04
$30,000,001.00 to	$100,000,000.00	$0.03
$100,000,001.00 to	$1,300,000,000.00	$0.02
More Than $1,300,000,001.00		$0.01

(b) The Commissioner of Banks may collect the assessment provided for in subsection (a) of this section annually or in periodic installments as approved by the State Banking Commission."

Sec. 2. G.S. 53-244.101 is amended to read:

"§ 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~~plus the actual cost of obtaining credit reports and State and national criminal history record checks and ~~of~~ processing fees ~~of~~ for the ~~nationwide system~~ 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 and assessments.~~ 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."

Sec. 3. G.S. 53-244.115 is amended to read:

"§ 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,~~ 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 assessments 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."

Sec. 4. G.S. 53-244.119 is amended to read:

"§ 53-244.119. Commissioner's participation in nationwide registry.

(a) The Commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the Commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the Commissioner may establish by rule any requirements as necessary, including:

(1) Background checks for:

a. Criminal history through fingerprint or other databases;

b. Civil or administrative records;

c. Credit history; or

d. Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.

(2) The payment of fees to apply for, renew, or amend licenses through the Nationwide Mortgage Licensing System and Registry;

(3) The setting or resetting as necessary of renewal or reporting dates; and

(4) Requirements for amending or surrendering a license or any other activities as the Commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(b) The Commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Article.

(c) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the Commissioner is authorized to waive or modify, in whole or in part, any or all of the requirements of this Article and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(d) The Commissioner is authorized to enter into agreements to license the use of the proprietary software owned by the Office of the Commissioner of Banks to banking, mortgage, or financial services supervisory agencies of other states.

~~(e) The Commissioner may require a licensee to pay, through the National Mortgage Licensing System, a reasonable administrative processing fee, not to exceed seventy-five dollars ($75.00), for each of the following licensing status changes:~~

~~(1) A change in the name of the licensee.~~

~~(2) A change in the address of the licensee's principal office.~~

~~(3) For mortgage loan originators, a change in the licensee's sponsors.~~

~~(4) For mortgage lenders, mortgage brokers, and mortgage servicers, a change in the control of the licensee.~~

~~(5) A change in the identity of the branch manager of any branch of the licensee.~~

~~(6) A change in the identity of the licensee's qualified individual. "~~

Sec. 5. This act shall become effective _____.

Ex #2A
(CHESTNUT)

NORTH CAROLINA

OFFICE OF THE TREASURER

JANET COWELL, TREASURER

MEMO

TO: Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws
FROM: State Treasurer Janet Cowell
Acting Commissioner of Banks Ray Grace
CC: Members of the State Banking Commission
RE: Recommendation from the State Banking Commission on Commission's Composition
DATE: March 19, 2012

I. Background

Based on the recommendation from State Treasurer Janet Cowell at the January 18, 2012 Banking Commission ("Commission") meeting, a Subcommittee on the Commission's Composition ("Subcommittee") was created consisting of the following Commission members: James Frye, Raymond Pierce, Maurice Hull, David Ward, Ana Flynn, Mark Griffith, Mary Khaki Parks, Sammy Jackson, and John Freeze. The Subcommittee convened a conference call on January 26 with a majority of the Subcommittee members. In addition, Department of State Treasurer staff followed up with emails seeking responses with the remainder of the Subcommittee members. The full Commission met on March 14, 2011, and approved the recommendations found in this memorandum.

II. Recommendation

A. Size of Commission: The Commission recommends that the number of Commission members be reduced from 21 to 15. The Commission also recommends that such a reduction should take place through attrition whereby members whose terms have expired should no longer be appointed. Such attrition would be completed by April 1, 2013.

B. Public Member Experience: The Commission believes it is not necessary that public members possess certain expertise to be appointed (*e.g.*, accounting background, an attorney with financial background).

C. Non-Public Member Composition: The Commission recommends that one member of the non-public member constituency should be from a non-depository industry regulated by the North Carolina Office of the Commissioner of the Banks. Such industry includes the mortgage, check cashing, money transmitter, refund anticipation loan, and consumer industries. In addition, the Commission recommends that the remaining members should be a practical banker or representative from a savings institution.

D. Public v. Non-Public Member Composition: The Commission recommends that public members continue to make up the majority of the Commission.

Ex#3

MEMORANDUM

March 16, 2012

TO:	North Carolina Joint Study Commission on Modernization of North Carolina Banking Laws
FROM:	North Carolina Bar Association Task Force on Modernization of North Carolina Banking Laws
COPY TO:	Mr. Raymond E. Grace & Mr. Paul H. Stock
VIA:	Mr. Paul H. Stock
RE:	Upcoming Suggestions

The North Carolina Bar Association Modernization Task force would appreciate the opportunity to make helpful and detailed comments on the great drafts the Commission has prepared. We have discussed this wish with our friend Paul Stock, who has graciously agreed to convey this memorandum to you.

Our committee of four banking lawyers wants to see this bill pass more than anyone — modernization of North Carolina banking law is long-overdue. We all have been frustrated over the years that we could not get this task accomplished. We do not wish to take "pot shots" — we plan to offer our suggestions as unofficial members of your team, with clear and concise explanations of possible problems and concrete and detailed suggestions for alternatives consistent with the intent of the bill.

The four members of our committee are warm friends of the Commissioner's office, and work regularly with the staff not only for our clients but in the public interest on legislative matters. One of our members was part of the Chapter 53 working group Commissioner Smith established several years ago, and assisted Commissioner Lingerfelt with the trust company legislation ten years ago. We all are ardent proponents of your goals.

Rewrites of this nature are inherently complex, and fraught with the possibility of unintended consequences that cannot be repaired, especially these days, by simple technical corrections bills. We only want to help make an important piece of legislation as free as possible of unintended "snags." Although we have some concerns about time, we are prepared to offer our suggestions on an expedited basis and are in the process of formulating them.

This memorandum is not that set of suggestions, but just a preview of the detailed suggestions we will be making. Our suggestions will address concerns like these:

- Matching the bill to Article 14 on trust operations of banks and Article 24 on stand-alone trust companies, including fixing the reduction of OCOB enforcement authority over trust companies that might result from enactment of the bill in its current form;

- Possible competitive problems for North Carolina banks arising from the new section on Interstate Banking and failure to bring forward or connect Articles 17 and 17B of chapter 53;

- Issues with the change in control provisions in Articles 7 and 10, which we believe are unintentional but which could create serious problems for several family-controlled banking organizations in North Carolina;

- Dealing with some well-intentioned provisions that may accidentally cause banks to have less protection in dealing with trustees than they currently have under the North Carolina Uniform Trust Code enacted in 2005;

- Concern about the inadvertent omission of the "one action" rule in the current director liability provision; and

- A number of problems with definitions, cross-references, and other snags which are inevitable in a draft of major legislation but which really need to be corrected before enactment.

We are sorry we could not prepare comprehensive suggestions for fixes before today, as we had hoped, but we will endeavor to get this Commission more detail before the next meeting on March 27 and hope to continue to work with it in April.

Again, we deeply appreciate the efforts the Commission is making and are trying to advance this bill, not impede it.

Paul Stock
Ex #4

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

Follow up items from the March 6, 2012 Meeting

The items addressed below deal with issues discussed during the March 6, 2012 meeting of the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws, a subsequent meeting with the Co-Chairs of the Commission, as well as those identified by OCOB staff or raised by various stakeholders in comments.

1. Pursuant to direction of the Chairs, OCOB staff has drafted a series of amendments to the proposed legislation that would remove all references to fees from the statute and leave them to be addressed in rules as is the current practice. The proposed amendments set forth below would clarify the statutory authority to prescribe applicable fees by rule and delete all proposed statutory provisions setting forth fees.

   a. Rewrite 53-2-4(a) to read:

   "(a) As authorized in Chapters 53, 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. However, 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. ~~statute.~~ The Commissioner is authorized, in the exercise of reasonable discretion, to establish the time, place, and method for the payment of the assessments, fees, charges and costs."

   b. Rewrite 53-3-1(a) to read:

   "(a) The applicant shall file an application for permission to organize a bank and for a charter with the Commissioner. The application shall be in the form required by the Commissioner, and shall contain such information as the Commissioner requires, set forth in sufficient detail to enable the Commissioner to evaluate the applicant's satisfaction of the criteria set forth in G.S. 53C-3-4. The applicant shall pay a non-refundable application fee ~~in the amount of $10,000~~ as provided by rule at the time of filing the application."

   c. Rewrite 53-7-101(b) to read:

   "(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 ~~a~~ fee ~~of $5,000~~ as may be required by rule."

d. Rewrite 53-7-102(a)(2) to read as it did before it was amended at the March 6 meeting:
"(2) All filing fees required by a rule of the Commissioner; and".

e. Rewrite 53-7-201 to read:
"§ 53-7-201. Combination authority.
With the approval of the Commissioner, a bank may combine with one or more depository institutions. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee ~~of $5,000~~ as set forth by rule."

f. Rewrite 53-7-207(b) to read:
"(b) The bank seeking approval of such a combination shall file with the Commissioner an application for approval, copies of the agreements under which the bank proposes to effect the combination, and such additional information as the Commission shall require by rule or as is required by the Commissioner in connection with such application in order to achieve the objectives of this Chapter. Such bank shall pay to the Commissioner a fee ~~of~~ ~~$1,000~~ as set forth by rule."

g. Rewrite 53-7-301 to read:
"§ 53C-7-301. Conversion to a North Carolina bank charter.
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 such conversion. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee ~~of $5,000~~ as set forth by rule."

2. § 53-8-2 governs assessments and fees for banks. The corresponding section of current law contains the provisions dealing with assessments for consumer finance agencies. It also has language permitting adjustment of bank assessments from the statutory formula when economic circumstances warrant such adjustments.

a. The section of current law corresponding to 53-8-2 is 53-122. It also contains the provisions dealing with the fees and assessments for consumer finance licensees. That provision was removed from 53-8-2 and should be moved to the portion of Chapter 53 dealing with consumer finance companies, Article 15. OCOB recommends moving the assessment provision to a new § 53-191.1 to read:
"§ 53-191.1. Assessments of Consumer Finance Licensees.
Each consumer finance licensee shall pay an assessment not to exceed eighteen dollars ($18.00) per one hundred thousand dollars ($100,000) of assets, or fraction thereof, plus a fee of three hundred dollars ($300.00) per office; provided, however, a consumer finance licensee shall pay a minimum annual assessment of not less than five hundred dollars ($500.00). The assessment shall

be determined on a consumer finance licensee's total assets as shown on its report of condition made to the Commissioner of Banks as of December 31 each year, or the date most nearly approximating the same. If the Commissioner of Banks 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."

b. Pursuant to direction of the Chairs, OCOB staff has drafted an amendment restoring flexibility in assessment collections from banks by adding a new subdivision to 53-8-2. It was also necessary to make several conforming amendments to 53-8-2 as a result of moving consumer finance assessments to Article 15. OCOB recommends amending 53-8-2 by adding a new subdivision (4) to read:
"(4) In the first half of each calendar year, the State Banking Commission shall review the estimated cost of maintaining each division of the office of the Commissioner of Banks for the next fiscal year. If the estimated assessments provided for under Chapter 53 for any division shall exceed the estimated cost of maintaining that division for the next fiscal year, then the State Banking Commission may reduce by a uniform percentage and assessments provided for in Chapter 53 for that division. If the estimated assessments provided for in Chapter 53 for any division shall be less than the estimated cost of maintaining that division for the next fiscal year, then the State Banking Commission may increase by a uniform percentage and assessments provided for in Chapter 53 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 the office of the Commissioner of Banks for the next fiscal year."

3. In two places in Article 7A, the proposed law requires that a notice be given "not more than 30 days before nor less than 10 days after" a certain event. The intent was to create a window of 40 days during which the notice is to be given. To accomplish that intent, the later time period should be "not more than 10 days after...." OCOB recommends addressing those two provisions as follows:
   a. Rewrite the first sentence of 53-7-103 to read:
   "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 ~~less~~ more than 10 days after the filing of the application with the Commissioner."
   b. Rewrite the first sentence of 53-7-202(b) to read:
   "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 ~~less~~ more than 10 days after the filing of the application with the Commissioner."

4. Proposed 53-7-207(a) deals with combinations with and among subsidiaries. A number of questions were raised about the provisions of this section, particularly subsection (a), indicating a lack of clarity and overbreadth. OCOB determined that revisions to enhance the clarity and scope of 53-7-207(a) should be made and recommends that the Commission rewrite 53-7-207(a) to read:

"(a) With the approval of the Commissioner, a bank may combine with a subsidiary so long as a ~~the~~ bank is the resulting entity of the combination and may combine another company with a subsidiary. ~~subsidiary so long as the subsidiary of the bank is the resulting entity of the combination.~~ A combination of a subsidiary and another company shall be effected in accordance with organizational law applicable to each. The ~~merger~~ combination of two or more subsidiaries of the same bank is exempt from the provisions of this section as is the combination of two or more subsidiaries of the same bank holding company."

5. 53-8-12(b) refers to a publishing requirement that no longer exists and makes reference in two places to time limits of a number of "days," which begs the question about how to treat weekends and holidays. OCOB recommends deleting the reference to publication and specifying that the two time periods are "business days." OCOB recommends that 53-8-12(b) be rewritten to read:

"(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 therefore, or within the extension of time granted by the Commissioner, ~~or failing to publish the reports as required,~~ 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."

PROPOSED CHANGES TO THE
NORTH CAROLINA BANKING LAWS – CHAPTER 53 OF THE GENERAL STATUTES
ARTICLE 9A ADDRESSES SUPERVISORY LIQUIDATION; VOLUNTARY DISSOLUTION AND LIQUIDATION

Current Section(s)	Summary	New Section	Summary	Explanation of Change
Article 9A Supervisory Liquidation; Voluntary Dissolution and Liquidation.				
No corresponding section.	N/A	**53-9-101**	**53-9-101. Supervisory combinations.** This section provides the Commissioner with a powerful tool for dealing with a severely troubled bank. In order to protect the public, including depositors and creditors of the bank, upon a finding that the 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, the Commissioner may authorize or require a combination or other control transaction. The Commissioner is not required to take supervisory control of the bank pursuant to 53-8-14. The Commissioner may order that the transaction take place without the vote of the equity owners of the bank which would otherwise be required.	This provision gives specific authority to the Commissioner to utilize important tools for resolving the problems presented by a struggling bank. Quite commonly the best resolution, if one can be arranged, is a supervisory consolidation with a healthy institution.
53-20(g). Liquidation of banks.	53-20(c) and (g) grant broad authority to the Commissioner to take possession of a bank and to collect all debts and claims due the bank of whatever nature. It bars the officers and directors of the bank from exercising any powers that are vested in the Commissioner under this section.	**53-9-102**	**53-9-102. Distributions, assignments restricted.** This section 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. The bank may not make a general assignment of its assets for the benefit its creditors except by surrendering the assets to the Commissioner for dissolution and liquidation. Any other purported assignment is rendered void by this section.	The substance of the new provision falls within the limitations encompassed in the relevant subsection of existing law.

Ex #5

Current Section(s)	Summary	New Section	Summary	Explanation of Change
No corresponding section.	N/A	**53-9-103**	**53-9-103. Cancellation of charter.** This section sets forth the procedural requirement that the Commissioner cancel the charter, publishing notice of the cancellation, of any bank that ceases to exist or ceases to be eligible for a charter. A copy of the order is to be filed with the Secretary of State. The former bank is permitted to operate under Chapter 55, the N.C. Business Corporations Act, for so long as necessary to dissolve and liquidate its business and affairs.	This section is completely procedural in nature and covers the final steps taken in the liquidation of a bank. Charter in this context refers to the document issued by the Commissioner that permits the corporation to do business as a bank.
No corresponding section.	N/A	**53-9-201**	**53-9-201. Voluntary dissolution prior to receipt of charter.** Prior to issuance of a charter, a bank in formation may give notice to the Commissioner and, with the Commissioner's consent, abandon its application. With a majority vote of its board of directors, it may dissolve and liquidate under Chapter 55, the N.C. Business Corporations Act.	The new provision allows a simpler process for voluntary dissolution of a bank in formation, prior to receipt of its charter.
53-18. Voluntary liquidation	53-18 authorizes voluntary dissolution upon affirmative vote of two-thirds of its stockholders at a duly called meeting upon resolution of the board of directors. 10 days notice to stockholders is required. Where the stockholders vote for dissolution, a certified copy of the proceedings must be sent to the Commissioner for his approval. If the Commissioner approves, he or she is directed to issue a permit to dissolve. The permit is not to be issued until the Commissioner is satisfied that the bank has made adequate provision to pay off all of its depositors and creditors. If not so satisfied, the Commissioner is	**53-9-202**	**53-9-202. Voluntary dissolution.** This provision authorizes a bank, with the Commissioner's approval, to undertake a voluntary dissolution and liquidation. Subsection (b) lists the items that must be provided to the Commissioner by the board of directors of a bank that has determined to voluntarily dissolve: (i) the resolution of the board; (ii) the proposed articles of dissolution; (iii) the plan for dissolution; and (iv) any notices or proxy solicitation materials proposed to be sent to the shareholders. Subsection (c) authorizes the Commissioner to review all relevant materials and to authorize the plan to proceed as provided in 53-9-203. Subsection (d) requires a two-thirds vote of the shareholders to approve a voluntary dissolution and liquidation. Subsection (e) authorizes the	The new provision is much clearer and better organized than existing law in laying out the process for seeking voluntary dissolution. The stockholder vote required, two-thirds, remains unchanged.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	authorized to deny the permit and take possession of the bank and liquidate the bank as provided in Chapter 53. When the Commissioner does issue the permit, the directors of the bank must publish notice in the newspaper that it is liquidating and advising depositors and creditors to present their claims for payment. The notice must be published once a week for four weeks. A bank in liquidation is subject to examination by the Commissioner and required to provide any report he or she may request. All unpaid claims are subject to the escheats law. When approved by the Commissioner, the bank may transfer all of its assets to another institution. Such action requires a two-thirds vote of the board of directors. A certified copy of the minutes and the contract for the sale and transfer must be provided to the Commissioner. A certified copy of the Commissioner's order permitting liquidation or sale and transfer of assets, filed in the office of the Secretary of State, shall authorize the cancellation of the charter of the bank, but it may continue to exist under corporate law.		Commissioner to place a bank in receivership if a majority of its board of directors believes it should be dissolved and liquidated but finds it inadvisable or otherwise impractical to proceed with a vote of the equity owners.	
53-18. Voluntary liquidation 53-20(b). Liquidation of banks.	53-18 authorizes voluntary dissolution upon affirmative vote of two-thirds of its stockholders at a duly called meeting upon resolution of the board of directors. 10 days notice to stockholders is required. Where the stockholders vote for dissolution, a	**53-9-203**	**53-9-203. Voluntary dissolution and liquidation procedure.** This section sets forth the process for accomplishing a voluntary dissolution and liquidation. Subsection (a) directs the Commissioner, at the appropriate time to: (i) notify the bank's federal supervisory agency and the FDIC, if different; (ii) select and appoint a	The new provision sets forth the final procedural steps in accomplishing the dissolution and liquidation.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	certified copy of the proceedings must be sent to the Commissioner for his approval. If the Commissioner approves, he or she is directed to issue a permit to dissolve. The permit is not to be issued until the Commissioner is satisfied that the bank has made adequate provision to pay off all of its depositors and creditors. If not so satisfied, the Commissioner is authorized to deny the permit and take possession of the bank and liquidate the bank as provided in Chapter 53. When the Commissioner does issue the permit, the directors of the bank must publish notice in the newspaper that it is liquidating and advising depositors and creditors to present their claims for payment. The notice must be published once a week for four weeks. A bank in liquidation is subject to examination by the Commissioner and required to provide any report he or she may request. All unpaid claims are subject to the escheats law. When approved by the Commissioner, the bank may transfer all of its assets to another institution. Such action requires a two-thirds vote of the board of directors. A certified copy of the minutes and the contract for the sale and transfer must be provided to the Commissioner. A certified copy of the Commissioner's order permitting liquidation or sale and transfer of assets, filed in the office of the Secretary of State, shall authorize		receiver, just as in an involuntary dissolution; and (iii) attach a certificate of approval to the articles of dissolution, which may then be filed with the Secretary of State.	

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	the cancellation of the charter of the bank, but it may continue to exist under corporate law. 52-20(b) provides for action by a bank's board of directors, by resolution of a majority, to place the bank within the control of the Commissioner.			
53-19. When Commissioner of Banks may take charge. 53-20. Liquidation of banks. 53-37. Conditions under which banks may reopen.	53-19 provides that the Commissioner may take charge of a bank when any one of 10 listed factors exists, ranging from improper actions by responsible parties to impaired capital stock, unsafe or unsound operation or making a voluntary assignment of assets to creditors. 53-20 addresses all aspects of liquidation of a bank. Subsection (a) directs the Commissioner to take control of a bank that exhibits any one of a number of listed weaknesses including failure to follow the banking laws, regulations or requirements of the Commission, failure to make required reports to the Commissioner, becomes insolvent or is operating in an unsafe or unsound manner. Subsection (c) requires the Commissioner, within 48 hours of taking possession of a bank, to file a notice with the Clerk of Superior Court in the county where the bank is located stating that the action has been taken and the reason therefore. Filing that notice acts as a bar to any attachment or other legal proceeding against the bank or its assets. Subsection (d)	**53-9-301**	**53-9-301. Receivership.** This lengthy section addresses all aspects of receivership. Subsection (a) authorizes the Commissioner to take custody of the books, records and assets of a bank in a voluntary dissolution as set forth in Part 2 of this Article or if it reasonably appears from one or more examinations that any one of 9 listed factors are present ranging from inappropriate acts by officers, directors or liquidators of the bank to the bank's insolvency; or inability to continue operations. Subsection (b) sets forth the process for notifying the bank of the pending receivership and holding a hearing in those cases where an emergency requiring immediate action does not exist. Subsection (c) authorizes the Commissioner to appoint one or more receivers. Subsection (d) authorizes the Commissioner to appoint the FDIC as receiver and, upon so doing, relieves the Commissioner of any further responsibility. Subsection (e) addresses serving notice of the receivership on the bank and requires posting of public notice at each branch and by publication as defined in the definition section. Subsection (f) sets forth the general incidents of the appointment of a receiver, generally specifying that the receiver takes control and is not subject to the oversight of the officers, directors or shareholders of the bank. Subsection (g) sets forth the powers of the	The new provision and current law cover the same subject matter in largely equivalent ways. The new provision sets forth the procedure in clearer and more contemporary language. It eliminates reference to pending liquidations in the 1920s and 1930s.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	requires notice be given by the Commissioner of the action of taking possession of the bank to all banks or other entities in possession of any assets of the bank. No liens attach to any such assets after possession is taken by the Commissioner except as set forth in this section. Subsection (e) allows the bank to resume business only as provided in § 53-37 after the Commissioner has taken possession. Subsection (f) provides a process by which a bank may oppose the Commissioner's order to take possession of the bank and to seek an injunction from the Superior Court to halt the Commissioner. If the bank prevails at the hearing under this subsection and the Court allows it to reopen, the Court may require appropriate bond. Subsection (g) grants broad authority to the Commissioner in possession of a bank to collect all debts and claims due the bank of whatever nature. It bars the officers and directors of the bank from exercising any powers that are vested in the Commissioner under this section. Subsection (h) requires a bond of the Commissioner or the Commissioner's agent in the minimum amount of $5000. In the event that the FDIC is appointed as the Commissioner's agent, no such bond is required. Subsection (i) requires the Commissioner to file within 30 days an inventory of the assets and liabilities of		receiver, which are expansive and include all aspects of running the bank. Those powers continue until the bank is liquidated or returned to the prior or newly constituted management. Subsection (h) authorizes the Commissioner to determine that the receivership proceedings should be discontinued (except where the FDIC is the receiver) and to order the return of the operation of the bank to newly constituted management. Subsection (i) lists the priority of claims against a bank in receivership. Subsection (j) addresses allocation of available funds to the various classes of claims. Subsection (k) grants the Commissioner discretion in the payment of claims. Subsection (l) sets forth the procedure for accomplishing the dissolution of the bank when all assets have been liquidated. It provides for the transfer of unclaimed property to the Escheats Fund. The Commissioner conducts a review of the actions of the receiver and, upon approval, the receiver is given a final discharge and release.	

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	the bank in his possession with the Clerk of the superior court in the action and to maintain a copy at the bank. Subsection (j) requires newspaper publication of a notice once a week for 4 weeks calling on persons with claims against the bank to present the claims to the Commissioner at the bank within the time specified in the notice which must allow at least 90 days from the first publication. Subsection (k) addresses the process for rejecting claims, appealing rejections, or filing by interested parties of objections to claims not rejected by the Commissioner. Subsection (l) requires that the Commissioner file a list of claims presented and deposits, including and specifying claims rejected by him and file it with the Clerk, maintaining a copy in the bank's records with the inventory for examination. It addresses payment of claims filed late with assets remaining after valid claims have been paid. After 3 months, any remaining funds are to be paid to the Escheats Fund. Subsection (m) addresses when payments of dividends to stockholders and depositors may be made by the Commissioner in possession and sets forth the priority for distribution of assets of the bank under this subsection. Subsection (n) deals with deposits of collected funds in other banks and payment of interest on those deposits. Subsection (o)			

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	authorizes the Commissioner to retain the services of attorneys, accountants and Clerks and to pay them from the funds of the bank upon approval of the resident or presiding judge. Subsection (p) provides that the Commissioner is to hold unpaid dividends in trust for 10 years at which time he is to pay them over to the Treasurer and at that point the Commissioner is completely discharged. Subsection (q) provides that when the sums available to the Commissioner are insufficient to pay all valid claimants, the Commissioner is to file a report with the Clerk and is thereafter discharged. Subsection (r) directs the Commissioner, after he has paid all expenses of liquidation and every depositor and creditor of the bank, to call a meeting of the bank's stockholders by mail and also by newspaper publication once a week for four weeks. At the meeting, the stockholders will elect an agent to receive from the Commissioner any assets of the bank still remaining in the Commissioner's hands. The Commissioner is to transfer those assets to the agent and file a complete report of all the transactions taken with the Clerk. The filing of the report will service as a complete and final discharge of the Commissioner from all liability for the liquidation of the bank. The agent is directed to convert all assets to cash and to distribute the cash			

Current Section(s)	Summary	New Section	Summary	Explanation of Change
	to the stockholders as directed by them. As long as assets remain in the agents hands, the agent must file semiannual reports with the Commissioner. Subsection (s) directs the Commissioner to include in his annual report to the Governor a list of all banks liquidated pursuant to this section and to prepare periodically reports available for inspection by the public of all such banks. Subsection (t) authorizes the Commissioner to reimbursement by the bank of actual expenses incurred under this section. Subsection (u) makes the provisions of this section the exclusive procedure for liquidation of a bank. Subsection (v) deals with the applicability of the section to banks in the process of liquidation when the law was passed in 1927. Subsection (w) is another applicability provision, this one dealing with banks in existence on or after January 1, 1936. Subsection (x) directs that any funds due to a known but unlocated depositor are to be paid to the escheats fund as provided in Chapter 116B except as otherwise specifically provided in Chapter 53. 53-37 permits bank that has been under control of the Commissioner to reopen under specified conditions, essentially requiring that the circumstances warranting the Commissioner's taking control of the bank have been successfully addressed.			

Current Section(s)	Summary	New Section	Summary	Explanation of Change
53-22. Statute relating to receivers applicable to insolvent banks.	53-22 makes §§ 1-507.1 through 507.11, dealing with receivers or corporations, applicable to the liquidation and dissolution of a bank if not inconsistent with the provisions of 53-20.	**53-9-401**	**53-9-401. Statute relating to receivers applicable to insolvent banks.** This provision makes §§ 1-507.1 through 507.11, dealing with receivers or corporations, applicable to the liquidation and dissolution of a bank if not inconsistent with the provisions of Article 9A.	There is no substantive change.
53-23. Disposition of books, records, etc. 53-24. Destruction of records of liquidated insolvent banks.	53-23 requires the books and records of a liquidated bank to be deposited by the receiver in the office of the Clerk of Superior Court of the county in which the bank is located or such other place as the receiver believers will provide for proper safekeeping. The documents are to be held subject to the order of the Commissioner or the Clerk. 53-24 provides that after 10 years, the Clerk may destroy the records by burning them in the presence of the register of deeds and the sheriff of the county. After 10 years, the Commissioner may burn any records of the liquidated bank in his or her possession. The authority does not extend to any records held by the Clerk or Commissioner relating to the liquidation of the bank.	**53-9-402**	**53-9-402. Storage and destruction of records.** This section deals with the records of the dissolved bank, requiring the Commissioner to maintain them as required for bank records under § 53-6-14. After five years, the Commissioner is authorized to destroy the bank's records, but not OCOB's records regarding the bank, its receivership or dissolution.	The new provision does not involve the Clerk of Superior Court in the maintenance of the liquidated banks records and requires that the records only be maintained for 5 years before they may be destroyed by the Commissioner. The new provision does not prescribe a particular means of destruction beyond one that is "commercially reasonable."
53-25. Trust terminated on insolvency of trustee bank.	53-25 provides for the appointment by the Clerk of Superior Court of a successor trustee, upon petition, for any bank that is a trustee in any instrument upon the placement of that bank in receivership.	**53-9-403**	**53-9-403. Trust terminated on insolvency of trustee bank.** This section provides for the appointment by the Clerk of Superior Court of a successor trustee, upon petition, for any bank that is a trustee in any instrument upon the placement of that bank in receivership.	No substantive difference.
53-26. Petition for new trustee; service upon parties	53-26 section sets forth the process for petitioning for a substitute trustee and the notice that must be given to all	**53-9-404**	**53-9-404. Petition for new trustee; service upon parties interested.** This section sets forth the process for petitioning for a substitute trustee	The new provision incorporates all of the substance of the existing law except the requirement of publication in a newspaper.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
interested. 53-27. Publication and contents of notice.	interested parties, and published in the newspaper, to show cause why a substitute trustee should not be appointed. 53-27 requires that the notice set forth the names of the parties to the instrument, the date of the instrument and the place where it is recorded.		and the notice that must be given to all interested parties to show cause why a substitute trustee should not be appointed. The notice must set forth the names of the parties to the instrument, the date of the instrument and the place where it is recorded.	
53-28. Appointment where no objection is made.	53-28 provides that if no interested party appears at the hearing to object to the appointment of a substitute trustee, this section authorizes the Clerk of Superior Court to proceed with the appointment.	**53-9-405**	**53-9-405. Appointment of substitute trustee where no objection made.** If no interested party appears at the hearing to object to the appointment of a substitute trustee, this section authorizes the Clerk of Superior Court to proceed with the appointment.	No substantive difference.
53-29. Hearing where objection made; appeal from order.	53-29 directs the Clerk of Superior Court to hold a hearing where there is objection to the appointment and to decide the matter. The Clerk's decision may be appealed as in the case of special proceeding generally.	**53-9-406**	**53-9-406. Hearing where objection made, appeal from order.** This section directs the Clerk of Superior Court to hold a hearing where there is objection to the appointment and to decide the matter. The Clerk's decision may be appealed as in the case of special proceedings generally.	No substantive difference.
53-30. Registration of final order.	53-30 directs that the final appointment of a substitute trustee is to be certified by the Clerk of Superior Court and 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. It requires the register of deeds to enter "a minute" of the substitution in the margin of the record where the original instrument is recorded.	**53-9-407**	**53-9-407. Registration of final order.** This section provides that the final appointment of a substitute trustee is to be certified by the Clerk of Superior Court and 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.	The new provision does not require annotation of the original record to reflect the substitution of the trustee.
53-31. Petition and order applicable to all instruments	53-31 permits the order appointing a substitute trustee to apply to more than one instrument so long as each names	**53-9-408**	**53-9-408. Petition and order applicable to all instruments involved.** This section permits the order appointing a substitute trustee to apply to	No substantive difference.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
involved.	the same trustee.		more than one instrument so long as each names the same trustee.	
53-32. Additional remedy.	53-32 states that the appointment of a substitute trustee is in addition to and not in place of any other remedy provided by law.	**53-9-409**	**53-9-409. Additional remedy.** This section states that the appointment of a substitute trustee is in addition to and not in place of any other remedy provided by law.	No substantive difference.

Ray Grace
Ex # 6

Article 10A.

Bank Holding Companies

Part 1. Change in Control

§53-10-101. Holding companies.

Every holding company 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 such control transaction being subject to receipt of the approval of the Commissioner.

(b) The Commissioner may require a person who is obligated to file a notice or an application under this section to appoint an agent resident in this State for service of process upon the filing of such notice or application or as a condition to the acceptance of such 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 additional voting securities, or any person who is an affiliate of the person previously engaging in the approved control transaction with such permission and who is identified in the application submitted for the approval, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the transaction at least 10 days before the acquiring person or affiliate thereof first votes or directs the voting of the voting securities.

(2) An acquisition of control over voting securities by operation of law, will, or intestate succession, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the acquisition or transfer at least 10 days before the acquiring person first votes or directs the voting of the voting securities.

(3) Proxy solicitations by or on behalf of the holding company.

(4) 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.

(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 such Section 3.

(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 holding company of 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 Commissioner for the filing of further information has been determined by the Commissioner to have been satisfied.

§53-10-103. Application regarding a control transaction.

(a) A person seeking approval of a control transaction to which a holding company of bank is a party 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 confidential record of the Commissioner subject to G.S. 53-2-7(b).

§53-10-104. Public notice.

A person filing an application for approval of a control transaction 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 holding company and the address of its principle 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.

§53-10-105. Actions on control transaction application.

(a) The Commissioner shall examine the proposed control transaction, including the character, competence, and experience of the acquiring person and its proposed management personnel, to determine whether the financial stability of the holding company or the interests of the customers served by one or more bank subsidiaries of the holding company would be adversely affected by the proposed control transaction. Not later than the 60th day following receipt of a completed application for approval of a control transaction unless extraordinary circumstances require a longer period of review, the Commissioner shall approve or deny the application.

(b) The Commissioner may deny an application for approval of a control 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 holding company, one or more bank subsidiaries of the holding company or the financial interests of the customers of such banks.

(2) An examination of the character, competence, and 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 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 such 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 the holders' votes or consents have been approved by the Commissioner and that any representation to the contrary is a criminal offense, have not been made to the holders.

(c) If an application filed under this Part is approved by the Commissioner, the control transaction may become effective. All conditions to approval set forth in the order of the Commissioner shall be enforceable against the person, and each member of a group of persons, receiving the approval.

§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 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 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:

(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 and communities served by the banks controlled by the parties to the combination would be adversely affected by the proposed combination.

(d) Notwithstanding any laws to the contrary, information about the character, competence, or 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 laws of this State, 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 such decision within 10 days of the date of the issuance of the order in accordance with G.S. 53C-2-6 and continues to engage in such 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) for each day it remains in violation of the laws of this State. 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 such 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 such change.

Ex #7

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-ROz-10 [v.25] (12/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/15/2012 5:39:42 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.

The General Assembly of North Carolina enacts:

SECTION 1. Articles 1 through 14, 17, 17B and 18A 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 3 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.

(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.

"**§ 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 unless established as a depository 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

(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.

(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 company, that is organized under the laws of this State and is engaged in the business of receiving deposits (other than trust funds), paying monies and making loans.

(5) Bank Operating Subsidiary. – A subsidiary 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.

(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 "Tier 1 capital" as that term is defined in Part 325 of the Regulations of the FDIC or any successor regulation of the FDIC; provided, that if the term "Tier 1 capital" is replaced by a term including substantially the same components as "Tier 1 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 3 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.

(35) Federal Savings Association. – A federal savings association or federal savings bank chartered under Section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464.

(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 or that controls a company that directly or indirectly controls a depository institution.

(39) 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.

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

(41) Individual. – A human being.

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

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

(44) National Bank. – A banking association organized under 12 U.S.C. 21.

(45) 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, or a depository institution established under the laws of another state 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 officers, mortgage loan offices, and insurance agency offices, or a combination thereof.

(46) North Carolina Financial Institution. – A bank, savings institution, or trust company organized under the laws of this State.

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

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

(49) 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.

(50) 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.

(51) Organizers. – One or more individuals who are the organizers of a proposed ban 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, and at all times thereafter, is, or has been during the five years

preceding the appointment, a president, chief executive officer, director, or holder of five per cent (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 practical banker [redacted] who, at the time of appointment to the Commission, nor was within the five years preceding the appointment, an employee of a North [redacted] 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 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 that has an equity ownership interest in a bank or holding company and is entitled to vote such interest under the bank's or holding company's organizational documents.

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

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

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

(69) Trust Company. – A company that is formed primarily for the purpose of taking, executing, and administering trusts, and which is not a depository institution.

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

(71) Voting Securities. –Voting Securities means:

a. Any equity ownership interest in a company that entitles the holder to vote on any matter presented to holders of equity ownership interests in the company for a vote, and

b. Any equity interest, right to acquire an equity ownership interest, debt instrument or other similar interest or instrument convertible into an equity ownership interest that entitles the holder to vote on any matter presented to holders of equity ownership interest which may be converted into a voting equity ownership interest.

"**§ 53-1-5. Severability.**

If any provision of this Chapter is found by any court of competent jurisdiction to be in valid 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 five practical bankers, and seven 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 public member. 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) 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 Commission 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 him for administration or in connection with any bank or the rights, liabilities, property or assets thereof, under his 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.

"**§ 53-2-3. The Office of the Commissioner of Banks.**

(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 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.

"**§ 53-2-4. Administration of the Office of the Commissioner of Banks.**

(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 by statute. 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 five 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 Commissioner may set public hearings on matters within its purview.

"**§ 53-2-7. Official record.**

(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 the names or other personal information of any customers of any person or revealing the collateral given by any such customers in connection with an extension of credit; 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 company, 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 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 institution or trust companies, 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 to not 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 in the amount of ten thousand dollars ($10,000) 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 company 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 and the application for a charter.

(2) All funds paid for shares of the proposed bank shall be placed in escrow under an agreement, and with an escrow agent approved by 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.

(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.

(b) 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 or the Commission and that a representation to the contrary is a criminal offense.

(3) All payments for purchases of shares are made in legal tender of the United States.

(4) The proposed bank has an operational expense fund from which to 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 five 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 do "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 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 recommended conditions. The Commission shall render its decision within 30 days after the completion of 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 cash 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 G.S. 53-3-7(c) or other applicable law."

Article 4A

Governance of Banks

§ 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 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 consent to service of process in Wake County, North Carolina prior to taking office.

"**§ 53-4-6. Liability of directors.**

Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of the bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its stockholders or any other person shall have sustained in consequence of such violation.

"**§ 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.

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

"**§ 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 lawful money of the United States 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 a compliance review 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, 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 provided 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 the trust business.

(5) 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) or (b) 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 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 equal in market value to the amount of such deposits, and such bonds shall be valid security for all loans and deposits to the same extent as are any obligations of the United States.

(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, or national bank subsidiary 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 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 corporation organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors.

(i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:

(1) As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith.

(2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real property acquired under this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made.

(j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government, or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent of its required capital.

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 it 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 firm the liabilities of the several members of

the firm, 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.

(d) This section shall not affect the law governing transactions with minors in cases outside the scope of this section, including transactions that constitute an extension of credit to the minor.

"**§ 53-6-5. Trust accounts; limited documentation required; certification of trust.**

(a) A bank may accept and administer a deposit account and lease a safe deposit box:

(1) To one or more persons purporting to act as trustee or trustees for a trust; and

(2) For which further notice of the existence and terms of the trust is not given in writing to the bank.

(b) For any deposit account that is opened with any bank or any safe deposit box leased from any bank by one or more persons purporting to act as trustee or trustees pursuant to a written trust agreement, a trustee may provide the bank with a certification of trust, as described in Chapter 36A of the General Statutes, to evidence the trust relationship.

(c) Unless specifically otherwise agreed to by the bank in writing, the action of any one or more of the named trustees, acting alone and without the knowledge, consent or joinder of any other trustee or trustees, shall be binding upon the trust, all other trustees, and all trust beneficiaries.

(d) Upon the death, resignation, dissolution or adjudication of incompetence of all named trustees and successor trustees noted on a certification of trust, a bank may, regardless of its knowledge of competing claims, withhold disposition of any funds on deposit in the account and freeze any safe deposit box leased by the trustee o trustees until receipt of one of the following:

(1) An order by a court of competent jurisdiction directing the disposition of funds and any safe deposit box.

(2) A newly executed certification of trust from a person acting or purporting to act as a newly appointed successor trustee under the same trust.

(3) Other documentation that establishes to the satisfaction of the bank the manner in which the funds and any safe deposit box are to be administered or distributed.

(e) Nothing in this section shall obligate a bank to establish a deposit account for, or lease a safe deposit box to, a trustee who refuses to furnish the bank with either a copy of a written trust agreement or a certification of trust.

"**§ 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

(2) Upon the death of one joint owner, the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

_____

_____

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

(h) Any joint tenant may terminate a joint account.

(i) Where a joint account is held by two or more individuals and a joint tenant does not wish for the account to be terminated but requests to be removed from the account, the bank shall remove the joint tenant from the account. The joint account shall continue in the names of the remaining tenant or tenants. Any joint tenant who requested to be removed from an account remains liable for any debts incurred in connection with the joint account during the period in which the individual was 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 total discharge of the bank's obligation as to the amount paid. 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 band 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 actins 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, 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 of 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 first 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. 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 notice requirement 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.

"**§ 53-6-18. Nonbranch bank business offices.**

(a) A bank may establish one or more nonbranch bank business offices as defined by G.S. 53-1-4(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 a product, service or other type 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.

"**§ 53-6-20. Interstate branching.**

(a) To the extent permitted by federal law, out-of-state banks may establish branches in this State. An out-of-state bank desiring to establish a branch in this State, whether by de novo establishment or by acquisition of an existing branch of another depository institution, shall provide the Commissioner with written notification of the intent not later than the date on which the out-of-state bank makes application to its federal bank supervisory authority for approval to establish or acquire the branch.

(b) An out-of-state bank that establishes and maintains one or more branches in this State may conduct any activities at the branch or branches that are authorized under the laws of

this State for banks, except to the extent the activities may be prohibited by other laws, regulations, or orders applicable to the out-of-state bank. In addition to all other rights and powers provided under this Chapter, out-of-state banks which are engaged in the business of banking in this State and each of their subsidiaries, subject to the prior approval of the Commissioner, may make any extension of credit or investment, exercise any power, and engage in any activity which they could make, exercise or engage in if incorporated or operating as federally chartered institutions, and they shall be entitled to all rights, privileges, and protections granted or available to federal chartered institutions.

Article 7A

Control Transactions; Combinations; Conversions.

Part 1. Change in Control.

"**§ 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 a fee of five thousand dollars ($5,000.00).

(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) Proxy solicitations by or on behalf of the bank.

(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 law.

(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 less 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.

(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.

"**§ 53-7-105. 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. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee of five thousand dollars ($5,000.00).

"**§ 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 less 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. Surviving depository institution.**

The depository institution resulting from a combination shall immediately be vested, by law and without any conveyance or transfer, with all rights, powers and duties of each party to the combination, including contractual, property and fiduciary rights, powers and duties, except as otherwise provided by the order of the Commissioner approving the combination, the organizational documents of the resulting depository institution or the law of the United States, and shall be deemed a continuation of each party to the combination. Except for a combination effected as a transfer of substantially all of the assets and liabilities of a bank, the combination of a depository institution in which it is not the resulting bank shall not be deemed an assignment of contractual other rights or liabilities by the combined bank.

"**§ 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 combine with a subsidiary so long as the bank is the resulting entity of the combination and may combine another company with a subsidiary so long as the subsidiary of the bank is the resulting entity of the combination. A combination of a subsidiary and another company shall be effected in accordance with

organizational law applicable to each. The combination of two or more subsidiaries of the same bank is exempt from the provisions of this section.

(b) The bank seeking approval of the 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 Commission 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 of one thousand dollars ($1,000.00).

(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.

(d) The bank resulting from the combination with a subsidiary shall immediately be vested, by law and without any conveyance or transfer, with all rights, powers and duties of the subsidiary, including contractual, property and fiduciary rights, powers and duties, except as otherwise provided by the order of the Commissioner approving the combination or the organizational documents of the resulting bank, and shall be deemed a continuation of each party to the combination. Any reference to a party to the combination in any writing, whether executed or taking effect before or after the combination is effective, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of the writing.

"**§ 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.

Part 3. Charter Conversion.

"**§ 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 is 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 of five thousand dollars ($5,000.00).

(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 and shall cease to exist as an entity chartered under the laws of this State.

(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 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 through the employees and agents of the OCOB all laws relating to banks. All banks shall conduct their business in a manner consistent with all laws, rules, and orders relating to banking.

(b) The Commissioner may enter into written agreements, cease and desist order stipulations, consensual cease and desist 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 consensual 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.

"**§ 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, shall 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 1 misdemeanor and may be fined a sum equal to the amount of the extension made or the gratuity given. If the Commissioner, any deputy commissioner, or any bank examiner accepts an extension of credit or gratuity from any bank, or from any officer, director, employee or affiliate thereof, that individual shall be guilty of a Class 1 misdemeanor, and may be fined a sum equal to the extension of credit made or the gratuity given.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commissioner may exempt from the application of subsection (a) any deputy commissioner, or any bank examiner with respect to any extension of credit existing upon the hiring of the deputy commissioner or bank examiner by the OCOB and any extension of the term or renewal of such extension of credit made thereafter, so long as the extension of term or renewal has terms and conditions generally available to customers of the applicable bank having generally the same creditworthiness as the deputy commissioner or bank examiner.

"**§ 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:

(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 days after the receipt of a request or requisition therefor, or within the extension of time granted by the Commissioner, or failing to publish the reports as required, shall be notified by the Commissioner, and if the failure continues for five 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 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 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 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 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 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.

"**§ 53-8-15. Removal of directors, officers, and employees.**

(a) If the Commissioner determines that a director, officer, or employee of a bank has participated in or consented to any violation of this Chapter or an order of the 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 9

Supervisory Liquidation; Voluntary Dissolution and Liquidation.

Part 1. General Provisions.

"**§ 53-9-101. Supervisory combinations.**

Notwithstanding any other provision of this Chapter, in order to protect the public, including depositors and creditors of a bank, the Commissioner, upon making a finding that a bank is unable to operate in a safe and sound manner and is not reasonably likely to be able to resume safe and sound operations, may authorize or require a combination of the bank, a control transaction or any other transaction, whether or not the Commissioner has taken supervisory control pursuant to G.S. 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 ot 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.

"**§ 53-9-202. Voluntary dissolution.**

(a) With the approval of the Commissioner, a bank may engage in a voluntary dissolution and liquidation.

(b) If, by a majority vote, the board of directors of a bank should determine that in their judgment the bank should be dissolved and liquidated, then the board of directors shall 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 a 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 deliver 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, chooses in action, bills, instruments, notes, intangible interests and property of every description of the bank.

(2) Foreclose mortgages, deeds of trust, and other liens granted to the bank to the extent the bank would have the right to do so.

(3) Seek injunctions and institute suits for the recovery of any property, damages, or demands existing in favor of the bank, and shall, upon the receiver's own application, be substituted as party plaintiff in the place of the bank in any suit or proceeding pending at the time of the receiver's appointment.

(4) Sell, convey and assign any or all of the property rights and interests owned by the bank.

(5) Appoint agents and engage independent contractors.

(6) Examine papers and investigate persons.

(7) Make and carry out agreements with the FDIC for the payment or assumption of the bank's liabilities, in whole or in part, and to sell, convey, transfer, pledge, or assign assets as security or otherwise and to make guarantees in connection therewith.

(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 and records to be conducted, with which the receiver shall assist. The accounts of the receiver shall then be ruled upon by the Commissioner, and if approved, the receiver shall be given a final and complete discharge and release.

Part 4. Provisions Relating to Any Dissolution or Receivership.

"**§ 53-9-401. Statute relating to receivers applicable to insolvent banks.**

The provisions of G.S. 1-507.1 through 1-507.11, relating to receivers, when not inconsistent with the provisions of this Article, shall apply to the liquidation of banks under this Article.

"**§ 53-9-402. Storage and destruction of records.**

(a) Any record of a bank that is in or has completed the process of dissolution and liquidation may be kept in compliance with the provisions of G.S. 53-6-14.

(b) All records of a bank which has completed the process of dissolution and liquidation shall be held in such place as in the Commissioner's judgment will provide for their proper safekeeping and protection.

(c) After the expiration of five years from the date of filing of the certificate of completed liquidation under G.S. 53-9-301, the records of the liquidated bank may be destroyed by the Commissioner using commercially reasonable record destruction procedures.

(d) Nothing in this section shall be construed to authorize the destruction by the Commissioner any of the records of the OCOB made by it with reference to the dissolution, receivership or liquidation of any bank.

"**§ 53-9-403. Trust terminated on insolvency of trustee bank.**

Whenever any bank, which has been, or shall be, appointed trustee in any indenture, deed of trust or other instrument of like character, executed to secure the payment of any bonds, notes or other evidences of indebtedness, has been or shall be placed in receivership, the powers and duties of the bank as trustee in any such instrument shall,, upon the entry of an order of the Clerk of Superior Court having jurisdiction under G.S. 53-9-405 appointing a successor trustee, upon a petition as described in this Part, immediately cease.

"**§ 53-9-404. Petition for new trustee; upon parties interested.**

In all cases of dissolution receivership and liquidation under this Article, the Clerk of Superior Court of any county in which an indenture, deed of trust or other instrument of like character is recorded shall, upon the verified petition of any person interested in any such trust, either as trustee, beneficiary or otherwise, which interest shall be set out in the petition, enter an order directing service, in the manner required by law for service of summons, on all interested parties of a notice requiring all persons having any interest in the trust, to appear at the Clerk's office on a day designated in the order and notice, not less than 30 days from the date of the first publication of the notice, and show cause why a new trustee shall not be appointed. The notice shall set forth the names of the parties to the indenture, deed of trust or other such instrument, and the date the documents were executed and the place of recording.

"**§ 53-9-405. Appointment of substitute trustee where no objection made.**

If, upon the day fixed in the notice, no person appears and objects to the appointment of a substitute trustee, the Clerk of Superior Court shall, upon such terms 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.

"**§ 53-9-409. Additional remedy.**

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 10

Holding Companies.

"**§ 53-10-1. Holdings companies.**

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.

"**§ 53-10-2. Holding company control transaction.**

(a) A person seeking to engage in a control transaction or combination to which a holding company formed under the laws of this State and having a bank as a subsidiary is a party shall file the following with the Commissioner:

(1) An application in the form prescribed by the Commissioner.

(2) All filing fees required by a rule of the Commissioner.

(3) Any other information required by rule of the Commissioner or required 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.

"**§ 53-10-3. Actions on control transaction and combination applications.**

(a) Not later than the 60th day following receipt of an application for approval of a control transaction or a combination under G.S. 53-10-2, the Commissioner shall approve or deny the application.

(b) The Commissioner may deny an application for approval of a control transaction or combination to which a holding company is a party for any of the following reasons:

(1) The financial condition of the person seeking approval of a control transaction or a combination could jeopardize the financial stability of the bank that is a subsidiary of the holding company or the financial interests of the bank's customers.

(2) The Commissioner's examination of the character, competence or experience of any acquiring person shows that it would not be in the interest of the depositors of the bank that is a subsidiary 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 of a control transaction or a combination to which a holding company is a party would not be in the best interests of the subsidiary bank's customers.

(4) Upon the effective date of the proposed control transaction or combination, the bank that is a subsidiary of the holding company would have inadequate equity or not be in compliance with this Chapter or rules of the Commissioner.

(5) The application for approval is incomplete.

(6) If the person seeking approval solicits votes for the approval of or consents to such control transaction or combination from the holders of the voting securities of the holding company, adequate and complete disclosures of all material information about the proposed control transaction or combination, together with a prominent statement that neither such control transaction combination nor any solicitation of such holders' votes or consents has been approved by the Commissioner or the Commission 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 Article is approved by the Commissioner, the control transaction or combination may be effected. 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.

"**§ 53-10-4. Appeal.**

Any order of the Commissioner denying an application for approval of a control transaction or combination to which a holding company is a party may be appealed to the Commission by the person filing the application denied as provided in G.S. 53-2-6.

"**§ 53-10-5. Cease and desist order.**

Upon a finding that any action of a holding company subject to this Article may be in violation of any laws of this State, 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 laws of this State. 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.

"**§ 53-10-6. Other control changes.**

Each holding company 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 the change.

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

February 27, 2012

MEMORANDUM

TO:	Members, Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws
FROM:	Rep. Harold J. Brubaker, Co-Chair Senator Harry Brown, Co-Chair
SUBJECT:	Meeting Notice

DAY	**DATE**	**TIME**	**ROOM**
Tuesday	March 27, 2012	10:00 am	544 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Cindy Coley at (919) 715-4946.

cc: Committee Record _X_
Interested Parties _X_

Cindy Coley (Rep. Brubaker)

From: Cindy Coley (Rep. Brubaker)
Sent: Monday, February 27, 2012 3:43 PM
To: Cindy Coley (Rep. Brubaker)
Subject: Banking Laws Modernization, Jt. Leg. Study (2011)

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

February 27, 2012

MEMORANDUM

TO: Members, Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

FROM: Rep. Harold J. Brubaker, Co-Chair

Senator Harry Brown, Co-Chair

SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Tuesday	March 27, 2012	10:00 am	544 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Cindy Coley at (919) 715-4946.

MINUTES

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

Thursday, April 12, 2012

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws met on Thursday, April 12, 2012 at 1:00 p.m., Room 421 Legislative Office Building, Raleigh, North Carolina. In attendance were Representative Brubaker (Chairman); Representatives Daughtry, Jordan, and McCormick; Senator Brown (Chairman); Senators Blake and Blue; Christopher Kukla, Gray Reed, Charles Whitehead, Jr., and Andrea (Beth) Young. Ryan Blackledge (Bill Drafting Staff), Karen Cochrane-Brown (Research Staff) Greg Roney (Research Staff), and Committee Assistants Cindy Coley and Darryl Black were present.

Representative Brubaker, Chairman, called the meeting to order and recognized House Sergeant-At-Arms Staff Fred Hines and Martha Gadison; and Senate Sergeant-At-Arms Staff Ken Kirby and Ron Spann.

Representative Brubaker called for adoption of the March 27, 2012 Minutes. Upon a motion by Representative Daughtry and seconded by Senator Brown, the March 27, 2012 Minutes were unanimously approved.

Representative Brubaker, Chairman recognized Paul Stock, Legal Specialist, North Carolina Commissioner of Banks who reviewed "A Comparison of the Provisions of Current G.S. 53-19 and Proposed G.S. 53-9-301" which is attached as Exhibit #1. This information was requested by Representative Jordan at the March 27, 2012 meeting.

Paul Stock then reviewed the "Proposed Revisions to G.S. 53-5-2 which is attached as Exhibit #2.

***Representative Brubaker requested that Staff and the OCOB clarify Item 13 (Bank Premises) which allows banks to include in Bank Premises additional office space to be rented or subleased for more than 5 years.**

***The following sections also will stay in the Final Report but are subject to further review by the Study Commission:**

Item 15 – Definition of Capital.
Item 35, Section 53-4-6, Page 7 – Bank Board of Directors Liability.

Rep. Brubaker advised Study Commission Members that the Final Report would be presented at the April 26, 2012 meeting for their consideration and approval.

Chairman Brubaker again reminded the members that the next meeting is scheduled for Thursday, April 26, 2012, 10:00 a.m., 643 Legislative Office Building, Raleigh, North Carolina. There being no further business, the meeting adjourned at 1:30 p. m.

Rep. Harold J. Brubaker, Chairman

Sen. Harry Brown, Chairman

ATTEST:

Cindy Coley, Committee Assistant

MINUTES

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

Thursday, April 12, 2012

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws met on Thursday, April 12, 2012 at 1:00 p.m., Room 421 Legislative Office Building, Raleigh, North Carolina. In attendance were Representative Brubaker (Chairman); Representatives Daughtry, Jordan, and McCormick; Senator Brown (Chairman); Senators Blake and Blue; Christopher Kukla, Gray Reed, Charles Whitehead, Jr., and Andrea (Beth) Young. Ryan Blackledge (Bill Drafting Staff), Karen Cochrane-Brown (Research Staff) Greg Roney (Research Staff), and Committee Assistants Cindy Coley and Darryl Black were present.

Representative Brubaker, Chairman, called the meeting to order and recognized House Sergeant-At-Arms Staff Fred Hines and Martha Gadison; and Senate Sergeant-At-Arms Staff Ken Kirby and Ron Spann.

Representative Brubaker called for adoption of the March 27, 2012 Minutes. Upon a motion by Representative Daughtry and seconded by Senator Brown, the March 27, 2012 Minutes were unanimously approved.

Representative Brubaker, Chairman recognized Paul Stock, Legal Specialist, North Carolina Commissioner of Banks who reviewed "A Comparison of the Provisions of Current G.S. 53-19 and Proposed G.S. 53-9-301" which is attached as Exhibit #1. This information was requested by Representative Jordan at the March 27, 2012 meeting.

Paul Stock then reviewed the "Proposed Revisions to G.S. 53-5-2 which is attached as Exhibit #2.

***Representative Brubaker requested that Staff and the OCOB clarify Item 13 (Bank Premises) which allows banks to include in Bank Premises additional office space to be rented or subleased for more than 5 years.**

***The following sections also will stay in the Final Report but are subject to further review by the Study Commission:**

Item 15 – Definition of Capital.
Item 35, Section 53-4-6, Page 7 – Bank Board of Directors Liability.

Rep. Brubaker advised Study Commission Members that the Final Report would be presented at the April 26, 2012 meeting for their consideration and approval.

Chairman Brubaker again reminded the members that the next meeting is scheduled for Thursday, April 26, 2012, 10:00 a.m., 643 Legislative Office Building, Raleigh, North Carolina. There being no further business, the meeting adjourned at 1:30 p. m.

Rep. Harold J. Brubaker, Chairman

Sen. Harry Brown, Chairman

ATTEST:

Cindy Coley, Committee Assistant

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

Senator Harry Brown, Co-Chair ***Representative Harold J. Brubaker, Co-Chair***

AGENDA

Thursday April 12, 2012
1:00 pm.
Room 421 LOB

1. **Welcome and Introductions**
   Representative Harold Brubaker, Co-Chair

2. **Approve Minutes from March 27, 2012 Meeting**

3. **A Comparison of the Provisions of Current G.S. 53-19 and Proposed G.S. 53-9-301**
   Paul Stock, Legal Specialist, Office of North Carolina Commissioner of Banks

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

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

6. **Committee Discussion and Directions to Staff for Final Report**

7. **Adjourn**

ATTENDANCE

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

(Name of Committee)

DATES	Nov. 21, 2011	Dec. 19, 2011	Jan. 20, 2012	Feb. 14, 2012	March 6, 2012	March 27, 2012	April 12, 2012
Rep. Brubaker, - House Chair	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Sen. Harry Brown, Senate Chair	No	Yes	Yes	Yes	Yes	Yes	Yes
Rep. Leo Daughtry	Yes	Yes	N	N	Yes	Yes	Yes
Rep. Beverly Earle	Yes	Yes	N	N	Yes	N	N
Rep. Jonathan Jordan	N	Yes	Yes	Yes	Yes	Yes	Yes
Rep. Daniel McComas	N	Yes	Yes	N	Yes	Yes	N
Sen. Thomas Apodaca	N	N	N	N	N	Yes	N
Sen. Harris Blake	N	Yes	Yes	N	Yes	Yes	Yes
Sen. Dan Blue	Yes	Yes	Yes	Yes	N	N	Yes
Sen. Thom Goolsby	N	N	N	N	N	N	N
Charles Whitehead (House Bank)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Gray Reed (Senate Bank)	N	Yes	Yes	Yes	Yes	Yes	Yes
Christopher Kukla (House)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Andrea Young (Senate)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Rep. Darryl McCormick			Yes	N	Yes	N	Yes

Committee Sergeants at Arms

NAME OF COMMITTEE Joint Study Modernization of N.C. Banking Laws

DATE: 4-12-12 **Room:** 421

House Sgt-At Arms:

1. **Name:** Fred Hines
2. **Name:** Martha Gadison
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

Senate Sgt-At Arms:

1. **Name:** Ken Kirby
2. **Name:** Ron SPANN
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — APRIL 12, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joseph A. Smith, Jr.	Poyner Spruill LLP
[signature]	NCCOB
Knox Proctor	NCCOB
Rowe Campbell	NCCOB
[signature]	NCCOB
Jeff Klein	BB&T
DANIEL GARNER	NCCOB
Jeff Wolfe	Smith Anderson
Geoff Adams	Smith Anderson
Todd Everson	Gretta & Everson
Ha Nguyen	NCCOB

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — APRIL 12, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Solari	DSI
Daniel Baum	Troutman Sanders
Lauren Wheatley	NCCUL
Elliot Rushing	NC Dept. of Secretary of State
Lisa McDougald	BB&T
Joff Lein	BB&T
Charlie Fields	NCCOB
[signature]	NMRS
Rochelle Sparks	NC Justice Center
Al Ripley	"
[signature]	[signature]

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — APRIL 12, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Bar Asso.
Miranda Streeter	
Olivia McCormick	LA
Ben Davis	Brooks Pierce / NCBA
Nathan Batts	NC Bankers Assoc.
Kim Crouch	NCBA
John Harris	LAWA
David McKowan	NC Realtors

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-ROz-10 [v.29] (12/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/29/2012 12:39:56 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.

The General Assembly of North Carolina enacts:

SECTION 1. Articles 1 through 14, 17, 17B and 18A 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 3 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.

(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.

"**§ 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 unless established as a depository 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

(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.

(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 company, that is organized under the laws of this State and is engaged in the business of receiving deposits (other than trust funds), paying monies and making loans.

(5) Bank Operating Subsidiary. – A subsidiary 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.

(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 "Tier 1 capital" as that term is defined in Part 325 of the Regulations of the FDIC or any successor regulation of the FDIC; provided, that if the term "Tier 1 capital" is replaced by a term including substantially the same components as "Tier 1 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 3 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.

(35) Federal Savings Association. – A federal savings association or federal savings bank chartered under Section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464.

(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 or that controls a company that directly or indirectly controls a depository institution.

(39) 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.

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

(41) Individual. – A human being.

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

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

(44) National Bank. – A banking association organized under 12 U.S.C. 21.

(45) 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, or a depository institution established under the laws of another state 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 officers, mortgage loan offices, and insurance agency offices, or a combination thereof.

(46) North Carolina Financial Institution. – A bank, savings institution, or trust company organized under the laws of this State.

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

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

(49) 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.

(50) 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.

(51) Organizers. – One or more individuals who are the organizers of a proposed ban 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, and at all times thereafter, 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 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 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 that has an equity ownership interest in a bank or holding company and is entitled to vote such interest under the bank's or holding company's organizational documents.

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

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

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

(69) Trust Company. – A company that is formed primarily for the purpose of taking, executing, and administering trusts, and which is not a depository institution.

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

(71) Voting Securities. –Voting Securities means:

a. Any equity ownership interest in a company that entitles the holder to vote on any matter presented to holders of equity ownership interests in the company for a vote, and

b. Any equity interest, right to acquire an equity ownership interest, debt instrument or other similar interest or instrument convertible into an equity ownership interest that entitles the holder to vote on any matter presented to holders of equity ownership interest which may be converted into a voting equity ownership interest.

"**§ 53-1-5. Severability.**

If any provision of this Chapter is found by any court of competent jurisdiction to be in valid 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) 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 him for administration or in connection with any bank or the rights, liabilities, property or assets thereof, under his 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.

"**§ 53-2-3. The Office of the Commissioner of Banks.**

(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 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.

"**§ 53-2-4. Administration of the Office of the Commissioner of Banks.**

(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 five 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."

§ 53-2-7. Official record.

(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 the names or other personal information of any customers of any person or revealing the collateral given by any such customers in connection with an extension of credit; 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 company, 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 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 institution or trust companies, 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 to not 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 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 company 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 and the application for a charter.

(2) All funds paid for shares of the proposed bank shall be placed in escrow under an agreement, and with an escrow agent approved by 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.

(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.

(b) 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 or the Commission and that a representation to the contrary is a criminal offense.

(3) All payments for purchases of shares are made in legal tender of the United States.

(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 five 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 do "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 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 recommended conditions. The Commission shall render its decision within 30 days after the completion of 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 cash 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 G.S. 53-3-7(c) or other applicable law."

Article 4A

Governance of Banks

§ 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 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 consent to service of process in Wake County, North Carolina prior to taking office.

"**§ 53-4-6. Liability of directors.**

Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of the bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its stockholders or any other person shall have sustained in consequence of such violation.

"**§ 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.

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

"**§ 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 lawful money of the United States 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 a compliance review 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, 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 provided 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 the trust business.

(5) 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) or (b) 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 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 equal in market value to the amount of such deposits, and such bonds shall be valid security for all loans and deposits to the same extent as are any obligations of the United States.

(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, or national bank subsidiary 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 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 corporation organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors.

(i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:

(1) As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith.

(2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real property acquired under this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made.

(j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government, or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent of its required capital.

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 it 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 firm the liabilities of the several members of the firm, 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.

(d) This section shall not affect the law governing transactions with minors in cases outside the scope of this section, including transactions that constitute an extension of credit to the minor.

"**§ 53-6-5. Trust accounts; limited documentation required; certification of trust.**

(a) A bank may accept and administer a deposit account and lease a safe deposit box:

(1) To one or more persons purporting to act as trustee or trustees for a trust; and

(2) For which further notice of the existence and terms of the trust is not given in writing to the bank.

(b) For any deposit account that is opened with any bank or any safe deposit box leased from any bank by one or more persons purporting to act as trustee or trustees pursuant to a written trust agreement, a trustee may provide the bank with a certification of trust, as described in Chapter 36A of the General Statutes, to evidence the trust relationship.

(c) Unless specifically otherwise agreed to by the bank in writing, the action of any one or more of the named trustees, acting alone and without the knowledge, consent or joinder of any other trustee or trustees, shall be binding upon the trust, all other trustees, and all trust beneficiaries.

(d) Upon the death, resignation, dissolution or adjudication of incompetence of all named trustees and successor trustees noted on a certification of trust, a bank may, regardless of its knowledge of competing claims, withhold disposition of any funds on deposit in the account and freeze any safe deposit box leased by the trustee o trustees until receipt of one of the following:

(1) An order by a court of competent jurisdiction directing the disposition of funds and any safe deposit box.

(2) A newly executed certification of trust from a person acting or purporting to act as a newly appointed successor trustee under the same trust.

(3) Other documentation that establishes to the satisfaction of the bank the manner in which the funds and any safe deposit box are to be administered or distributed.

(e) Nothing in this section shall obligate a bank to establish a deposit account for, or lease a safe deposit box to, a trustee who refuses to furnish the bank with either a copy of a written trust agreement or a certification of trust.

"**§ 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

(2) Upon the death of one joint owner, the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

_____

_____

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

(h) Any joint tenant may terminate a joint account.

(i) Where a joint account is held by two or more individuals and a joint tenant does not wish for the account to be terminated but requests to be removed from the account, the bank shall remove the joint tenant from the account. The joint account shall continue in the names of the remaining tenant or tenants. Any joint tenant who requested to be removed from an account remains liable for any debts incurred in connection with the joint account during the period in which the individual was 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 total discharge of the bank's obligation as to the amount paid. 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 band 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 actins 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, 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 of 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 first 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. 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 notice requirement 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.

"**§ 53-6-18. Nonbranch bank business offices.**

(a) A bank may establish one or more nonbranch bank business offices as defined by G.S. 53-1-4(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 a product, service or other type 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.

"**§ 53-6-20. Interstate branching.**

(a) To the extent permitted by federal law, out-of-state banks may establish branches in this State. An out-of-state bank desiring to establish a branch in this State, whether by de novo establishment or by acquisition of an existing branch of another depository institution, shall provide the Commissioner with written notification of the intent not later than the date on which the out-of-state bank makes application to its federal bank supervisory authority for approval to establish or acquire the branch.

(b) An out-of-state bank that establishes and maintains one or more branches in this State may conduct any activities at the branch or branches that are authorized under the laws of this State for banks, except to the extent the activities may be prohibited by other laws, regulations, or orders applicable to the out-of-state bank. In addition to all other rights and powers provided under this Chapter, out-of-state banks which are engaged in the business of banking in this State and each of their subsidiaries, subject to the prior approval of the Commissioner, may make any extension of credit or investment, exercise any power, and engage in any activity which they could make, exercise or engage in if incorporated or operating as federally chartered institutions, and they shall be entitled to all rights, privileges, and protections granted or available to federal chartered institutions.

Article 7A

Control Transactions; Combinations; Conversions.

Part 1. Change in Control.

"§ 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) Proxy solicitations by or on behalf of the bank.

(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.

(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.

"**§ 53-7-105. 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. 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. Surviving depository institution.**

The depository institution resulting from a combination shall immediately be vested, by law and without any conveyance or transfer, with all rights, powers and duties of each party to the combination, including contractual, property and fiduciary rights, powers and duties, except as otherwise provided by the order of the Commissioner approving the combination, the organizational documents of the resulting depository institution or the law of the United States, and shall be deemed a continuation of each party to the combination. Except for a combination effected as a transfer of substantially all of the assets and liabilities of a bank, the combination of a depository institution in which it is not the resulting bank shall not be deemed an assignment of contractual other rights or liabilities by the combined bank.

"**§ 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 combine with a subsidiary so long as a bank is the resulting entity of the combination. With the approval of the Commissioner, a bank may combine another company with a subsidiary of the bank and the combination shall be effected in accordance with organizational law applicable to each. The combination of two or more subsidiaries of the same bank is exempt from the provisions of this section, as is the combination of two or more subsidiaries of the same bank holding company.

(b) The bank seeking approval of the 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 Commission 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.

(d) The bank resulting from the combination with a subsidiary shall immediately be vested, by law and without any conveyance or transfer, with all rights, powers and duties of the subsidiary, including contractual, property and fiduciary rights, powers and duties, except as otherwise provided by the order of the Commissioner approving the combination or the organizational documents of the resulting bank, and shall be deemed a continuation of each party to the combination. Any reference to a party to the combination in any writing, whether executed or taking effect before or after the combination is effective, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of the writing.

"**§ 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.

Part 3. Charter Conversion.

"**§ 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 is 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 and shall cease to exist as an entity chartered under the laws of this State.

(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 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 through the employees and agents of the OCOB all laws relating to banks. All banks shall conduct their business in a manner consistent with all laws, rules, and orders relating to banking.

(b) The Commissioner may enter into written agreements, cease and desist order stipulations, consensual cease and desist 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 consensual 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, shall 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 1 misdemeanor and may be fined a sum equal to the amount of the extension made or the gratuity given. If the Commissioner, any deputy commissioner, or any bank examiner accepts an extension of credit or gratuity from any bank, or from any officer, director, employee or affiliate thereof, that individual shall be guilty of a Class 1 misdemeanor, and may be fined a sum equal to the extension of credit made or the gratuity given.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commissioner may exempt from the application of subsection (a) any deputy commissioner, or any bank examiner with respect to any extension of credit existing upon the hiring of the deputy commissioner or bank examiner by the OCOB and any extension of the term or renewal of such extension of credit made thereafter, so long as the extension of term or renewal has terms and conditions generally available to customers of the applicable bank having generally the same creditworthiness as the deputy commissioner or bank examiner.

"**§ 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:

(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 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 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 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 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 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.

"**§ 53-8-15. Removal of directors, officers, and employees.**

(a) If the Commissioner determines that a director, officer, or employee of a bank has participated in or consented to any violation of this Chapter or an order of the 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 9

Supervisory Liquidation; Voluntary Dissolution and Liquidation.

Part 1. General Provisions.

"**§ 53-9-101. Supervisory combinations.**

Notwithstanding any other provision of this Chapter, in order to protect the public, including depositors and creditors of a bank, the Commissioner, upon making a finding that a bank is unable to operate in a safe and sound manner and is not reasonably likely to be able to resume safe and sound operations, may authorize or require a combination of the bank, a control transaction or any other transaction, whether or not the Commissioner has taken supervisory control pursuant to G.S. 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 ot 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.

"**§ 53-9-202. Voluntary dissolution.**

(a) With the approval of the Commissioner, a bank may engage in a voluntary dissolution and liquidation.

(b) If, by a majority vote, the board of directors of a bank should determine that in their judgment the bank should be dissolved and liquidated, then the board of directors shall 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.

(6) Examine papers and investigate persons.

(7) Make and carry out agreements with the FDIC for the payment or assumption of the bank's liabilities, in whole or in part, and to sell, convey, transfer, pledge, or assign assets as security or otherwise and to make guarantees in connection therewith.

(8) Perform all other acts that might be done by the employees, officers, and directors of the bank.

These powers shall be continued in effect until liquidation of the bank or until return of the bank to its prior or newly constituted management.

(h) The Commissioner may, unless the FDIC has been appointed as receiver, determine that the receivership proceedings of a bank should be discontinued and the possession of the bank returned to newly constituted management. The Commissioner shall then remove the receiver and restore all the rights, powers, and privileges of the bank's depositors, shareholders, customers, employees, officers, and directors. The return of a bank to a newly constituted management from the possession of a receiver shall, by operation of law and without any conveyance or other instrument, act or deed, vest in the bank the title to all property held by the receiver in the capacity as receiver for the bank.

(i) Claims against a bank in receivership shall have the following order of priority for payment:

(1) Costs, expenses, and debts of the bank incurred on or after the date of the appointment of the receiver, including compensation for the receiver and a reasonable sum for the time of employees and agents of the OCOB.

(2) Claims of holders of deposit accounts.

(3) Claims of secured creditors in such order of priority as is established by applicable law or regulation.

(4) Claims of general creditors.

(5) Claims of holders of the bank's shares in the order of preference established by the bank's organizational documents.

(j) All claims of each class described within subsection (i) of this section shall be paid in full so long as sufficient assets are available therefor. Members of a class for which the receiver cannot make payment in full shall be paid an amount proportionate to their total claims.

(k) The Commissioner may direct the receiver to make payment of claims for which no provision is made in this section, and may direct the payment of less than all claims within a class.

(l) When all assets of the bank have been fully liquidated, all claims and expenses have been paid or settled, and the receiver has recommended a final distribution, the dissolution of the bank in receivership shall be accomplished in the following manner:

(1) The receiver shall file with the Commissioner a detailed report, in a form to be prescribed by the Commissioner, of the receiver's acts and proposed final distribution of the bank's assets.

(2) Upon the Commissioner's approval of the final report of the receiver, the receiver shall make the final distribution of the bank's assets, in any manner as the Commissioner may direct.

(3) When any unclaimed property, including funds due to a known but unlocated depositor, remains following the final distribution of the bank's assets, such property shall be promptly transferred to the State Treasurer to hold in accordance with the provisions of Chapter 115B of the General Statutes.

(4) Upon completion of the actions described in this subsection, the process of dissolution and liquidation of the bank shall be deemed complete, and the Commissioner shall issue a certification of completed liquidation to the Secretary of State.

(5) Upon completion of the process of dissolution and liquidation, the Commissioner shall cause an examination of the receiver's activities and records to be conducted, with which the receiver shall assist. The accounts of

the receiver shall then be ruled upon by the Commissioner, and if approved, the receiver shall be given a final and complete discharge and release.

Part 4. Provisions Relating to Any Dissolution or Receivership.

"§ 53-9-401. Statute relating to receivers applicable to insolvent banks.

The provisions of G.S. 1-507.1 through 1-507.11, relating to receivers, when not inconsistent with the provisions of this Article, shall apply to the liquidation of banks under this Article.

"§ 53-9-402. Storage and destruction of records.

(a) Any record of a bank that is in or has completed the process of dissolution and liquidation may be kept in compliance with the provisions of G.S. 53-6-14.

(b) All records of a bank which has completed the process of dissolution and liquidation shall be held in such place as in the Commissioner's judgment will provide for their proper safekeeping and protection.

(c) After the expiration of five years from the date of filing of the certificate of completed liquidation under G.S. 53-9-301, the records of the liquidated bank may be destroyed by the Commissioner using commercially reasonable record destruction procedures.

(d) Nothing in this section shall be construed to authorize the destruction by the Commissioner of any of the records of the OCOB made by it with reference to the dissolution, receivership or liquidation of any bank.

"§ 53-9-403. Trust terminated on insolvency of trustee bank.

Whenever any bank, which has been, or shall be, appointed trustee in any indenture, deed of trust or other instrument of like character, executed to secure the payment of any bonds, notes or other evidences of indebtedness, has been or shall be placed in receivership, the powers and duties of the bank as trustee in any such instrument shall,, upon the entry of an order of the Clerk of Superior Court having jurisdiction under G.S. 53-9-405 appointing a successor trustee, upon a petition as described in this Part, immediately cease.

"§ 53-9-404. Petition for new trustee; upon parties interested.

In all cases of dissolution receivership and liquidation under this Article, the Clerk of Superior Court of any county in which an indenture, deed of trust or other instrument of like character is recorded shall, upon the verified petition of any person interested in any such trust, either as trustee, beneficiary or otherwise, which interest shall be set out in the petition, enter an order directing service, in the manner required by law for service of summons, on all interested parties of a notice requiring all persons having any interest in the trust, to appear at the Clerk's office on a day designated in the order and notice, not less than 30 days from the date of the first publication of the notice, and show cause why a new trustee shall not be appointed. The notice shall set forth the names of the parties to the indenture, deed of trust or other such instrument, and the date the documents were executed and the place of recording.

"§ 53-9-405. Appointment of substitute trustee where no objection made.

If, upon the day fixed in the notice, no person appears and objects to the appointment of a substitute trustee, the Clerk of Superior Court shall, upon such terms 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.

"**§ 53-9-409. Additional remedy.**

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 10

Bank Holding Companies.

Part 1. Change in Control

"**§ 53-10-101. Holdings companies.**

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 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) Proxy solicitations by or on behalf of the holding company.

(4) A transaction exempted by rules, orders, or declaratory ruling s 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 Commissioner for the filing of further information had been determined by the Commissioner to have been satisfied.

"**§ 53-10-103. Application regarding a control transaction.**

(a) A person seeking approval of a control transaction to which a holding company of a bank is a party under this Article shall file the following with the Commissioner:

(1) An application in the form prescribed by the Commissioner.

(2) All filing fees required by rule of the Commissioner.

(3) Any other information required by a rule of the Commissioner or deemed by the Commissioner to achieve the objectives of this Chapter.

(b) In the event a person submitting an application is a group of persons, the Commissioner may require each member of the group to submit information relevant to the application.

(c) Notwithstanding any laws to the contrary, information about the character, competence or experience of an acquiring person or its proposed management personnel or affiliates shall be deemed a confidential record of the Commissioner subject to G.S. 53-2-7(b).

"**§ 53-10-104. Public notice.**

A person filing an application for approval of a control transaction 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 name of the applicable holding company and the address of its principle 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 publication of the public notice shall be

considered. The public notice shall provide the current mailing address of the Commissioner.

"**§ 53-10-105. Actions on control transaction applications.**

(a) The Commissioner shall examines the proposed control transaction, including the character, competence, and experience of the acquiring person and its proposed management personnel, to determine whether the financial stability of the holding company or the interests of the customers served by one or more bank subsidiaries of the holding company would be adversely affected by the proposed control transaction. Not later than the 60th day following receipt of a completed application for approval of a control transaction unless extraordinary circumstances require a longer period of review, the Commissioner shall approve or deny the application.

(b) The Commissioner may deny an application for approval of a control for any of the following reasons:

(1) The financial condition of the person seeking approval of a control transaction could jeopardize the financial stability of the holding company, one or more bank subsidiaries of the holding company or the financial interests of the bank's customers.

(2) An examination of the character, competence or experience of any acquiring person or of any of the proposed management personnel of the holding company shows that it would not be in the interest of the customers of one or more of the bank subsidiaries of the holding company or in the interest of the public to permit the person to control the holding company.

(3) The plans or proposals of the person seeking approval with respect to exercising control over the holding company would not be in the best interests of the customers of one or more bank subsidiaries of the holding company.

(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 Co9mmissioner 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.

(b) A holding company filing an application for approval of a combination shall publish a public notice of the filing of the application not more than 30 days before nor more than 10 days after the filing of the application with the Commissioner. The public notice shall contain the following:

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

(2) The names of the parties to the proposed combination and the addresses of its 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.

(c) The Commissioner shall examine the proposed combination including the character, competency and experience of the proposed directors and executive officers of the surviving party of the combination, to determine whether the interests of the customers and communities served by the banks controlled by the parties to the combination would be adversely affected by the proposed combination.

(d) Notwithstanding any laws to the contrary, information about the character, competence, and experience of the directors and executive officers of the parties to a combination received by the Commissioner shall be deemed a confidential record of the Commissioner subject to G.S. 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 laws of this State, 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 laws of this State. 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. Article 15 of Chapter 53 is amended by adding a new section to read:

"**§ 53-191.1. Assessments of consumer finance licensees.**

Each consumer finance licensee shall pay an assessment not to exceed eighteen dollars ($18.00) per one hundred thousand dollars ($100,000.00) 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 fiancé 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.

DRAFT

Comparison of § 53-19 and § 53-9-301

§ 53-19. When Commissioner of Banks may take charge.	Equivalent language in proposed law (§ 53-9-301. Receivership.)	Explanation
The Commissioner of Banks may forthwith take possession of the business and property of any bank to which this Chapter is applicable whenever it shall appear that such bank:	(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:	The new language generally modernizes the existing language and provides for more clarity by identifying more specific situations in which a bank may be operating in unsafe or unsound conditions.
(1) Has violated its charter or any laws applicable thereto;	(3) The business of the bank is being conducted in a fraudulent, illegal, or unsafe manner.	
(2) Is conducting its business in an unauthorized or unsafe manner;	(3) The business of the bank is being conducted in a fraudulent, illegal, or unsafe manner.	
(3) Is in an unsafe or unsound condition to transact its business;	(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. (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.	Condition (4) in the proposed law is the equivalent of § 53-19(3); however, new (3), (7) and (8) may also apply.

1#

(4) Has an impairment of its capital stock;	(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.	
(5) Has refused to pay its depositors in accordance with the terms on which such deposits were received, or has refused to pay its holders of certificates of indebtedness or investment in accordance with the terms upon which such certificates of indebtedness or investment were sold;	(3) The business of the bank is being conducted in a fraudulent, illegal, or unsafe manner. (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. (8) The bank is unable to continue operations.	Condition (5) in the proposed law is the equivalent of § 53-19(5); however, new (3) and (8) may also apply.
(6) Has become otherwise insolvent;	(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. (7) The bank is insolvent, or is in imminent danger of insolvency or has suspended its ordinary business transactions due to insufficient funds.	Condition (7) in the proposed law is the equivalent of § 53-19(6); however, new (5) may also apply.
(7) Has neglected or refused to comply with the terms of a duly issued lawful order of the Commissioner of Banks;	(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.	

(8) Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination of a duly appointed or authorized examiner of the Commissioner of Banks;	(2) The directors, officers, or liquidators of the bank have impeded or obstructed an examination.	
(9) Its officers have refused to be examined upon oath regarding its affairs; or	(2) The directors, officers, or liquidators of the bank have impeded or obstructed an examination.	
(10) Has made a voluntary assignment of its assets to trustees.	(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. (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.	Condition (5) in the proposed law is the equivalent of § 53-19(10); however, new (4), (7) and (8) may also apply.

#2

PROPOSED REVISIONS TO § 53-5-2.

When the Study Commission reviewed Article 5A, extra time was requested by OCOB to permit the agency to solicit input from the industry about this important section. A number of considerations were raised, but in the end, only a few minor changes were suggested. They are reflected below.

"§ 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 23 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 50 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 41 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, ~~or~~ 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 ~~corporation~~ company organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors.

(i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:

(1) As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith.

(2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real acquired under this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made.

(j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government, or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent of its required capital."

#3

RECOMMENDATIONS TO THE JOINT LEGISLATIVE STUDY COMMISSION
ON THE MODERNIZATION OF THE BANKING LAW
Task Force on Banking Modernization of the NC Bar Association and
The Office of the Commissioner of Banks

1. Retain current Article 14.
2. Retain current Articles 17 and 17B.
3. Retain Article 18A.
4. § 53-1-2. A consensus was reached that the legislation should include language in one place addressing subsequent enactment or adoption of referenced federal laws or regulations rather than inserting such language at the point of each reference. The recommendation is to add a new subsection (e) to § 53-1-2 to read:
"(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."
5. Amend 53-1-3(b) and (b)(1) to properly reference "trust institutions."
"(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."
6. Change definition of "trust company" in 53-1-4(69) to match G.S. 53-301(a)(51).
"(69) Trust Company. -- A trust institution that is neither a depository institution nor a foreign bank (as "foreign bank" is 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)."
7. Add a definition to § 53-1-4 of "State trust company" to match G.S. 53-301(a)(45).
"( ) 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 Chapter 53 of the General Statutes to operate only as a trust company and not as a commercial bank."
8. Add a definition of "trust institution" to § 53-1-4 to match G.S. 53-301(a) (52).

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

9. Change "trust company" to "trust institution" in 53-2-7(b)(4) and (11) and 53-3-2(a)(3):
   Amend § 53-2-7(b)(4) by substituting the phrase "trust institution" for "trust company."
   Amend § 53-2-7(b)(11) by substituting the phrase "trust institutions" for "trust companies."
   Amend § 53-3-2(a)(3) by substituting the phrase "trust institution" for "trust company."
10. Change "trust company" to "State trust company" in 53-3-4(a)(9); also change "do" to "conduct" in such section:
    "(9) If the proposed bank intends to ~~do~~ conduct "trust business", as that term is defined in Chapter 53, it appears that trust powers should be granted based on consideration of the various factors set forth in Chapter 53 for considering applications and setting capital for a State trust company."
11. Delete § 53-6-5 because the topic is dealt with better elsewhere in the General Statutes and the proposed language creates more questions than it answers.
    Amend Article 6A by deleting proposed § 53-6-5.
12. § 53-1-4(4): Clarify definition of "Bank:
    "(4): Bank. – Any corporation, other than a credit union, savings institution, or trust institution ~~company~~, that is organized under the laws of this State and is engaged in the business of receiving deposits, paying monies and making loans."
13. The proposed law unintentionally stripped banks of the authority to rent out excess office space, so the definition in § 53-1-4(6) should be amended as follows:
    "(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."
14. A new definition of "Banking Laws" should be added to § 53-1-4 to read:
    "( )Banking Laws -- All laws the Commissioner or OCOB is authorized to enforce under any applicable statute."
15. For clarity and to better conform to federal treatment, the definition of capital in § 53-1-4(11) should be revised to read:
    "(11) Capital. – An amount equal to the bank's "~~Tier 1~~ total capital", as such term is ~~defined~~ used by the FDIC in 12 CFR Part 325 ~~of the Regulations of the FDIC~~; provided, that if the term "~~Tier 1~~ total capital" is replaced by a term including substantially the same ~~components~~ elements as "~~Tier 1~~ 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."
16. Rewrite 53-1-4(43): Lower-Tier Subsidiary. – Any bank operating subsidiary in which a bank ~~operating~~ subsidiary has an equity ownership interest.
17. § 53-1-4(45): The definition of nonbranch bank business office needs to be expanded to cover federally chartered depository institutions:

(45) Nonbranch 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~~, or~~ 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 nonbranch bank business office shall not be deemed to be a taking of deposits. Nonbranch bank business offices include loan production offices, mortgage loan offices, and insurance agency offices, or a combination thereof.

18. To address an important issue under securities laws, the definition in § 53-1-4(46) should be amended as follows:

"(46) 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."

19. § 53-1-4(55): The definition of a practical banker currently allows a former director, officer or significant shareholder to serve on the Commission but does not permit a current director, officer or significant shareholder to leave his or her position once appointed to the Commission:

(55) Practical Banker. – An individual who at the time of appointment to the Commission~~, and at all times thereafter,~~ 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.

20. § 53-1-4(58): The definition of public notice provides that all newspaper notices will be published in the county of a bank's principal office. This location may not be appropriate for all notices (e.g., a change of location of a branch). The location for each public notice should be specified either in this Chapter or by rule:

(58) Public Notice. – Notice to the public by (a) 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 principle office or in such other county as may be directed by the Commissioner to best meet the purpose for which the notice is required and (b) 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.

21. § 53-1-4(63): The definition of shareholder should be changed to match Chapter 55 (North Carolina Business Corporation Act):

(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.

22. § 53-1-4(71): The definition of voting security is drafted too broadly to include holders of equity or debt that may vote "on any matter." The definition should be revised to be consistent with original intent:

"(71) Voting Security. –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."

23. The proposed law does not contain definitions for "well-capitalized" and "well-managed" as used in 53-5-1(e)(2). These important concepts should be defined to conform with federal treatment:

"(__) 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."

"(__) Well capitalized – As defined in Regulation Y of the Federal Reserve Board, 12 C.F.R. 225.2(r)."

24. § 53-2-1(c): In order to ensure that this statute does not conflict with federal or state law, an additional qualification should be added:

"(c) ~~No~~ 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."

25. § 53-2-3(a) provides for the removal, but not the appointment, of any Deputy Commissioner.

"(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 the OCOB may be conducted by employees of other agencies of government, and agents and independent contractors of the OCOB. The Commissioner may <u>appoint or</u> remove at his or her discretion any deputy commissioner."

26. § 53-2-6(b): With the reduction in size of the State Banking Commission, it will be increasingly difficult to meet the requirement of five members for the appellate review panel, so the requirement should be reduced to three:

"(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 chairman of the Commission may appoint an appellate review panel of not less than ~~five~~ <u>three</u> members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. "

27. § 53-2-7(b)(3): The NCBA Task Force recommends replacing the description of personal records to be consistent with language used by the federal Gramm-Leach-Bliley Act:

"(3) ~~Records containing the names or other personal information of any customers of any person or revealing the collateral given by any such customers in connection with an extension of credit~~ <u>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</u>; 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 him or her and shall be open to inspection and copying by any person;"

28. § 53-3-2(c): A proposed bank should be permitted to pay organizational expenses from its escrow account and undertake other actions in preparation of becoming a chartered bank. The section should clarify how the escrow account is established and add exceptions for the removal of funds:

"(c) Unless and until the Commissioner issues the proposed bank a charter:

(1) The proposed bank shall not transact any business except such as is incidental and necessary to its organization ~~and~~ or the application for a charter or preparation for commencing in the business of banking;

(2) All funds paid for shares of the proposed bank shall be placed in escrow under a~~n~~ written escrow ~~agreement, and~~ with a~~n~~ third party escrow agent, ~~approved by~~ satisfactory to the Commissioner; and

(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."

29. § 53-3-4(a)(3): The term "legal tender" is a broad term that includes other forms of payment other than currency; this section should also clarify that the currency payment requirement only applies at the time of organization:

" (3) All payments for purchases of shares in a bank in organization are made in ~~legal tender of the~~ United States currency."

30. § 53-3-4(a)(6): The threshold of ownership of voting securities in this section should be raised consistent with federal law:

"(6) The character, competence and experience of the organizers, proposed directors, proposed officers, and initial holders of more than ~~five~~ ten percent of the voting securities of the proposed bank will command the confidence of the public;"

31. The changes to 53-3-6(a) set forth below clarify who recommends the conditions for issuance of a charter and when action is to be taken by the Commission on charter applications:

"(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 ~~recommended~~ conditions recommended by the Commissioner. The Commission shall render its decision ~~within 30 days after the~~ at the ~~completion of 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."

32. § 53-3-7(a)(1 should be revised to be consistent with 53-3-4(a)(3):

"(1) Has received ~~cash~~ 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;"

33. § 53-4-3(a): There is an ambiguity in this section on whether the additional committees that the board deems appropriate must be appointed:

"(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."

34. § 53-4-5(c)'s requirement that a director appoint an agent for service of process in Wake County may be too broad and may have unintended consequences. We recommend the following revision:

"(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

(i) the Commissioner may serve as the director's agent for service of process, and

(ii) the director consents to jurisdiction in Wake County, North Carolina, but only for purposes of any action or proceeding brought by the Commissioner."

35. § 53-4-6: This section appears to create a private right of action rather than limiting the liability of directors to actions where directors are liable under a separate right of action. Article 24 of Chapter 53 provides a good model to achieve the purposes we understand are desired. We strongly recommend that 53-4-6 be rewritten to read as follows:

"(a) The standard of conduct for directors shall be as set forth in G.S. 55-8-30.

(b) Any director of a bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of such bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its shareholders, or any other person has sustained in consequence of the 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."

36. § 53-4-10 should be conformed with § 53-4-3 and add authority for the OCOB to review a bank's compliance with a code of ethics:

"As part of its examination of a bank, OCOB may assess the competence, composition, structure and conduct of such bank's board of directors, including, without limiting the generality of the foregoing: (i) number of directors; (ii) independence of directors; (iii)

compliance with the bank's code of ethics; (iv) committee structure of the board; and ~~(iv)~~(v) education and training of board members. In making such assessment, OCOB shall take into consideration ~~the size, complexity and business operations of the bank as well as~~ 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. Such assessment shall be part of the overall assessment of the bank's management and of whether the bank is operating in a safe and sound manner."

37. § 53-4-11(c)(1) should be revised to be consistent with 53-3-4(a)(3).
"(1) Cash on hand, which shall include both ~~lawful money of the~~ United States currency and exchange of any clearing house association or similar intermediary;"
38. § 53-4-12(a)(1)a. should be revised to clarify which committee is referenced:
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 ~~a compliance review~~ such a committee; and
39. To address historical misinterpretations in this area, § 53-5-1, line 2, should read: "In addition, and not by way of limitation, a bank shall have the power to:"
40. § 53-5-1(b)(4) includes a reference to the trust business which is unnecessary and confusing:
~~(4) In the trust business; and~~
41. The cross-reference in § 53-5-1(e)(1)(a) to "subsections (a) and (b)" should refer to "subsections (a), (b) and (c)."
42. § 53-6-14(b) should be revised to conform to the language in 53-6-14(c) as that was previously amended by the Study Commission:
"(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."
43. § 53-6-17: The 30-day notice posted at a branch prior to its closing that is required by current Chapter 53 should be retained in the proposed rewrite:
"A bank may close a branch upon ~~first~~ providing written notice to the Commissioner and the customers of the branch at least 90 days prior to the proposed closing, such notice to include the date the branch will close, and 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. However, the consolidation of two or more branches into a single location in the same vicinity shall not be considered a closure subject to the 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."

44. § 53-6-18(a)(2): Clarify that a branch may not qualify as a nonbranch bank business office just by offering nonbanking business at that location:
"(2) If a proposed nonbranch bank business office will offer ~~a~~ 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."
45. Retain Articles 17 and 17B and delete proposed G.S. § 53-6-20. Dodd-Frank does authorize *de novo* interstate branching, but retaining these sections remains important for interstate mergers and for acquisitions of existing branches. The reference to "as permitted by federal law" in G.S. § 53-6-20 leaves a circularity with respect to existing branches, as federal law refers to state law on that topic.
Delete § 53-6-20.
46. § 53-7-101(c): Unlike current state and federal law, this subsection does not except bona fide gifts, so all gifts that might change control would require an application and public notice. The exception in subdivision (4) for proxy solicitations is strange. The proxy statement is not itself the change of control.
"(4) ~~Proxy solicitations by or on behalf of the bank.~~ *Bona fide* gifts."
47. § 53-7-201: This provision needs to clarify that a bank may merge with a non-depository institution as long as the bank is the surviving entity:
"§ 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."
48. The substance of § 53-7-205 and § 53-7-207(d) should be eliminated. The concept here is already covered more fully in N.C.G.S. § 55-11-06.
Delete § 53-7-207(d) and replace proposed § 53-7-205 with the following language which carries forward the content of current § 53-17, which is not otherwise picked up in the new law:
"§ 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 North Carolina 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 such 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."

49. § 53-7-207 does not currently permit a combination that is structured as a reverse triangular merger and is unclear about certain other types of combinations. It should be rewritten to read:

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

(a) (1) With the approval of the Commissioner, a bank may:

(i) combine with a subsidiary so long as ~~the~~a bank is the resulting entity of the combination;

(ii) ~~and may~~ combine a subsidiary with another company if a subsidiary is the resulting entity; or ~~with a subsidiary so long as the subsidiary of the bank is the resulting entity of the combination.~~

(iii) combine two or more subsidiaries of two or more banks under common control of the same holding company.

(2) The approval of the Commissioner is not required for:

(i) ~~A~~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

(ii) ~~The~~a combination of two or more subsidiaries of the same bank. ~~is exempt from the provisions of this section.~~

(b) The bank seeking approval of the 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. The bank shall pay to the Commissioner a fee ~~of one thousand dollars ($1,000.00).~~ as set forth by rule."

50. § 53-7-303(c) and (d): Since § 53-7-303(a) permits a bank to convert to another depository institution under North Carolina law, the bank that is converted to another depository institution may not cease to exist as an entity chartered under North Carolina law:

"(c) Upon effectiveness of the conversion, the resulting depository institution shall cease to be a bank ~~and shall cease to exist as an entity chartered under the laws of this State~~.

(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."

51. § 53-8-1(a): There are many laws that are not applicable to banks, and various banking laws are applicable to some banks but not others. The new definition of banking laws should be referenced and this subsection rewritten using that defined term:

"(a) Every bank shall be under the supervision of the Commissioner. It shall be the Commissioner's duty to enforce through the employees and agents of the OCOB ~~all laws relating to banks.~~ the banking laws. All banks shall conduct their business in a manner consistent with ~~all laws, rules, and orders relating to banking.~~ the banking laws."

52. § 53-8-1(b): The list of regulatory enforcement actions in this section should be revised for greater clarity:

"(b) The Commissioner may enter into written agreements, cease and desist order stipulations, ~~consensual~~ 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 ~~consensual~~ corrective actions."

53. § 53-8-6(c): This provision presents constitutional issues. A court must have discretion when it reviews the Commissioner's application to compel compliance by proceedings for contempt:

"(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, ~~shall~~ 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."

54. The references in 53-8-12(c)(1) and (2), (f) and (h) should be expanded to include all entities under the jurisdiction of the Commissioner:

"(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."

. . . . .

"(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 20 G.S. 115C-457.2."

. . . . .

"(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.

55. The phrase "Trust terminated" in the title of § 53-9-403 should be changed to "Authority to serve as trustee terminated."
"§ 53-9-403. Authority to serve as trustee terminated."
56. As was the case with § 53-7-101(c), § 53-10-102(c) differs from federal law and other state law in that it does not except bona fide gifts, so all gifts that might change control would require an application and public notice. The exception for proxy solicitations is unnecessary as the proxy statement is not itself the change of control.
"(3) ~~Proxy solicitations by or on behalf of the bank.~~ *Bona fide* gifts."
57. § 53-10-301 gives the Commissioner the authority to order a bank holding company to cease and desist from any activity that "may be in violation of any laws of this state." Reference should instead be made to the newly defined "banking laws."
§ 53-10-301. Cease and desist orders.

Upon a finding that any action of a holding company subject to this Article may be in violation of any banking laws ~~of this State~~, 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 state holding company fails to appeal such decision within 10 days of the date of the issuance of the order in accordance with G.S. 53C-2-6 and continues to engage in such action in violation of the Commissioner's order to cease and desist such action, it should be subject to a civil money penalty of twenty thousand dollars ($20,000) for each day it remains in violation of ~~the laws of this State~~ such 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 state holding company's failure to comply with an order of the Commissioner. The clear proceeds of such civil money penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

March 28, 2012

MEMORANDUM

TO: Members, Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

FROM: Representative Harold J. Brubaker, Co-Chair
Senator Harry Brown, Co-Chair

SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Thursday	April 12, 2012	1:00 pm	421 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Cindy Coley at (919) 715-4946.

cc: Committee Record _X_
Interested Parties _X_

Cindy Coley (Rep. Brubaker)

From: Cindy Coley (Rep. Brubaker)
Sent: Wednesday, March 28, 2012 10:50 AM
To: Cindy Coley (Rep. Brubaker); Darryl Black (Sen. Harry Brown)
Subject: Banking Laws Modernization, Jt. Leg. Study (2011)

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

March 28, 2012

MEMORANDUM

TO: Members, Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

FROM: Representative Harold J. Brubaker, Co-Chair

Senator Harry Brown, Co-Chair

SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Thursday	April 12, 2012	1:00 pm	421 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Cindy Coley at (919) 715-4946.

MINUTES

JOINT LEGISLATIVE STUDY COMMISSION

ON

THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS

Thursday, April 26, 2012

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws met on Thursday, April 26, 2012 at 10:00 a.m., Room 643 Legislative Office Building, Raleigh, North Carolina.

In attendance were Senator Brown (Chairman) and Representative Brubaker (Chairman); Senators Blake and Blue; Representatives Jordan and McCormick; Mr. Christopher Kukla, Mr. Gray Reed and Mr. Charles Whitehead, Jr. Ryan Blackledge (Bill Drafting Staff), Drupti Chauhan (Research Staff), Karen Cochrane-Brown (Research Staff) and Greg Roney (Research Staff) were present. Committee Assistants Darryl Black and Cindy Coley were present.

Senator Brown, Chairman, called the meeting to order and recognized House Sergeant-At-Arms Reginald (Reggie) Sills, Joe Crook and Martha Parrish and Senate Sergeant-At-Arms Staff Ken Kirby and William (Billy) Fritscher.

Chairman Brown called for the adoption of the minutes from the April 12, 2012 meeting. Chairman Brubaker seconded the motion that was approved unanimously.

Presentation

Chairman Brown asked staff member Ms. Karen Cochrane-Brown to provide a brief review of the draft final report titled Study Commission on the Modernization of NC Banking Laws that was included in member notebooks.

Ms. Cochrane-Brown provided a summary of bill and report. Ms. Cochrane-Brown stated that the draft included meeting summaries, presenters, findings, bill summaries and recommended legislative proposals which included a rewrite of banking law and a change of mortgage regulation funding. She further added that in the beginning of the process, former Banking Commissioner Joseph Smith, Jr. had stated that Article 11 would not change and that in previous bill drafts, it appeared that this article could be repealed. With the most current bill

draft, Article 11 is staying in place. Conforming changes with other sections referenced in repealed sections were also amended.

Chairman Brown stated that this was the first major rewrite of banking legislation since 1931.

Chairman Brown requested that Commissioner Ray Grace make some remarks on the proposed legislation.

Commissioner Ray Grace provided a brief history of banking in North Carolina. He stated that the genesis of state banking law was in 1921 during the Harding administration in which there were 511 state banks and 45 branches with aggregate total assets of $243 million. For comparison purposes, today there are 78 state banks with aggregate total assets of $250 billion. For 91 years, with the exception of occasional tweaks, this legislation persevered through a Great Depression, world wars, recessions, and the transition from an agrarian to an information technology-based economy. Commissioner Grace believed it is critical to bring banking laws into the 21st century for state banks to maintain their national leadership status, vitality and strength- so as to most effectively serve their customers. Commissioner Grace thanked former Commissioner Smith, Banking Commission staff, Modernization of NC Banking Laws Commission members, and legislative staff for their support.

Chairman Brown thanked Commissioner Ray Grace and former Commissioner Smith for their assistance and also thanked commission members and staff. Chairman Brubaker added that this effort was the brainchild of former Commissioner Smith and he also thanked those involved for their collaborative efforts in producing such efficient meetings.

Chairman Brown called for the adoption of the final legislative draft report. Chairman Brubaker seconded the motion that was approved unanimously.

Chairman Brown then requested if there was any further discussion

Senator Blake asked how banks felt about draft. Mr. Reed stated that banks were pleased with collaborative effort and Mr. Whitehead added banks appreciate clarity that this bill will bring.

There being no further business, the meeting adjourned at 10:15 a.m.

Sen. Harry Brown, Chairman

Rep. Harold Brubaker, Chairman

ATTEST:

Darryl Black, Committee Assistant

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

Senator Harry Brown, Co-Chair *Representative Harold J. Brubaker, Co-Chair*

AGENDA

Thursday April 26, 2012
10:00 am.
Room 643 LOB

1. **Welcome and Introductions**
   Senator Harry Brown, Co-Chair

2. **Approve Minutes from April 12, 2012 Meeting**

3. **Consideration of Draft Final Report**

4. **Remarks from Acting Commissioner Ray Grace**

5. **Adjourn**

ATTENDANCE

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

(Name of Committee)

DATES	Nov. 21, 2011	Dec. 19, 2011	Jan. 20, 2012	Feb. 14, 2012	March 6, 2012	March 27, 2012	April 12, 2012	4/26/12
Rep. Brubaker, - House Chair	Yes	Yes	Yes	Yes	Yes	Yes	✓	✓
Sen. Harry Brown, Senate Chair	No	Yes	Yes	Yes	Yes	Yes	✓	✓
Rep. Leo Daughtry	Yes	Yes	N	N	Yes	Yes	✓	
Rep. Beverly Earle	Yes	Yes	N	N	Yes	N		
Rep. Jonathan Jordan	N	Yes	Yes	Yes	Yes	Yes	✓	✓
Rep. Daniel McComas	N	Yes	Yes	N	Yes	Yes		
Sen. Thomas Apodaca	N	N	N	N	N	Yes		
Sen. Harris Blake	N	Yes	Yes	N	Yes	Yes	✓	✓
Sen. Dan Blue	Yes	Yes	Yes	Yes	N	N	✓	✓
Sen. Thom Goolsby	N	N	N	N	N	N		
Charles Whitehead (House Bank)	Yes	Yes	Yes	Yes	Yes	Yes	✓	✓
Gray Reed (Senate Bank)	N	Yes	Yes	Yes	Yes	Yes	✓	✓
Christopher Kukla (House)	Yes	Yes	Yes	Yes	Yes	Yes	✓	✓
Andrea Young (Senate)	Yes	Yes	Yes	Yes	Yes	Yes	✓	N
Rep. Darryl McCormick			Yes	N	Yes	N	✓	✓

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — APRIL 26, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fred Bone	Boncard associates
Susanna Davis	Gov Office
Daniel Bamm	Troutman Sanders
Todd Eveson	Gaeta & Eveson, P.A.
Solari	DST
Stephen Kuba	Comptroller

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — APRIL 26, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nathan Batts	North Carolina Bankers Assoc.
Joff Klein	BB&T
Elizabeth Biser	Brooks Pierce/NCBA
Ben Davis	Brooks Pierce/NCBA
Joe Smith	Poyner Spruill LLP
[illegible]	NMRS
Lisa McDougald	BB&T
Sheria Reid	S of Gov.
[illegible]	[illegible]
Kim Crowell	NCBA
Rochelle Sparks	NC Justice Center

VISITOR REGISTRATION SHEET

MODERNIZATION OF NC BANKING LAWS — APRIL 26, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carley Ruff	NCHC
Al Ripley	NC Justice Ctr
Lauren Whaley	NCCUL

NORTH CAROLINA GENERAL ASSEMBLY

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

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

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

OR

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27603-5925
TELEPHONE: (919) 733-9390

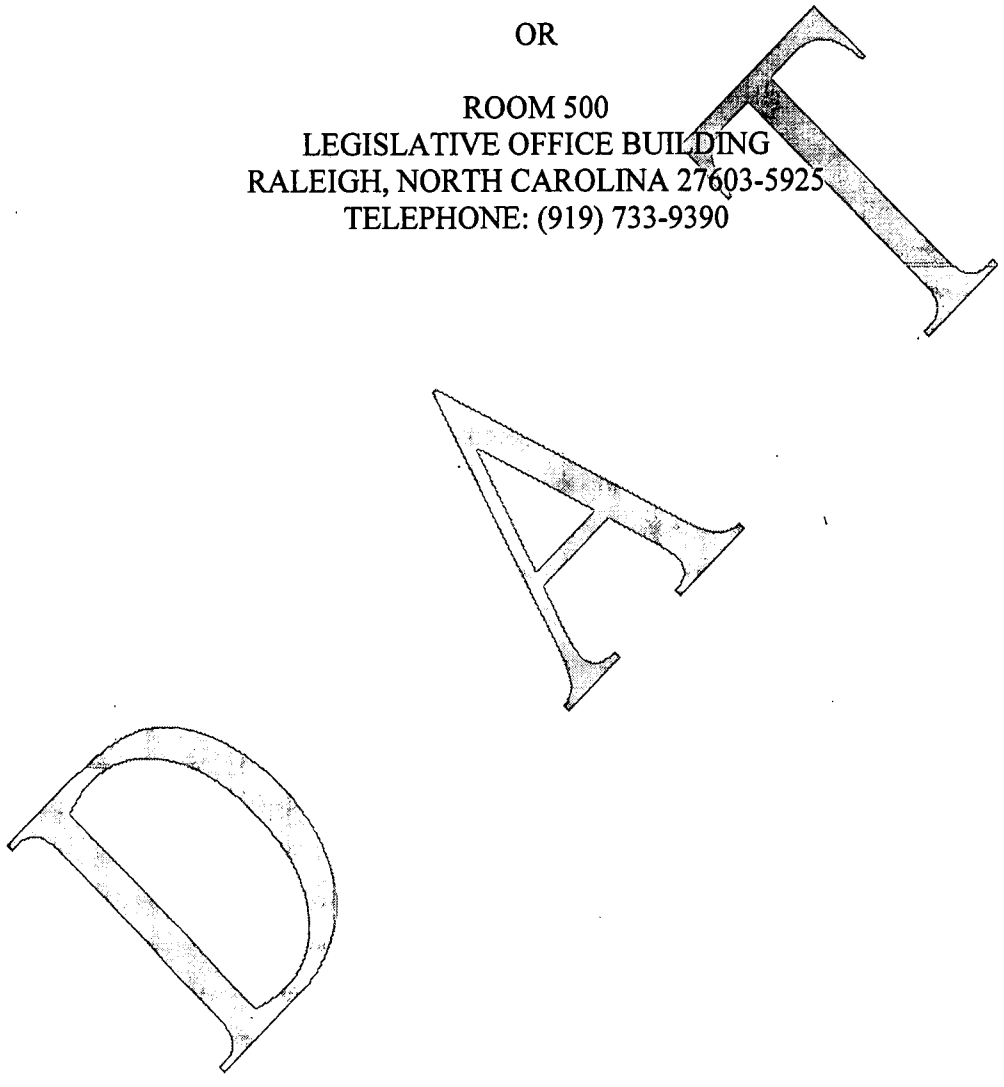


TABLE OF CONTENTS

LETTER OF TRANSMITTAL 5

COMMITTEE PROCEEDINGS 7

FINDING AND RECOMMENDATIONS 9

APPENDICES

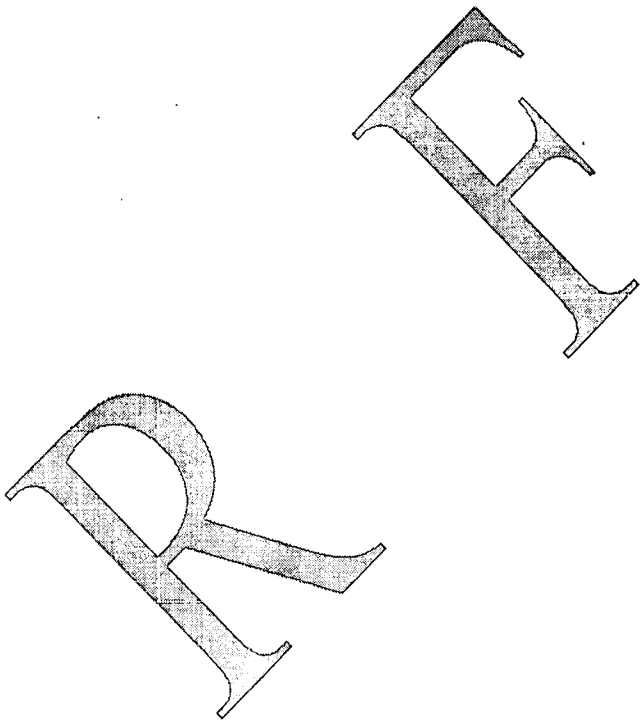
APPENDIX A
MEMBERSHIP OF THE JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS (2011) 11

APPENDIX B
COMMITTEE CHARGE/STATUTORY AUTHORITY 12

APPENDIX C
LEGISLATIVE PROPOSALS 13

DRAFT

This page intentionally left blank



TRANSMITTAL LETTER

April 26, 2012

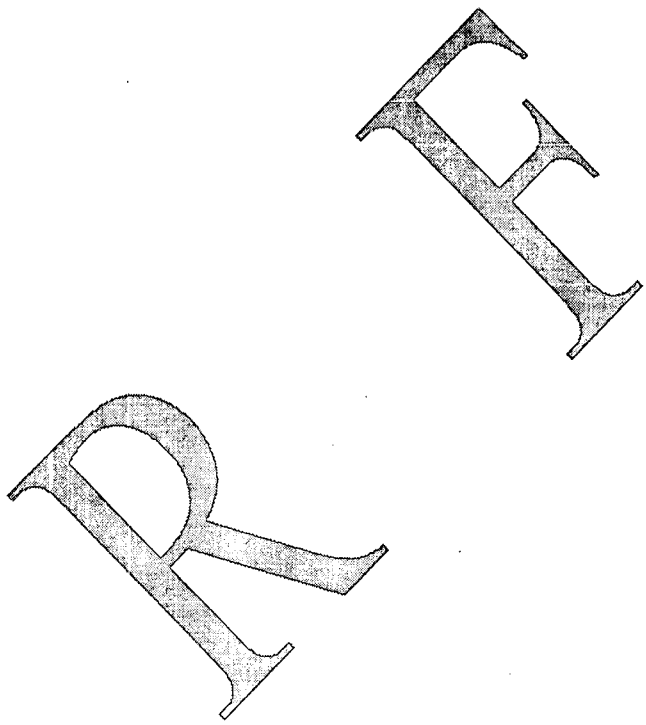
TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

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)

This page intentionally left blank



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

A Comparison of the Provisions of Current G.S. 53-19 and Proposed G.S. 53-9-301
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.

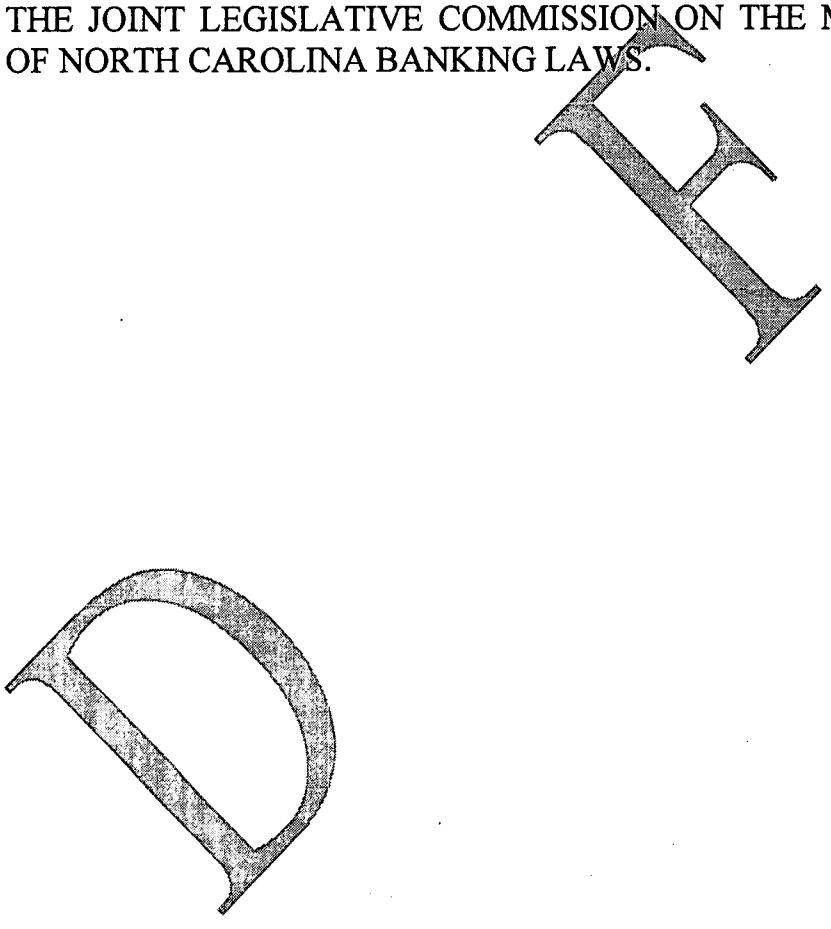
5. The fees generated by the S.A.F.E. Mortgage Licensing Act are insufficient to support the cost of regulating the mortgage lending industry. Since 2002, bank assessments have subsidized mortgage regulation. The funding mechanism for mortgage regulation should be changed to replace the current licensing 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.



COMMITTEE MEMBERSHIP

2011-2012

President Pro Tempore of the Senate Appointments:

Sen. Harry Brown (Chair)

Sen. Thomas Apodaca
Sen. Harris Blake
Sen. Daniel Blue
Sen. Thom Goolsby
Mr. Gray Reed
Ms. Andrea Young

Speaker of the House of Representatives Appointments:

Rep. Harold Brubaker (Chair)

Rep. Namon Daughtry
Rep. Beverly Earle
Rep. Jonathan Jordan
Rep. Daniel McComas
Mr. Christopher Kukla
Mr. Charles Whitehead

DRAFT

COMMITTEE CHARGE/STATUTORY AUTHORITY

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-353
SENATE BILL 555

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 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.

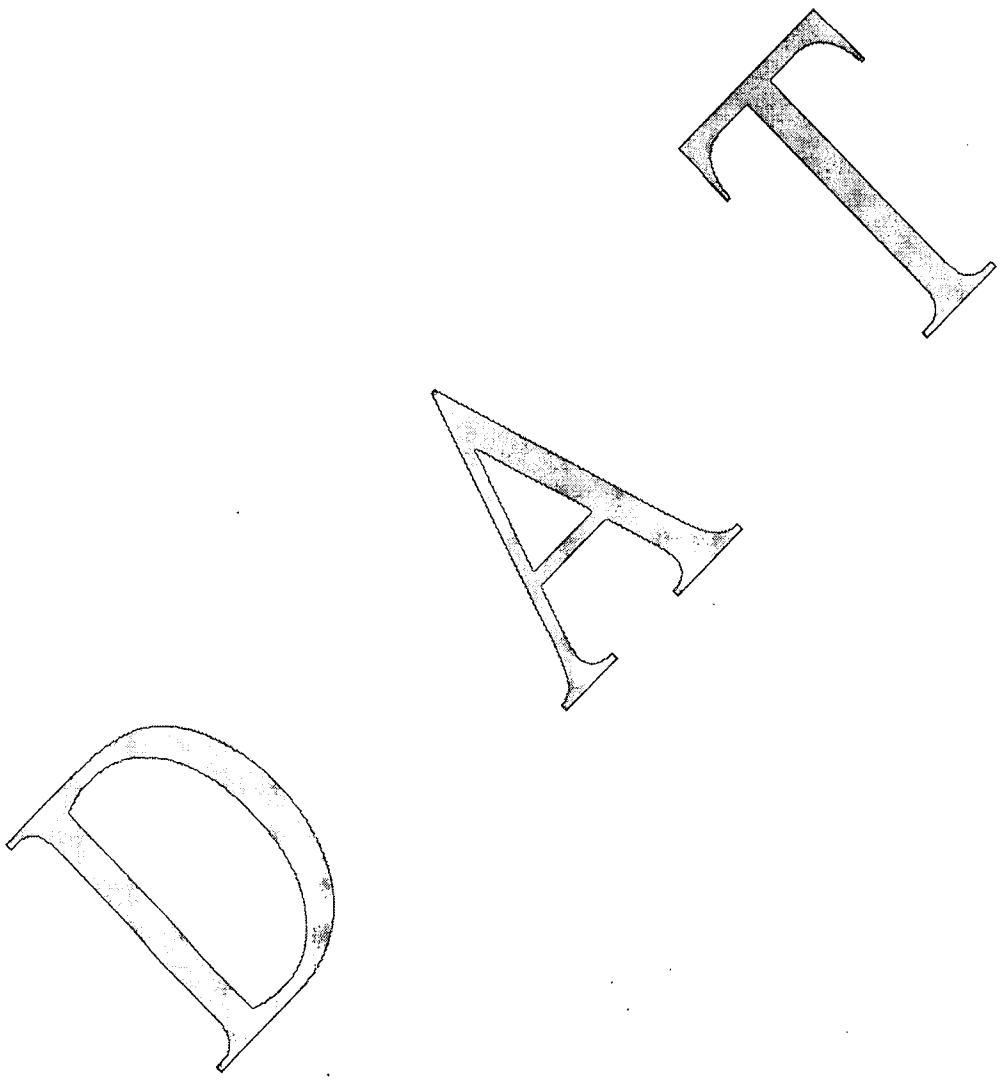
s/ Philip E. Berger
President Pro Tempore of the Senate

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

LEGISLATIVE PROPOSALS



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

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

(THIS 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.

(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.

(35) Federal Savings Association. – A federal savings association or federal savings bank chartered under Section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464.

(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.

(39) 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.

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

(41) Individual. – A human being.

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

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

(44) National Bank. – A banking association organized under 12 U.S.C. 21.

(45) 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 officers, mortgage loan offices, and insurance agency offices, or a combination thereof.

(46) 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.

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

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

(49) 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.

(50) 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.

(51) 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.

"**§ 53-2-3. The Office of the Commissioner of Banks.**

(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.

"**§ 53-2-4. Administration of the Office of the Commissioner of Banks.**

(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.

"§ 53-2-7. Official record.

(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 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 institution 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.

(b) 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 or the Commission and that a representation to the contrary is a criminal offense.

(3) All payments for purchases of shares in a bank in organization are made in United States currency.

(4) The proposed bank has an operational expense fund from which to pay organizational expenses, in an amount determined by the Commissioner to be sufficient for the safe and sound operation of the proposed bank while the charter application is pending.

(5) The proposed bank has been formed for legitimate and lawful business purposes.

(6) The character, competence and experience of the organizers, proposed, directors, proposed officers, and initial holders of more than ten percent 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."

Article 4A

Governance of Banks

§ 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.

(i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:

(1) As security for extensions of credit made or moneys due to it when that real estate has been mortgaged to it in good faith.

(2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real property acquired under this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made.

(j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government, or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent 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 it 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.

(d) This section shall not affect the law governing transactions with minors in cases outside the scope of this section, including transactions that constitute an extension of credit to the minor.

"**§ 53-6-6. 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

(2) Upon the death of one joint owner, the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

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

(h) Any joint tenant may terminate a joint account.

(i) Where a joint account is held by two or more individuals and a joint tenant does not wish for the account to be terminated but requests to be removed from the account, the bank shall remove the joint tenant from the account. The joint account shall continue in the names of the remaining tenant or tenants. Any joint tenant who requested to be removed from an account remains liable for any debts incurred in connection with the joint account during the period in which the individual was 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

total discharge of the bank's obligation as to the amount paid. 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.

"**§ 53-6-18. Nonbranch bank business offices.**

(a) A bank may establish one or more nonbranch bank business offices as defined by G.S. 53-1-4(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.

Part 1. Change in Control.

"**§ 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.

(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.

"**§ 53-7-105. 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 liabilites.**

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.

Part 3. Charter Conversion.

"**§ 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 is 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 1 misdemeanor and may be fined a sum equal to the amount of the extension made or the gratuity given. If the Commissioner, any deputy commissioner, or any bank examiner accepts an extension of credit or gratuity from any bank, or from any officer, director, employee or affiliate thereof, that individual shall be guilty of a Class 1 misdemeanor, and may be fined a sum equal to the extension of credit made or the gratuity given.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commissioner may exempt from the application of subsection (a) any deputy commissioner, or any bank examiner with respect to any extension of credit existing upon the hiring of the deputy commissioner or bank examiner by the OCOB and any extension of the term or renewal of such extension of credit made thereafter, so long as the extension of term or renewal has terms and conditions generally available to customers of the applicable bank having generally the same creditworthiness as the deputy commissioner or bank examiner.

"**§ 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:

(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.

"**§ 53-8-15. Removal of directors, officers, and employees.**

(a) If the Commissioner determines that a director, officer, or employee of a bank has participated in or consented to any violation of this Chapter or an order of the

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.

Part 1. General Provisions.

"**§ 53-9-101. Supervisory combinations.**

Notwithstanding any other provision of this Chapter, in order to protect the public, including depositors and creditors of a bank, the Commissioner, upon making a finding that a bank is unable to operate in a safe and sound manner and is not reasonably likely to be able to resume safe and sound operations, may authorize or require a combination of the bank, a control transaction or any other transaction, whether or not the Commissioner has taken supervisory control pursuant to G.S. 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 ot 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.

"**§ 53-9-202. Voluntary dissolution.**

(a) With the approval of the Commissioner, a bank may engage in a voluntary dissolution and liquidation.

(b) If, by a majority vote, the board of directors of a bank should determine that in their judgment the bank should be dissolved and liquidated, then the board of directors shall 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.

(6) Examine papers and investigate persons.

(7) Make and carry out agreements with the FDIC for the payment or assumption of the bank's liabilities, in whole or in part, and to sell, convey, transfer, pledge, or assign assets as security or otherwise and to make guarantees in connection therewith.

(8) Perform all other acts that might be done by the employees, officers, and directors of the bank.

These powers shall be continued in effect until liquidation of the bank or until return of the bank to its prior or newly constituted management.

(h) The Commissioner may, unless the FDIC has been appointed as receiver, determine that the receivership proceedings of a bank should be discontinued and the possession of the bank returned to newly constituted management. The Commissioner shall then remove the receiver and restore all the rights, powers, and privileges of the

bank's depositors, shareholders, customers, employees, officers, and directors. The return of a bank to a newly constituted management from the possession of a receiver shall, by operation of law and without any conveyance or other instrument, act or deed, vest in the bank the title to all property held by the receiver in the capacity as receiver for the bank.

(i) Claims against a bank in receivership shall have the following order of priority for payment:

(1) Costs, expenses, and debts of the bank incurred on or after the date of the appointment of the receiver, including compensation for the receiver and a reasonable sum for the time of employees and agents of the OCOB.

(2) Claims of holders of deposit accounts.

(3) Claims of secured creditors in such order of priority as is established by applicable law or regulation.

(4) Claims of general creditors.

(5) Claims of holders of the bank's shares in the order of preference established by the bank's organizational documents.

(j) All claims of each class described within subsection (i) of this section shall be paid in full so long as sufficient assets are available therefor. Members of a class for which the receiver cannot make payment in full shall be paid an amount proportionate to their total claims.

(k) The Commissioner may direct the receiver to make payment of claims for which no provision is made in this section, and may direct the payment of less than all claims within a class.

(l) When all assets of the bank have been fully liquidated, all claims and expenses have been paid or settled, and the receiver has recommended a final distribution, the dissolution of the bank in receivership shall be accomplished in the following manner:

(1) The receiver shall file with the Commissioner a detailed report, in a form to be prescribed by the Commissioner, of the receiver's acts and proposed final distribution of the bank's assets.

(2) Upon the Commissioner's approval of the final report of the receiver, the receiver shall make the final distribution of the bank's assets, in any manner as the Commissioner may direct.

(3) When any unclaimed property, including funds due to a known but unlocated depositor, remains following the final distribution of the bank's assets, such property shall be promptly transferred to the State Treasurer to hold in accordance with the provisions of Chapter 115B of the General Statutes.

(4) Upon completion of the actions described in this subsection, the process of dissolution and liquidation of the bank shall be deemed complete, and the Commissioner shall issue a certification of completed liquidation to the Secretary of State.

(5) Upon completion of the process of dissolution and liquidation, the Commissioner shall cause an examination of the receiver's activities

and records to be conducted, with which the receiver shall assist. The accounts of the receiver shall then be ruled upon by the Commissioner, and if approved, the receiver shall be given a final and complete discharge and release.

Part 4. Provisions Relating to Any Dissolution or Receivership.

"**§ 53-9-401. Statute relating to receivers applicable to insolvent banks.**

The provisions of G.S. 1-507.1 through 1-507.11, relating to receivers, when not inconsistent with the provisions of this Article, shall apply to the liquidation of banks under this Article.

"**§ 53-9-402. Storage and destruction of records.**

(a) Any record of a bank that is in or has completed the process of dissolution and liquidation may be kept in compliance with the provisions of G.S. 53-6-14.

(b) All records of a bank which has completed the process of dissolution and liquidation shall be held in such place as in the Commissioner's judgment will provide for their proper safekeeping and protection.

(c) After the expiration of five years from the date of filing of the certificate of completed liquidation under G.S. 53-9-301, the records of the liquidated bank may be destroyed by the Commissioner using commercially reasonable record destruction procedures.

(d) Nothing in this section shall be construed to authorize the destruction by the Commissioner of any of the records of the OCOB made by it with reference to the dissolution, receivership or liquidation of any bank.

"**§ 53-9-403. Authority to serve as trustee terminated.**

Whenever any bank, which has been, or shall be, appointed trustee in any indenture, deed of trust or other instrument of like character, executed to secure the payment of any bonds, notes or other evidences of indebtedness, has been or shall be placed in receivership, the powers and duties of the bank as trustee in any such instrument shall,, upon the entry of an order of the Clerk of Superior Court having jurisdiction under G.S. 53-9-405 appointing a successor trustee, upon a petition as described in this Part, immediately cease.

"**§ 53-9-404. Petition for new trustee; upon parties interested.**

In all cases of dissolution receivership and liquidation under this Article, the Clerk of Superior Court of any county in which an indenture, deed of trust or other instrument of like character is recorded shall, upon the verified petition of any person interested in any such trust, either as trustee, beneficiary or otherwise, which interest shall be set out in the petition, enter an order directing service, in the manner required by law for service of summons, on all interested parties of a notice requiring all persons having any interest in the trust, to appear at the Clerk's office on a day designated in the order and notice, not less than 30 days from the date of the first publication of the notice, and show cause why a new trustee shall not be appointed. The notice shall set forth the names of the parties to the indenture, deed of trust or other such instrument, and the date the documents were executed and the place of recording.

"**§ 53-9-405. Appointment of substitute trustee where no objection made.**

If, upon the day fixed in the notice, no person appears and objects to the appointment of a substitute trustee, the Clerk of Superior Court shall, upon such terms

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.

"**§ 53-9-409. Additional remedy.**

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

"**§ 53-10-101. Holdings companies.**

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

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 ruling s 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

Commissioner for the filing of further information had been determined by the Commissioner to have been satisfied.

"**§ 53-10-103. Application regarding a control transaction.**

(a) A person seeking approval of a control transaction to which a holding company of a bank is a party under this Article shall file the following with the Commissioner:

(1) An application in the form prescribed by the Commissioner.

(2) All filing fees required by rule of the Commissioner.

(3) Any other information required by a rule of the Commissioner or deemed by the Commissioner to achieve the objectives of this Chapter.

(b) In the event a person submitting an application is a group of persons, the Commissioner may require each member of the group to submit information relevant to the application.

(c) Notwithstanding any laws to the contrary, information about the character, competence or experience of an acquiring person or its proposed management personnel or affiliates shall be deemed a confidential record of the Commissioner subject to G.S. 53-2-7(b).

"**§ 53-10-104. Public notice.**

A person filing an application for approval of a control transaction 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 name of the applicable holding company and the address of its principle 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 publication of the public notice shall be considered. The public notice shall provide the current mailing address of the Commissioner.

"**§ 53-10-105. Actions on control transaction applications.**

(a) The Commissioner shall examines the proposed control transaction, including the character, competence, and experience of the acquiring person and its proposed management personnel, to determine whether the financial stability of the holding company or the interests of the customers served by one or more bank subsidiaries of the holding company would be adversely affected by the proposed control transaction. Not later than the 60th day following receipt of a completed application for approval of a control transaction unless extraordinary circumstances require a longer period of review, the Commissioner shall approve or deny the application.

(b) The Commissioner may deny an application for approval of a control for any of the following reasons:

(1) The financial condition of the person seeking approval of a control transaction could jeopardize the financial stability of the holding company, one or more bank subsidiaries of the holding company or the financial interests of the bank's customers.

(2) An examination of the character, competence or experience of any acquiring person or of any of the proposed management personnel of the holding company shows that it would not be in the interest of the customers of one or more of the bank subsidiaries of the holding company or in the interest of the public to permit the person to control the holding company.

(3) The plans or proposals of the person seeking approval with respect to exercising control over the holding company would not be in the best interests of the customers of one or more bank subsidiaries of the holding company.

(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 Co9mmissioner 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.

(b) A holding company filing an application for approval of a combination shall publish a public notice of the filing of the application not more than 30 days before nor more than 10 days after the filing of the application with the Commissioner. The public notice shall contain the following:

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

(2) The names of the parties to the proposed combination and the addresses of its 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.

(c) The Commissioner shall examine the proposed combination including the character, competency and experience of the proposed directors and executive officers of the surviving party of the combination, to determine whether the interests of the customers and communities served by the banks controlled by the parties to the combination would be adversely affected by the proposed combination.

(d) Notwithstanding any laws to the contrary, information about the character, competence, and experience of the directors and executive officers of the parties to a combination received by the Commissioner shall be deemed a confidential record of the Commissioner subject to G.S. 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,~~ 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~~ 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 such 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:

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

Any aggrieved party in a proceeding under ~~G.S. 53-211~~ G.S. 53-211, G.S. 53-10-102, or ~~G.S. 53-227.1~~ 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

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

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.**

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 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:

~~(1) 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.~~

~~(9) 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.~~

(10) Article 14 of this Chapter.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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(1),~~ 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. 53-1,~~ G.S. 53-1-4(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).~~ G.S. 53-2-2. 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. 53-1,~~ 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(1),~~ 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~~ G.S. 53-1-1 through 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~~ G.S. 53-1-1 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.

Bill Draft 2011-ROz-10: Banking Law Modernization Act.

2011-2012 General Assembly

Committee:		**Date:**	April 22, 2012
Introduced by:		**Prepared by:**	Karen Cochrane-Brown
Analysis of:	2011-ROz-10		Committee Counsel

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 baking 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.

2011-ROz-10-SMRO-46 v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-ROfz-11 [v.3] (03/27)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/23/2012 1:25:18 PM

Short Title: Modify Mortgage Regulation Funding. (Public)

Sponsors: .

Referred to:

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 ($1,5000,000.00) 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:

Loan and/or Servicing Dollar Volume		Per Thousand
$1,500,001.00 to	$2,500,000.00	$0.07
$2,500,001.00 to	$5,000,000.00	$0.06
$5,000,001.00 to	$10,000,000.00	$0.05
$10,000,001.00 to	$30,000,000.00	$0.04
$30,000,001.00 to	$100,000,000.00	$0.03
$100,000,001.00 to	$1,300,000,000.00	$0.02
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~~ 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~~ plus the actual cost of obtaining credit reports and State and national criminal history record checks and ~~of~~ processing fees ~~of~~ for the ~~nationwide system~~ Nationwide Mortgage Licensing System and Registry as the Commissioner shall ~~require, nonrefundable renewal fees as follows:~~ require.

~~(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.~~ And assessments.

(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.~~ fee. 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,

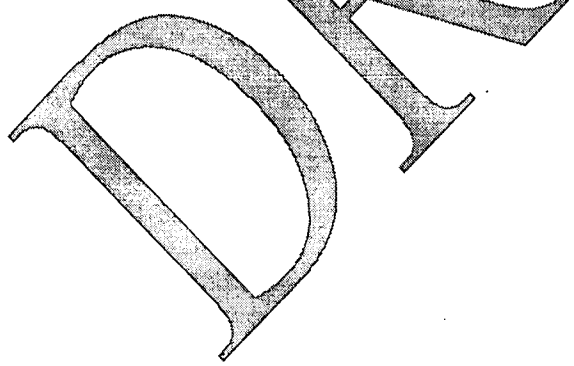
b. Over which the applicant has control, or

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.

2011-2012 General Assembly

Committee:		**Date:**	April 23, 2012
Introduced by:		**Prepared by:**	Karen Cochrane-Brown
Analysis of:	2011-ROfz-11		Committee Counsel

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.

2011-ROfz-11-SMRO-47 v1

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

March 28, 2012

MEMORANDUM

TO: Members, Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

FROM: Representative Harold J. Brubaker, Co-Chair
Senator Harry Brown, Co-Chair

SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Thursday	April 26, 2012	10:00 am	643 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Cindy Coley at (919) 715-4946.

cc: Committee Record _X_
Interested Parties _X_

Cindy Coley (Rep. Brubaker)

From: Cindy Coley (Rep. Brubaker)
nt: Wednesday, March 28, 2012 3:23 PM
: Cindy Coley (Rep. Brubaker); Darryl Black (Sen. Harry Brown)
Subject: Banking Laws Modernization, Jt. Leg. Study (2011)

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

March 28, 2012

MEMORANDUM

TO: Members, Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

FROM: Representative Harold J. Brubaker, Co-Chair

Senator Harry Brown, Co-Chair

SUBJECT: Meeting Notice

DAY	DATE	TIME	ROOM
Thursday	April 26, 2012	10:00 am	643 LOB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting http://www.ncleg.net/graphics/downtownmap.pdf.

If you are unable to attend or have any questions concerning this meeting, please contact Cindy Coley at (919) 715-4946.