

**2011-2012**

**HOUSE  
BANKING**

**MINUTES**

# HOUSE COMMITTEE ON BANKING

<u>MEMBER</u>	<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
Rhyne, Johnathan (Chair)	Susan Beaupied Committee Assistant	733-5782	2208	19
Brubaker, H. (Vice-Chair)	Cindy Coley	715-4946	302	1
Dockham, Jerry (Vice-Chair)	Regina Irwin	715-2526	2204	3
Hastings, Kelly (Vice-Chair)	Leslie Sutter	715-2002	2123	63
McComas, Dan (Vice-Chair)	Judy Lowe	733-5786	506	6
Alexander, Kelly	Marjorie Connor	733-5778	404	119
Brawley, Bill	Brian Lehrschall	733-5800	1313	78
Carney, Becky	Ann Jordan	733-5827	1221	91
Daughtry, Leo	Margaret Dockery	733-5605	2207	4
Fisher, Susan	Cindy Garrison	715-2013	504	82
Gibson, Pryor	Susanna Davis	715-3007	514	60
Glazier, Rick	Carin Savel	733-5601	1021	92
Hager, Mike	Christine Brenco	733-5749	306C	66
Haire, Phil	Theresa Lopez	715-3005	609	58
Hall, Larry	Lisa Ray	733-5872	1015	107
Hilton, Mark	Carol Wilson	733-5988	1227	17
Holloway, Bryan	Cara Philon	733-5609	529	32
Jackson, Darren	Angela McMillan	733-5974	1019	106
McCormick, Darrell	Ann Murtha	733-5654	2119	64
Moore, Rodney	Charmey Morgan	733-5606	1211	110
Shepard, Phillip	Pamela Pate	715-9644	301N	98
Steen, Fred	Chris Floyd	733-5881	305	27
Stone, Mike	Kathy Voss	715-3026	1008	97

## **Staff:**

**Drupti Chauhan**  
**Karen Cochrane-Brown**  
**Greg Roney**

**NORTH CAROLINA GENERAL ASSEMBLY**

**BANKING COMMITTEE  
2011-2012 SESSION**

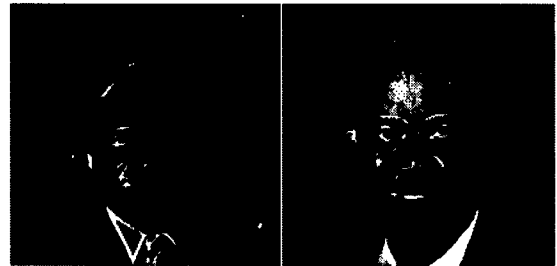


**Rep. Rhyne  
Chair**



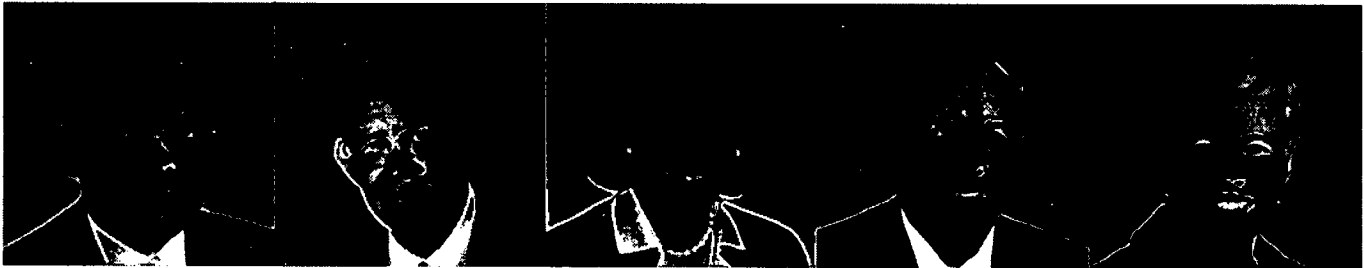
**Rep. Brubaker  
Vice-Chair**

**Rep. Dockham  
Vice-Chair**



**Rep. Hastings  
Vice-Chair**

**Rep. McComas  
Vice-Chair**



**Rep. K. Alexander**

**Rep. Brawley**

**Rep. Carney**

**Rep. Daughtry**

**Rep. Fisher**



**Rep. Gibson**

**Rep. Glazier**

**Rep. Hager**

**Rep. Haire**

**Rep. Hall**



**Rep. Hilton**

**Rep. Holloway**

**Rep. Jackson**

**Rep. McCormick**

**Rep. R. Moore**

**NORTH CAROLINA GENERAL ASSEMBLY**

**BANKING COMMITTEE  
2011-2012 SESSION**



**Rep. Shepard**

**Rep. Steen**

**Rep. Stone**



**(2011-2012 SESSION)**

[illegible]

North Carolina General Assembly  
Through House Committee on  
Banking

Date: 06/23/2011  
Time: 11:19  
Page: 001 of 001  
Leg. Day: H-087/S-087

2011-2012 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0121=	Brubaker	REAPPOINT JOS. A. SMITH COMMISSIONER OF BANKS.	H	Ref To Com On Banking	02-17-11	
H0203	Crawford	SHOW MORTGAGE PAYOFF ON SATISFACTION FILING.	H	Ref To Com On Rules and Operations of the Senate	03-02-11	06-02-11
H0501	Glazier	CREDIT UNION OWNERSHIP OF INS. CO.	*H	Pres. To Gov. 6/16/2011	05-18-11	05-18-11
H0583=	Sager	ALLOW SAVINGS PROMOTION RAFFLES.	H	Ref To Com On Banking	04-05-11	
H0686	Hastings	PAYABLE ON DEATH ACCOUNTS.	*H	Pres. To Gov. 6/16/2011	04-07-11	05-23-11
H0707	Rhyne	DEEDS OF TRUST/ MODERNIZE PROCEDURES.	*H	Ref To Com On Judiciary I	04-07-11	06-03-11
H0717	Wray	PRIVATE MORTGAGE INSURANCE PREMIUMS.	H	Ref To Com On Banking	04-07-11	
H0810=	Steen	CONSUMER FINANCE ACT AMENDMENTS.	*H	Ref To Com On Rules and Operations of the Senate	04-07-11	04-14-11
H0810=	Steen	CONSUMER FINANCE ACT AMENDMENTS.	*H	Ref To Com On Rules and Operations of the Senate	04-14-11	04-19-11
H0810=	Steen	CONSUMER FINANCE ACT AMENDMENTS.	*H	Ref To Com On Rules and Operations of the Senate	04-19-11	04-20-11
H0810=	Steen	CONSUMER FINANCE ACT AMENDMENTS.	*H	Ref To Com On Rules and Operations of the Senate	04-20-11	05-31-11
H0814=	Collins	FAIR COMPENSATION FOR MORTGAGE BROKER/ LENDER.	H	Re-ref Com On Rules, Calendar, and Operations of the House	04-07-11	05-10-11
S0369=	Harry Brown	CONFIRM JOSEPH A. SMITH COMMISSIONER OF BANKS.	HR	Ch. Res 2011-4	03-22-11	03-24-11
S0513=	Rick Gunn	ALLOW SAVINGS PROMOTION RAFFLES.	HR	Ch. SL 2011-146	05-16-11	06-02-11

'\$' indicates the bill is an appropriation bill.

A bold line indicates the bill is an appropriation bill.

'\*' indicates that the text of the original bill was changed by some action.

'=' indicates that the original bill is identical to another bill.

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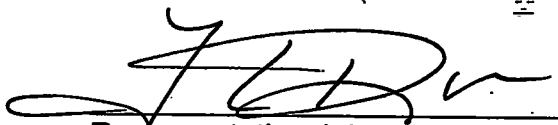
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**MINUTES**  
**HOUSE COMMITTEE ON BANKING**  
Thursday, February 3, 2011

Upon the call of the chair, the House Banking Committee met on February 3, 2011 in room 1327 of the Legislative Building. The following members were present: Johnathan Rhyne, chairman; Representatives Brubaker, Dockham, Hastings, McComas, K. Alexander, Brawley, Carney, Fisher, Gibson, Hager, Haire, Hilton, Holloway, Jackson, McCormick, R. Moore, Shepard, and Stone.

The Chairman called the meeting to order. He introduced Mr. Joseph A. Smith, Jr., the North Carolina Commissioner of Banks. After brief introductory remarks, he introduced Mary Kane, a financial examiner of the Office of Commissioner of Banks. She presented a seminar called "Banking 101." (see attached).

The meeting adjourned at 12:48 p.m.

  
Representative Johnathan L. Rhyne, Jr.  
Chairman

  
Susan Beaupied  
Committee Assistant

# Banking 101

Joseph A. Smith, Jr., Commissioner of Banks



north carolina  
COMMISSIONER OF BANKS



# Objectives

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- Understand the function of the banking system
- Understand the Office of the Commissioner of Banks' supervision process



# Why are banks unique?

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- Banks function as financial Intermediaries
  - Pool financial resources from those with excess funds and lend it to borrowers
  - Only banks can perform this function in sufficient volume
  - Charge a fee or interest for the matchmaking service
  - “The business of buying and selling money.”

Hugh McColl



# Why are banks unique?

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- Banks serve as conduit for Fed's Monetary Policy

## Monetary Policy:

The Federal Reserve's actions to influence the availability and cost of money in order to promote national economic goals





# What is Monetary Policy?

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## Tools:

- Federal Open Market Committee
- Federal Funds Rate
- Discount Rate
- Reserve Requirements
- Buying Government Bonds



# What is Fiscal Policy?

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The government influences the economy by changing how it spends and collects money.

## Tools:

- Government spending cuts and increases
- Tax cuts and tax increases
- Unemployment benefits



# What is a Commercial Bank?

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- A financial intermediary that
  - ✓ channels funds between surplus and deficit agents
  - ✓ transforms bank deposits into bank loans
  - ✓ channel funds from savers to borrowers
- A business bank as opposed to a retail bank which provides services directly to consumers



# Gramm-Leach-Bliley Act

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- The 1933 Glass-Steagall Act prohibited any one institution from acting as any combination of commercial bank, investment bank, or insurance company.
- Gramm-Leach-Bliley's 1999 repeal of Glass-Steagall blurred the line between commercial banks that take deposits and Wall Street investment banks that are active in the capital markets



# Dual Banking System

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- In the U.S., banking is regulated by both the Federal and State governments
- New banks choose either a National or a State charter
- National charter regulated by Office of the Comptroller of the Currency
- NC State charters are regulated by NC Commissioner of Banks
- Banks can also flip charters



# Primary Federal Regulators

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- All commercial banks must have a primary Federal regulator :
  - All national banks: the Office of the Comptroller of the Currency
  - State banks that are members of the Federal Reserve System: the Federal Reserve Bank
  - State “non member” banks: Federal Deposit Insurance Corporation



# Federal Reserve System

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- Central bank of the U.S. created by Congress in 1913
- Purpose: to make the financial system
  - Safe
  - Flexible
  - An instrument for a stable monetary & fiscal policy



# Federal Reserve System

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- Twelve regional district banks (NC is in 5<sup>th</sup> district)
- District banks are supervised by Board of Governors
- Federal Open Market Committee (FOMC)  
implements monetary policy by setting the Federal Funds rate





# Federal Reserve Bank Goals

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- Maximum employment
- Stable prices
- Moderate long-term interest rates
- Supervision & regulation to ensure the safety & soundness of the banking and financial system
- Consumer protection



# Federal Deposit Insurance Corporation

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- Created in 1933
- Since 1989, all commercial banks that accept deposits are required to have FDIC insurance
- Dodd-Frank Act permanently raised the insured amount to \$250,000 per depositor, for each account and ownership category
- No depositor has ever lost a penny of FDIC-insured deposits
- FDIC supervises State-non member banks



# Why are Banks so heavily regulated?

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- Banks must have the public's confidence in order for the financial system to operate efficiently
- Banks must be financially healthy to perform their role in the economy
- Banks are the conduit for the FRB's monetary policy
- Banks accept customers' deposits



# OCOB Supervisory Program

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- Continuous off-site analysis and monitoring
- Risk-focused examination
  - Off-site
  - On-site
- Issuance of Report of Examination (ROE)



# Purpose of a Bank Exam

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- Maintain public confidence
- Determine compliance with laws and regulations
- Prevent problem situations from deteriorating to the point where costly regulatory intervention becomes unavoidable
- Provide regulators with an objective foundation on which to base corrective measures, recommendations, and instructions



# Capital Adequacy

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- Volume and severity of risk assets
- Growth experience and plans
- Earnings retention
- Access to capital markets
- Management's ability to address emerging needs for additional capital



# Asset Quality

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- Level, distribution, and severity of classified assets
- Nature and volume of special mention assets
- Adequacy of lending policies and credit administration procedures
- Volume and nature of credit documentation exceptions
- Existence of asset concentrations
- Appropriate level of the Allowance for Loan and Lease Losses
- Ability to administer and collect problem credits



# Management (both Board & Exec. Officers)

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- Technical competence
- Leadership and administrative abilities
- Compliance with banking regulations and statutes
- Adequacy of and compliance with internal policies
- Depth and succession
- Ability to plan and respond to changing circumstances
- Quality of internal controls and operating procedures
- Integrity of Management Information System





# Earnings

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- Ability to cover losses and provide adequate capital
- Level, trends, quality, and stability
- Appropriate provisions to the ALLL
- Expenses in relation to operations
- Adequacy of the budget and forecasting system



# Liquidity

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- Volatility and diversification of funding sources
- Frequency and level of borrowings
- Reliance on interest-sensitive funds
- Availability of assets readily convertible into cash
- Access to money markets or other funding sources
- Effectiveness of funds management strategies and contingency funding plans



# Sensitivity to Market Risk

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- Potential for interest rate changes to adversely affect earnings and capital
- Ability of management to identify, measure, monitor, and control exposure to market risk
- Overall accuracy of the available measurements
- Presence of items with particularly volatile or uncertain interest rate sensitivity



# Bank Red Flags

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- Commercial Real Estate Concentrations
- Rapid Growth
- Weak Management
- Declining Capital, Earnings, Liquidity
- Increasing Problem Loans



# Why do Banks Merge?

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- Consolidation in the industry
- Economies of scale
- Acquisition of another bank's capital, deposit base, brand, reputation, technology, employees, market share
- Closed by regulators due to unsafe and unsound conditions which may include inadequate capital & liquidity



HOUSE PAGES

NAME OF COMMITTEE Banking Comm DATE 2/3/11

1. Name: Tia Cunningham

County: Hoke

Sponsor: Pierce

2. Name: Skylar Stroud

County: Iredell

Sponsor: Howard

3. Name: Currie Bryant

County: Brunswick

Sponsor: Hill

4. Name: Caroline Law

County: Gaston

Sponsor: Torbett

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

SGT-AT-ARM

1. Name: Earl Coker

2. Name: Martha Madison

3. Name: Bill Bass

4. Name: \_\_\_\_\_

## VISITOR REGISTRATION SHEET

Banks

Name of Committee

2/3/11

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Elizabeth Hammond	Office of the Commissioner of Banks
Ray Grace	- DO -
Paul Stock	NCPA
Chris Kulka	CUL
Lauren Whaley	NCCU
Sarah Sarr	WM
Montez	NMRS
Larry Heckner	Clark Lytle Geduldig
Ben Seaborn	TSS

# VISITOR REGISTRATION SHEET

**Name of Committee**

Date \_\_\_\_\_

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

**NAME****FIRM OR AGENCY AND ADDRESS**

Lee-Ann Ferguson

Caroline Shih Strategies

JOHN GOODMAN

NC CHAMBER

JoAnn Davidson

JAP + ASSOC. (01/10)



**MINUTES**  
**HOUSE COMMITTEE ON BANKING**  
Thursday, March 24, 2011

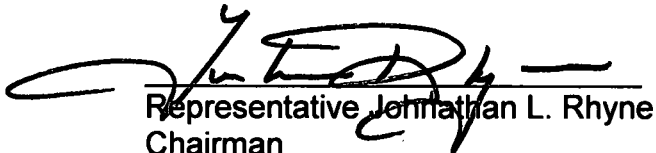
Upon the call of the chair, the House Banking Committee met on March 24, 2011, at 12:00 p.m. in room 1327 of the Legislative Building. The following members were present: Representatives Brubaker, Dockham, McComas, Vice-Chairs; Representatives Alexander, Brawley, Haire, Jackson, Moore, Shepherd, and Steen.


Representative Dockham presided and called the meeting to order to consider Senate Joint Resolution 369, A JOINT RESOLUTION TO CONFIRM THE GOVERNOR'S REAPPOINTMENT OF JOSEPH A. SMITH TO THE OFFICE OF COMMISSIONER OF BANKS. Representative Dockham called on Representative Brubaker to explain the resolution.

Representative Haire called for a voice vote on the question of approving SJR 369. The committee voted unanimously to give a favorable report to SJR 369.

The meeting adjourned at 12:04 p.m.

Respectfully submitted,

  
Representative Johnathan L. Rhyne  
Chairman

  
Susan Beaupied  
Committee Assistant

## **AGENDA**

### **BANKING COMMITTEE**

**Thursday, March 24, 2011**

**Room 1327**

**12:00 noon**

**I. Welcome and opening remarks**

**Representative Jerry Dockham, Vice-Chair  
Banking Committee**

**II. Agenda item:**

**SJR 369 REAPPOINT JOSEPH A. SMITH COMMISSIONER  
OF BANKS  
Senator Harry Brown, Sponsor**

**III. Adjournment**

**2011 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Rhyne (Chair) for the Committee on BANKING.

---

☐ Committee Substitute for

**SJR 369**

A JOINT RESOLUTION TO CONFIRM THE GOVERNOR'S  
REAPPOINTMENT OF JOSEPH A. SMITH TO THE OFFICE OF COMMISSIONER OF BANKS.

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.

# VISITOR REGISTRATION SHEET

House Banking

MARCH 24, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

McNeil Chestnut	FBI & Comm Bldg.
Ha Nguyen	NCCOB
Elizabeth Hammond	NCCOB
Debbie Petersen	NCCOB
Deb Williford	NCCOB
Tami Hinton	NCCOB
BOB KUCAB	NCHFA
Chad Smith	CAPA
David McGowan	NC Ren Hous
Dick Carlton	atby,
Paul Stork	NCBA

## VISITOR REGISTRATION SHEET

House Banking

MARCH 24, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

DANIEL GARNER

OCOB

Chris Kukla

CR

Lauren Whaley

NCCU

Justin D. Brown

Bone & Assoc.

Tommy C. C.

NMR

AI Ripley

NC JC

HOUSE PAGES

NAME OF COMMITTEE BANKING DATE 3-24-11

1. Name: Samantha Enochs (House)

County: Iredell

Sponsor: Grey Mills

2. Name: Mary McDraak (House)

County: Iredell

Sponsor: Grey Mills

3. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

4. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

5. Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

SGT-AT-ARM

1. Name: \_\_\_\_\_

2. Name: \_\_\_\_\_

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

Committee Sergeants at Arms

NAME OF COMMITTEE BANKING

DATE: 3-24-11 Room: 1228

House Sgt-At Arms:

1. Name: JOHN BRANDON

2. Name: R.L. Carter

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

● Name: \_\_\_\_\_

Senate Sgt-At Arms:

1. Name: \_\_\_\_\_

2. Name: \_\_\_\_\_

3. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

**MINUTES**  
**HOUSE COMMITTEE ON BANKING**  
Thursday, May 19, 2011

Upon the call of the chair, the House Banking Committee met on May 19, 2011, at 12:00 p.m. in room 1327 of the Legislative Building. The following members were present: Representative Johnathan Rhyne, Chairman; Representatives Brubaker, Dockham, Hastings, Vice-Chairs; Representatives Alexander, Brawley, Carney, Daughtry, Fisher, Glazier, Hager, Hall, Jackson, McCormick, McGuirt, Moore, Shepherd, Steen, and Stone.

Chairman Rhyne called the meeting to order to consider HB 686, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A PAYABLE ON DEATH ACCOUNT NAMING AN ENTITY OTHER THAN A NATURAL PERSON AS BENEFICIARY. The chair recognized Representative Dockham to make a motion to accept the proposed committee substitute for HB 686. The motion carried.

Representative Rhyne recognized Representative Hastings to explain the bill.

Representative Dockham moved for a favorable report on the PCS for HB 686. The motion carried for a favorable report for the PCS for HB 686, unfavorable to the original bill.

Representative Hager made a motion to accept the PCS for HB 810, CONSUMER FINANCE ACTS AMENDMENTS. The motion carried. Representative Rhyne recognized Representative Steen to explain the bill.

Representative Rhyne recognized several proponent and opponent outside speakers to argue HB 810 and explain their positions on the bill. Speaking in favor of the bill were:

1. Chris McKinley, President of Green Cap Financial
2. Everett Wallace, Policy Advisor to the NC Credit and Personal Finance

Speaking in opposition to the bill were:

1. Jennifer Epperson, Department of Justice of the State of North Carolina
2. Colonel Stephen J. Sicinski, Commander, Fort Bragg
3. Michael Archer, Regional Legal Assistance Director, Marine Corps Installments, East
4. Gini Schopfel, Navy-Marine Corps Relief Society, Camp Lejeune



Chairman Rhyne adjourned the meeting at 12:44 PM.

Respectfully submitted,

  
\_\_\_\_\_  
Representative Johnathan Rhyne  
Chairman

  
\_\_\_\_\_  
Susan Beaupied  
Committee Assistant

## **AGENDA**

### **BANKING COMMITTEE**

**Thursday, May 19, 2011  
Room 1327 Legislative Building  
12:00 PM**

#### **OPENING REMARKS**

**Representative Johnathan Rhyne, Chair  
Banking Committee**

#### **AGENDA ITEMS**

**HB 686 PAYABLE ON DEATH ACCOUNTS  
HB 810 CONSUMER FINANCE ACCOUNT AMENDMENTS**

#### **ADJOURNMENT**

**2011 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Rhyne (Chair) for the Committee on BANKING.

☐ Committee Substitute for

**HB 686** A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A PAYABLE ON DEATH ACCOUNT NAMING AN ENTITY OTHER THAN A NATURAL PERSON AS BENEFICIARY.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

**(FOR JOURNAL USE ONLY)**

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 686

Short Title: Payable on Death Accounts.

(Public)

Sponsors: Representative Hastings (Primary Sponsor).

For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Banking.

April 7, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A PAYABLE ON DEATH  
3 ACCOUNT NAMING AN ENTITY OTHER THAN A NATURAL PERSON AS  
4 BENEFICIARY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 53-146.2 is repealed and a new G.S. 53-146.2A is enacted to  
7 read:

8 "**§ 53-146.2A. Payable on Death (POD) accounts.**

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

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

17 (2) If there are two or more owners of a Payable on Death account, the owners  
18 shall own the account as joint tenants with right of survivorship and, except  
19 as otherwise provided in this section, the account shall have the incidents set  
20 forth in G.S. 53-146.1.

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

24 (4) If only one beneficiary is living and of legal age at the death of the last  
25 surviving owner, the beneficiary shall be the owner of the account, and  
26 payment by the bank to such owner shall be a total discharge of the bank's  
27 obligation as to the amount paid. If two or more beneficiaries are living at  
28 the death of the last surviving owner, they shall be owners of the account as  
29 joint tenants with right of survivorship as provided in G.S. 53-146.1, and  
30 payment by the bank to the owners or any of the owners shall be a total  
31 discharge of the bank's obligation as to the amount paid.

32 (5) If one or more owners survive the last surviving beneficiary, the account  
33 shall become an individual account of the owner, or a joint account with  
34 right of survivorship of the owners, and shall have the legal incidents of an



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- individual account in the 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.
- (6) 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.
- (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 following:

'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) 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. If the beneficiary is an entity other than a natural person, the account shall have the same incidents as set forth in subsection (a) of this section, except for subdivisions (4), (5), and (6). In addition, the following shall apply if the beneficiary is an entity other than a natural person:

- (1) There shall only be one beneficiary.
- (2) If the beneficiary should cease to exist before the death of the last 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 the 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.

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 following:

'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.

(c) 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.

(d) 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.

(e) This section does not repeal or modify any provisions of laws relating to estate taxes."

**SECTION 2.** G.S. 54B-130 is repealed and a new G.S. 54B-130A is enacted to read:

**"§ 54B-130A. Payable on Death (POD) accounts.**

(a) If any natural person or natural persons establishing a deposit account shall execute a written agreement with the association 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. If one or more beneficiaries are natural persons, 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 association.
- (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. 54B-129.
- (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 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 association to such owner shall be a total discharge of the association'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

1 G.S. 54B-129, and payment by the association to the owners or any of the  
2 owners shall be a total discharge of the association's obligation as to the  
3 amount paid.

4 (5) If one or more owners survive the last surviving beneficiary, the account  
5 shall become an individual account of the owner, or a joint account with  
6 right of survivorship of the owners, and shall have the legal incidents of an  
7 individual account in the case of a single owner or a joint account with right  
8 of survivorship, as provided in G.S. 54B-129, in the case of multiple owners.

9 (6) If only one beneficiary is living and that beneficiary is not of legal age at the  
10 death of the last surviving owner, the association shall transfer the funds in  
11 the account to the general guardian or guardian of the estate, if any, of the  
12 minor beneficiary. If no guardian of the minor beneficiary has been  
13 appointed, the association shall hold the funds in a similar interest bearing  
14 account in the name of the minor until the minor reaches the age of majority  
15 or until a duly appointed guardian withdraws the funds.

16 (7) Prior to the death of the last surviving owner, no beneficiary shall have any  
17 ownership interest in a Payable on Death account. Funds in a Payable on  
18 Death account established pursuant to this subsection shall belong to the  
19 beneficiary or beneficiaries upon the death of the last surviving owner, and  
20 the funds shall be subject only to the personal representative's right of  
21 collection as set forth in G.S. 28A-15-10(a)(1). Payment by the association  
22 of funds in the Payable on Death account to the beneficiary or beneficiaries  
23 shall terminate the personal representative's authority under  
24 G.S. 28A-15-10(a)(1) to collect against the association for the funds so paid,  
25 but the personal representative's authority to collect such funds from the  
26 beneficiary or beneficiaries is not terminated.

27 The natural person or natural persons establishing an account under this subsection shall  
28 sign a statement containing language set forth in a conspicuous manner and substantially  
29 similar to the following:

30 'SAVINGS AND LOAN (or name of institution)

31 PAYABLE ON DEATH ACCOUNT

32 G.S. 54B-130A

33 I (or we) understand that by establishing a Payable on Death account under the provisions  
34 of North Carolina General Statute 54B-130A that:

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

42  
43  
44 (b) If any natural person or natural persons establishing a deposit account shall execute  
45 a written agreement with the association containing a statement that it is executed pursuant to  
46 the provisions of this section and providing for the account to be held in the name of the natural  
47 person or natural persons as owner or owners for one or more beneficiaries, the account and  
48 any balance thereof shall be held as a Payable on Death account. If the beneficiary is an entity  
49 other than a natural person, the account shall have the same incidents as set forth in subsection  
50 (a) of this section, except for subdivisions (4), (5) and (6). In addition, the following shall apply  
51 if the beneficiary is an entity other than a natural person:

- (1) There shall only be one beneficiary.
- (2) If the beneficiary should cease to exist before the death of the last 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 the case of a single owner or a joint account with right of survivorship, as provided in G.S. 54B-129, in the case of multiple owners.

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 following:

'SAVINGS AND LOAN (or name of institution)

PAYABLE ON DEATH ACCOUNT

G.S. 54B-130A

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 54B-130A 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 association (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.

(c) 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.

(d) 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.

(e) This section does not repeal or modify any provisions of laws relating to estate taxes."

**SECTION 3.** G.S. 54C-166 is repealed and a new G.S. 54C-166A is enacted to read:

**"§ 54C-130A. Payable on Death (POD) accounts.**

(a) If any natural person or natural persons establishing a deposit account shall execute a written agreement with the savings 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. If one or more beneficiaries are natural persons, 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 savings 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. 54C-165.
- (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 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 savings bank to such owner shall be a total discharge of the savings 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. 54C-165, and payment by the savings bank to the owners or any of the owners shall be a total discharge of the savings bank's obligation as to the amount paid.
- (5) If one or more owners survive the last surviving beneficiary, 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 the case of a single owner or a joint account with right of survivorship, as provided in G.S. 54C-165, in the case of multiple owners.
- (6) If only one beneficiary is living and that beneficiary is not of legal age at the death of the last surviving owner, the savings 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 savings 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.
- (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 savings 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 savings 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 following:

'SAVINGS BANK (or name of institution)

PAYABLE ON DEATH ACCOUNT

G.S. 54C-166A

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 54C-166A 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 savings 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) If any natural person or natural persons establishing a deposit account shall execute a written agreement with the savings bank containing a statement that it is executed pursuant to

1 the provisions of this section and providing for the account to be held in the name of the natural  
2 person or natural persons as owner or owners for one or more beneficiaries, the account and  
3 any balance thereof shall be held as a Payable on Death account. If the beneficiary is an entity  
4 other than a natural person, the account shall have the same incidents as set forth in subsection  
5 (a) of this section except for subdivisions (4), (5), and (6). In addition, the following shall apply  
6 if the beneficiary is an entity other than a natural person:

7 (1) There shall only be one beneficiary.

8 (2) If the beneficiary should cease to exist before the death of the last owner, the  
9 account shall become an individual account of the owner, or a joint account  
10 with right of survivorship of the owners, and shall have the legal incidents of  
11 an individual account in the case of a single owner or a joint account with  
12 right of survivorship, as provided in G.S. 54C-165, in the case of multiple  
13 owners.

14 The natural person or natural persons establishing an account under this subsection shall  
15 sign a statement containing language set forth in a conspicuous manner and substantially  
16 similar to the following:

17 'SAVINGS AND LOAN (or name of institution)

18 PAYABLE ON DEATH ACCOUNT

19 G.S. 54C-166A

20 I (or we) understand that by establishing a Payable on Death account under the provisions  
21 of North Carolina General Statute 54C-166A that:

22 1. During my (or our) lifetime I (or we), individually or jointly, may withdraw  
23 the money in the account and.

24 2. By written direction to the savings bank (or name of institution) I (or we),  
25 individually or jointly, may change the beneficiary or beneficiaries.

26 3. Upon my (or our) death the money remaining in the account will belong to  
27 the beneficiary or beneficiaries and the money will not be inherited by my  
28 (or our) heirs or be controlled by will.

30  
31 (c) This section shall not be deemed exclusive. Deposit accounts not conforming to this  
32 section shall be governed by other applicable provisions of the General Statutes or the common  
33 law, as appropriate.

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

37 (e) This section does not repeal or modify any provisions of laws relating to estate  
38 taxes."

39 **SECTION 4.** G.S. 54-109.57 is repealed and a new G.S. 54-109.57A is enacted to  
40 read:

41 **"§ 54-109.57A. Payable on Death (POD) accounts.**

42 (a) Shares may be issued to and deposits received from any natural person or natural  
43 persons establishing an account who shall execute a written agreement with the credit union  
44 containing a statement that it is executed pursuant to the provisions of this section and  
45 providing for the account to be held in the name of the natural person or natural persons as  
46 owner or owners for one or more beneficiaries. Such account and any balance thereof shall be  
47 held as a Payable on Death account. If one or more beneficiaries are natural persons, the  
48 account shall have the following incidents:

49 (1) Any owner during the owner's lifetime may change any designated  
50 beneficiary by a written direction to the credit union.

- (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. 54-109.58.
- (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 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 credit union to such owner shall be a total discharge of the credit union'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. 54-109.58, and payment by the credit union to the owners or any of the owners shall be a total discharge of the credit union's obligation as to the amount paid.
- (5) If one or more owners survive the last surviving beneficiary, 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 the case of a single owner or a joint account with right of survivorship, as provided in G.S. 54-109.58, in the case of multiple owners.
- (6) If only one beneficiary is living and that beneficiary is not of legal age at the death of the last surviving owner, the credit union 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 credit union 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.
- (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 credit union 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 credit union 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 following:

'CREDIT UNION (or name of institution)

PAYABLE ON DEATH ACCOUNT

G.S. 54-109.57A

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 54-109.57A that:

1. During my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account.

- 1           2.     By written direction to the credit union (or name of institution) I (or we),  
2                 individually or jointly, may change the beneficiary or beneficiaries.  
3           3.     Upon my (or our) death the money remaining in the account will belong to  
4                 the beneficiary or beneficiaries and the money will not be inherited by my  
5                 (or our) heirs or be controlled by will.  
6

7  
8           (b)   Shares may be issued to and deposits received from any natural person or natural  
9                 persons establishing an account who shall execute a written agreement with the credit union  
10                containing a statement that it is executed pursuant to the provisions of this section and  
11                providing for the account to be held in the name of the natural person or natural persons as  
12                owner or owners for one or more beneficiaries. Such account and any balance thereof shall be  
13                held as a Payable on Death account. If the beneficiary is an entity other than a natural person,  
14                the account shall have the same incidents as set forth in subsection (a) of this section, except for  
15                subdivisions (4), (5), and (6). In addition, the following shall apply if the beneficiary is an  
16                entity other than a natural person:

- 17                (1)   There shall only be one beneficiary.  
18                (2)   If the beneficiary should cease to exist before the death of the last owner, the  
19                        account shall become an individual account of the owner, or a joint account  
20                        with right of survivorship of the owners, and shall have the legal incidents of  
21                        an individual account in the case of a single owner or a joint account with  
22                        right of survivorship, as provided in G.S. 54-109.58, in the case of multiple  
23                        owners.

24           The natural person or natural persons establishing an account under this subsection shall  
25           sign a statement containing language set forth in a conspicuous manner and substantially  
26           similar to the following:

27                                'CREDIT UNION (or name of institution)  
28                                PAYABLE ON DEATH ACCOUNT  
29                                G.S. 54-109.57A

30           I (or we) understand that by establishing a Payable on Death account under the provisions  
31           of North Carolina General Statute 54-109.57A that:

- 32                1.     During my (or our) lifetime I (or we), individually or jointly, may withdraw  
33                        the money in the account.  
34                2.     By written direction to the credit union (or name of institution) I (or we),  
35                        individually or jointly, may change the beneficiary or beneficiaries.  
36                3.     Upon my (or our) death the money remaining in the account will belong to  
37                        the beneficiary or beneficiaries and the money will not be inherited by my  
38                        (or our) heirs or be controlled by will.  
39

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

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

47           (e)   This section does not repeal or modify any provisions of laws relating to estate  
48                 taxes."

49           SECTION 5. This act becomes effective October 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 686  
PROPOSED COMMITTEE SUBSTITUTE H686-CSTM-7 [v.4]

5/18/2011 9:19:07 PM

Short Title: Payable on Death Accounts.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED  
AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A PAYABLE ON DEATH  
ACCOUNT NAMING AN ENTITY OTHER THAN A NATURAL PERSON AS  
BENEFICIARY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-146.2 is repealed and a new G.S. 53-146.2A is enacted to  
read:

**"§ 53-146.2A. Payable on Death (POD) 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.

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

4       (d) This section does not repeal or modify any provisions of laws relating to estate  
5 taxes."

6       SECTION 2. G.S. 54B-130 is repealed and a new G.S. 54B-130A is enacted to  
7 read:

8 **"§ 54B-130A. Payable on Death (POD) accounts.**

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

15       (1) Any owner during the owner's lifetime may change any designated  
16 beneficiary by a written direction to the association.

17       (2) If there are two or more owners of a Payable on Death account, the owners  
18 shall own the account as joint tenants with right of survivorship and, except  
19 as otherwise provided in this section, the account shall have the incidents set  
20 forth in G.S. 54B-129.

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

24       (4) If the beneficiary or beneficiaries are natural persons, there may be one or  
25 more beneficiaries and the following shall apply:

26       a. If only one beneficiary is living and of legal age at the death of the  
27 last surviving owner, the beneficiary shall be the owner of the  
28 account, and payment by the association to such owner shall be a  
29 total discharge of the association's obligation as to the amount paid.  
30 If two or more beneficiaries are living at the death of the last  
31 surviving owner, they shall be owners of the account as joint tenants  
32 with right of survivorship as provided in G.S. 54B-129, and payment  
33 by the association to the owners or any of the owners shall be a total  
34 discharge of the association's obligation as to the amount paid.

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

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

45       (6) If one or more owners survive the last surviving beneficiary who was a  
46 natural person, or if a beneficiary who is an entity other than a natural person  
47 should cease to exist before the death of the owner, the account shall become  
48 an individual account of the owner, or a joint account with right of  
49 survivorship of the owners, and shall have the legal incidents of an  
50 individual account in a case of a single owner or a joint account with right of  
51 survivorship, as provided in G.S. 54B-129, 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 association 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 association 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:

'SAVINGS AND LOAN (or name of institution)

PAYABLE ON DEATH ACCOUNT

G.S. 54B-130A

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 54B-130A 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 association (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."

**SECTION 3.** G.S. 54C-166 is repealed and a new G.S. 54C-166A is enacted to read:

**"§ 54C-130A. Payable on Death (POD) accounts.**

(a) If any natural person or natural persons establishing a deposit account shall execute a written agreement with the savings 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 savings 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. 54C-165.

(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 savings bank to such owner shall be a total discharge of the savings 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. 54C-165, and payment by the savings bank to the owners or any of the owners shall be a total discharge of the savings 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 savings 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 savings 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. 54C-165, 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 savings 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 savings 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:

'SAVINGS BANK (or name of institution)  
PAYABLE ON DEATH ACCOUNT

## G.S. 54C-166A

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 54C-166A 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 savings 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."

SECTION 4. G.S. 54-109.57 is repealed and a new G.S. 54-109.57A is enacted to read:

**"§ 54-109.57A. Payable on Death (POD) accounts.**

(a) Shares may be issued to and deposits received from any natural person or natural persons establishing an account who shall execute a written agreement with the credit union 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. Such 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 credit union.
- (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. 54-109.58.
- (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 credit union to such owner shall be a total discharge of the credit union'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. 54-109.58, and payment by the credit union to the owners or any of the owners shall be a total discharge of the credit union'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 credit union 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 credit union 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. 54-109.58, 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 credit union 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 credit union 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:

'CREDIT UNION (or name of institution)

PAYABLE ON DEATH ACCOUNT

G.S. 54-109.57A

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 54-109.57A 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 credit union (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.

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

4        (d) This section does not repeal or modify any provisions of laws relating to estate  
5 taxes."

6        **SECTION 5.** This act becomes effective October 1, 2011, and applies to  
7 agreements executed on or after that date. Agreements executed prior to October 1, 2011  
8 remain subject to the laws in effect at the time the parties executed the agreement.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 810  
PROPOSED COMMITTEE SUBSTITUTE H810-CSRO-16 [v.4]

5/18/2011 7:11:04 PM

Short Title: Consumer Finance Act Amendments.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED  
AN ACT TO MAKE VARIOUS AMENDMENTS TO THE NORTH CAROLINA  
CONSUMER FINANCE ACT TO INCREASE CONSUMER ACCESS AND CREDIT  
MARKET PARITY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 53-166(a) reads as rewritten:

"(a) Scope. – No person shall engage in the business of lending in amounts of ~~ten~~ fifteen thousand dollars (~~\$10,000~~) (\$15,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans."

**SECTION 2.** G.S. 53-172(a) reads as rewritten:

"(a) No licensee shall conduct the business of making loans under this Article within any office, suite, room, or place of business in which any other business is solicited or transacted.

Installment paper dealers as defined in G.S. 105-83, ~~and the collection by a licensee of loans legally made in North Carolina, or another state by another government regulated lender or lending agency, agency and the collection by a licensee of claims of, or payments to, an insurance company licensed in North Carolina and arising in any way from an insurance policy approved by the Commissioner of Insurance,~~ shall not be considered as being any other business within the meaning of this section."

**SECTION 3.** G.S. 53-173 reads as rewritten:

"§ 53-173. **Maximum rate of interest and fee; computation of interest; limitation on interest after judgment; limitation on interest after maturity of the loan.**

(a) Maximum Rate of Interest. – Every licensee under this section may make loans in installments not exceeding three thousand dollars (\$3,000) in amount, at interest rates not exceeding thirty-six percent (36%) per annum on the outstanding principal balance of any loan not in excess of ~~six~~ one thousand five hundred dollars (~~\$600.00~~) (\$1,500) and fifteen percent (15%) per annum on any remainder of such unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.



1 ...  
2 (g) Limitations on Loans to Individual Borrowers. –

- 3 (1) No loan shall be made to a borrower before the 91st day after the origination  
4 of an existing loan made under this section, nor with less than 50% of the  
5 indebtedness of the existing loan reduced in the current balance, unless the  
6 borrower receives the greater of one hundred dollars (\$100) or twenty  
7 percent (20%) in cash in excess of the principal amount of the original loan.  
8 (2) No licensee shall make a loan under this section to repay an existing loan  
9 under this section with the licensee without providing a notice, approved by  
10 the Commissioner, explaining the benefits of disciplined consistent  
11 repayment of installment credit and the potential of increasing costs when  
12 obtaining a new loan before final payment.  
13 (3) A licensee under this section must accept and credit semi-monthly and  
14 weekly payments from borrowers made before regularly scheduled payments  
15 are due and also provide at the time the loan is made an example of the  
16 potential savings that could occur as a result of more frequent payments.  
17 (4) No licensee or an affiliate of such licensee, shall make a loan to a borrower  
18 under this section if there exists an outstanding loan made under this section  
19 or G.S. 53-176 between the licensee and that borrower unless the existing  
20 loan is paid in full from the proceeds of the new loan."

21 **SECTION 4. G.S. 53-176 reads as rewritten:**

22 **"§ 53-176. Optional rates, maturities and amounts.**

23 (a) ~~In lieu of addition to making loans in the amount and at the interest stated in~~  
24 ~~G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may at any time elect to make~~  
25 ~~loans in installments not exceeding ten- fifteen thousand dollars (\$10,000) (\$15,000) and which~~  
26 ~~shall not be repayable in less than six months or more than 84- 96 months and which shall not~~  
27 ~~be secured by deeds of trust or mortgages on real estate and which are repayable in~~  
28 ~~substantially equal consecutive monthly payments and to charge and collect interest in~~  
29 ~~connection therewith which shall not exceed the following actuarial rates:~~

- 30 (1) ~~With respect to a loan not exceeding seven thousand five hundred dollars~~  
31 ~~(\$7,500), thirtyThirty percent (30%) per annum on that part of the unpaid~~  
32 ~~principal balance not exceeding one- five thousand dollars (\$1,000)(\$5,000).~~  
33 (1a) Twenty-four percent (24%) per annum on the unpaid principal balance not  
34 exceeding ten thousand dollars (\$10,000).-and  
35 (1b) eighteen- Eighteen percent (18%) per annum on the remainder of the unpaid  
36 principal balance.

37 Interest shall be contracted for and collected at the single simple interest rate applied to the  
38 outstanding balance that would earn the same amount of interest as the above rates for payment  
39 according to schedule.

- 40 (2) ~~With respect to a loan exceeding seven thousand five hundred dollars~~  
41 ~~(\$7,500), eighteen percent (18%) per annum on the outstanding principal~~  
42 ~~balance.~~

43 (b) In addition to the interest permitted in this section, a licensee may assess at closing a  
44 fee for processing the loan as agreed upon by the parties, not to exceed twenty-five dollars  
45 (\$25.00) for loans up to two thousand five hundred dollars (\$2,500) and one percent (1%) of  
46 the cash advance for loans above two thousand five hundred dollars (\$2,500), not to exceed a  
47 total fee of forty dollars (\$40.00), provided that such charges may not be assessed more than  
48 twice in any 12-month period.

49 (c) The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f),  
50 (g), (h) and (i) shall apply to loans made pursuant to this section.

~~(d) Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and no sooner than 30 days from the date of such notification begin making loans regulated by this section. After such election a licensee may continue to make loans in accordance with this section unless the licensee notifies the Commissioner in writing of its intention to terminate such election on a date not sooner than 30 days from the notification.~~

(e) The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty. Except as otherwise provided for pursuant to G.S. 75-20(a), no more than twice in a 12-month period, a borrower may cancel a loan with the same licensee within three business days after disbursement of the loan proceeds without incurring or paying interest so long as the amount financed, minus any fees or charges, is returned to and received by the licensee within that time.

~~(f) No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article except as authorized in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee that elects to make loans in accordance with the provisions of this section shall be bound by that election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State."~~

SECTION 5. G.S. 53-177 reads as rewritten:

**"§ 53-177. Recording fees. Fees.**

(a) Recording Fees. – The licensee may collect from the borrower the amount of any fees necessary to file or record its security interest with any public official or agency of a county or the State as may be required pursuant to Article 9 of Chapter 25 of the General Statutes or G.S. 20-58 et seq. Upon full disclosure to the borrower on how the fees will be applied, such fees may either (i) be paid by the licensee to such public official or agency of the county or State, or (ii) in lieu of recording or filing, applied by the licensee to purchase nonfiling or nonrecording insurance on the instrument securing the loan, ~~or (iii) be retained by a licensee that elects to self insure against the loss of a security interest by reason of not filing or recording its security instrument. Provided, provided,~~ however, the amount collected by the licensee from the borrower for the purchase of a nonfiling or nonrecording insurance ~~policy, or for self insurance, policy~~ shall be the premium amount for such insurance as fixed by the Commissioner of Insurance. Such premium shall be at least one dollar (\$1.00) less than the cost of recording or filing a security interest. Provided further, a licensee shall not collect or permit to be collected any notary fee in connection with any loan made under this Article, nor may a licensee collect any fee from the borrower for the cost of releasing a security interest except such fee as actually paid to any public official or agency of the county or State for such purpose.

(b) Late Fees. –

(1) A licensee may charge a late payment charge for any payment which remains past due for 10 days or more after the due date.

(2) No licensee may charge a late payment charge:

a. For loans made pursuant to G.S. 53-173, greater than ten dollars (\$10.00).

b. For loans made pursuant to G.S. 53-176, greater than fifteen dollars (\$15.00).

c. More than once with respect to a single late payment.

1       (c) Third-Party Payment Fees. – The licensee may collect any actual charges paid by  
2 the licensee related to payments submitted by the borrower or at the borrower's request through  
3 electronic or other means not affiliated with the licensee.

4       (d) Deferral Charges. – A licensee may, by agreement with the borrower, collect a  
5 deferral charge and defer the due date of all or any part of one or more installments under an  
6 existing loan contract as permitted in the provisions of G.S. 25A-30."

7       **SECTION 6.** G.S. 53-179 reads as rewritten:

8       **"§ 53-179. Multiple-office loan limitations.**

9       A licensee shall not grant a loan in one office to any borrower who already has a loan in  
10 another office operated by the same entity or by an affiliate, parent, subsidiary or under the  
11 same ownership, management or control, whether partial or complete. This section shall apply  
12 to intrastate and interstate operations. A licensee shall take every reasonable precaution to  
13 prevent granting loans in violation of this section. ~~Such~~ Subject to the limitation contained in  
14 G.S. 53-173(g)(4), loans granted inadvertently resulting in a total liability of three thousand  
15 dollars (\$3,000) or less, shall be adjusted to the rates applicable under the Article to a single  
16 loan of equivalent amount, and when the total liability on such loans is in excess of three  
17 thousand dollars (\$3,000), interest shall be adjusted to simple interest at eight percent (8%) per  
18 annum on the entire obligation."

19       **SECTION 7.** This act becomes effective October 1, 2011.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 810

Short Title: Consumer Finance Act Amendments. (Public)

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Sponsors: Representatives Steen, Brubaker, Owens, and K. Alexander (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

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Referred to: Banking, if favorable, Finance.

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April 7, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE VARIOUS AMENDMENTS TO THE NORTH CAROLINA  
3 CONSUMER FINANCE ACT TO INCREASE CONSUMER ACCESS AND CREDIT  
4 MARKET PARITY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 53-165 is amended by adding a new subsection to read:

7 "(e1) 'Consumer Price Index' shall mean the Consumer Price Index for Urban Wage  
8 Earners and Clerical Workers: U.S. City Average, All Items, compiled by the Bureau of Labor  
9 Statistics, United States Department of Labor, or, if that index is canceled or superseded, the  
10 index chosen by the Bureau of Labor Statistics as most accurately reflecting the changes in the  
11 purchasing power of the dollar for consumers, or, if no such index is chosen by the Bureau of  
12 Labor Statistics, the index chosen by the Commissioner of Banks as most accurately reflecting  
13 the changes in the purchasing power of the dollar for consumers."

14 SECTION 2. G.S. 53-172(a) reads as rewritten:

15 "§ 53-172. Conduct of other business in same office.

16 (a) No licensee shall conduct the business of making loans under this Article within any  
17 office, suite, room, or place of business in which any other business is solicited or transacted.

18 Installment paper dealers as defined in G.S. 105-83, and the collection by a licensee of  
19 loans legally made in North Carolina, or another state by another government regulated lender  
20 or lending agency, agency and the collection by the licensee of claims of, or payments to, an  
21 insurance company licensed in North Carolina and arising in any way from an insurance policy  
22 approved by the Commissioner of Insurance, shall not be considered as being any other  
23 business within the meaning of this section."

24 SECTION 3. G.S. 53-173 reads as rewritten:

25 "~~§ 53-173. Maximum rate of interest and fee; computation of interest; Personal~~  
26 ~~installment loans maximum charges and fees; limitation on interest after~~  
27 ~~judgment; limitation on interest after maturity of the loan.~~

28 (a) ~~Maximum Rate of Interest. Every licensee under this section may make loans in~~  
29 ~~installments not exceeding three thousand dollars (\$3,000) in amount, at interest rates not~~  
30 ~~exceeding thirty six percent (36%) per annum on the outstanding principal balance of any loan~~  
31 ~~not in excess of six hundred dollars (\$600.00) and fifteen percent (15%) per annum on any~~  
32 ~~remainder of such unpaid principal balance. Interest shall be contracted for and collected at the~~  
33 ~~single simple interest rate applied to the outstanding balance that would earn the same amount~~  
34 ~~of interest as the above rates for payment according to schedule.~~



~~(a1) Maximum Fee. — In addition to the interest authorized in subsection (a) of this section, a licensee making loans under this section may collect from the borrower a fee for processing the loan equal to five percent (5%) of the loan amount not to exceed twenty-five dollars (\$25.00), provided that such charges may not be assessed more than twice in any 12-month period.~~

(a) Maximum Charges and Fees. —

(1) Installment account handling charge. — Every licensee under this section may make personal installment loans in amounts up to two thousand dollars (\$2,000), as adjusted periodically in accordance with subdivision (3) of this subsection, and collect an installment account handling charge. The installment account handling charge shall not exceed three dollars (\$3.00) per month for each one hundred dollars (\$100.00) of the amount financed. The installment account handling charge shall be calculated for the term of the contract and with the total processing fee authorized in G.S. 53-173(a)(2) added to the amount of the principal. Every payment shall be applied to the combined total of principal and charges until the contract is fully paid. The acceptance or payment of charges on loans made under the provisions of this subsection shall not be deemed to constitute payment, deduction, or receipt thereof in advance nor compounding.

(2) Processing fee. — In addition to the installment account handling charge authorized by subdivision (1) of this subsection, a licensee making a loan under this section may collect from the borrower a fee for processing the loan equal to ten percent (10%) of the amount financed not to exceed one hundred dollars (\$100.00), as adjusted periodically in accordance with subdivision (3) of this subsection, provided that such charges may not be assessed more than once in a 90-day period. This fee shall be fully earned by the licensee at the time the loan is made and shall not be subject to any refund requirement upon prepayment of the personal installment loan by the borrower except as provided in subsection (i) of this section.

(3) Adjustment of amounts. —

a. Each year the Commissioner of Banks shall compute, in accordance with sub-subdivision b. of this subdivision, and announce to licensees by May 15, the following amounts based on a reference base index equal to the consumer price index for 1982, and the adjusted amounts shall take effect on July 1 of the year of the computations:

1. The maximum fee under subdivision (2) of this subsection.
2. The maximum amount financed under subdivision (a)(1) of this section and G.S. 53-176(a).
3. The dollar thresholds for the interest rate tiers set forth in G.S. 53-176(a)(1).
4. The maximum fee for processing the loan under G.S. 53-176(b).

b. The adjustment of amounts required by sub-subdivision a. of this subdivision shall be computed by following these four steps:

1. Dividing the reference base index into the consumer price index at the end of the preceding year.
2. Converting the amount obtained under G.S. 53-173(a)(3)b.1. to the nearest whole percent.
3. Rounding the result computed under G.S. 53-173(a)(3)b.2. to the next lower multiple of 10 percent (10%) unless the result

1                                   computed under G.S. 53-173(a)(3)b.2. is a multiple of 10  
2                                   percent (10%) in which event that result shall be used.

3                                   4.   For each amount referred to in G.S. 53-173(a)(3)a.1. through  
4                                   a.4., multiplying that amount by the result obtained under  
5                                   G.S. 53-173(a)(3)b.3.

6                                   c.   If the consumer price index is revised, the revised index shall be used  
7                                   to compute amounts under this subsection after that revision takes  
8                                   effect. If the revision changes the reference base index, a revised  
9                                   reference base index shall be used. The revised reference base index  
10                                  shall bear the same ratio to the reference base index as the revised  
11                                  consumer price index for the first month in which it is available bears  
12                                  to the consumer price index for the first month in which the revised  
13                                  consumer price index is available.

14                                  (b)   ~~Computation of Interest. — Interest on loans made pursuant to this section shall not~~  
15                                  ~~be paid, deducted, or received in advance. Such interest shall not be compounded but interest~~  
16                                  ~~on loans shall (i) be computed and paid only as a percentage of the unpaid principal balance or~~  
17                                  ~~portion thereof and (ii) computed on the basis of the number of days actually elapsed; provided,~~  
18                                  ~~however, if part or all of the consideration for a loan contract is the unpaid principal balance of~~  
19                                  ~~a prior loan, then the principal amount payable under the loan contract may include any unpaid~~  
20                                  ~~interest on the prior loan which have accrued within 90 days before the making of the new loan~~  
21                                  ~~contract. For the purpose of computing interest, a day shall equal 1/365th of a year. Any~~  
22                                  ~~payment made on a loan shall be applied first to any accrued interest and then to principal, and~~  
23                                  ~~any portion or all of the principal balance may be prepaid at any time without penalty.~~

24                                  (c)   ~~Limitation on Interest after Judgment. — If a money judgment is obtained against~~  
25                                  ~~any party borrower on any loan made under the provisions of this section-section, neither the~~  
26                                  ~~judgment nor the loan shall carry, from the date of the judgment, any carry interest in excess of~~  
27                                  ~~eight percent (8%) per annum at the annual percentage rate of the loan contract as computed~~  
28                                  ~~under the federal Truth in Lending Act, 12 U.S.C. § 1601, et seq.~~

29                                  (d)   ~~Limitation of Interest after Maturity of Loan. — After the maturity date of any loan~~  
30                                  ~~contract made under the provisions of this section and until the loan contract is paid in full by~~  
31                                  ~~cash, new loan, refinancing or otherwise, no charges other than interest at eight percent (8%)~~  
32                                  ~~per annum shall be computed or collected from any party to the loan upon the unpaid principal~~  
33                                  ~~balance of the loan. the loan shall carry interest at a rate not to exceed the annual percentage~~  
34                                  ~~rate of the loan contract as computed under the federal Truth in Lending Act, 12 U.S.C. § 1601,~~  
35                                  ~~et seq.~~

36                                  (e)   ~~Repealed by Session Laws 1989, c. 17, s. 3.~~

37                                  (f)   ~~Repealed by Session Laws 2001-519, s. 3.~~

38                                  (g)   No Other Charges Permitted. — On any loan made under the provisions of this  
39                                  section, no other charge of any nature whatsoever is permitted except for those authorized by  
40                                  this section and G.S. 53-175, 53-177, 53-180(e), and 53-189.

41                                  (h)   Limitation on Loans to Individual Consumers. —

42                                       (1)   No person licensed under this Article, or an affiliate of such licensee, shall  
43                                       make a loan to a borrower under this section if there exists an outstanding  
44                                       loan made under this section or G.S. 53-176 between the licensee and that  
45                                       borrower unless the existing loan is paid in full from the proceeds of the new  
46                                       loan.

47                                       (2)   The acquisition by a licensee, or an affiliate of a licensee, of a loan made by  
48                                       another licensee under this section to a borrower who at the time of the  
49                                       acquisition has an outstanding loan made pursuant to this section from the  
50                                       acquiring licensee or an affiliate of the acquiring licensee, is not a violation  
51                                       of this subsection.

(3) In the event a loan is made in violation of this subsection, the licensee shall refund to the borrower all charges paid by the borrower with respect to the loan, however, the borrower shall remain obligated to repay to the licensee the amount financed under the loan.

(i) Partial Refund of Fees. – If a loan made under this section is prepaid in full prior to the term expiration date, including payment in cash or by a new loan, or if, upon default by the borrower, the licensee demands payment in full of the unpaid balance, the licensee shall refund or credit to the borrower that portion of the installment account handling charge permitted in G.S. 53-173(a)(1) as contracted on the loan but not earned as of the date of loan payoff. The amount of any refund or credit shall be calculated according to the payment schedule originally contracted for, and calculated in accordance with the actuarial method set forth in Regulation Z (12 C.F.R. Part 226) as of the next installment due date following the date of prepayment. In addition, if the loan is prepaid in full, refinanced, or consolidated within the first 90 days, the first fifteen dollars (\$15.00) of the loan processing fee shall be retained by the lender and the remainder of the loan processing fee shall be refunded at a rate of one-ninetieth of the remainder of the loan processing fee per day, beginning on the day after the date of the prepayment, refinancing, or consolidation and ending on the 90<sup>th</sup> day after the loan was made.

(j) Rescission of Contract. – A borrower who has entered into a contract for a loan made pursuant to this section may, within three days of having entered into the contract, rescind the loan contract by returning to the licensee in cash or by a certified bank check the amount financed under the loan, and, upon delivery of those funds to the licensee, the borrower shall have no further liability or obligations under the loan contract. No borrower may exercise this right more than twice in a 12-month period."

**SECTION 4. G.S. 53-175 reads as rewritten:**

**"§ 53-175. Fee for returned checks.**

A licensee may collect the fee for returned checks to the extent permitted by G.S. 25-3-506, G.S. 25-3-506, or thirty dollars (\$30.00), whichever is greater. This section shall apply to any loan made by any licensee under this Article."

**SECTION 5. G.S. 53-176 reads as rewritten:**

**"§ 53-176. Optional rates, maturities and amounts.**

(a) ~~In lieu of addition to making loans in the amount and at the interest stated in G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may at any time elect to make installment loans in installments not exceeding ten thousand dollars (\$10,000) fifteen thousand dollars (\$15,000) and which shall not be repayable in less than six months or more than 8496 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed the following actuarial rates:~~

(1) ~~With respect to a loan not exceeding seven thousand five hundred dollars (\$7,500), thirty percent (30%) per annum. Two and one-half percent (2.5%) per month on that part of the unpaid principal balance not exceeding one thousand dollars (\$1,000) and eighteen percent (18%) per annum five thousand dollars (\$5,000), and two percent (2%) per month on that part exceeding five thousand dollars (\$5,000) but not exceeding ten thousand dollars (\$10,000), and one and one-half percent (1.5%) per month on the remainder of the unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.~~

(2) ~~With respect to a loan exceeding seven thousand five hundred dollars (\$7,500), eighteen percent (18%) per annum on the outstanding principal balance.~~

(a) Interest on loans made pursuant to this section shall not be paid, deducted, or received in advance. Such interest shall not be compounded but shall be (i) computed and paid only as a percentage of the unpaid principal balance or portion thereof and (ii) computed on the basis of the number of days actually elapsed. However, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the loan contract may include any unpaid interest on the prior loan which has accrued within 90 days before the making of the new loan contract. For the purpose of computing interest, a day shall equal 1/360th of a year. Any payment made on a loan shall be applied first to any accrued interest and then to principal, and any portion or all of the principal balance may be prepaid at any time without penalty.

(b) In addition to the interest permitted in this section, a licensee may assess at closing a fee for processing the loan as agreed upon by the parties, not to exceed ~~twenty five dollars (\$25.00) for loans up to two thousand five hundred dollars (\$2,500) and one percent (1%)~~ thirty-five dollars (\$35.00) for loans up to one thousand seven hundred fifty dollars (\$1,750), as adjusted periodically in accordance with G.S. 53-173(a)(3), and two percent (2%) of the cash advance for loans above two thousand five hundred dollars (\$2,500), not to exceed a total fee of forty dollars (\$40.00), one thousand seven hundred fifty dollars (\$1,750), as adjusted periodically in accordance with G.S. 53-173(a)(3), provided that such charges may not be assessed more than twice in any 12-month period.

(c) The provisions of ~~G.S. 53-173(b), (e) and (d)~~ G.S. 53-173(a)(3), (c), and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section.

~~(d) Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and no sooner than 30 days from the date of such notification begin making loans regulated by this section. After such election a licensee may continue to make loans in accordance with this section unless the licensee notifies the Commissioner in writing of its intention to terminate such election on a date not sooner than 30 days from the notification.~~

(e) The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty. Except as otherwise provided for pursuant to G.S. 75-20(a), no more than twice in a 12-month period, a borrower may cancel a loan with the same licensee within three business days after disbursement of the loan proceeds without incurring or paying interest so long as the amount financed, minus any fees or charges, is returned to and received by the licensee within that time.

~~(f) No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article except as authorized in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee that elects to make loans in accordance with the provisions of this section shall be bound by that election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State."~~

SECTION 6. G.S. 53-177 reads as rewritten:

"§ 53-177. Recording fees. Fees.

(a) Recording Fees. — The licensee may collect from the borrower the amount of any fees necessary to file or record its security interest with any public official or agency of a county or the State as may be required pursuant to Article 9 of Chapter 25 of the General Statutes or G.S. 20-58 et seq. Upon full disclosure to the borrower on how the fees will be applied, such fees may either (i) be paid by the licensee to such public official or agency of the county or State, or (ii) in lieu of recording or filing, applied by the licensee to purchase

1 nonfiling or nonrecording insurance on the instrument securing the loan, or (iii) be retained by  
2 a licensee that elects to self insure against the loss of a security interest by reason of not filing  
3 or recording its security instrument: loan. Provided, however, the amount collected by the  
4 licensee from the borrower for the purchase of a nonfiling or nonrecording insurance policy, or  
5 for self insurance, policy shall be the premium amount for such insurance as fixed by the  
6 Commissioner of Insurance. Such premium shall be at least one dollar (\$1.00) less than the cost  
7 of recording or filing a security interest. Provided further, a licensee shall not collect or permit  
8 to be collected any notary fee in connection with any loan made under this Article, nor may a  
9 licensee collect any fee from the borrower for the cost of releasing a security interest except  
10 such fee as actually paid to any public official or agency of the county or State for such  
11 purpose.

12 (b) Late Fees. –

13 (1) A licensee may charge a late payment charge as agreed upon by the parties  
14 in the loan contract for payments received 10 days or more after the due  
15 date.

16 (2) No licensee may charge a late payment charge:

17 a. For loans made pursuant to G.S. 53-173, greater than fifteen dollars  
18 (\$15.00).

19 b. For loans made pursuant to G.S. 53-176, in excess of five percent  
20 (5%) of the amount of the payment or twenty dollars (\$20.00),  
21 whichever is greater.

22 c. More than once with respect to a single late payment.

23 (c) Third-Party Payment Fees. – The licensee may collect any actual charges paid by  
24 the licensee related to payments submitted by the borrower or at the borrower's request through  
25 electronic or other means not affiliated with the licensee.

26 (d) Deferral Charges. – A licensee may, by agreement with the borrower, collect the  
27 charge and defer the due date of all or any part of one or more installments under an existing  
28 loan contract as permitted in the provisions of G.S. 25A-30."

29 **SECTION 7. G.S. 53-180 reads as rewritten:**

30 **"§ 53-180. Limitations and prohibitions on practices and agreements.**

31 (a) Time and Payment Limitation. – Except as otherwise provided in this Article, no  
32 licensee making a loan pursuant to G.S. 53-173 shall enter into any contract of loan under this  
33 Article providing for any scheduled repayment of principal or charges less than four months or  
34 more than 25seven months from the date of making the contract if the cash advance is six  
35 hundred dollars (\$600.00) five hundred dollars (\$500.00) or less; or more than 3713 months  
36 from the date of making the contract if the cash advance is in excess of six hundred dollars  
37 (\$600.00) but not in excess of fifteen hundred dollars (\$1,500); five hundred dollars (\$500.00)  
38 but not in excess of one thousand dollars (\$1,000); more than 4919 months from the date of  
39 making the contract if the cash advance is in excess of fifteen hundred dollars (\$1,500) but not  
40 in excess of two thousand five hundred dollars (\$2,500); one thousand dollars (\$1,000) but not  
41 in excess of one thousand five hundred dollars (\$1,500); or more than 6425 months if the cash  
42 advance is in excess of two thousand five hundred dollars (\$2,500). one thousand five hundred  
43 dollars (\$1,500). Every loan contract shall provide for repayment of the amount loaned in  
44 substantially equal equal, fully amortizing installments, either of principal or of principal and  
45 charges in the aggregate, at approximately equal periodic intervals of time. Nothing contained  
46 herein shall prevent a loan being considered a new loan because the proceeds of the loan are  
47 used to pay an existing contract loan.

48 (b) No Assignment of Earnings. – A licensee may not take an assignment of earnings of  
49 the borrower for payment or as security for payment of a loan. An assignment of earnings in  
50 violation of this section is unenforceable by the assignee of the earnings and is revocable by the  
51 borrower. A sale of unpaid earnings made in consideration of the payment of money to or for

the account of the seller of the earnings is deemed to be a loan to the seller by an assignment of earnings.

(c) Limitation on Default Provisions. – An agreement between a licensee and a borrower pursuant to a loan under this Article with respect to default by the borrower is enforceable only to the extent that (i) the borrower fails to make a payment as required by the agreement, or (ii) the prospect of payment, performance, or realization of collateral is significantly endangered or impaired, the burden of establishing the prospect of a significant endangerment or impairment being on the licensee.

(d) Prohibitions on Discrimination. – No licensee shall deny any extension of credit or discriminate in the fixing of the amount, duration, application procedures or other terms or conditions of such extension of credit because of the race, color, religion, national origin, sex or marital status of the applicant or any other person connected with the transaction.

(e) Limitation on Attorney's Fees. – With respect to a loan made pursuant to the provisions of ~~G.S. 53-173~~, G.S. 53-173 or G.S. 53-176, the agreement may ~~not~~ provide for ~~payment by the borrower of the collection of reasonable attorney fees.~~

(f) No Real Property as Security. – No licensee shall make any loan within this State which shall in any way be secured by real property.

(g) Deceptive Acts or Practices. – No licensee shall engage in any unfair method of competition or unfair or deceptive trade practices in the conduct of making loans to borrowers pursuant to this Article or in collecting or attempting to collect any money alleged to be due and owing by a borrower.

(h) Limitations on Home Loans. – No affiliate operating in the same office or subsidiary operating in the same office of a licensee shall make any home loan as defined in G.S. 24-1.1A(e) in a principal amount of less than three thousand dollars (\$3,000).

(i) Limitation on Conditions to Making Loans. – A licensee or an affiliate operating in the same office or subsidiary operating in the same office of a licensee shall not make as a condition of any loan the refinancing of a borrower's home loan as defined in G.S. 24-1.1A(e) which is not currently in default.

(j) No Solicitation of Deposits. – No licensee may directly or indirectly solicit from any borrower funds to be held on deposit in any bank; provided, however, a borrower may at his option, by way of a military allotment or other such program, designate a depository to receive and disburse funds for a designated purpose.

(k) Loans made pursuant to this Article solicited using a facsimile or negotiable check shall be subject to the provisions of G.S. 75-20(a)."

**SECTION 8.** G.S. 53-181 reads as rewritten:

**"§ 53-181. Statements and information to be furnished to borrowers; power of attorney or confession of judgment prohibited.**

(a) Contents of Statement Furnished to Borrower. – At the time a loan is made, and one time per calendar year free at the written request of the borrower and twenty-five dollars (\$25.00) for each additional request, the licensee shall deliver to the borrower, or if there be two or more borrowers, to one of them a copy of the loan contract, or a written statement, showing in clear and distinct terms:

- (1) The name and address of the licensee and one of the primary obligors on the loan;
- (2) The date of the loan contract;
- (3) Schedule of installments or descriptions thereof;
- (4) The cash advance;
- (5) The face amount of the note evidencing the loan;
- (6) The amount collected or paid for insurance, if any;
- (7) The amount collected or paid for filing or other fees allowed by this Article;
- (8) The collateral or security for the loan;

(9) If the loan refinances a previous loan, the following relating to the refinanced loan: (i) the principal balance due; (ii) interest charged that is included in the new loan; and (iii) rebates on any credit insurance, listed separately.

(10) In addition to any disclosures otherwise provided by law, a licensee soliciting loans using a facsimile or negotiable check shall provide the disclosures required by G.S. 75-20(a).

(b) Schedule of Charges, etc., to Be Made Available; Copy Filed with Commissioner. – Each licensee doing business in North Carolina shall make readily available to the borrower at each place of business such full and accurate schedule of charges and insurance premiums, including refunds and rebates, on all classes of loans currently being made by such licensee, as the Commissioner shall prescribe, and a copy thereof shall be filed in the office of the Commissioner of Banks.

(c) Power of Attorney or Confession of Judgment Prohibited. – No licensee shall take any confession of judgment or permit any borrower to execute a power of attorney in favor of any licensee or in favor of any third person to confess judgment or to appear for the borrower in any judicial proceeding and any such confession of judgment or power of attorney to confess judgment shall be absolutely void."

SECTION 9. G.S. 53-186 reads as rewritten:

"§ 53-186. Commissioner to issue subpoenas, conduct hearings, give publicity to investigations, etc.

(a) Powers of the Commissioner. – The Commissioner of Banks shall have the power and duty to issue subpoenas including subpoenas duces tecum, and compel attendance of witnesses, administer oaths, conduct hearings and transcribe testimony in making the investigations and conducting the hearings provided for herein or in the other discharge of his duties, and to give such publicity to his investigations and findings as he may deem best for the public interest.

(b) Timely Response to Borrowers' Complaints and Inquiries. –

(1) Timely Commissioner response to borrowers. – The Commissioner shall establish reasonable procedures to provide a timely response to borrowers, in writing where appropriate, to complaints against, or inquiries concerning, a licensee, including all of the following:

a. Steps that have been taken by the Commissioner in response to the complaint or inquiry of the borrower.

b. Any responses received by the Commissioner from the licensee.

c. Any follow-up actions or planned follow-up actions by the Commissioner in response to the complaint or inquiry of the borrower.

(2) Timely response to Commissioner by licensee. – A licensee shall provide a timely response, in writing where appropriate, to the Commissioner concerning a borrower complaint or inquiry, including all of the following:

a. Steps that have been taken by the licensee to respond to the complaint or inquiry of the borrower.

b. Responses received by the licensee from the borrower.

c. Follow-up actions or planned follow-up actions by the licensee to respond to the complaint or inquiry of the borrower.

(3) Provision of information to borrowers. – A licensee shall, in a timely manner, comply with a borrower's written request for information in the control or possession of such licensee concerning the loan transaction, product, or service that the borrower obtained from such licensee as required by G.S. 53-181(a), including up to six months of payment history,



1 concerning the account of the borrower. However, nothing in this section  
2 shall be construed to require a licensee to make available to the consumer  
3 any of the following:

- 4 a. Any confidential commercial information, including an algorithm  
5 used to derive credit scores or other risk scores or predictors;  
6 b. Any information collected by the licensee for the purpose of  
7 preventing fraud or money laundering, or detecting or making any  
8 report regarding other unlawful or potentially unlawful conduct;  
9 c. Any information required to be kept confidential by any other  
10 provision of law; or  
11 d. Any nonpublic or confidential information, including confidential  
12 supervisory information.

13 (c) Commissioner to Develop Pamphlet. – The Office of the Commissioner of Banks  
14 shall develop a written pamphlet that explains the rights and responsibilities of consumers who  
15 obtain loans from a licensee for distribution in all licensed offices. Such pamphlet shall include  
16 the names, mailing or electronic mail addresses, and telephone numbers for the offices in the  
17 Office of Commissioner of Banks or the Department of Justice responsible for enforcing the  
18 provisions of this Chapter. Such pamphlet shall be given to a borrower at the time a loan is  
19 made by a licensee and shall be readily available to all consumers at all times in each licensed  
20 office. The Commissioner shall consult with, and seek input from, representatives of  
21 consumers, the licensees, and the Attorney General in the development of the pamphlet. Each  
22 licensee shall be responsible for reproducing and distributing the pamphlet finally approved and  
23 authorized by the Commissioner. The pamphlet developed under this subsection shall be  
24 provided to consumers as of January 1, 2012."

25 **SECTION 10.** This act becomes effective October 1, 2011.

	<b>PCS "New HB 810"</b>	<b>Current Law</b>	<b>HB 810</b>
<b>Maximum Loan Amount</b>	\$15,000	\$10,000	Same as PCS
<b>Loans Under 53-173</b>	<p>\$25 upfront fee, limited to 2 times per 12-month period.</p> <p>Increases 36% rate to loan balance up to \$1,500</p> <p>15% on balance between \$1,500 and \$3,000</p>	<p>\$25 upfront fee, limited to 2 times per 12-month period.</p> <p>36% on loan balance up to \$600</p> <p>15% on balance between \$600 and \$3,000</p>	<p>Increases processing fee to 10% of loan up to \$100.</p> <p>Allow account handling fee of \$3 per \$100 in lieu of interest (36% equivalent)</p>
<b>Loans Under 53-176</b>	<p>\$25 fee on loans up to \$2,500.</p> <p>1% fee capped at \$40 for loans above \$2,500.</p> <p>30% interest on balance up to \$5,000;</p> <p>24% interest on balance between \$5,000 and \$10,000;</p> <p>18% interest on balance between \$10,000 and \$15,000</p>	<p>\$25 fee on loans up to \$2,500.</p> <p>1% fee capped at \$40 for loans above \$2,500.</p> <p>30% interest on balance up to \$1000;</p> <p>18% on balance between \$1000 and \$7,500;</p> <p>18% on entire balance between \$7,500 and \$10,000</p>	<p>Same interest rate structure as PCS;</p> <p>Increases processing fee to \$35 on loans up to \$1,750 or 2% of loan amount above \$1,750;</p>
<b>Recording Fee</b>	Eliminates self-insurance when taking interest in personal property, which lenders are not using now.	Allows lender to purchase insurance, self-insure or file security interest when taking interest in personal property to secure the loan.	Same as PCS
<b>Late Fees</b>	<p>Late fee allowed when payment more than 10 days past due;</p> <p>\$10.00 on 173 loans</p> <p>5% of payment up to \$15 for 176 loans;</p> <p>No more than once for single late payment</p>	None allowed	<p>\$15.00 on 173 loans,</p> <p>5% of payment up to \$20 for 176 loans.</p>

Third-Party Payment Fees	Lender can collect charges for electronic or phone payments through unaffiliated third parties.	Not allowed	Same as PCS
Deferral Charges	1.5% of payment for each month deferred	Not allowed	Same as PCS
Conduct of Business in Same Office	Allows collection of claims of or payments to an insurance policy approved by NCDOI	No provision	Same as PCS
Limitations on Loans to Individual Consumers	<p>Lender can refinance loan before 90 days or if balance is more than 50% of original if the new loan balance provides \$100 or 20% of the balance (whichever is greater) more in cash at refinancing;</p> <p>Lender must provide a brochure when refinancing that explains the benefits of "disciplined consistent repayment of installment credit" and the potential of increasing costs when getting a new loan before repaying the old one;</p> <p>Lender must accept semi-monthly or weekly payments; and</p> <p>No more than one loan per lender at a time (could still get loans from multiple lenders).</p>	No more than one loan per lender at any one time.	No provision



# State of North Carolina

## Office of the Commissioner of Banks

Beverly E. Perdue  
Governor

Joseph A. Smith, Jr.  
Commissioner of Banks

February 2011

### BY HAND DELIVERY

Honorable Phil Berger  
President Pro Tempore of the Senate  
N.C. Senate  
16 W. Jones Street, Room 2007  
Raleigh, NC 27601-2808

Honorable Thom Tillis  
Speaker of the House  
N.C. House of Representatives  
16 W. Jones Street, Room 2304  
Raleigh, NC 27601-1096

RE: 2010 Consumer Finance Study

Dear Senator Berger and Representative Tillis:

Pursuant to the instructions of the 2009 – 2010 Session of the General Assembly of North Carolina, more fully described below, I am delivering to you under cover of this letter a study of the North Carolina Consumer Finance Act.

The North Carolina Consumer Finance Act ("CFA"), N.C.G.S. § 53-164, is a carefully drafted and comprehensive exception to North Carolina's usury law. Its provisions squarely set the limits of permissible activity and make clear that the CFA is not a mechanism for circumventing the State's general usury law. The result has been the creation of a narrowly bounded and particularly delineated lending industry which makes small installment loans. The CFA grants to the North Carolina Commissioner of Banks (the "Commissioner") the responsibility to regulate this activity through licensure of consumer finance companies and enforcement of the normative provisions of relevant North Carolina law. It does not confer on the Commissioner the authority to set fees and charges, all of which are subject to statutory limits.

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](http://www.nccob.org)  
An Equal Opportunity/Affirmative Action Employer February

For the year ended December 31, 2009, companies making small consumer loans in North Carolina had outstanding loans of \$1.2 billion and stated equity of \$245.9 million. This compares with aggregate North Carolina net loans outstanding of North Carolina state-chartered banks of \$159.3 billion and equity capital of such banks of \$28.2 billion. Six consumer finance companies made 80% of the small loans outstanding, with 75 companies accounting for the remainder. Two of the six largest consumer finance companies made 66% of the small loans outstanding. The average amount of such loans was \$2,341.

The 2009 Session of the General Assembly of North Carolina established a Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws and the Consumer Finance Act (the "Commission"), which in 2010 conducted a study of the CFA. At the conclusion of the study, the Commission recommended that the Commissioner do a further study and report to the General Assembly on the topics set out in the original study: the rise in operating costs for the industry and what impact it was having on the delivery of the product, the maximum amount that could be extended to any single borrower, the rate and fee structure, and "strategies for increasing consumer protection and disclosure." The North Carolina Office of the Commissioner of Banks ("NCCOB") was also asked to do a series of tasks including: revisiting past data, reviewing and possibly changing the annual report form, gathering new data, and analyzing this new data. The Commission's recommendations require that any CFA modifications balance "all appropriate consumer protections" with "the requirement for potential profitability of the lender."

Pursuant to the Commission's recommendations, NCCOB sponsored four meetings participated in by representatives of the consumer finance industry and consumer advocates. In addition, NCCOB sponsored preparation by the UNC Center for Community Capital of an analysis of industry profitability based on existing reports submitted to NCCOB as required under the CFA.

On the basis of the foregoing, the Commissioner finds that:

- While there has been an increase in operating expenses of North Carolina consumer finance companies over time, the increases have been covered in substantial part by an increase in the average loan amount. As a result, the majority of these companies remain profitable and the potential for profitability continues to exist under the current framework, although lenders may not be as profitable as they would like.
- The adjustment of the consumer loan market mentioned above has resulted in a concentration of loan activity in six consumer finance companies and a modest reduction in the number of companies making consumer loans. These developments mirror comparable developments in the banking industry: concentration of assets and activities in a relatively small number of banks.

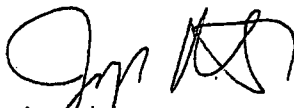
- While some concerns have been expressed, based on anecdotal evidence, regarding persistent refinancing of consumer loans, no compelling evidence was submitted by consumer advocates or discovered in a review of NCCOB and Justice Department files to support the view that refinancing is an abuse of consumers or in need of remediation.

In light of the foregoing findings and after careful consideration of the following report and submissions from meeting participants, the Commissioner does not recommend any changes in the CFA, either to enhance industry revenue or increase consumer protections.

It should be noted that, as a result of the study, Annual Report forms for consumer finance companies have been revised to enhance and standardize the information included in such reports, so that the industry may be more effectively monitored by all stakeholders.

The conclusions of this report are not intended to suggest that the financial services provided to unbanked and under-banked North Carolinians are satisfactory. It is to suggest that efficient and low cost services to this market cannot be fully achieved either by traditional depository institutions or traditional small loan companies. The Commissioner recommends that future studies on this topic focus on the utilization of advanced communications and information processing technology to reduce the costs and manage risks of financial services to this market.

Sincerely,



Joseph A. Smith, Jr.  
Commissioner of Banks



**UNITED STATES MARINE CORPS**  
**MARINE CORPS INSTALLATIONS EAST**  
**PSC BOX 20005**  
**CAMP LEJEUNE, NC 28542-0005**

5830  
 SJA  
 18 May 2011

North Carolina General Assembly  
 Raleigh, North Carolina

To the Honorable Members of the North Carolina General Assembly,

1. In my letter of April 20, 2011, I advised of the Department of Defense's opposition to North Carolina House Bill 810 and the reasons therefore. I understand that as the bill moves through the legislative process, there may be amendments to it. Accordingly, I have been authorized to set forth some general concerns of the Department of Defense concerning proposed changes to North Carolina's Consumer Finance Act.

a. Interest rates and Fees. The Department of Defense continues to be concerned about policies and statutes that prescribe products with a uniformly high interest rate and only cursory evaluation of credit worthiness of the borrower. We find that there are already many high interest lenders that target and harm military service members within the current statutory limitations, and the proposed changes would more likely exacerbate this situation. Troops, particularly those that are unsophisticated and more junior in rank, turn to high interest lenders for quick cash in times of perceived or actual financial distress, as they are encouraged to by extensive lender advertising –and the promise of “no credit checks” and automatic approvals. Unfortunately, due to a lack of information, haste, misleading sales, or bad judgment, military borrowers sometimes forego other options and resources in purchasing high cost lending products. Further, we find that high cost loans are more likely to cause additional, longer term harm for service members and their families rather than resolve financial problems. Thus, to the extent that North Carolina law makes small loans more expensive through any increase in interest rates, fees, or other expenses, these products will cause more harm to financially distressed troops and are less likely to have any beneficial effect.

b. Transparency. The Department of Defense believes that lenders should clearly and conspicuously disclose the real cost of the loan, including the actual cost of borrowing expressed as a true annual percentage rate (APR). Military consumers are generally familiar with and understand APR. Furthermore, expressing the loan cost as APR allows consumers to compare such costs with other loans. The consumer's ability to understand the real cost of the loan is diminished to the extent that fees or charges are not included in the calculation of the APR. Further, lending products and regulations that cause monthly loan payments to be applied in greater amounts to front-loaded interest and less to principal, increases the actual cost of the loan and tends to mislead consumers as to its cost.

c. Loan Rollover. Troops sometimes engage commercial lenders to alleviate acute financial distress with an injection of quick cash. Unfortunately, our experience has been, particularly but not exclusively with respect to payday loans, that all too often, the high interest loan harms rather than helps the service member. After obtaining the loan, recurring monthly bills and other expenses must still be paid. Now, however, the consumer has another monthly obligation, repayment of the high cost loan. When the borrower is unable to meet all these financial obligations, the lender encourages him to obtain another high interest loan to repay the initial loan, commencing a vicious downward circle of increased borrowing and debt. The Department is concerned about any legislation that tends to encourage the practice of making or obtaining rollover loans; i.e., new loans to pay for old loans.

d. Choice of Law. Should North Carolina enact legislation adverse to military consumers, the potential exists for other states to import such regulations through contractual choice of law provisions.

2. The Department of Defense continues to be concerned about the issue of small loan finance law, a matter that directly impacts the readiness and well being of armed forces personnel. Further, as described in my previous letter, the enactment of legislation contrary to the aforementioned principles is likely to have a disproportionately adverse impact on service members, who are affected in ways and degrees not experienced by the general public.



M. S. ARCHER  
Regional Legal Assistance Director  
Marine Corps Installations East



# Ellie and John Grandstaff, North Carolina

“The first time we came to the loan company, we had just made a military move, from Hawaii to North Carolina. On moving day, the truck caught on fire in our driveway. We had to call transportation management to come take pictures while the truck was on fire with our things in it. We did the claims, but meanwhile we were advised to go ahead and get a loan.

A friend of ours told us about an installment loan company we could go to because we are military. He told us, ‘Hey, come over to this loan company. They can work with you. They know you’re military.’

When you’re military, you move around so much that it looks unstable and it drops your credit score.

The consumer installment loan company is very important to the military. They’ll work with you because they know you’re military. They look at your credit differently and understand that you move around a lot. And these loan companies tend to help the military better, and faster—you will know something within minutes instead of days.

When John’s mother was ill, the military flew us to his hometown so he could see her while she was in the hospital. He was halfway back to where he was deployed when she passed away. I had to get a loan so he could actually get back home to go to his mother’s funeral.”

**John:** “It really made me feel good that Ellie could go into the loan company and be able to get the money and the help that she needed. It made me feel good because it was real important for me to go to my mother’s funeral.”

“We have a good working relationship with the loan company. It’s a sense of stability, especially for military personnel. If they have excessive debt, they get in trouble. It’s not only his job, it’s also the spouses job to make sure that your credit is in check. Soldiers have to keep up a certain security clearance, and if they have excessive debt they get in trouble or can lose their clearance.

In every duty station there is a list which tells you all of the companies to stay away from, but the small installment loan company is actually referred from member to member because they will work with you.”

**John:** “It’s a peace of mind to me knowing she can get things taken care of while I am deployed.”



*John joined the Marine Corps right out of high school. He and Ellie have been together for 20 years. It gives them peace of mind knowing that Ellie can go to their local installment loan company for help, if necessary, while John is deployed.*

See Ellie and John’s video at: [www.MilitaryFamilyInstallmentLoanStory.info](http://www.MilitaryFamilyInstallmentLoanStory.info)  
[www.AssociationForResponsibleLending.org](http://www.AssociationForResponsibleLending.org)

-----Original Message-----

From: Dan McNeill [mailto:dkmcneill8218@gmail.com]

Sent: Thursday, May 19, 2011 05:54 AM

To: Rep. Harold "Bru" Brubaker; Rep. Johnathan Rhyne, Jr.; Rep. Jerry Dockham; Rep. Kelly Hastings; Rep. Danny McComas

Cc: Rep. Rick Glazier

Subject: House Bill 810

Gentlemen,

Please excuse the intrusion. I am Dan K. McNeill, a native of the Great State of North Carolina and a taxpaying NC citizen all my adult life. I spent 40 continuous years as a commissioned officer in the Regular Army of the United States immediately after I graduated from NCSU in 1968. Twenty five of those years were spent over 8 assignments at Fort Bragg.

I respectfully request that you not support with your vote House Bill 810, a proposed bit of legislation which has the potential to target, with what some are calling usurious lending practices, American Soldiers, Sailors, Airmen, and Marines who are assigned to duties in North Carolina. Those individuals, who by the way are all volunteers, daily face the stresses and demands brought on by almost 10 years of persistent conflict.

The demands inherent with frequent moves and deployments place extraordinary fiscal burdens on our Troops. I know this from first-hand experience because of the frequent moves endured by my family and myself and by the deployments I have made to RVN, ROK, Italy, Panama, Saudi Arabia, Iraq, and Afghanistan.

I am certain some of you, Rep. Glazier for sure, work hard to make North Carolina a military-friendly state. And for good reason, I believe. With the imminent move of US Army Forces Command to Fort Bragg, it would seem the possibility exists for defense-related business to become one of the top business segments in North Carolina.

House Bill 810 has the potential to make our State seem a lot less military-friendly.

Yr. ob. svt.,

Dan K. McNeill

General, United States Army-Retired

## Case 1

In 2005 Mr. and Mrs. Jones\* obtained a small loan with an APR of 30.36%. The total amount of the loan was \$1,404.41, but with the high insurance fees on the loan, the Jones only received \$1,009 in cash from the loan. The interest rate and fees charged on the loan were \$494.82 and the insurance fees were \$391.93. Had they known then that this loan would be refinanced three times and place them in economic peril they would have chosen any of the several other options available.

On the first, and all three subsequent loans, the Jones were told they had to purchase four kinds of insurance: Joint Credit Life, Single Credit Accident & Health, Single Interest Auto, and Credit Unemployment. A year later, unable to pay the loan off, the Jones were told they should refinance the loan. They received only \$190.36 on the second loan but paid \$436.46 in fees on the refinance. In 2007 they refinanced again getting \$508.25 but paying \$423.74 in fees. Finally in 2008, they refinanced again, this time getting no funds from the loan but paying \$317.22 in fees. When all was said and done the Jones actually received \$1,707.61 in cash and minus a small portion of fees refunded to them paid \$1,318.81 in fees.

It is unclear what the future holds for the Jones, their case is being considered for litigation, but what is clear is that this loan did not help the Jones but instead made them much worse off than if they had considered other options.

<u>Loan Date</u>	<u>Amount to Borrower</u>	<u>Fees</u>	<u>Fees Refund</u>	<u>Net Fees</u>
4/29/05	\$1,008.72	\$417.46	\$ 0	\$417.46
4/3/06	190.36	436.46	134.09	302.37
8/13/07	508.25	423.74	62.61	361.13
11/21/08	0	317.22	79.37	237.85
Totals	\$1,707.33	\$1,594.88	\$276.07	\$1,318.81

### APRs and Type of Insurance

11/21/08      APR 29.55% State, 32.49% Federal,  
18 month loan    payments due 1/4/09. Maturity date: 6/4/10

Joint Credit Life \$20.45 plus \$3 origination fee  
Single Credit Accident & Health \$44.16 plus \$3 orig fee  
Single Interest Auto Ins. \$139  
Credit Unemployment Ins. \$45.61

**8/13/07**      APR 28.43% State, 30.31% Federal,  
24 month loan payments due 9/13/07 Maturity date: 8/13/09

Joint Credit Life \$33.90 plus \$3 orig fee  
Single Credit Accident & Health \$67.20, plus \$3 orig fee  
Single Interest Auto Ins. \$176  
Credit Unemployment Ins. \$80.64

**4/3/06**      APR 28.49% State, 30.38% Federal,  
24 month loan payments due 5/6/06 Maturity date: 4/6/08

Joint Credit Life \$33.47, plus \$3 orig fee  
SCA&H            \$66.36, plus \$3 orig fee  
SIA Ins            \$176  
CUI                \$79.63

**4/29/05**      APR 28.48% State, 30.36 Federal  
24 month loan payments due 6/5/05 Maturity date: 5/5/07

JCL \$33.47, plus \$3 orig fee  
SCA&H \$66.36, plus \$3 orig fee  
SIA Ins \$176  
CUI \$79.63

## Case 2

In April of 2008, Mr. Phillips\* obtained a \$3,395.79 loan from a finance company. The loan was for 36 months and had an APR of 24.18%. Included in the loan were credit insurance premiums (life, disability, personal property) totaling \$395.69, so Mr. Phillips only received \$3,000.10 from the loan. Over the term of the loan Mr. Phillips would pay \$4,807.44. The lender did not properly explain to Mr. Phillips that he could get the loan without paying for the insurance. In determining the amount of personal property credit insurance they could sell Mr. Phillips, the lender used the purchase price for the items rather than the replacement values, thereby overvaluing their security interest and the amount of credit insurance they could sell Mr. Phillips.

Mr. Phillips made his monthly payments (\$133/mo) for approx the first 18 months, and during that time the lender sent constant promotional material trying to get Mr. Phillips to refinance and seek larger additional loans. Loan up-selling is relentless with each monthly statement saying things such as:

"What is it about summer that makes us all want to be kids again? Could you use a little extra cash to make some summer magic of your own happen?"

"Whatever your cash needs may be we are just a phone call away 888-888-8888"

"The Holidays are over, now your mail box is bulging with bills, would a little extra cash help you pay off those bills"

"Now is a great time to do a tune-up on your auto your wardrobe and your finances would \$1,500 help to pay off your bills"

"Make your birthday extra special by treating yourself to something you have always wanted – we can approve a loan for you in less than an hour."

Then, in approx. October 2010, Mr. Phillips was unable to make his payments because he lost his job. Almost immediately upon being late with his payment, the lender began calling his home and his cell phone 2-4 times per day. They also called two of his friends who were listed as references in the loan paperwork. The lender told one of them that they were calling from a local employer and that he should tell Mr. Phillips to call this number because they had a great new job for him. The lender eventually brought suit against Mr. Phillips in small claims court, but did not bring any documentation showing that he owed them the amount they were asking for. The magistrate ruled against the lender and the lender appealed to district court. The attorney for Mr. Phillips has filed an answer and counterclaims (debt collection claims, Consumer Finance Act violations, Ch. 75), and is unable to use the court system because of a mandatory arbitration agreement included in the loan agreement.

\$560.18 principal and interest on the insurance

**DIRECT LOAN  
PROMISSORY NOTE-SECURITY AGREEMENT  
DISCLOSURE STATEMENT PURSUANT TO FEDERAL TRUTH-IN-LENDING ACT**

Date of Loan 12/10/2009	Account/Contract Number	Type	G.P.L.
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<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate State 30.00 %	<b>CREDITOR</b> Cardinal Finance Company of Whiteville, Inc. 608 S. Madison St. Whiteville, NC 28472	<b>DISCLOSURES REQUIRED BY FEDERAL LAW</b> <b>DEBTOR(s) (Name and Address)</b> <div style="text-align: center; font-size: 2em; font-weight: bold;">REDACTED</div>		
<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate. Federal 51.93 %	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you. \$ 63.80	<b>Amount Financed</b> The amount of credit provided to you or on your behalf \$ 353.61	<b>Total of Payments</b> The amount you will have paid after you have made all payments as scheduled. \$ 417.41	<b>AMOUNT FINANCED (Federal Disclosure)</b> ..... \$ 353.61 <b>LOAN PROCESSING FEE</b> ..... \$ 25.00 (Included in Estimated Finance Charge in Federal Disclosure) <b>ITEMIZATION OF AMOUNT FINANCED OF (NORTH CAROLINA)</b> \$ 378.61 <b>A. Amount paid on your account no:</b> 48265 Principal ..... \$ 314.56 Interest Due _____ Days \$ 9.05 \$ 323.61 Less Loan Refunds: Credit Life Prem ..... \$ 0.00 Credit A&H Prem ..... \$ 0.00 Credit Property Prem ..... \$ 0.00 Credit Auto Prem ..... \$ 0.00 Credit Unemp. Prem ..... \$ 0.00 \$ .00 <b>TOTAL</b> ..... \$ 323.61 <b>B. Amount given to you directly: Check No.</b> ..... \$ 0.00 <b>C. Amount paid to others on your behalf:</b> Non-Filing Fee(s) ..... \$ 0.00 Insurance Origination Fee ..... \$ 0.00 To insurance company (credit life premium) ..... \$ 0.00 To insurance company (credit A&H premium) ..... \$ 0.00 To insurance company (credit property premium) ..... \$ 0.00 To insurance company (Single interest auto premium) ... \$ 0.00 To insurance company (credit unemployment premium) ... \$ 0.00 To insurance company (non-filing premium) ..... \$ 30.00 To public officials (UCC-1 recording) ..... \$ 0.00 To public officials (MVR-6 recording) ..... \$ 0.00 Loan Processing Fee ..... \$ 25.00 To ..... \$ 0.00 To ..... \$ 0.00 <b>TOTAL DISBURSEMENTS</b> ..... \$ 378.61
<b>AN ITEMIZATION OF THE AMOUNT FINANCED IS SHOWN ON THIS DOCUMENT. YOUR PAYMENT SCHEDULE WILL BE:</b>				
<b>NUMBER OF PAYMENTS</b>	<b>AMOUNT OF PAYMENTS</b>	<b>WHEN PAYMENTS ARE DUE</b>		
7	\$59.63	01/10/2010 of each month beginning next month.		
<b>Final Payment</b> 0	\$0.00	07/10/2010 Maturity Date		
<b>INSURANCE</b>				
<b>TYPE and PREMIUM</b>		<b>SIGNATURE</b>		
<input type="checkbox"/> Single Credit Life Insurance Origination Fee \$0.00	\$0.00	I want Credit Life Insurance. Signature		
<input type="checkbox"/> Joint Credit Life Insurance Origination Fee \$0.00	\$0.00	(To be insured only if Credit Accident & Health Premium shown) Signature		
<input type="checkbox"/> Single Credit Accident and Health Insurance Origination Fee \$0.00	\$0.00	I want Credit Accident and Health Insurance. Signature		
<input type="checkbox"/> Joint Credit Accident and Health Insurance Origination Fee \$0.00	\$0.00	I want Joint Credit Accident and Health Insurance. Signature		
<input type="checkbox"/> Credit Property Insurance Insurance Origination Fee \$0.00	\$0.00	I want Credit Property Insurance. Signature		
<input type="checkbox"/> Single Interest Auto Ins. \$0.00	\$0.00	I want Single Interest Auto Insurance. Signature		
<input type="checkbox"/> Credit Unemployment Ins. \$0.00	\$0.00	I want Credit Unemployment Insurance. Signature		

Credit Life Insurance Credit Accident and Health Insurance and Credit Unemployment Insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost. You may obtain property and/or auto insurance from a company other than Cardinal Finance Company, Inc. If you obtain the above insurance through Cardinal Finance Company, Inc., the cost of the insurance will be as specified above and there will be a non-refundable insurance origination fee charged as stated above. The term of the insurance will be for the term of the loan.

**SECURITY:** You are giving a security interest in:

- ☐ The goods or property being purchased.  
☒ Your personal property.  
☐ Your automobile

**NOTICE TO BORROWERS:** Article 32, Section 360 of Chapter 58 of the General Statutes of North Carolina requires that we notify you of your option to provide us through an agent of your own choosing at any time during the term of the loan the physical damage insurance we require on the motor vehicle used as collateral for your loan. If insurance is terminated or non-renewed the secured Party may add the cost of auto insurance to your balance.

**RIGHT TO RESCIND INSURANCE:** Credit Insurance obtained in connection with this loan will be procured subject to the terms and conditions of the "Certificate of Insurance" issued. Each insured shall have the RIGHT TO RESCIND any such insurance upon giving written notice to the insurer within 30 days from the date the insured receives such certificates.

**INSURANCE AGAINST LIABILITY FOR BODILY INJURY AND PROPERTY DAMAGE TO OTHERS IS NOT INCLUDED IN THIS TRANSACTION.**

**LATE CHARGE:** If a payment is late, you will not be charged a late charge.  
**PAYMENT:** If you pay off early you will not have to pay a penalty.  
See your promissory note below for any additional information about non-payment, default or any required repayment in full before the scheduled date. You should also see your security agreement for additional information about the security interests.

**PROMISSORY NOTE**

FOR VALUE RECEIVED, the undersigned jointly and severally promise to pay to the order of Creditor the Amount Financed and a Finance Charge. The Finance Charge may consist of a loan processing fee, a non-refundable Non-Filing Fee and interest. The Loan Processing Fee may not exceed \$25.00 for loans up to \$2500.00 and 1% of the cash advance for loans above \$2500.00 not to exceed a maximum fee of \$40.00. The interest shall be computed with respect to the Amount Financed not exceeding seven thousand five hundred dollars (\$7,500), at the rate of thirty percent (30%) per annum on that part of the unpaid balance of the Amount Financed not exceeding one thousand dollars (\$1,000) and eighteen percent (18%) per annum on the remainder of the unpaid balance of the Amount Financed until paid or the Maturity Date. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule. Interest shall be computed on the basis of the number of days actually elapsed and a day shall be 1/365th of a year. Payments shall first be applied to the Finance Charge to date of payment and any balance to the Amount Financed. Prepayment may be made at any time in any amount without penalty. Both the Amount Financed and the Finance Charge are payable at the address of Creditor above, or at such other place as the legal holder hereof may designate. The Amount Financed and the Finance Charge shall be due and payable in the number of installments, in the amounts and on the dates shown above under the disclosed payment schedule with the date of the last installment payment being the maturity date, at which time all unpaid Amount Financed and the accrued Finance Charge shall be due and payable, unless the maturity date is otherwise extended or deferred by Creditor. Any unpaid balance of the Amount Financed remaining after the maturity date will accrue interest at the rate of eight percent (8%) per annum. G.S. 53-176. In the event a check is tendered in payment of the amount due under this loan and upon presentation to the named drawee, such check is returned due to insufficient funds or credit, the Creditor, in addition to the assessment of the aforesaid charges, shall have the right to assess against the Debtor an additional charge in an amount not to exceed the maximum charge permitted by North Carolina statutes for payment of any installment when due or of any default in the Security Agreement or if the Creditor determines that the prospect of payment, performance, or realization of collateral is significantly endangered or impaired, the unpaid Amount Financed and any accrued Finance Charge shall, at the option of Creditor, become due and payable without notice or demand. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any other time. The undersigned waive presentation for payment, demand, protest and notice of dishonor, and all defenses on the grounds of extension of time for the payment hereof. This loan is regulated by the provisions of Chapter 53, Article 15 of the North Carolina General Statutes.

DEBTOR(s) further agrees by signing below: (1) that a copy of this document was received and that all applicable blanks were completed on the "Date of Loan"; (2) Creditor is authorized to make disbursements shown in the "Itemization"; (3) the signatures serve as execution of the "Promissory Note" and the "Security Agreement"; (4) that the word "(Seal)" beside my name is adopted as my personal seal and that it was my intention to so adopt that as my seal; and (5) that "Debtor(s)" shall mean the singular or plural as applicable.

**WITNESS THE HAND(S) AND SEAL(S) OF DEBTOR(S)**

Witness \_\_\_\_\_  
Witness \_\_\_\_\_

Debtor \_\_\_\_\_ (Seal)  
Debtor \_\_\_\_\_ (Seal)  
Debtor \_\_\_\_\_ (Seal)

**SECURITY AGREEMENT**

NOW THEREFORE, in consideration of said Loan and to further secure the payment of said Note, the undersigned Debtor(s) hereby conveys a security interest to Creditor, its successors and assigns in the "Collateral" hereinafter described, provided, however, if the Debtor(s) well and truly pays and discharges said Note according to the terms thereof, then these presents shall cease and be void.

**DESCRIPTION OF PROPERTY GIVEN AS COLLATERAL**

(1) Personal property now located in or about Debtor(s) residence at the address set forth, described as follows:

Desc: Rca 19in Color Tv; \* Desc: Ge Floor Model Color Tv; \* Desc: Rca 23in Color Tv; \* Desc: Zenith 19in Color Tv; \* Desc: Lennox Sound Radio V Player; \* Desc: Mitsubishi Vcr; \* Desc: Magnavox Vcr; \* Desc: Rca Compact Disc. Player & Cass.; \* Desc: Uniden Scanner; \* Desc: Cahinsaw; \* De Network Satellite; \* Desc: Jvc Dvd Player

Any item circled above is in addition to items listed on UCC 1 Form Dated:

Items listed above are the same as those listed on the UCC 1 Form Dated:

(2) Vehicle(s), complete with all attachments and equipment, now located at the Debtor(s) residence set forth above, described as follows:

New or Used	Year of Model	MAKE	SERIES NAME (Also "No." if applicable)	BODY TYPE & MODEL NO. (if truck, tons capacity)	NO. CYL.	H/P - '65 and later	IDENTIFICATION NO. (Serial or Motor No.)

(3) Other (Describe)

(4) All accessions to the foregoing. SEE BELOW FOR ADDITIONAL PROVISIONS OF SECURITY AGREEMENT

**ADDITIONAL PROVISIONS OF SECURITY AGREEMENT**

Debtor(s) warrants that the title to said Collateral is vested in Debtor(s) free of liens and encumbrances, and no financing statement or other lien instruments covering any of the Collateral is on file in any public office. Debtor(s) shall keep said Collateral in good repair, free from all attachments, executions, liens, security interests, taxes and encumbrances and shall not use the same nor permit it to be used illegally, for hire or in any contest.

If this Security Agreement includes a motor vehicle, Debtor(s) covenants he will not remove same from the State of his present residence shown above and if this Security Agreement includes other personal property, Debtor(s) covenants he will not remove such other personal property from his residence, without the written consent of the Creditor. Neither loss of nor injury to said property shall relieve Debtor(s) from his obligation hereunder.

Debtor(s) may retain possession of the Collateral until default hereunder. If default shall occur in the payment of the debt secured hereby or any conditions of this Security Agreement or if Creditor feels unsecured in his Security, then the Creditor may take immediate possession of the collateral, wherever found, with or without legal process, may require the Debtor(s) to assemble the Collateral and make it available to the Creditor and make it available reasonably convenient to both parties and may exercise any right and remedies granted Secured Party under Article 9 of the Uniform Commercial Code upon default by a Debtor under a Security Agreement.

The following notice is applicable if this box has been checked and signed by Creditor representative.

☐ **APPLICABLE BY** \_\_\_\_\_ Representative

**NOTICE**

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# SMALL DOLLAR LOAN PRODUCTS SCORECARD—UPDATED

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#### ABOUT THE AUTHORS

Leah A. Plunkett, Emily Caplan, and Nathanael Player at the National Consumer Law Center performed the research, calculations, and analysis for this updated *Scorecard*.

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Thanks to Carolyn Carter and Diane Thompson at the National Consumer Law Center for help with calculations. Denise Lisio at the National Consumer Law Center served as legal editor. Carolyn Carter and Chi Chi Wu at the National Consumer Law Center, Gail Hillebrand at Consumers Union, and Jean Ann Fox at Consumer Federation of America provided expertise and guidance, as well as a review of and edits to the text. For the original *Scorecard*, Elizabeth Renuart, formerly at the National Consumer Law Center and now an Assistant Professor of Law at Albany Law School in Albany, N.Y., and Emily Caplan did the research, calculations, and analysis. Michael Wroblewski at Consumers Union was primarily responsible for the descriptive text with the assistance of Gail Hillebrand. Jean Ann Fox at Consumer Federation of America reviewed and edited the text.

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#### ABOUT THE NATIONAL CONSUMER LAW CENTER

The National Consumer Law Center<sup>®</sup>, a nonprofit corporation founded in 1969, assists consumers, advocates, and public policy makers nationwide on consumer law issues. NCLC works toward the goal of consumer justice and fair treatment, particularly for those whose poverty renders them powerless to demand accountability from the economic marketplace. NCLC has provided model language and testimony on numerous consumer law issues before federal and state policy makers. NCLC publishes an 18-volume series of treatises on consumer law, and a number of publications for consumers.

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## SUMMARY

(Updated 5/7/10)<sup>1</sup>

States have historically taken the lead through their police powers to ensure that consumers are not subject to abusive lending practices. This *Scorecard* assesses how well states are exercising their authority by examining five elements of state laws:

- The statutory maximum annual percentage rate (APR) for four typical small dollar loan products:
  - Payday loan;
  - Auto-title loan.
  - Six-month installment loan;
  - One-year installment loan.
- Whether the APRs for these four products are limited by the state's criminal usury cap.<sup>2</sup>

For each of these four products, the *Scorecard* awards the state a passing grade if state law limits the maximum annual percentage

rate (APR)<sup>3</sup> to 36% or less, and a failing grade if state law allows an APR greater than 36%. The 36% annual interest rate benchmark has historically been common in state law,<sup>4</sup> and a 36% APR is the cap that Congress established for certain loan products extended to active-duty service members.

This updated *Scorecard* (2010) follows up on the original *Scorecard* (2008), which was released by the National Consumer Law Center and Consumer Federation of America in August 2008.<sup>5</sup> Since that date, the most significant

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<sup>3</sup> The *Scorecard* uses the Truth in Lending Act's (TILA) definition of "finance charge" to calculate the APRs for the loan products included in the *Scorecard*. In the John Warner National Defense Authorization Act of 2006, Pub. L. No. 109-364, § 670 (2006) ("Defense Authorization Act"), Congress set a cap of 36% for certain loans made to active-duty military personnel but included more fees in the APR calculation than called for under TILA. This means that the APRs calculated under the Defense Authorization Act could be higher than the TILA APR for the same product. Because TILA covers products offered generally in the lending market, the *Scorecard* applies the TILA methodology rather than the military formula.

<sup>4</sup> See National Consumer Law Center, *The Cost of Credit: Regulation, Preemption, and Industry Abuses* § 2.3.3.2 (4th ed. 2009) (permitting small loans at 36% annual interest rate was designed to address problem of loan-sharking by bringing legitimate lenders into small dollar loan market).

<sup>5</sup> The original *Scorecard* and its statutory back-up are available at <http://www.nclc.org/reports/content/CU-Small-Dollar-IntroScorecard-8-28-08.pdf> and <http://www.nclc.org/reports/content/CU-Small%20Dollar-backup-8-25-08.pdf>. We have taken the opportunity afforded by updating the *Scorecard* and statutory back-up to make some minor corrections to material in the originals.

<sup>1</sup> Legislative developments through April 15, 2010, are reflected in this *Scorecard*, unless otherwise indicated.

<sup>2</sup> Some states have enacted both civil and criminal usury laws. Civil usury laws were adopted in the original colonies, and this practice continued among the states after independence. See National Consumer Law Center, *The Cost of Credit: Regulation, Preemption, and Industry Abuses* § 2.2.2 (4th ed. 2009). Criminal usury laws were designed to complement civil laws and create criminal liability when a lender's rate or fees exceeded a rate that is often in excess of the general usury law of the state. Some criminal usury laws also punish extortionate behavior and threats of physical injury—behaviors that are now associated with "loan-sharking." Thus, criminal usury laws punish conduct that is more reprehensible, violent, or intentional.

**Eight jurisdictions** protect consumers against abusive lending practices for all four small dollar loan products:

Arkansas	New Jersey
Connecticut	New York
District of Columbia	Pennsylvania
Maryland	Vermont

**Fifteen states** allow abusive lending for all four products included in the *Scorecard*:

Arizona	Mississippi	South Carolina
Delaware	Missouri	South Dakota
Idaho	Montana	Tennessee
Illinois	Nevada	Utah
Minnesota	New Mexico	Wisconsin

legislative developments affecting the grading in this *Scorecard* have been 36% APR caps on payday loans<sup>6</sup> and title loans<sup>7</sup> becoming effective in New Hampshire. New Hampshire now receives passing instead of failing grades for these products.<sup>8</sup> Other positive changes include new or clarifying legislation or regulation in multiple states, such as Idaho and Minnesota, to apply their payday lending laws to Internet payday lenders. Also noteworthy was a decision by the Supreme Court of Arkansas striking down the state's payday lending law as unconstitutional.<sup>9</sup> These and other state law developments since the original *Scorecard* are discussed in more detail below.

As of April 15, 2010, eight jurisdictions—Arkansas, Connecticut, the District of Columbia, Maryland, New Jersey, New York,

Pennsylvania, and Vermont—protect consumers against abusive lending practices for all four small dollar loan products. On the other hand, fifteen states—Arizona, Delaware, Idaho, Illinois, Minnesota, Mississippi, Missouri, Montana, Nevada, New Mexico, South Carolina, South Dakota, Tennessee, Utah, and Wisconsin—allow abusive lending for all four products included in the *Scorecard*. The remaining states protect consumers to varying degrees.

As this *Scorecard* demonstrates, reforms are still needed in many states. In addition, there is important work to be done at the national level, such as the creation of a nationwide usury cap for consumer loans as well as a new federal regulator to protect consumers in all lending outlets.

<sup>6</sup> N.H. Rev. Stat. Ann. § 399-A:13(XX).

<sup>7</sup> N.H. Rev. Stat. Ann. § 399-A:14(VI).

<sup>8</sup> Although not effective until September 2008, Ohio's 28% APR cap on payday loans was reflected in the grading on the original *Scorecard*.

<sup>9</sup> *McGhee v. Arkansas Bd. of Collection Agencies*, 289 S.W.3d 18 (Ark. 2008).

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The National Consumer Law Center, Consumer Federation of America, and Consumers Union

# SMALL DOLLAR LOAN PRODUCTS SCORECARD—UPDATED

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## TABLE OF CONTENTS

I. Background	2
II. Description of the Small Loan Products Included in the <i>Scorecard</i>	5
III. Grading Scale	7
IV. State Law Changes Since the Original <i>Scorecard</i>	8
Small Dollar Loan Products <i>Scorecard</i> 2010	14

## I. BACKGROUND

Abusive lending practices not only harm individual consumers, but they place a needless drag on the overall U.S. economy. Abusive lending practices include those in which the lender charges excessive fees and interest rates; lends without regard to the borrower's ability to repay; refinances a borrower's loans repeatedly over a short period of time without any economic gain for the borrower; or commits outright fraud or deception.<sup>10</sup>

Consumers experiencing abusive lending practices pay much more for their loans than other consumers and often get trapped in cycles of debt from which they cannot emerge. As a result, these consumers have fewer resources to devote toward building family wealth.<sup>11</sup> This is especially true of consumers who are of modest means and just trying to make ends meet. Indeed, numerous studies have documented the harms to consumers related to these abusive lending practices.<sup>12</sup>

<sup>10</sup> See, e.g., Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 72 Fed. Reg. 50,580, 50,581–83 (Aug. 31, 2007) (Department of Defense final rule) (describing characteristics of payday, auto-title, and military installment loans that are abusive).

<sup>11</sup> For a discussion of how consumers in poverty pay more for basic goods and services and, thus, find it difficult to build real wealth, see Matthew Fellowes, The Brookings Institution, From Poverty, Opportunity: Putting the Market to Work for Lower Income Families (July 2006), available at [http://www.brookings.edu/reports/2006/07/poverty\\_fellowes.aspx](http://www.brookings.edu/reports/2006/07/poverty_fellowes.aspx).

<sup>12</sup> See, e.g., Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 72 Fed. Reg. 50,580, 50,581–83 (Aug. 31, 2007) (Department of Defense final rule); Amanda Quester & Jean Ann Fox, Center for Responsible Lending and Consumer Federation of America, Car Title Lending: Driving

The overall domestic economy also is harmed because these practices distort consumer spending. They lessen consumer resources devoted to building productive assets (such as educational achievement and home ownership) and divert resources to less productive uses such as the payment of multiple loan fees or high finance charges. The subprime mortgage lending crisis that came to a head beginning in 2007 exemplifies how abusive lending practices can harm the overall economy. Had stronger consumer protections governing mortgage lending been in place, the resulting harm to consumers and the overall economy would likely not have been as great. Indeed, these real and potential harms to the individual and to the overall economy are so significant that they outweigh the countervailing notion that lenders and individuals should be free to contract at any rate and terms.<sup>13</sup>

To determine how states have exercised their historical responsibility to address abusive lending, the *Scorecard* examines the

Borrowers to Financial Ruin (Apr. 14, 2005), available at <http://www.responsiblelending.org/issues/car-title/reports/page.jsp?itemID=28012839> (describing abuses of auto-title loans); Uriah King, Leslie Parrish, Ozlim Tanek, Center for Responsible Lending, Financial Quicksand: Payday Lenders Sink Borrowers in Debt with \$4.2 Billion in Predatory Fees Every Year (Nov. 30, 2006), available at <http://www.responsiblelending.org/payday-lending/research-analysis/financial-quicksand-payday-lending-sinks-borrowers-in-debt-with-4-2-billion-in-predatory-fees-every-year.html>.

<sup>13</sup> See, e.g., Sonia Garrison, Sam Rogers, Mary L. Moore, Center for Responsible Lending, Continued Decay and Shaky Repairs: The State of Subprime Loans Today (Jan. 2009), available at [http://www.responsiblelending.org/mortgage-lending/research-analysis/continued\\_decay\\_and\\_shaky\\_repairs.pdf](http://www.responsiblelending.org/mortgage-lending/research-analysis/continued_decay_and_shaky_repairs.pdf) (assessing damage caused by subprime mortgage crisis).

maximum statutory APR<sup>14</sup> for four typical consumer small loan products and whether the state's criminal usury cap limits the interest charged for those products. The issue of criminal usury caps was included in this evaluation because some of these caps reflect the outer limit of acceptable interest that a state is willing to criminalize and, in the case of New York and New Jersey, provide the cap for small consumer loans.

The *Scorecard* evaluates maximum APRs because payday and auto-title lenders tend to charge an APR near the applicable statutory limit.<sup>15</sup> Moreover, APR caps are the most effective way to protect consumers against abusive lending practices compared with other reforms in these markets. A report on payday lending by the Center for Responsible Lending (CRL) explains how reforms short of rate caps have failed to protect consumers adequately.<sup>16</sup>

<sup>14</sup> The Truth in Lending Act APR is a uniform way to determine the true cost of a loan. It is expressed as a percentage and includes some of the fees and charges associated with the loan, as well as the interest to be earned over the term. For purposes of the *Scorecard*, the APR is calculated pursuant to the requirements of the Truth in Lending Act. See 15 U.S.C. §§ 1605, 1606. The APR has been the credit cost yardstick in this country for forty years and aims to provide an apples-to-apples comparison of the cost when consumers shop. See Elizabeth Renuart & Diane Thompson, *The Truth, The Whole Truth, and Nothing but the Truth: Fulfilling the Promise of Truth in Lending*, 25 Yale J. on Reg. 181, 186–91 (2008); Matthew A. Edwards, *Empirical and Behavioral Critiques of Mandatory Disclosure: Socio-Economics and the Quest for Truth in Lending*, 14 Cornell J.L. & Pub. Pol'y 199, 211–15 (2005).

<sup>15</sup> Mark Flannery & Katherine Samolyk, *Payday Lending: Do the Costs Justify the Price?* 9 (FDIC Center for Financial Research Working Paper, June 2005), available at [http://www.fdic.gov/bank/analytical/cfr/2005/wp2005/cfrwp\\_2005-09\\_flannery\\_samolyk.pdf](http://www.fdic.gov/bank/analytical/cfr/2005/wp2005/cfrwp_2005-09_flannery_samolyk.pdf).

<sup>16</sup> Uriah King & Leslie Parrish, Center for Responsible Lending, *Springing the Debt Trap: Rate Caps Are*

The CRL report examined the impact of reforms other than rate caps, such as: payment plans which require loans to amortize; bans on renewals or a cooling-off period between renewals; limits on loan amounts based on a borrower's income; limits on the number of loans a borrower can have at the same time; and establishing databases to monitor compliance with payday lending requirements. The report found that the debt trap of payday lending continues even where such reforms have been implemented. In states that have implemented these non-rate cap reforms:

- Borrowers who have five or more loans each year account for 90% of the payday lending business;
- Borrowers who have twelve or more transactions per year get over 60% of payday loans;
- Borrowers who have twenty-one or more transactions per year get 24% of loans;
- Approximately 14% of Colorado payday loan borrowers has had payday debt for the past six months—each day; and
- Almost 90% of repeat payday loans are made on the heels of repayment of an earlier loan.<sup>17</sup>

The CRL report concluded that: "Those states which enforce a comprehensive interest rate cap at or around 36 percent for small

Only Proven Payday Lending Reform (Dec. 13, 2007), available at <http://www.responsiblelending.org/payday-lending/research-analysis/springing-the-debt-trap.pdf>.

<sup>17</sup> Uriah King & Leslie Parrish, Center for Responsible Lending, *Springing the Debt Trap: Rate Caps Are Only Proven Payday Lending Reform* 9–18 (Dec. 13, 2007), available at <http://www.responsiblelending.org/payday-lending/research-analysis/springing-the-debt-trap.pdf>.

loans have solved their debt trap problem; realizing a savings of \$1.5 billion for their citizens while preserving a more responsible small loan market. In sum, the only proven way for state policymakers to protect their citizens from predatory small loans is to enforce a comprehensive small loan law with an interest rate cap at or around 36 percent.”<sup>18</sup>

After determining the maximum APRs allowed in each state, the *Scorecard* then compares the maximum allowable APR to a 36% APR cap. The 36% cap on small loan lending became the law in most states by the mid-twentieth century.<sup>19</sup> Small loan laws were

<sup>18</sup> Uriah King & Leslie Parrish, Center for Responsible Lending, *Springing the Debt Trap: Rate Caps Are Only Proven Payday Lending Reform* 4 (Dec. 13, 2007), available at <http://www.responsiblelending.org/payday-lending/research-analysis/springing-the-debt-trap.pdf>. In those states that try to improve their consumer protections, the payday loan industry often migrates to the loopholes to avoid coverage. For example, in 2005, Illinois enacted payday legislation in an attempt to increase protections to consumers. 815 Ill. Comp. Stat. 122/1-1-122/99-99 (effective Dec. 6, 2005). Before this Act, Illinois had repealed its usury cap for consumer installment loans. As soon as the new law took effect, some payday lenders began offering “installment” loans for over 120 days that cost more than the new payday loan law permits. For example, one product is a 140-day “look alike” loan requiring nine biweekly interest payments, with a final balloon payment of the entire principal amount. For the borrower, this “installment” loan is essentially a fourteen-day payday loan with ten built-in rollovers. Woodstock Institute, Monsignor John Egan Campaign for Payday Loan Reform, *Hunting Down the Payday Loan Customer: The Debt Collection Practices of Two Payday Loan Companies* 4 (Oct. 2006), available at [http://www.issuelab.org/research/hunting\\_down\\_the\\_payday\\_loan\\_customer\\_the\\_debt\\_collection\\_practices\\_of\\_two\\_payday\\_loan\\_companies](http://www.issuelab.org/research/hunting_down_the_payday_loan_customer_the_debt_collection_practices_of_two_payday_loan_companies).

<sup>19</sup> See Elisabeth Anderson, *Experts, Ideas, and Policy Change: The Russell Sage Foundation and Small Loan Reform, 1910–1940*, at 4, 39 (Mar. 8, 2006), available at

adopted during this time in response to the widespread problem of loan-sharking. These laws were largely the product of the research and promotional efforts of the Russell Sage Foundation which, between 1916 and 1942, published seven drafts of a Uniform Small Loan Law.<sup>20</sup> In 2006, Congress enacted a similar 36% cap for extensions of credit to active-duty service members and their dependents.<sup>21</sup> Specifically, Congress declared it unlawful for lenders to extend credit for loans at an APR greater than 36% to active-duty service members and their dependents.<sup>22</sup> In promulgating the regulations to implement this congressional directive, the Department of Defense described the problem that abusive lending practices can have for consumers. It stated that:

[a] major concern of the Department has been the debt trap some forms of credit can present for Service members and their families. The combination of little-to-no regard for the borrower’s ability to repay the loan, unrealistic payment schedule, high fees, and interest and the opportunity to roll over the loan instead of repaying it, can create a cycle of debt for financially overburdened Service members and their families.<sup>23</sup>

<http://www.yale.edu/scr/andersen.doc> (noting that thirty-four states implemented laws permitting small dollar lending at or about 36% annual interest rate from 1914 to 1943).

<sup>20</sup> National Consumer Law Center, *The Cost of Credit: Regulation, Preemption, and Industry Abuses* § 2.3.3.2 (4th ed. 2009).

<sup>21</sup> John Warner National Defense Authorization Act of 2006, Pub. L. No. 109-364, § 670 (2006).

<sup>22</sup> This cap became effective on October 1, 2007.

<sup>23</sup> Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 72 Fed. Reg. 50,580, 50,581–83 (Aug. 31, 2007) (Department of Defense final rule).

The same concerns are present for many nonmilitary families in today's economy. The *Scorecard* seeks to highlight the states that use their regulatory authority to protect consumers against abusive lending practices. More detail is provided in the statutory back-up to this *Scorecard*, available at <http://www.nclc.org/reports/content/cu-small-dollar-scorecard-backup-2010.pdf>.

## II. DESCRIPTION OF THE SMALL LOAN PRODUCTS INCLUDED IN THE SCORECARD

### 1. Two-week, \$250 loan ("payday" loan)

A payday loan is a short-term cash loan based on the borrower's personal check held for future deposit or electronic access to the borrower's bank account. A consumer writes a personal check for the amount borrowed plus the finance charge and receives cash. In some cases, instead of writing a check, the borrower signs over electronic access to his or her bank account to receive and repay the loan. Payday loans are made at stores and via the Internet.

The lender holds the check until the next payday when the total of the cash received and the finance charge must be paid in one lump sum. To pay a loan, the borrower can redeem the check for cash, allow the check to be deposited at the bank, or just pay a new finance charge to roll the loan over for another pay period. When state law prohibits rollovers, a sham in which the consumer redeems the check and immediately re-borrows the same funds plus paying another loan fee may be used to accomplish what is, in effect, a rollover. Unfortunately, even a borrower who is able to repay the loan when it is due may

be left with inadequate funds to cover other expenses and wind up taking out another payday loan immediately or shortly after repaying the prior one. This back-to-back borrowing is known as "churning."<sup>24</sup> A study by the CRL concluded that 76% of payday loans are the result of churning (defined as a borrower taking out a new loan within the same two week period as closing out an old loan).<sup>25</sup>

To get a payday loan, a consumer needs to have an open bank account in relatively good standing, a steady source of income, and identification. Payday lenders do not conduct a full credit check, establish a debt-to-income ratio, or determine whether a borrower can afford to repay the loan when it comes due.

Two weeks is a typical duration for payday loans. In 2009, the median payday loan amount in the country was \$350.<sup>26</sup> This rep-

<sup>24</sup> Uriah King & Leslie Parrish, Center for Responsible Lending, Phantom Demand: Short-Term Due Date Generates Need for Repeat Payday Loans, Accounting for 76% of Total Volume 5 (July 2009), available at <http://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-short-term-due-date-generates-need-for-repeat-payday-loans-accounting-for-76-of-total-volume.html>.

<sup>25</sup> Uriah King & Leslie Parrish, Center for Responsible Lending, Phantom Demand: Short-Term Due Date Generates Need for Repeat Payday Loans, Accounting for 76% of Total Volume 3, 7 (July 2009), available at <http://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-short-term-due-date-generates-need-for-repeat-payday-loans-accounting-for-76-of-total-volume.html>.

<sup>26</sup> Uriah King & Leslie Parrish, Center for Responsible Lending, Phantom Demand: Short-Term Due Date Generates Need for Repeat Payday Loans, Accounting for 76% of Total Volume 15 (July 2009), available at <http://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-short-term-due-date-generates-need-for-repeat-payday-loans-accounting-for-76-of-total-volume.html>.



resents an increase from as recently as 2005, when the typical payday loan amount was in the range of \$250–\$300.<sup>27</sup> The maximum loan amount permitted depends on state law. Some states have a tiered pricing system and, for ease of calculation, the original *Scorecard* chose an amount (\$250) that would not trigger more than one tier. (For the sake of consistency between the original and updated *Scorecards*, this amount has been retained.) For example, Colorado permits a fee of 20% on the first \$300 and then 7.5% on the balance.

The statutory backup to the *Scorecard* also tracks whether states permit a lender to hold a consumer's check or obtain authorization to debit the borrower's bank account. The practices of check holding and electronic debiting give the lender access to the consumer's bank account with no further action by the consumer after the loan is made. Internet lenders rely heavily on the ability to debit electronically the consumer's bank account; they also may include fine print in their loan contracts to permit them to create and submit for payment an unsigned check using the borrower's account information to collect funds from the borrower's bank account even if the borrower revokes debit authorization.

## 2. One-month, \$300 auto-title loan

To obtain an auto-title loan, a borrower signs over the title to a paid-for car and, in some states, provides the lender with a spare set of keys. The loan is usually due within a month in one balloon payment. If the borrower fails to repay the loan, the lender can take and sell

the car. In some states, title lenders are allowed to keep the surplus from the sale of the car, allowing title lenders to reap a windfall from the borrower's default. The lenders typically perform no assessment of ability to repay.

Typically, a car title loan is due in one month and has a principal amount of approximately \$300. The *Scorecard* based its APR calculations on a \$300 loan. Auto-title lenders typically do not make large loans; loan size is dependent on the value of the car and they lend no more than 30% to 50% of value to ensure negligible losses if the car is taken by the lender and sold in the event of default. In some states, such as South Carolina<sup>28</sup> and California,<sup>29</sup> lenders make larger loans secured by car titles to avoid limits on interest and fees for small loans.

## 3. Six-month, \$500 unsecured installment loan

Short-term installment loans are offered by different types of lenders, but are most commonly made by finance companies. These lenders normally assess the ability of the borrower to repay the loan. Repayment is usually made in installments of equal amounts which cover both principal and interest. Interest rates and APRs can be lower for consumers with better credit records or scores. If the borrower defaults, the lender can obtain a court judgment for repayment of the loan. The *Scorecard* uses a loan slightly larger than either a payday or an auto title loan to compare the cost of an installment, as opposed to a single-payment, loan.

<sup>27</sup> Mark Flannery & Katherine Samolyk, *Payday Lending: Do the Costs Justify the Price?* 1 (FDIC Center for Financial Research Working Paper June 2005), available at [http://www.fdic.gov/bank/analytical/cfr/2005/wp2005/cfrwp\\_2005-09\\_flannery\\_samolyk.pdf](http://www.fdic.gov/bank/analytical/cfr/2005/wp2005/cfrwp_2005-09_flannery_samolyk.pdf).

<sup>28</sup> Title loans over \$600 are not subject to any interest rate cap. S.C. Code Ann. § 37-3-201. However, even a \$300 title loan has a 117% APR.

<sup>29</sup> Title lenders in California do not offer a \$300 product, but they will make loans of \$2500 and above because they can do so with no rate cap. Cal. Fin. Code § 22303 (West).

#### 4. One-year, \$1,000 unsecured installment loan

The *Scorecard* uses an unsecured installment loan with a longer duration to provide another point of comparison to the payday and auto-title loan products. The structure of this loan is similar to the six-month, \$500 unsecured installment loan.

#### 5. Criminal usury cap

The *Scorecard* assesses whether a state maintains a criminal usury cap. Criminal usury caps can provide an outer limit to allowable interest rates. Three states have criminal usury laws that apply regardless of other state law and set maximum rates. Twenty-eight jurisdictions have not enacted a criminal usury law. Twelve states set a cap in their criminal law that does not apply if other state law allows a higher rate. Five states have a general criminal usury law that makes it a crime to violate the usury caps in other state law but does not itself set a rate limit. Finally, three states make exceeding the criminal usury cap a crime only if the lender also threatens or uses violence; however, in one of these states, there is no criminal liability based on the rate cap violation if the rate charged is otherwise authorized by law.

- If the loan product's APR is less than or equal to 36%, the grade is a P;
- If the state "Prohibited" a payday or auto-title product, the grade is a P;<sup>32</sup>
- If the loan product's APR is greater than 36%, the grade is an F;
- If there is "No cap" on the loan product's APR, the grade is an F.

Criminal usury statutes are somewhat more complicated because of their interplay with other state laws. A handful of these laws set an absolute cap that applies to all loan products evaluated in this *Scorecard*. For these laws, the same basic grading rule applies as for the individual small loan products.

- If the criminal usury statute imposes an APR cap less than or equal to 36%, the grade is a P;
- If the criminal usury statute imposes an APR cap greater than 36%, the grade is an F.

Other criminal usury statutes set a rate cap, but the cap is inapplicable if another state law allows a higher interest rate. For example, a state criminal usury statute might cap interest

### III. GRADING SCALE<sup>30</sup>

The four small loan products are graded on a pass (P) or fail (F) basis based on the APR for the loan product.<sup>31</sup>

<sup>30</sup> Grading is strict, thus some states—including Massachusetts, Minnesota, North Carolina, and West Virginia—earn Fs for products that are not far over the 36% APR benchmark. In general, these near misses are the result of fees being permitted in addition to interest.

<sup>31</sup> APRs are rounded down or up to avoid decimals.

They were rounded down to the nearest number without decimals if they were XX.50% or less and were rounded up to nearest full number without decimals if they were XX.51% or more.

<sup>32</sup> Where a payday or auto-title loan is "Prohibited," this means that either: a) state law bans payday or title lending because it prohibits the taking of the check or the car's title as security; or b) payday or title lenders would not make loans with APRs under the applicable usury cap due to their current business models. For example, the applicable state law may contain a low rate cap and/or the small loan law requires installment payments.

rates at 24% except as otherwise authorized by law. If a separate payday loan statute authorizes interest rates of 300%, the criminal usury statute will have no effect on payday loans. But if no other provision of state law allows a higher interest rate for payday loans, then the 24% cap will apply to them.

Taking these factors into account, if the rate cap in a state's criminal usury statute is inapplicable if another state law allows a higher rate or if a state's criminal usury statute does not contain its own rate limit but simply references the limits in other state law, the *Scorecard* grades the state as follows:

- If no other state law allows a rate higher than 36% for any of the four loan products in the *Scorecard*, the criminal usury law is termed a "Soft cap," and the grade is a P.
- If the criminal usury statute contains its own rate cap but other state law allows a rate higher than 36% for any of the four loan products in the *Scorecard*, the APR includes a plus sign ("+") to indicate that the cap can be higher than the stated amount, and the grade is an F.
- If the criminal usury statute does not contain any limits on rates but criminalizes making loans above the caps set forth in other state laws governing the four loan products, and any of these products can have a rate higher than 36%, the criminal usury law is deemed to have "No cap," and the grade is an F.

And a final grading rule for the criminal usury cap category:

- If the state does not have a criminal usury law, the *Scorecard* states "None," and the grade is a NA (not applicable)

because the *Scorecard* does not penalize for the lack of a law in this category.

#### IV. STATE LAW CHANGES SINCE THE ORIGINAL SCORECARD

Some recent state law developments are highlighted below: all those that have affected the statutory maximum APR for any of the four products in the updated *Scorecard*, as well as some that have not. In the latter category, the focus is on legislative developments that have closed prior loopholes in relevant state laws or addressed the challenges posed by Internet payday lenders who make loans to a state's residents without following the state's laws.<sup>33</sup>

**Arizona:** Arizona's law authorizing payday lending contains a sunset date of July 1, 2010. In 2008, voters rejected Proposition 200, a ballot initiative that would have allowed payday lenders to operate in the state permanently.<sup>34</sup> In 2010, legislation that would have had the same effect was killed in committee. If the sunset occurs as scheduled, single payment loans

<sup>33</sup> See Jean Ann Fox & Anna Petrini, Consumer Federation of America, Internet Payday Lending: How High-Priced Lenders Use the Internet to Mire Borrowers in Debt and Evade State Consumer Protections (Nov. 30, 2004), available at [http://www.consumerfed.org/pdfs/Internet\\_Payday\\_Lending113004.pdf](http://www.consumerfed.org/pdfs/Internet_Payday_Lending113004.pdf) (discussing particular problems with Internet payday lenders, such as trouble tracking them down after loans are made).

<sup>34</sup> This consumer victory occurred over massive industry opposition; payday lenders spent almost fifteen times more than opponents of the initiative. Tyler Evilsizer, National Institute on Money in State Politics, Lenders Couldn't Buy Laws 1 (Aug. 18, 2009), available at <http://www.followthemoney.org/Research/index.phtml>.

at high APRs secured by checks will no longer be authorized. Arizona will then earn a P in the payday loan category.

**Arkansas:** Despite the usury cap located in Arkansas's constitution, the state legislature had enacted a payday loan law permitting "fees" (and avoiding the use of the word "interest") which exceeded the constitutional usury cap. In November 2008, the Arkansas Supreme Court resolved the issue, ruling that the transactions were indeed loans, and the state law was unconstitutional.<sup>35</sup> Because of the state supreme court's ruling, Arkansas retains its P in the payday loan category.

**Delaware:** On July 16, 2009, this state added statutory provisions specifically authorizing title loans—without any mention of a cap on interest or fees.<sup>36</sup> Delaware retains its F in the title loan category.

**Idaho:** As of July 1, 2009, if a payday lender is not licensed by the state of Idaho, any loans it makes in this state are void, uncollectible, and unenforceable.<sup>37</sup> Not only can borrowers walk away from these loans, they can sue the unlicensed lenders to get their money back.<sup>38</sup> This statutory change addresses the problem of Internet payday lenders. However, as Idaho lacks any cap on fees or interest rates, borrowers' costs when borrowing even from a licensed lender remain high, and it retains its F in the payday loan category.

<sup>35</sup> *McGhee v. Arkansas Bd. of Collection Agencies*, 289 S.W.3d 18 (Ark. 2008). On the basis of its constitutional usury cap, Arkansas earned a "P" for payday loans in the original *Scorecard*, although the *McGhee* decision had not yet been issued.

<sup>36</sup> Del. Code Ann. tit. 5, §§ 2250–61.

<sup>37</sup> Idaho Code. Ann. § 28-46-402(3).

<sup>38</sup> Idaho Code. Ann. § 28-46-402(3).

**Illinois:** In 2009, the regulations governing auto-title loans changed the definition of a title-secured loan to include all loans secured by title to a motor vehicle, regardless of the loan's duration.<sup>39</sup> Under the prior regulations, such loans lasting more than sixty days were not covered. The amendment thus eliminated a long-standing loophole whereby title lenders had evaded these regulations by structuring their loans as longer than sixty days. In addition, a requirement that consumers be allowed to repay the loan in substantially equal installments was added.<sup>40</sup> This should result in an end to a one-month loan product repayable in a lump sum; however, one-month loan products repayable in installments were not expressly banned. As the new measures did not include a cap on interest rates or fees, lenders in Illinois can continue to charge any amount they wish for a one-month loan product, as long as it is not repayable in a lump sum. Absent a rate and fee cap, the new repayment requirement of substantially equal installments does not decrease the cost of any one-month loan products that may remain available. Illinois thus still rates an F for title lending.

**Indiana:** Indiana does not have title lending. The 36% annual interest rate cap on small loans (up to a certain amount) would apply to title loans, and thus keeps title lenders from opening their doors in this state. Indiana attempted to enforce its law against title lenders in Illinois who made title loans to Indiana consumers who came over the border to their Illinois stores. This attempt was held to be unconstitutional by a federal trial court, a decision that was affirmed by a federal appellate

<sup>39</sup> 38 Ill. Code. R. 110.300.

<sup>40</sup> 38 Ill. Code. R. 110.340(b).

court.<sup>41</sup> Nonetheless, Indiana retains its P for title lending, as it has a rate cap on the books and is enforcing the cap within its borders.

**Kentucky:** In 2009, this state imposed new restrictions on payday lenders. If a payday lender is not licensed by Kentucky, any loans it makes in Kentucky are void, and it is not entitled to collect any monies from borrowers.<sup>42</sup> In addition, if a lender violates any provision of the payday law, the executive director of the Office of Financial Institutions may void the loan; the lender may only recover from the borrower any principal it has paid to him or her.<sup>43</sup> A ten-year moratorium on the issuing of new payday loan licenses became effective on July 1, 2009.<sup>44</sup> The state has also created a database to track payday loan transactions; however, the \$1 per transaction fee for accessing the database may be passed along to the consumer, thereby increasing the allowable APR on a two-week \$250 payday loan from 460% to 471%.<sup>45</sup> Kentucky retains its F grade in the payday loan category.

**Maryland:** Although this state does not permit payday lending, in recent years online payday lenders have been making loans to Maryland residents by setting themselves up as credit services organizations and charging

broker fees to connect borrowers with loans. The result has been loans with triple digit APRs due to the imposition of broker fees on top of interest.<sup>46</sup> A bill to close this loophole passed both houses of the Maryland legislature and was signed by the governor on May 4, 2010. This new law prohibits broker fees that, when added to the interest charged on a loan, exceed the applicable interest rate cap.<sup>47</sup> It will be effective on October 1, 2010.<sup>48</sup> Maryland already rated a P in the payday loan category; the new law will make its prohibition more effective.

**Minnesota:** As of August 1, 2009, this state has applied its payday laws to Internet payday lenders who make loans to Minnesota residents while the residents are present in that state.<sup>49</sup> Additional reforms also became effective at this time, such as prohibiting payday loan contracts from requiring that disputes between a lender and a borrower residing in Minnesota be resolved anywhere but in Minnesota.<sup>50</sup> A rate cap was not among the reforms, however, so Minnesota still rates an F in the payday lending category.

**New Hampshire:** On January 1, 2009, New Hampshire imposed a 36% APR cap on

<sup>41</sup> *Midwest Title Loans v. Ripley*, 616 F. Supp. 2d 897 (S.D. Ind. 2009), *aff'd sub nom.*, *Midwest Title Loans v. Mills*, 593 F.3d 660 (7th Cir. 2010).

<sup>42</sup> Ky. Rev. Stat. Ann. § 286.9-035(1) (West).

<sup>43</sup> Ky. Rev. Stat. Ann. § 286.9-035(2) (West).

<sup>44</sup> Ky. Rev. Stat. Ann. § 286.9-071 (West).

<sup>45</sup> Ky. Rev. Stat. Ann. §§ 286.9-140(1)–(2) (West). As of May 1, 2010, the database appeared to be up and running.

<sup>46</sup> Eileen Ambrose, *Payday Lenders Face Tougher Restrictions*, Baltimore Sun (Apr. 12, 2010), available at <http://www.baltimoresun.com/business/money/bs-bz-ambrose-payday-20100412,0,2759475.story>.

<sup>47</sup> H.B. 79, 2010 Gen. Assem. 427th Sess. (Md. 2010), <http://mlis.state.md.us/2010rs/billfile/hb0079.htm>.

<sup>48</sup> Eileen Ambrose, *Payday Lenders Face Tougher Restrictions*, Baltimore Sun (Apr. 12, 2010), available at <http://www.baltimoresun.com/business/money/bs-bz-ambrose-payday-20100412,0,2759475.story>.

<sup>49</sup> Minn. Stat. § 47.601, subdiv. 5.

<sup>50</sup> Minn. Stat. § 47.601, subdiv. 2(a)(2).

payday loans<sup>51</sup> and a 36% yearly interest rate cap on auto-title loans.<sup>52</sup> These caps appear to have shut down the making of both new payday and new auto-title loans in this state. The amended auto-title statute does permit lenders to pass along their actual costs for perfecting a security interest in the title to borrowers and recognizes that this fee may cause the true annualized cost for an auto-title loan to exceed 36%.<sup>53</sup> However, the only actual cost that appears to have been contemplated when this legislation was passed was the fee lenders must pay to the state Division of Motor Vehicles to perfect their security interest.<sup>54</sup> This fee is excludable from the finance charge definition under TILA (with proper disclosure) because it is paid to a public official for perfecting a security interest.<sup>55</sup> New Hampshire's auto-title law is thus properly understood as imposing a 36% APR cap. The *Scorecard* has changed New Hampshire's grades in the payday and auto-title loan categories from Fs to Ps.

In addition, New Hampshire appears to be moving toward a 36% APR cap for loans of \$10,000 or less. The APR would be computed using the TILA definition of finance charge; however, it would exclude one application fee per borrower per year and one participation or

membership fee per borrower from the finance charge, leaving some room for the TILA APR to exceed 36%. As of April 15, 2010, this bill, S.B. 193, had passed the House and gone to the Senate. If this bill passes and becomes law, New Hampshire will have gone from having no rate caps on any of the four products in the *Scorecard* to having some limit on all of them in the span of roughly two years, a significant accomplishment.

**Ohio:** This state enacted a 28% annual interest rate cap for payday loans, effective September 1, 2008. This was a significant change, as Ohio had previously permitted payday loans up to 391% APR. However, many payday lenders have stayed in business through a loophole: using licenses issued under the state's small loan and mortgage loan acts. The fees permitted by these laws, which were intended to be applied to longer term installment loans and mortgage loans, result in triple digit APRs when used for two-week payday loans.<sup>56</sup> Measures are being taken to address this problem, including efforts by the Ohio Department of Commerce to revoke several lenders' licenses<sup>57</sup> and proposed legislation that aims to close this loophole.<sup>58</sup> Because it has a

<sup>51</sup> N.H. Rev. Stat. Ann. § 399-A:13(XX).

<sup>52</sup> N.H. Rev. Stat. Ann. § 399-A:14(VI).

<sup>53</sup> N.H. Rev. Stat. Ann. § 399-A:14(VI).

<sup>54</sup> According to an attorney familiar with passage of the bill amending the auto title statute, the only discussion of any actual costs to be passed through to borrowers was the \$25 fee lenders must pay to the Division of Motor Vehicles (DMV) to perfect their security interest in a vehicle. E-mail from Attorney Sarah Mattson, New Hampshire Legal Assistance, Auto Title follow-up (Apr. 8, 2010, 10:56 a.m. EDT) (on file with NCLC).

<sup>55</sup> 12 C.F.R. § 226.4(e)(1).

<sup>56</sup> David Rothstein, Policy Matters Ohio, New Law, Same Old Loans: Payday Lenders Sidestep Ohio Law 2 (Sept. 2009), available at <http://www.policymattersohio.org/pdf/NewLawSameOldLoans2009.pdf> (explaining that the APR for a two week payday loan of \$100 is 423% when the small loan act is used and 680% when the mortgage loan act is used).

<sup>57</sup> Sheryl Harris, *Ohio Department of Commerce Takes Steps to Revoke Payday Lenders' Licenses*, Plain Dealer (Feb. 2, 2010), available at [http://www.cleveland.com/consumeraffairs/index.ssf/2010/02/ohio\\_department\\_of\\_commerce\\_ta.html](http://www.cleveland.com/consumeraffairs/index.ssf/2010/02/ohio_department_of_commerce_ta.html).

<sup>58</sup> Thomas Suddes, *A Bipartisan Stall Thwarts Ohioans' Will on Lending Rate*, Plain Dealer (Mar. 21, 2010), available at <http://www.cleveland.com/opinion/>

statutory rate cap of less than 36%, Ohio continues to rate a P in the payday loan category.

**Pennsylvania:** On July 26, 2008, the Pennsylvania Banking Department changed its position on Internet payday lenders to require them to follow Pennsylvania law when making loans to Pennsylvania residents.<sup>59</sup> Existing lenders were given until February 1, 2009, to comply; however, enforcement was suspended past that date due to a lawsuit challenging the Department's new position filed by Cash America Net of Nevada, an Internet lender without an office in the state making loans to Pennsylvania residents. The Commonwealth Court of Pennsylvania ruled in favor of the Department, declaring that Cash America was engaging in activities not authorized by state law because it was lending to Pennsylvania residents at a higher annual rate than the 6% permitted by the state's general usury law.<sup>60</sup> With the appropriate license under the state's Consumer Discount Company Act,<sup>61</sup> Cash America could have charged more. Not only did Cash America not have such a license; it was charging significantly beyond even what a licensed lender could have charged.<sup>62</sup> The rate permitted for licensed lenders is low enough to have kept payday lenders from opening up shop in Pennsylvania. Internet lenders will now face

the same barrier. Pennsylvania continues to rate a P in the payday loan category.

**South Carolina:** In June 2009, the South Carolina legislature overrode the Governor's veto to pass a bill imposing additional restrictions on payday loans. Among the new requirements now in place is that lenders must be licensed by the state to make loans to South Carolina residents.<sup>63</sup> This bill also changed the maximum amount that can be charged for payday loans; however, it only decreased the APR on a two-week \$250 payday loan to 391%, not a very significant change from the prior 460% APR. South Carolina therefore still rates an F for payday lending.

**Virginia:** On January 1, 2009, changes to Virginia's Payday Loan Act went into effect, including a requirement that this state's payday loan laws apply to Internet lenders making loans to Virginia residents.<sup>64</sup> A 36% annual interest rate cap was put in place, but both a loan fee and verification fee were also permitted.<sup>65</sup> With these two fees, the APR for a two-week \$250 payday loan has actually increased, from 390% APR to 610% APR. The number of people who are eligible for two-week payday loans has decreased, however, as lenders are now required to give borrowers a repayment period at least two times as long as the borrower's pay cycle.<sup>66</sup> To avoid this and other new legal requirements, many payday lenders switched to offering unregulated open-end loan products under another statutory provision.<sup>67</sup> The legislature responded by amending

[index.ssf/2010/03/a\\_bipartisan\\_stall\\_thwarts\\_ohi.html](http://index.ssf/2010/03/a_bipartisan_stall_thwarts_ohi.html).

<sup>59</sup> Notice to those Engaging or Considering Engaging in Nonmortgage Consumer Lending to Pennsylvania Residents, 38 Pa. Bull. 3986 (July 26, 2008).

<sup>60</sup> Cash Am. Net of Nev., L.L.C. v. Commonwealth, 978 A.2d 1028 (Pa. Commw. Ct. 2009).

<sup>61</sup> 7 Pa. Cons. Stat. §§ 6203, 6213.

<sup>62</sup> Cash Am. Net of Nev., L.L.C. v. Commonwealth, 978 A.2d 1028, 1031-32 (Pa. Commw. Ct. 2009).

<sup>63</sup> S.C. Code Ann. § 34-39-130(A).

<sup>64</sup> Va. Code Ann. § 6.1-469.1.

<sup>65</sup> Va. Code Ann. § 6.1-460.

<sup>66</sup> Va. Code Ann. § 6.1-459.1(v).

<sup>67</sup> Va. Code Ann. § 6.1-330.78.

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this open-end loophole, effective April 8, 2009, to provide payday lenders continued access to it only if they gave up their payday lending licenses or were making auto-title loans.<sup>68</sup> Furthermore, the latter option will no longer be available as of October 1, 2010.<sup>69</sup> On that date, a bill reforming title lending (S.B. 606) signed by the governor on April 11, 2010, becomes effective. S.B. 606 also includes limits on interest rates and imposes a minimum loan term of 120 days; these and other new requirements will be imposed on out-of-state lenders making loans to Virginia residents as well as Virginia title lenders.<sup>70</sup> There is currently no cap on interest or fees for title lending, so the bill is a positive development. Unfortunately,

the limits it sets will continue to permit triple digit APRs.<sup>71</sup> However, it will ban the one-month auto-title product evaluated by this *Scorecard*, thus Virginia will earn a P for title lending as of October 1, 2010. Virginia continues to rate an F for payday lending.

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As these recent state law developments demonstrate, there continues to be significant action at the state level to combat abusive small dollar loan products. However, the need for additional reforms in many states as well as at the federal level also remains urgent.

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<sup>68</sup> Va. Code Ann. § 6.1-330.78; 10 Va. Admin. Code § 5-200-100 (effective February 1, 2010). See Jay Speer, *Fool Me Once . . . Will the Loophole Lender Lobbyists Get Their Way Again?*, Augusta Free Press (Feb. 22, 2010), available at <http://augustafreepres.com/2010/02/15/fool-me-once-will-the-loophole-lender-lobbyists-get-their-way-again/>.

<sup>69</sup> Va. Code Ann. § 6.1-330.78(E), as amended by S.B. 606, Gen. Assem., 2010 Sess. (Va. Apr. 11, 2010). See also *Virginia Lawmakers Pass Car Title Lending Reform*, N.Y. Times (Mar. 11, 2010).

<sup>70</sup> Va. Code Ann. §§ 6.1-496, 6.1-495 & 6.1-481, as added by S.B. 606, Gen. Assem., 2010 Sess. (Va. Apr. 11, 2010).

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<sup>71</sup> Virginia Poverty Law Center, *Restrictions on Car Title Lending Signed into Law* (Apr. 14, 2010), available at <http://www.vplc.org/restrictionsPR.html>.



# SMALL DOLLAR LOAN PRODUCTS SCORECARD 2010

The National Consumer Law Center,  
Consumer Federation of America, and Consumers Union  
(Updated 5/7/10)<sup>72</sup>

STATE	LOAN TYPE	APR*	GRADE
<b>Alabama</b>	\$250, 2-week payday loan	456%	F
	\$300, 1-month auto-title loan	300	F
	\$500, 6-month loan	94	F
	\$1000, 1-year loan	20	P
	Criminal usury cap	None	NA
<b>Alaska</b>	\$250, 2-week payday loan	443	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	36	P
	Criminal usury cap	None	NA
<b>Arizona</b>	\$250, 2-week payday loan	460	F <sup>73</sup>
	\$300, 1-month auto-title loan	204	F
	\$500, 6-month loan	54	F
	\$1000, 1-year loan	46	F
	Criminal usury cap	No cap	F
<b>Arkansas</b>	\$250, 2-week payday loan	17	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	17	P
	\$1000, 1-year loan	17	P
	Criminal usury cap	None	NA
<b>California</b>	\$250, 2-week payday loan	460	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	45	F
	\$1000, 1-year loan	30	P
	Criminal usury cap	None	NA
<b>Colorado</b>	\$250, 2-week payday loan	521	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	91	F
	\$1000, 1-year loan	58	F
	Criminal usury cap	45	F
<b>Connecticut</b>	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	29	P
	\$1000, 1-year loan	26	P
	Criminal usury cap	12	P

<sup>72</sup> Legislative developments through April 15, 2010, are reflected in this *Scorecard*, unless otherwise indicated.

<sup>73</sup> Due to the sunset provision in Arizona's payday loan law, Arizona will have a P in this category as of July 1, 2010. Ariz. Rev. Stat. Ann. § 6-1263.

\* If the APR includes a plus sign ("+"), the grade is an F because the APR could be higher than the stated APR. This situation occurs if the state permits exceptions to the criminal usury cap and one of the four loan products in the *Scorecard* has an APR that exceeds 36%. Several states permit lenders to pick one or two or more rate and/or fee alternatives when making smaller loans. Note that the *Scorecard* APRs are based upon the maximum permissible rates/fees regime.

STATE	LOAN TYPE	APR *	GRADE
<b>Delaware</b>	\$250, 2-week payday loan	No cap	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	None	NA
<b>District Of Columbia</b>	\$250, 2-week payday loan	24	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	24	P
	\$1000, 1-year loan	24	P
	Criminal usury cap	None	NA
<b>Florida</b>	\$250, 2-week payday loan	342	F
	\$300, 1-month auto-title loan	30	P
	\$500, 6-month loan	30	P
	\$1000, 1-year loan	30	P
	Criminal usury cap	25+	F
<b>Georgia</b>	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	304	F
	\$500, 6-month loan	44	F
	\$1000, 1-year loan	31	P
	Criminal usury cap	60	F
<b>Hawaii</b>	\$250, 2-week payday loan	460	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	24	P
	\$1000, 1-year loan	25	P
	Criminal usury cap	No cap	F
<b>Idaho</b>	\$250, 2-week payday loan	No cap	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	None	NA
<b>Illinois</b>	\$250, 2-week payday loan	404	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	20+	F
<b>Indiana</b>	\$250, 2-week payday loan	391	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	36	P
	Criminal usury cap	45	F

\*If the APR includes a plus sign ("+"), the grade is an F because the APR could be higher than the stated APR. This situation occurs if the state permits exceptions to the criminal usury cap and one of the four loan products in the *Scorecard* has an APR that exceeds 36%. Several states permit lenders to pick one or two or more rate and/or fee alternatives when making smaller loans. Note that the *Scorecard* APRs are based upon the maximum permissible rates/fees regime.

STATE	LOAN TYPE	APR*	GRADE
<b>Iowa</b>	\$250, 2-week payday loan	358	F
	\$300, 1-month auto-title loan	35	P
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	36	P
	Criminal usury cap	None	NA
<b>Kansas</b>	\$250, 2-week payday loan	391	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	35	P
	Criminal usury cap	None	NA
<b>Kentucky</b>	\$250, 2-week payday loan	471	F
	\$300, 1-month auto-title loan	36	P
	\$500, 6-month loan	42	F
	\$1000, 1-year loan	41	F
	Criminal usury cap	None	NA
<b>Louisiana</b>	\$250, 2-week payday loan	521	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	81	F
	\$1000, 1-year loan	47	F
	Criminal usury cap	None	NA
<b>Maine</b>	\$250, 2-week payday loan	261	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	30	P
	\$1000, 1-year loan	30	P
	Criminal usury cap	None	NA
<b>Maryland</b>	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	33	P
	\$1000, 1-year loan	33	P
	Criminal usury cap	None	NA
<b>Massachusetts</b>	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	37	F
	\$1000, 1-year loan	27	P
	Criminal usury cap	20+	F
<b>Michigan</b>	\$250, 2-week payday loan	375	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	43	F
	\$1000, 1-year loan	35	P
	Criminal usury cap	25+	F

\* If the APR includes a plus sign ("+"), the grade is an F because the APR could be higher than the stated APR. This situation occurs if the state permits exceptions to the criminal usury cap and one of the four loan products in the *Scorecard* has an APR that exceeds 36%. Several states permit lenders to pick one or two or more rate and/or fee alternatives when making smaller loans. Note that the *Scorecard* APRs are based upon the maximum permissible rates/fees regime.

<b>STATE</b>	<b>LOAN TYPE</b>	<b>APR*</b>	<b>GRADE</b>
<b>Minnesota</b>	\$250, 2-week payday loan	235	F
	\$300, 1-month auto-title loan	116	F
	\$500, 6-month loan	51	F
	\$1000, 1-year loan	38	F
	Criminal usury cap	None	NA
<b>Mississippi</b>	\$250, 2-week payday loan	572	F
	\$300, 1-month auto-title loan	300	F
	\$500, 6-month loan	52	F
	\$1000, 1-year loan	44	F
	Criminal usury cap	None	NA
<b>Missouri</b>	\$250, 2-week payday loan	1,955	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	24+	F
<b>Montana</b>	\$250, 2-week payday loan	652	F
	\$300, 1-month auto-title loan	300	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	None	NA
<b>Nebraska</b>	\$250, 2-week payday loan	460	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	47	F
	\$1000, 1-year loan	36	P
	Criminal usury cap	None	NA
<b>Nevada</b>	\$250, 2-week payday loan	No cap	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	40	F
	\$1000, 1-year loan	40	F
	Criminal usury cap	None	NA
<b>New Hampshire</b>	\$250, 2-week payday loan	36	P
	\$300, 1-month auto-title loan	36	P
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	None	NA
<b>New Jersey</b>	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	30	P
	\$1000, 1-year loan	30	P
	Criminal usury cap	30	P

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STATE	LOAN TYPE	APR*	GRADE
New Mexico	\$250, 2-week payday loan	409	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	45	F
New York	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	25	P
	\$1000, 1-year loan	25	P
	Criminal usury cap	25	P
North Carolina	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	54	F
	\$1000, 1-year loan	37	F
	Criminal usury cap	None	NA
North Dakota	\$250, 2-week payday loan	520	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	28	P
	\$1000, 1-year loan	25	P
	Criminal usury cap	10.8+	F
Ohio	\$250, 2-week payday loan	28	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	70	F
	\$1000, 1-year loan	54	F
	Criminal usury cap	25+	F
Oklahoma	\$250, 2-week payday loan	396	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	46	F
	\$1000, 1-year loan	30	P
	Criminal usury cap	45	F
Oregon	\$250, 2-week payday loan	Prohibited <sup>74</sup>	P
	\$300, 1-month auto-title loan	154	F
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	36	P
	Criminal usury cap	None	NA
Pennsylvania	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	26	P
	\$1000, 1-year loan	22	P
	Criminal usury cap	36	P

<sup>74</sup> Two-week payday loans are prohibited in Oregon; however, the APR for a \$250, thirty-one-day payday loan (the minimum length permitted by law) is 154%, which merits a F.

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STATE	LOAN TYPE	APR*	GRADE
<b>Rhode Island</b>	\$250, 2-week payday loan	390	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	30	P
	\$1000, 1-year loan	24	P
	Criminal usury cap	21+	F
<b>South Carolina</b>	\$250, 2-week payday loan	391	F
	\$300, 1-month auto-title loan	117	F
	\$500, 6-month loan	71	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	None	NA
<b>South Dakota</b>	\$250, 2-week payday loan	No cap	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	None	NA
<b>Tennessee</b>	\$250, 2-week payday loan	313	F
	\$300, 1-month auto-title loan	264	F
	\$500, 6-month loan	87	F
	\$1000, 1-year loan	54	F
	Criminal usury cap	None	NA
<b>Texas</b>	\$250, 2-week payday loan	156 <sup>75</sup>	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	84	F
	\$1000, 1-year loan	81	F
	Criminal usury cap	None	NA
<b>Utah</b>	\$250, 2-week payday loan	No cap	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	No cap	F
<b>Vermont</b>	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	18 or 20	P
	\$500, 6-month loan	24	P
	\$1000, 1-year loan	24	P
	Criminal usury cap	Soft cap	P
<b>Virginia</b>	\$250, 2-week payday loan	610	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	36	P
	Criminal usury cap	None	NA

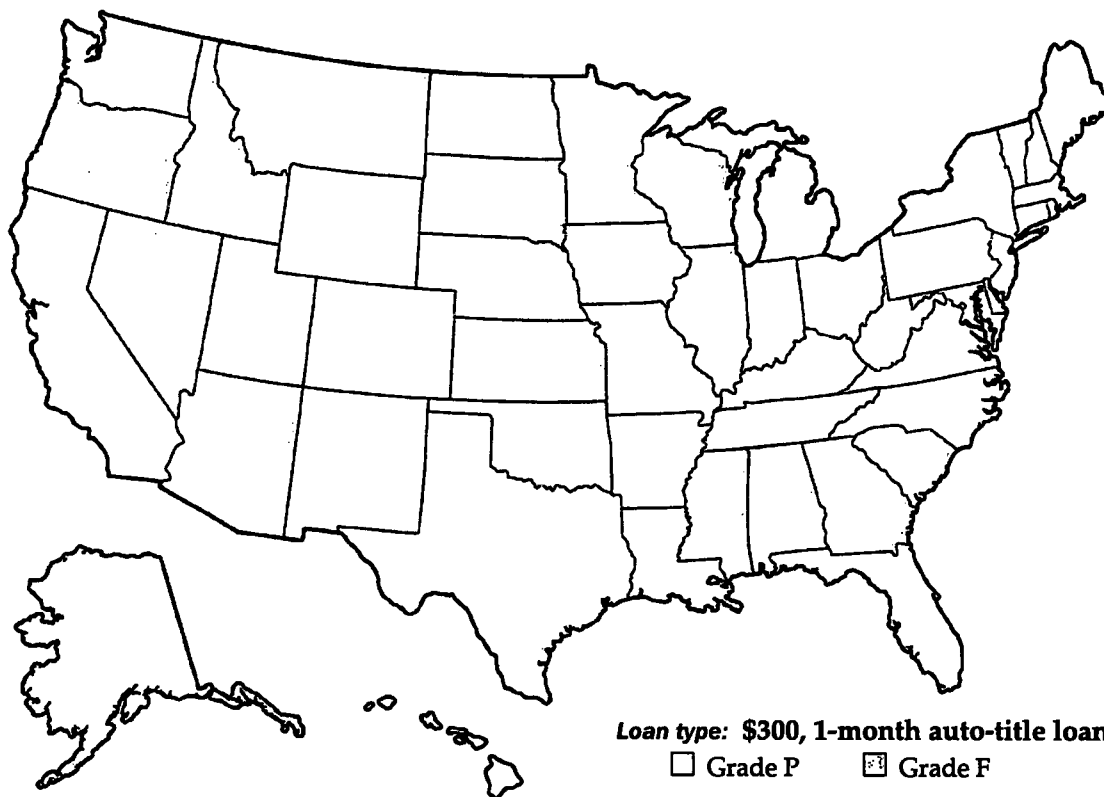
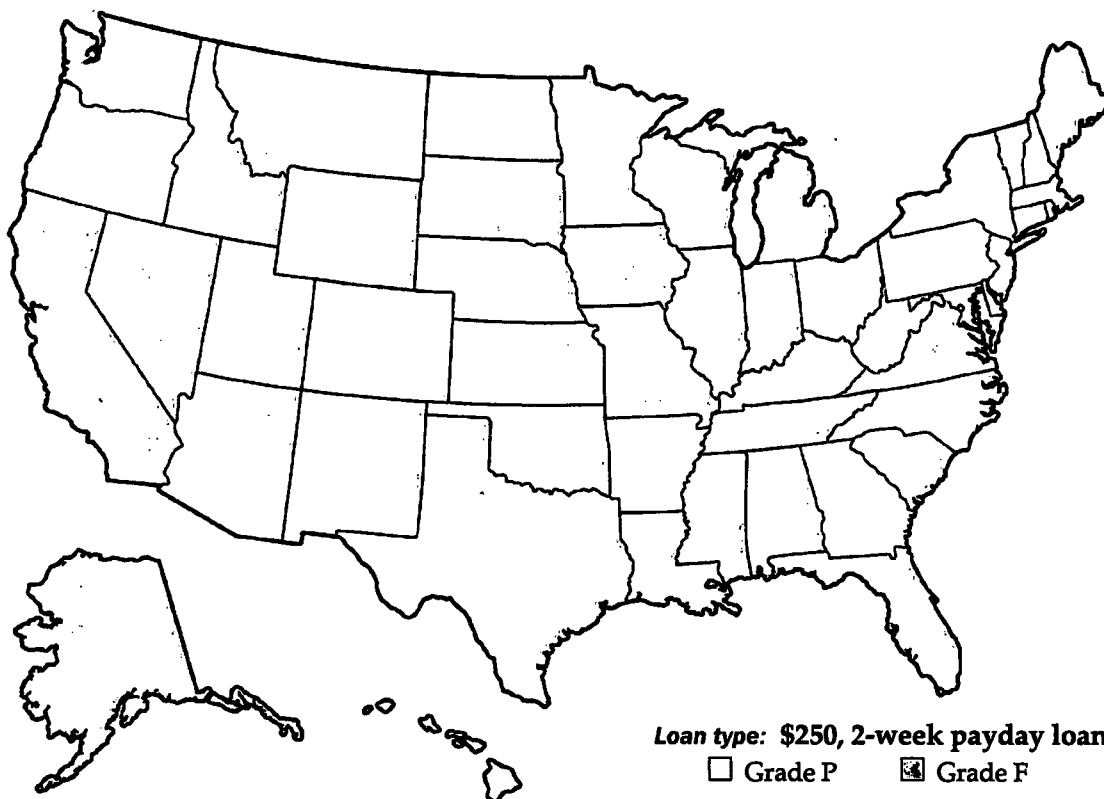
<sup>75</sup> Some lenders get around the rate cap on payday loans as well as the prohibition on title lending by setting themselves up as credit service organizations and facilitating both these loans with no rate cap. Tex. Fin. Code Ann. § 393.201 (Vernon).

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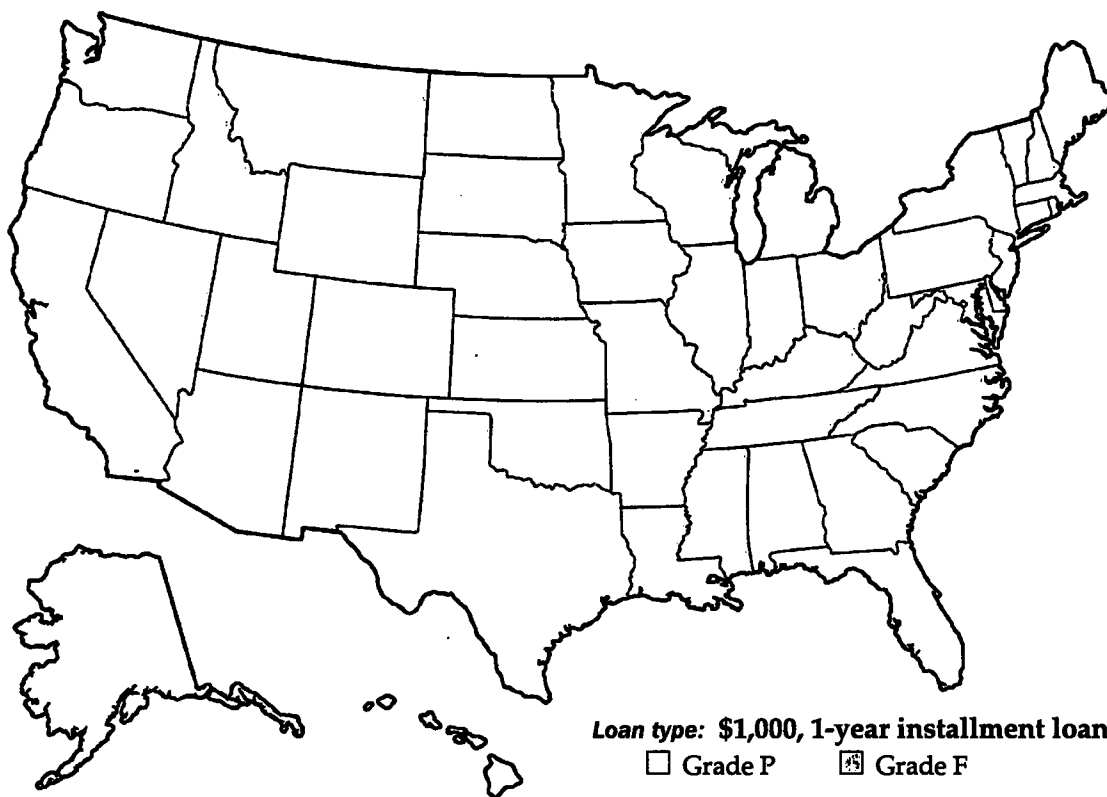
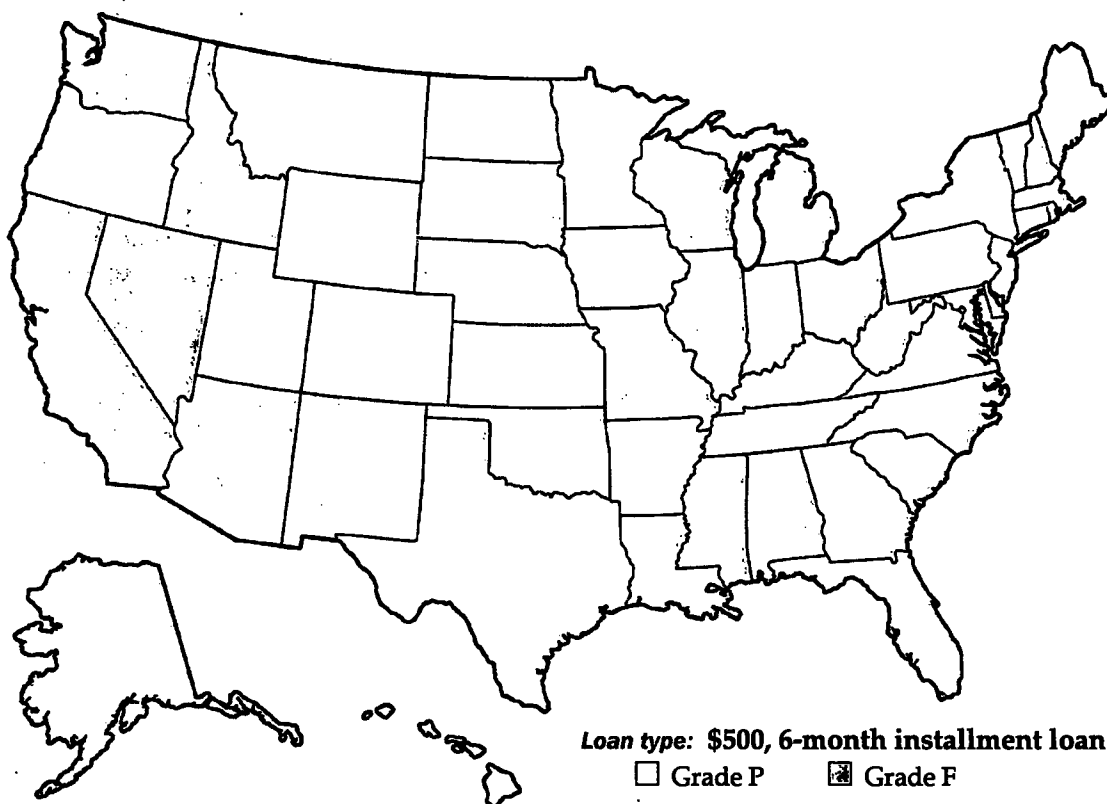
STATE	LOAN TYPE	APR*	GRADE
<b>Washington</b>	\$250, 2-week payday loan	390	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	39	F
	\$1000, 1-year loan	33	P
	Criminal usury cap	None	NA
<b>West Virginia</b>	\$250, 2-week payday loan	Prohibited	P
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	38	F
	\$1000, 1-year loan	35	P
	Criminal usury cap	Soft cap	P
<b>Wisconsin</b>	\$250, 2-week payday loan	No cap	F
	\$300, 1-month auto-title loan	No cap	F
	\$500, 6-month loan	No cap	F
	\$1000, 1-year loan	No cap	F
	Criminal usury cap	20+	F
<b>Wyoming</b>	\$250, 2-week payday loan	313	F
	\$300, 1-month auto-title loan	Prohibited	P
	\$500, 6-month loan	36	P
	\$1000, 1-year loan	36	P
	Criminal usury cap	None	NA

Website link to this document available at  
<http://www.nclc.org/reports/content/cu-small-dollar-scorecard-2010.pdf>.

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*Boston Headquarters:*  
7 Winthrop Square  
Boston, MA 02110-1245  
Phone: 617/542-8010  
Fax: 617/542-8028  
[www.nclc.org](http://www.nclc.org)

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*Washington Office:*  
1001 Connecticut Ave, NW  
Suite 510  
Washington, DC, 20036  
Phone: 202/452-6252  
Fax: 202/463-9462

# VISITOR REGISTRATION SHEET

HOUSE BANKING

Name of Committee

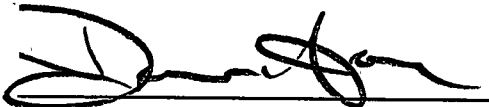
MAY 19, 2011

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

Glenn Hall	National Finance Co. Sanford NC
Dobly R. Hall	National Finance Co. Sanford, NC
Carley Ruff	NC Housing Coalition
Bill Dove	NC Justice Center
	SA
Lauren Whaley	NCCU
Kim Greer	NCBA
John Patis	NCAAA
Robert Jama	Basic Finance
Deek Mark	Basic Finance Inc.
Jim L Scott	Basic Finance Inc, Taylorsville, NC

# VISITOR REGISTRATION SHEET

HOUSE BANKING

Name of Committee

MAY 19, 2011

Date

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NAME

FIRM OR AGENCY AND ADDRESS

Kimberly Marlowe	Basie Finance, Inc., Taylorsville
Carol Brook	NC Justice Ctr, Raleigh
Zachary Kohn	NC Justice Ctr, Raleigh
Amina J Turner	NC NAACP, Durham
Bill Wilson	AARP
Mike Okun	NC State AFLCIO
Fred Bone	Bone & Assoc.
Thomas Bone	Bone & Associates, LLC
Jack Holtzman	NC Justice Center
Fallon Spoker	NC Justice Center
Doug Byrd	Fayetteville Chamber of Commerce

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Name of Committee

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Date

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NAME

FIRM OR AGENCY AND ADDRESS

Kevin Rogers

Action NC

Jennie Ramer-Hamers

NC Housing Coalition

Forest Gilliam

Governor's Office

J. C. [Signature]

CSS

Emily Brennan

MWC

Jennifer Epperson

NC DOJ

Michael Chestnut

for the Comm Bles.

Ha Nguyen

NC COB

Octavia R. [Signature]

SELF

Lis [Signature]

Rapdale Liggett PLLC

Dallas Woodhouse

AFP-NC

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HOUSE BANKING

Name of Committee

MAY 19, 2011

Date

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NAME

FIRM OR AGENCY AND ADDRESS

Alex Daniel	NC Justice Center
Rochelle Sparko	NC Justice Center
Chris Kukla	all
Dan Rearick	NC Justice Center
Jeff Shaw	NC Justice Center
Clermont Fraser	NCJC
Zach Margvand	NC Justice Center
Lily Huang	NC Justice Center
Ashtley Payne	NC Justice Center
RE Ewette	True Investment Corp
Scott Oliver	North State Acceptance
Larry Heckner	Clark, Lytle, Gredulig

# VISITOR REGISTRATION SHEET

HOUSE BANKING

Name of Committee

MAY 19, 2011

Date

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NAME	FIRM OR AGENCY AND ADDRESS
Dale Colby	att.
JERRY RIDENOUR	SPRINGLEAF
Ken Kiwion	Spring Leaf
L.J. McEntyre Jr.	Mitchell Credit Co
Richard Mendenhall	Welcome Finance Co. Inc.
Dennis Triplett	Welcome Finance Co., Inc.
Elmer Britt	Future Financial Services LLC
Marie Britt	" " "
JOHN L. DUPREE III	" " "
KL Kayla	Kayla Law Firm
Michael DeLosSantos	CRA-NC

# VISITOR REGISTRATION SHEET

HOUSE BANKING

MAY 19, 2011

Name of Committee

Date

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NAME	FIRM OR AGENCY AND ADDRESS
Matthew Easley	Smith Anderson
Kate Woerner-Deters	NC Justice Center
Chris McKinley	GREEN CAP FINANCIAL
Linda McKnight	CCANC
Al Ripley	NC Justice Ctr
COL STEVE SICINSKI	FT BRAGG GARRISON CDR
Virginia G. Schopfel	Camp Lejeune NMCRS
Michael S. Archer	SJA, Marine Corps Installations East
Greg W. Williams	Security Financial Services
Edith Bly	Security Financial Services
Vic BARR	SECURITY FINANCIAL Services



## VISITOR REGISTRATION SHEET

HOUSE BANKING

Name of Committee

MAY 19, 2011

Date

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NAME

FIRM OR AGENCY AND ADDRESS

Jeff Mixon

AFRNC

Beth Young

FPIC

Doug Heaton

William's Museum

Allison Waller

NIMRS

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE: Banking

DATE: 5/19/2011 Room: 1228

\*Name: Janilla Benton

County: Forsyth

Sponsor: Womble

\*Name: Sarah Jennings

County: Beaufort

Sponsor: Bill Cook

Name: Katie Tate

County: Beaufort

Sponsor: Bill Cook

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

1. Name: Reggie Sills

4. Name: \_\_\_\_\_

2. Name: Bill Mac Rae

5. Name: \_\_\_\_\_

3. Name: \_\_\_\_\_

6. Name: \_\_\_\_\_

**MINUTES**  
**HOUSE COMMITTEE ON BANKING**  
Thursday, May 26, 2011

Upon the call of the chair, the House Banking Committee met on May 26, 2011, at 12:00 p.m. in room 1327 of the Legislative Building. The following members were present: Representative Johnathan Rhyne, Chairman; Representatives Brubaker, Dockham, Hastings, McComas, Vice-Chairs; Representatives Alexander, Brawley, Carney, Daughtry, Fisher, Glazier, Hager, Haire, Hall, Hilton, Holloway, McCormick, Moore, Shepherd, Steen, and Stone.

The Chairman called the meeting to order to consider HB 810. The Chair recognized Karen Cochrane-Brown, legislative staff, to explain the proposed committee substitute for HB 810.

The Chair recognized Representative Hager who made a favorable motion to accept the PCS for HB 810. The motion carried. After some discussion, Representative Glazier called for a division vote.

The chair recognized Representative Hastings who made a motion for a favorable report on the PCS for HB 810. After taking a voice vote where the outcome was 15 to 6, the committee substitute for HB 810 was accepted, unfavorable to the original bill.

The meeting was adjourned at 12:48 PM.

Respectfully submitted,

  
\_\_\_\_\_  
Representative Johnathan L. Rhyne, Jr.  
Chairman

  
\_\_\_\_\_  
Susan Beaupied  
Committee Assistant

## **AGENDA**

### **BANKING COMMITTEE**

Thursday, May 26, 2011  
Room 1327 Legislative Building  
12:00 PM

#### **OPENING REMARKS**

Representative Johnathan Rhyne, Chair  
Banking Committee

#### **AGENDA ITEMS**

HB 810 CONSUMER FINANCE ACT AMENDMENTS

#### **ADJOURNMENT**

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 810  
PROPOSED COMMITTEE SUBSTITUTE H810-CSRO-16 [v.4]

5/18/2011 7:11:04 PM

Short Title: Consumer Finance Act Amendments.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE NORTH CAROLINA  
CONSUMER FINANCE ACT TO INCREASE CONSUMER ACCESS AND CREDIT  
MARKET PARITY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 53-166(a) reads as rewritten:

"(a) Scope. – No person shall engage in the business of lending in amounts of ~~ten~~ fifteen thousand dollars (~~\$10,000~~) (\$15,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans."

**SECTION 2.** G.S. 53-172(a) reads as rewritten:

"(a) No licensee shall conduct the business of making loans under this Article within any office, suite, room, or place of business in which any other business is solicited or transacted.

Installment paper dealers as defined in G.S. 105-83, ~~and the collection by a licensee of~~ loans legally made in North Carolina, or another state by another government regulated lender or lending ~~agency, agency and the collection by a licensee of claims of, or payments to, an~~ insurance company licensed in North Carolina and arising in any way from an insurance policy approved by the Commissioner of Insurance, shall not be considered as being any other business within the meaning of this section."

**SECTION 3.** G.S. 53-173 reads as rewritten:

"§ 53-173. ~~Maximum rate of interest and fee; computation of interest; limitation on interest after judgment; limitation on interest after maturity of the loan.~~

(a) Maximum Rate of Interest. – Every licensee under this section may make loans in installments not exceeding three thousand dollars (\$3,000) in amount, at interest rates not exceeding thirty-six percent (36%) per annum on the outstanding principal balance of any loan not in excess of ~~six~~ one thousand five hundred dollars (~~\$600.00~~) (\$1,500) and fifteen percent (15%) per annum on any remainder of such unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.



1 ...

2 (g) Limitations on Loans to Individual Borrowers. –

- 3 (1) No loan shall be made to a borrower before the 91st day after the origination  
4 of an existing loan made under this section, nor with less than 50% of the  
5 indebtedness of the existing loan reduced in the current balance, unless the  
6 borrower receives the greater of one hundred dollars (\$100) or twenty  
7 percent (20%) in cash in excess of the principal amount of the original loan.  
8 (2) No licensee shall make a loan under this section to repay an existing loan  
9 under this section with the licensee without providing a notice, approved by  
10 the Commissioner, explaining the benefits of disciplined consistent  
11 repayment of installment credit and the potential of increasing costs when  
12 obtaining a new loan before final payment.  
13 (3) A licensee under this section must accept and credit semi-monthly and  
14 weekly payments from borrowers made before regularly scheduled payments  
15 are due and also provide at the time the loan is made an example of the  
16 potential savings that could occur as a result of more frequent payments.  
17 (4) No licensee or an affiliate of such licensee, shall make a loan to a borrower  
18 under this section if there exists an outstanding loan made under this section  
19 or G.S. 53-176 between the licensee and that borrower unless the existing  
20 loan is paid in full from the proceeds of the new loan."

21 **SECTION 4. G.S. 53-176 reads as rewritten:**

22 **"§ 53-176. Optional rates, maturities and amounts.**

23 (a) ~~In lieu of addition to making loans in the amount and at the interest stated in~~  
24 ~~G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may at any time elect to make~~  
25 ~~loans in installments not exceeding ten- fifteen thousand dollars (\$10,000) (\$15,000) and which~~  
26 ~~shall not be repayable in less than six months or more than 84- 96 months and which shall not~~  
27 ~~be secured by deeds of trust or mortgages on real estate and which are repayable in~~  
28 ~~substantially equal consecutive monthly payments and to charge and collect interest in~~  
29 ~~connection therewith which shall not exceed the following actuarial rates:~~

- 30 (1) ~~With respect to a loan not exceeding seven thousand five hundred dollars~~  
31 ~~(\$7,500), thirtyThirty percent (30%) per annum on that part of the unpaid~~  
32 ~~principal balance not exceeding one- five thousand dollars (\$1,000)(\$5,000).~~  
33 (1a) Twenty-four percent (24%) per annum on the unpaid principal balance not  
34 exceeding ten thousand dollars (\$10,000).and  
35 (1b) eighteen- Eighteen percent (18%) per annum on the remainder of the unpaid  
36 principal balance.

37 Interest shall be contracted for and collected at the single simple interest rate applied to the  
38 outstanding balance that would earn the same amount of interest as the above rates for payment  
39 according to schedule.

- 40 (2) ~~With respect to a loan exceeding seven thousand five hundred dollars~~  
41 ~~(\$7,500), eighteen percent (18%) per annum on the outstanding principal~~  
42 ~~balance.~~

43 (b) In addition to the interest permitted in this section, a licensee may assess at closing a  
44 fee for processing the loan as agreed upon by the parties, not to exceed twenty-five dollars  
45 (\$25.00) for loans up to two thousand five hundred dollars (\$2,500) and one percent (1%) of  
46 the cash advance for loans above two thousand five hundred dollars (\$2,500), not to exceed a  
47 total fee of forty dollars (\$40.00), provided that such charges may not be assessed more than  
48 twice in any 12-month period.

49 (c) The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f),  
50 (g), (h) and (i) shall apply to loans made pursuant to this section.

(d) ~~Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and no sooner than 30 days from the date of such notification begin making loans regulated by this section. After such election a licensee may continue to make loans in accordance with this section unless the licensee notifies the Commissioner in writing of its intention to terminate such election on a date not sooner than 30 days from the notification.~~

(e) The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty. Except as otherwise provided for pursuant to G.S. 75-20(a), no more than twice in a 12-month period, a borrower may cancel a loan with the same licensee within three business days after disbursement of the loan proceeds without incurring or paying interest so long as the amount financed, minus any fees or charges, is returned to and received by the licensee within that time.

(f) ~~No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article except as authorized in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee that elects to make loans in accordance with the provisions of this section shall be bound by that election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State."~~

SECTION 5. G.S. 53-177 reads as rewritten:

**"§ 53-177. Recording fees.Fees.**

(a) Recording Fees. – The licensee may collect from the borrower the amount of any fees necessary to file or record its security interest with any public official or agency of a county or the State as may be required pursuant to Article 9 of Chapter 25 of the General Statutes or G.S. 20-58 et seq. Upon full disclosure to the borrower on how the fees will be applied, such fees may either (i) be paid by the licensee to such public official or agency of the county or State, or (ii) in lieu of recording or filing, applied by the licensee to purchase nonfiling or nonrecording insurance on the instrument securing the loan, ~~or (iii) be retained by a licensee that elects to self insure against the loss of a security interest by reason of not filing or recording its security instrument.~~ Provided, provided, however, the amount collected by the licensee from the borrower for the purchase of a nonfiling or nonrecording insurance ~~policy, or for self insurance, policy~~ shall be the premium amount for such insurance as fixed by the Commissioner of Insurance. Such premium shall be at least one dollar (\$1.00) less than the cost of recording or filing a security interest. Provided further, a licensee shall not collect or permit to be collected any notary fee in connection with any loan made under this Article, nor may a licensee collect any fee from the borrower for the cost of releasing a security interest except such fee as actually paid to any public official or agency of the county or State for such purpose.

(b) Late Fees. –

(1) A licensee may charge a late payment charge for any payment which remains past due for 10 days or more after the due date.

(2) No licensee may charge a late payment charge:

a. For loans made pursuant to G.S. 53-173, greater than ten dollars (\$10.00).

b. For loans made pursuant to G.S. 53-176, greater than fifteen dollars (\$15.00).

c. More than once with respect to a single late payment.

1       (c) Third-Party Payment Fees. – The licensee may collect any actual charges paid by  
2 the licensee related to payments submitted by the borrower or at the borrower's request through  
3 electronic or other means not affiliated with the licensee.

4       (d) Deferral Charges. – A licensee may, by agreement with the borrower, collect a  
5 deferral charge and defer the due date of all or any part of one or more installments under an  
6 existing loan contract as permitted in the provisions of G.S. 25A-30."

7       **SECTION 6.** G.S. 53-179 reads as rewritten:

8       **"§ 53-179. Multiple-office loan limitations.**

9       A licensee shall not grant a loan in one office to any borrower who already has a loan in  
10 another office operated by the same entity or by an affiliate, parent, subsidiary or under the  
11 same ownership, management or control, whether partial or complete. This section shall apply  
12 to intrastate and interstate operations: A licensee shall take every reasonable precaution to  
13 prevent granting loans in violation of this section. ~~Such-~~ Subject to the limitation contained in  
14 G.S. 53-173(g)(4), loans granted inadvertently resulting in a total liability of three thousand  
15 dollars (\$3,000) or less, shall be adjusted to the rates applicable under the Article to a single  
16 loan of equivalent amount, and when the total liability on such loans is in excess of three  
17 thousand dollars (\$3,000), interest shall be adjusted to simple interest at eight percent (8%) per  
18 annum on the entire obligation."

19       **SECTION 7.** This act becomes effective October 1, 2011.



House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Banking

DATE: 5/26/11 Room: 1228

\*Name: Hinton Edgerton

County: Johnston

Sponsor: Leo Daughtry

\*Name: Malik Clark

County: Mecklenburg

Sponsor: Earle

\*Name: James Llewellyn

County: Forsyth

Sponsor: Wamble

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

1. Name: Reggie Sills 4. Name: \_\_\_\_\_

2. Name: Garland Shepherd 5. Name: \_\_\_\_\_

Name: Bill MacRae 6. Name: \_\_\_\_\_

Committee Sergeants at Arms

NAME OF COMMITTEE

Banking

DATE:

5-26-2011

Room:

1228

House Sgt-At Arms:

1. Name:

Reggie Sills

2. Name:

GARLAND SHEPHEARD

3. Name:

BILL MACRAE

Name:

5. Name:

Senate Sgt-At Arms:

1. Name:

2. Name:

3. Name:

4. Name:

5. Name:

# VISITOR REGISTRATION SHEET

HOUSE BANKING

MAY 26, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Paul <del>Stout</del>	NCSA
Amy Fulbright	KL Gates
Nathan <del>Shel</del>	Rep Howard
McNeil Chestnut	Fair Sec Comm. Bks
N: dolo Crabtree	Summer Intern
Ha Nguyen	NCCAB
Lily Huang	NC Justice Center
Ashley Payne	NC Justice Center
Matt Ellinwood	"
Adam Linker	Hein
McC Beale	NC Appraisal Institute

# VISITOR REGISTRATION SHEET

HOUSE BANKING  
Name of Committee

MAY 26, 2011  
Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

Carley Ruff	NC Housing Coalition
Jim	NCPPA
Sam Sank	WM
Michael DeLosSantos	CRA-NC
Larry Heckner	Clarklytle Geduldig
Even Fugitt	CRL
Thomas W. Meese	Flt W. Meese
Allison Waller	Nelson Mullins
Bill Zanne	NC Justice Center
David	JH
BRAD Coulter	Mem HA

# VISITOR REGISTRATION SHEET

HOUSE BANKING

MAY 26, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Linda Wallace	
TOTTW COOPER	Compass NC
Monte Cooper	NMRS
Joyce Peters	JP Assoc
JAMIE KING	NCEL
Kim Brouch	NCBA
John McMillan	MFOS

# VISITOR REGISTRATION SHEET

HOUSE BANKING

MAY 26, 2011

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

VG Schapfel UCOLUSMC	NMCPIS <sup>Campejune</sup> Campejune 400 Mettugh Blvd N
HARRY PANNE	NCJC
JEFF SHAW	NCJC
Rochelle Sparks	NCJC
Alex Daniel	NCJC
Zach Marguand	NCJC
Beth Young	FPLC
Charlene McRae	NC Justice Center
David Beck	Self-Help
Madison Snifford	CRL
SUSAN LUPTON	CRL

# VISITOR REGISTRATION SHEET

HOUSE BANKING  
Name of Committee

MAY 26, 2011  
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chii Wlida	CML
Sara Weed	CR L
Kristin Szafianski	JLF
Erin McBrayer	JLF
Jud Bon	Bom : Asso.
Dick Cuthbert	WBY
Hernando	UWC
Fenist Gillen	Gamm's Office
Vic Barr	SFC
Lori Ann Harris	LHHA
Chris Farr	Americans For Prosperity

# VISITOR REGISTRATION SHEET

HOUSE BANKING

Name of Committee

MAY 26, 2011

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

David Miner	TRG, Inc
Bill Andrews	Life of the South
Pu-Ann Perryman	Carolina State Strategies
Ken Kinion	Springhead Financial Services
Iris Piercy	Ragdale Liggett
C. EVERETT WALLACE	NCIC PFC
J. Harro	NCJC
Al Rhye	NC J. Harro
PAUL DORDAL	Retired Air Force



**MINUTES**  
**HOUSE COMMITTEE ON BANKING**  
Thursday, June 2, 2011

Upon the call of the chair, the House Banking Committee met on June 2, 2011, at 11:00 a.m. in room 1327 of the Legislative Building. The following members were present: Representative Johnathan Rhyne, Chairman; Representatives Brubaker, Dockham, Hastings, McComas, Vice-Chairs; Representatives Brawley, Carney, Fisher, Hall, Hilton, Jackson, McCormick, McGuirt, Moore, Shepherd, and Stone.

The Chairman called the meeting to order to consider SB 513, AN ACT TO ALLOW CREDIT UNIONS TO CONDUCT SAVINGS PROMOTION RAFFLES. The Chair recognized Representative Sager to explain the bill. Next, Representative Carney made a motion to accept a favorable report for SB 513. The motion carried.

Chairman Rhyne then gave the gavel to Representative McCormick, who then presided over the meeting. Representative McCormick then recognized Representative Rhyne to explain HB 707, AN ACT TO MODERNIZE AND ENACT CERTAIN PROVISIONS REGARDING DEEDS OF TRUST (short title). Representative Brawley made a motion to accept the PCS for HB 707. The motion carried. Jim Creekman of First Citizen's Bank was introduced by Paul Stock to give his expert opinion on why HB 707 should be passed. Representative McComas made a motion for the passage of the committee substitute for HB 707. The motion carried.

Chairman Rhyne once again took the gavel and recognized Representative Crawford to explain HB 203, AN ACT TO ALLOW CREDIT UNIONS TO CONDUCT SAVINGS PROMOTION RAFFLES. Representative Moore made a motion for the favorable passage of HB 203, with a serial referral to Judiciary A. The motion carried.

The meeting was adjourned at 11:12 AM.

Respectfully submitted,

  
\_\_\_\_\_  
Representative Johnathan L. Rhyne, Jr.  
Chairman

  
\_\_\_\_\_  
Susan Beaupied  
Committee Assistant

## **AGENDA**

### **BANKING COMMITTEE**

Thursday, June 2, 2011  
Room 1327 Legislative Building  
11:00 PM

#### **OPENING REMARKS**

Representative Johnathan Rhyne, Chair  
Banking Committee

#### **AGENDA ITEMS**

HB 203 SHOW MORTGAGE PAYOFF ON SATISFACTION FILING  
HB 707 DEEDS OF TRUST/MODERNIZE PROCEDURES  
SB 513 ALLOW SAVINGS PROMOTIONS AND RAFFLES

#### **ADJOURNMENT**

**2011 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Rhyne (Chair) for the Committee on BANKING.

---

☐ Committee Substitute for

**HB 203** A BILL TO BE ENTITLED AN ACT TO PROVIDE AN ALTERNATIVE MORTGAGE SATISFACTION FORM THAT ALLOWS A SECURED CREDITOR TO INDICATE THAT THE UNDERLYING OBLIGATION HAS BEEN EXTINGUISHED.

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.

**2011 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Rhyne (Chair) for the Committee on BANKING.

---

☐ Committee Substitute for

**SB 513** A BILL TO BE ENTITLED AN ACT TO ALLOW CREDIT UNIONS TO CONDUCT SAVINGS PROMOTION RAFFLES.

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

---

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.

**2011 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Rhyne (Chair) for the Committee on BANKING.

☐ Committee Substitute for

**HB 707** A BILL TO BE ENTITLED AN ACT TO MODERNIZE AND ENACT CERTAIN PROVISIONS REGARDING DEEDS OF TRUST, INCLUDING RELEASES, SHORT SALES, FUTURE ADVANCE PROVISION TERMINATIONS AND SATISFACTIONS, TERMINATIONS AND SATISFACTIONS FOR EQUITY LINE LIENS, RELEASE OF ANCILLARY DOCUMENTS, ELIMINATING TRUSTEE OF DEED OF TRUST AS NECESSARY PARTY FOR CERTAIN TRANSACTIONS AND LITIGATION, AND INDEXING OF SUBSEQUENT INSTRUMENTS RELATED THERETO.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

**(FOR JOURNAL USE ONLY)**

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

1

SENATE BILL 513\*

Short Title: Allow Savings Promotion Raffles. (Public)

Sponsors: Senators Gunn, Clary; Brock, Daniel, Davis, Forrester, Hise, Mansfield, Pate,  
Preston, Rabon, Tillman, and Tucker.

Referred to: Commerce.

April 6, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW CREDIT UNIONS TO CONDUCT SAVINGS PROMOTION  
3 RAFFLES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 14-309.15 is amended by adding a new subsection to read:

6 "(h) Notwithstanding any other subsection of this section, it is lawful for a credit union  
7 to conduct a savings promotion raffle under G.S. 54-109.64."

8 SECTION 2. Article 14F of Chapter 54 of the General Statutes is amended by  
9 adding a new section to read:

10 "§ 54-109.64. Savings promotion raffles.

11 A credit union may offer a savings promotion raffle in which the sole consideration  
12 required for a chance of winning designated prizes is the deposit of a minimum specified  
13 amount of money in a savings account or other savings program offered by the credit union. A  
14 credit union shall maintain records sufficient to facilitate an audit of the savings promotion  
15 raffle, shall conduct the savings promotion raffle in a safe and sound manner, and shall fully  
16 disclose the terms and conditions of the promotion to account holders and prospective account  
17 holders of the credit union."

18 SECTION 3. This act becomes effective October 1, 2011.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 203

Short Title: Show Mortgage Payoff on Satisfaction Filing. (Public)  
Sponsors: Representative Crawford (Primary Sponsor).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.  
Referred to: Banking, if favorable, Judiciary Subcommittee A.

March 2, 2011

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE AN ALTERNATIVE MORTGAGE SATISFACTION FORM THAT  
ALLOWS A SECURED CREDITOR TO INDICATE THAT THE UNDERLYING  
OBLIGATION HAS BEEN EXTINGUISHED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-36.11 reads as rewritten:

"§ 45-36.11. Satisfaction: form.

(a) Standard Form. – No particular phrasing is required for a satisfaction of a security instrument. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.10(a):

'SATISFACTION OF SECURITY INSTRUMENT  
(G.S. 45-36.10; G.S. 45-37(a)(7))

The undersigned is now the secured creditor in the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (Identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_ at Page \_\_\_\_ or as document number \_\_\_\_ in the office of the Register of Deeds for \_\_\_\_ County, North Carolina.

This satisfaction terminates the effectiveness of the security instrument.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature of secured creditor)

[Acknowledgment before officer authorized to take acknowledgments]

(b) Alternate Form. – A secured creditor who would like to indicate that the underlying obligation secured by the instrument has been extinguished may use the following form, which, when properly completed, is also sufficient to satisfy the requirements of G.S. 45-36.10(a):

'SATISFACTION OF SECURITY INSTRUMENT  
(G.S. 45-36.10; G.S. 45-37(a)(7))



\* H 2 0 3 - V - 1 \*

The undersigned is now the secured creditor in the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (Identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

This satisfaction terminates the effectiveness of the security instrument and extinguishes the underlying obligation secured by the instrument.

Date: \_\_\_\_\_

(Signature of secured creditor)

[Acknowledgment before officer authorized to take acknowledgments]"

SECTION 2. G.S. 45-36.21 reads as rewritten:

"§ 45-36.21. Trustee's satisfaction of deed of trust: form.

(a) Standard Form. – No particular phrasing is required for a trustee's satisfaction of a deed of trust. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.20:

'TRUSTEE'S SATISFACTION OF DEED OF TRUST  
(G.S. 45-36.20; G.S. 45-37(a)(7))

The undersigned is now serving as the trustee or substitute trustee under the terms of the deed of trust identified as follows:

Original Grantor(s): (Identify original grantor(s) or trustor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies) or secured party(ies) in the deed of trust)

Recording Data: The deed of trust is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

This satisfaction terminates the effectiveness of the deed of trust.

Date: \_\_\_\_\_

(Signature of trustee or substitute trustee)

[Acknowledgment before officer authorized to take acknowledgments]"

(b) Alternate Form. – A trustee and secured creditor who would like to indicate that the underlying obligation secured by the deed of trust has been extinguished may use the following form, which, when properly completed, is also sufficient to satisfy the requirements of G.S. 45-36.20:

'TRUSTEE'S SATISFACTION OF DEED OF TRUST

AND

CREDITOR'S RELEASE

(G.S. 45-36.20; G.S. 45-37(a)(7))



The undersigned is now serving as the trustee or substitute trustee under the terms of the deed of trust identified as follows:

Original Grantor(s): (Identify original grantor(s) or trustor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies) or secured party(ies) in the deed of trust)

Recording Data: The deed of trust is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

This satisfaction terminates the effectiveness of the deed of trust.

Date: \_\_\_\_\_

(Signature of trustee or substitute trustee)

[Acknowledgment before officer authorized to take acknowledgments]

The obligation secured by the deed of trust has been extinguished.

Date: \_\_\_\_\_

(Signature of secured creditor)

[Acknowledgment before officer authorized to take acknowledgments]".

**SECTION 3.** This act becomes effective October 1, 2012, and applies to satisfactions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 707  
PROPOSED COMMITTEE SUBSTITUTE H707-CSRO-18 [v.1]

6/2/2011 10:09:53 AM

Short Title: Deeds of Trust/Modernize Procedures.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE AND ENACT CERTAIN PROVISIONS REGARDING DEEDS OF TRUST, INCLUDING RELEASES, SHORT SALES, FUTURE ADVANCE PROVISION TERMINATIONS AND SATISFACTIONS, TERMINATIONS AND SATISFACTIONS FOR EQUITY LINE LIENS, RELEASE OF ANCILLARY DOCUMENTS, ELIMINATING TRUSTEE OF DEED OF TRUST AS NECESSARY PARTY FOR CERTAIN TRANSACTIONS AND LITIGATION, AND INDEXING OF SUBSEQUENT INSTRUMENTS RELATED THERETO.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-9 reads as rewritten:

"§ 24-9. Loans exempt from rate and fee limitations.

...

(c) The provisions of G.S. 24-1.2A, 24-11, and 24-11.1 shall not apply to equity lines of credit offered by banks. Except as provided in this subsection and notwithstanding any other provision of this Chapter or any other provision of State law, any bank may charge and collect from any borrower interest at any rate and fees and other charges in any amount that the borrower agrees to pay in connection with an equity line of credit. However, an equity line of credit made by a bank shall be subject to the following, to the extent otherwise applicable:

...

(3) Notwithstanding the limitation against prepayment penalties contained in ~~G.S. 45-81(e)~~, G.S. 45-82.4, a bank may charge and collect prepayment fees or penalties following the borrower's voluntary exercise of a right or option to repay all or any portion of the outstanding balance of a variable interest rate equity line of credit at a fixed interest rate over a specified period of time, subject to the following limitations:

...."

SECTION 2. G.S. 45-10 reads as rewritten:

"§ 45-10. Substitution of trustees in mortgages and deeds of trust.

(a) In addition to the rights and remedies now provided by law, the holders or owners of a majority in amount of the indebtedness, notes, bonds, or other instruments evidencing a promise or promises to pay money and secured by mortgages, deeds of trust, or other instruments conveying real property, or creating a lien thereon, may, in their discretion, substitute a trustee whether the trustee then named in the instrument is the original or a



\* H 7 0 7 - C S R O - 1 8 - V - 1 \*

substituted ~~trustee, trustee~~ or a holder or owner of any or all of the obligations secured thereby, by the execution of a written document properly recorded pursuant to Chapter 47 of the North Carolina General Statutes.

...

(c) If the trustee named in a deed of trust is also the beneficiary named in that deed of trust, the instrument shall be deemed to be a deed of trust, and any substitute trustee named under the authority of subsection (a) of this section shall succeed to all the rights, titles, authority, and duties of the trustee under the terms of the deed of trust."

SECTION 3. G.S. 45-36.4 reads as rewritten:

"§ 45-36.4. Definitions.

As used in this Article, the following terms mean:

...

(1a) Borrower. – A person primarily liable for payment or performance of the obligation secured by the real property described in a security instrument.

(1b) Credit suspension directive. – A notification given to a secured creditor pursuant to G.S. 45-36.7A directing the secured creditor to suspend temporarily a borrower's right and ability to obtain additional credit advances in anticipation of the imminent sale of, or the imminent making of a new loan to be secured by, real property then encumbered by an existing security instrument when the anticipated transaction will involve either the satisfaction of the existing security instrument or the release of the real property from the lien of the existing security instrument.

...

(5) ~~Entitled person. – A person liable for payment or performance of the obligation secured by the real property described in a security instrument, or the landowner.~~ A person who:

a. Is a borrower;

b. Is a landowner;

c. Has contracted to purchase real property encumbered by an existing security instrument;

d. Has made or has committed to make a loan that is secured or is to be secured by real property encumbered by an existing security instrument;

e. Is a title insurance company authorized pursuant to Article 26 of Chapter 58 of the General Statutes to issue title insurance policies in the State of North Carolina that has insured or has committed to insure title to real property encumbered by an existing security instrument;

f. Is the foreclosing trustee or the high bidder in a foreclosure sale involving real property encumbered by an existing security instrument;

g. Is a qualified lien holder; or

h. Is an attorney licensed to practice law in the State of North Carolina or a bank, savings and loan association, savings bank, or credit union, but only when:

1. The attorney, bank, savings and loan association, savings bank, or credit union is or will be responsible for the disbursement of funds in connection with the sale of, or a new loan secured by, property then encumbered by an existing security instrument; and

2. A requirement of the sale or new loan transaction is or will be that the property be conveyed or encumbered free and clear of the lien of the existing security instrument.

...  
(7) Landowner. – A person that, before foreclosure, has the right of redemption in the real property described in a security instrument. The term does not include a person that holds only a lien on the real ~~property~~ property or the trustee under a deed of trust.

...  
(11) Payoff statement. – A document containing the information specified in ~~G.S. 45-36.7(d).~~ G.S. 45-36.7(e).

...  
(12a) Qualified lien holder. – A person who holds or is the beneficiary of a security interest in or lien on real property encumbered by an existing security instrument, but only if that person's security interest in or lien on the real property arises from a mortgage or deed of trust that is subordinate in priority to the lien of the existing security instrument. The term does not include a trustee under a deed of trust.

...  
(19a) Short-pay amount. – The sum necessary to obtain the release of all or a specific portion of the real property from the lien of a security instrument without satisfying the secured obligation in full.

(19b) Short-pay statement. – A document containing the information specified in G.S. 45-36.7(e1).

...  
(23) Trustee. – The trustee or substitute then serving as such under the terms of a deed of trust."

SECTION 4. G.S. 45-36.6 reads as rewritten:

"§ 45-36.6. Document of rescission: effect; liability for wrongful recording.

(a) ~~In this section, "document of rescission" means a document stating that an identified satisfaction or affidavit of satisfaction of a security instrument was recorded erroneously or that a security instrument was satisfied of record erroneously, the secured obligation remains unsatisfied, and the security instrument remains in force.~~ Definitions. – The following definitions apply in this section:

(1) Document of rescission. – A document that rescinds either (i) a release that was recorded in error or (ii) the erroneous satisfaction of a security instrument.

(2) Release. – A document that either (i) releases property from the lien of a security instrument or (ii) indicates that an obligation is no longer secured by a security instrument.

(b) ~~If a person records a satisfaction or affidavit of satisfaction of a security instrument in error or if a release is recorded in error or a security instrument is erroneously satisfied of record, erroneously by any other means, the person or then the secured creditor or the person who caused the release to be recorded in error or the security instrument to be erroneously satisfied of record may execute and record a document of rescission. The document of rescission must be duly acknowledged before an officer authorized to make acknowledgments. Upon recording, the document of rescission either (i) rescinds an erroneously recorded rescinds a release that was recorded in error and deprives the release of any effect or (ii) satisfaction or affidavit and rescinds the erroneous satisfaction of record of the security instrument and reinstates the security instrument.~~

- (c) A recorded document of rescission has no effect on the rights of a person that:
- (1) Records an interest in the real property described in a security instrument after the recording of ~~the satisfaction or affidavit of satisfaction of the security instrument~~ a release that was recorded in error or the erroneous satisfaction of record of the security instrument ~~by other means~~ and before the recording of the document of rescission; and
  - (2) Would otherwise have priority over or take free of the lien created by the security instrument as reinstated under Chapter 47 of the General Statutes.
- (d) A person that erroneously or wrongfully records a document of rescission is liable to any person injured thereby for the actual loss caused by the recording and reasonable attorneys' fees and costs.
- (e) A document is a document of rescission if it does all of the following:
- (1) Identifies the related security instrument, including the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.
  - (2) If the document of rescission is intended to rescind a release that was recorded in error, (i) identifies the release that was recorded in error by its recording data and the office in which it is recorded, (ii) states that the release was recorded in error, and (iii) states that the release is rescinded.
  - (3) If the document of rescission is intended to rescind the erroneous satisfaction of record of a security instrument, (i) identifies the satisfaction document that was recorded in error by its recording data and the office in which it is recorded, (ii) states that the security instrument was erroneously satisfied of record, and (iii) states that the satisfaction of the security instrument is rescinded and the security instrument reinstated.
  - (4) States that the person signing the document of rescission is either (i) the secured creditor or (ii) the person who caused the release to be recorded in error or the security instrument to be erroneously satisfied of record.
  - (5) Is signed and acknowledged as required by law for a conveyance of an interest in real property.
- (f) The register of deeds shall accept a document of rescission for recording unless one of the following applies:
- (1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.
  - (2) The required recording fee is not paid.
  - (3) The document is not signed and acknowledged as required by law for a conveyance of an interest in real property by either the secured creditor or the person who caused the release to be recorded in error or the security instrument to be erroneously satisfied of record. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any document of rescission or (ii) the authority of the person executing any document of rescission to do so.
- (g) No particular phrasing is required for a document of rescission that rescinds a release that was recorded in error. The following form, when properly completed, is sufficient to satisfy the requirements of subsection (e) of this section:

"DOCUMENT OF RESCISSION  
(G.S. 45-36.6(e))

The security instrument to which this Document of Rescission relates is identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of

Deeds for \_\_\_\_\_ County, North Carolina.

This Document of Rescission rescinds the release recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina. The release was recorded in error, is hereby rescinded, and is declared to be of no effect.

The undersigned is: (check applicable box)

\_\_\_\_\_ The secured creditor in the security instrument identified above.

\_\_\_\_\_ The person who caused the release to be recorded in error.

Date: \_\_\_\_\_

Signature of secured creditor or person who caused the release to be recorded in error

[Acknowledgment before officer authorized to take acknowledgments]"

(h) No particular phrasing is required for a document of rescission that rescinds the erroneous satisfaction of a security instrument. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.6(e):

"DOCUMENT OF RESCISSION  
(G.S. 45-36.6(e))

The security instrument to which this Document of Rescission relates is identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of

Deeds for \_\_\_\_\_ County, North Carolina.

The security instrument was erroneously satisfied of record by that satisfaction document recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina. The satisfaction of the security instrument is hereby rescinded, the security instrument is reinstated, and the security instrument is declared to be in full force and effect.

The undersigned is: (check applicable box)

\_\_\_\_\_ The secured creditor in the security instrument identified above.

\_\_\_\_\_ The person who caused the security instrument to be satisfied of record erroneously.

Date: \_\_\_\_\_

Signature of secured creditor or person who caused the security instrument to be satisfied of record erroneously

[Acknowledgment before officer authorized to take acknowledgments]"

SECTION 5. G.S. 45-36.7 reads as rewritten:

1 **"§ 45-36.7. Payoff and short-pay statement: ~~statements~~; request and content.**

2 (a) An entitled person, or an agent authorized by an entitled person to request a payoff  
3 ~~statement, or a short-pay statement,~~ may give to the secured creditor a notification requesting a  
4 payoff statement ~~for a specified payoff date not more than 30 days after the notification is~~  
5 ~~given, or a short-pay statement.~~ The notification must contain all of the following:

6 ...

7 (6) Whether the request is for a payoff statement or a short-pay statement.

8 (7) If the request is for a payoff statement, the specified payoff date, which may  
9 not be more than 30 days after the notification is given.

10 (8) If the request is for a short-pay statement, (i) the specified short-pay date,  
11 which may not be more than 30 days after the notification is given, (ii) a  
12 clear statement as to whether the request is for the short-pay amount required  
13 to release all of the real property described in the security instrument or only  
14 a portion of that property, and (iii) if the request is for the short-pay amount  
15 required to release only a portion of the real property described in the  
16 security instrument, a description of the specific real property to be released  
17 upon payment of the short-pay amount.

18 (b) If a notification under subsection (a) of this section directs the secured creditor to  
19 send the payoff statement or a short-pay statement to a person identified as an authorized agent  
20 of the entitled person, the secured creditor must send the statement to the agent, unless the  
21 secured creditor knows that the entitled person has not authorized the request.

22 (c) A person who gives to a secured creditor a notification requesting a payoff  
23 statement or a short-pay statement thereby represents that the person is an entitled person or the  
24 authorized agent of an entitled person. A secured creditor may rely on that representation in  
25 providing a payoff statement or a short-pay statement unless the secured creditor knows that the  
26 requesting person is neither an entitled person nor the authorized agent of an entitled person. A  
27 secured creditor has no duty to make inquiry as to whether, or to verify that, the person  
28 requesting a payoff statement or a short-pay statement is an entitled person or the authorized  
29 agent of an entitled person.

30 (d) Within 10 days after the effective date of a notification that complies with  
31 subsection (a) of this section, the secured creditor shall issue a payoff statement or a short-pay  
32 statement and send it as directed pursuant to subdivision (a)(3) of this section in the manner  
33 prescribed in G.S. 45-36.5 for giving a notification. A secured creditor that sends a payoff  
34 statement or a short-pay statement to the entitled person or the authorized agent may not claim  
35 that the notification did not satisfy subsection (a) of this section. If the person to whom the  
36 notification is given once held an interest in the secured obligation but has since assigned that  
37 interest, the person need not send a payoff statement or a short-pay statement but shall give (i) a  
38 notification of the assignment to the person to whom the payoff statement or a short-pay  
39 statement otherwise would have been sent, providing the name and address of the assignee, or  
40 (ii) a notification to the person to whom the payoff statement or a short-pay statement  
41 otherwise would have been sent, stating that the recipient claims no interest in the security  
42 instrument or the secured obligation, that the secured obligation was assigned, but that the  
43 identity and address of the assignee is not known.

44 ...

45 (e1) A short-pay statement must contain:

46 (1) The information reasonably necessary to calculate the short-pay amount as  
47 of the requested short-pay date, including the per diem interest amount, if  
48 any;

- 1           (2) The payment cutoff time, if any, the address or place where payment of the  
2           short-pay amount must be made, and any limitation as to the authorized  
3           method of payment;  
4           (3) Any conditions precedent that must be satisfied to obtain the release of the  
5           property identified in the request for the short-pay statement from the lien of  
6           the security instrument; and  
7           (4) Confirmation of the specific real property to be released from the lien of the  
8           security instrument upon receipt of the timely payment of the short-pay  
9           amount and satisfaction of the other conditions precedent to the release of  
10          that property.

11          Unless the short-pay statement expressly provides otherwise, all persons liable for payment  
12          or performance of the obligations secured by the security instrument will remain liable for the  
13          secured obligations to the extent the short-pay amount is not sufficient to satisfy the secured  
14          obligations in full.

15          (f) A payoff statement or a short-pay statement may contain the amount of any fees  
16 authorized under this section not included in the payoff amount. A secured creditor may require  
17 the payment in full of any fees authorized under this section before issuing a payoff  
18 ~~statement.~~statement or a short-pay statement.

19          (g) A secured creditor may not qualify a payoff amount or state that it is subject to  
20 change before the payoff date unless the payoff statement provides information sufficient to  
21 permit the entitled person or the person's authorized agent to request an updated payoff amount  
22 at no charge and to obtain that updated payoff amount during the secured creditor's normal  
23 business hours on the payoff date or the immediately preceding business day. A secured  
24 creditor may not qualify a short-pay amount or state that it is subject to change before the  
25 short-pay date unless the short-pay statement provides information sufficient to permit the  
26 entitled person or the person's authorized agent to request an updated short-pay amount at no  
27 charge and to obtain that updated short-pay amount during the secured creditor's normal  
28 business hours on the short-pay date or the immediately preceding business day.

29          (h) A secured creditor must provide upon request one payoff statement or one short-pay  
30 statement without charge during any six-month period. A secured creditor may charge a fee of  
31 twenty-five dollars (\$25.00) for each additional payoff statement and one hundred dollars  
32 (\$100.00) for each additional short-pay statement requested during that six-month period.  
33 However, a secured creditor may not charge a fee for providing an updated payoff amount or  
34 short-pay amount under subsection ~~(f)-(g)~~ of this section or a corrected payoff statement or  
35 short-pay statement under G.S. 45-36.8(a).

36          (i) Unless the security instrument provides otherwise, a secured creditor is not required  
37 to send a payoff statement or a short-pay statement by means other than first-class mail. If the  
38 creditor agrees to send a statement by another means, it may charge a reasonable fee for  
39 complying with the requested manner of delivery.

40          (j) Except as otherwise provided in G.S. 45-36.12, if a secured creditor to which a  
41 notification has been given pursuant to subsection (a) of this section does not send a timely  
42 payoff statement that substantially complies with subsection ~~(d)-(e)~~ of this section, section or a  
43 short-pay statement that substantially complies with subsection (e1) of this section, the creditor  
44 is liable to the entitled person for any actual damages caused by the failure, but not punitive  
45 damages. A creditor that does not pay the damages provided in this subsection within 30 days  
46 after receipt of a notification demanding payment shall also be liable for reasonable attorneys'  
47 fees and costs.

48          (k) This section does not apply unless (i) the notification requesting a payoff statement  
49 is given on or after ~~October 1, 2005.~~ October 1, 2005, and (ii) the notification requesting a  
50 short-pay statement is given on or after October 1, 2011."



SECTION 6. Article 4 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

**"§ 45-36.7A. Credit suspension directives.**

(a) A credit suspension directive may be given to a secured creditor by any of the following:

(1) Any borrower.

(2) The legal representative of any borrower.

(3) The attorney for any borrower.

(4) An attorney licensed to practice law in the State of North Carolina or a bank, savings and loan association, savings bank, or credit union, but only when (i) the attorney, bank, savings and loan association, savings bank, or credit union is responsible for the disbursement of funds in connection with the sale of, or a new loan secured by, real property then encumbered by an existing security instrument; (ii) a requirement of the sale or new loan transaction is that the property be conveyed or encumbered free and clear of the lien of the existing security instrument; and (iii) the credit suspension directive is given to the secured creditor contemporaneously with a notification requesting a payoff statement or a short-pay statement in anticipation of and in preparation for the imminent settlement of the sale or new loan transaction.

(b) A credit suspension directive must contain all of the following:

(1) The name and authority of the person giving the directive.

(2) Sufficient information to enable the creditor to identify the secured obligation, the identity of the borrower, and the real property encumbered by the security interest.

(3) The specified payoff date, which may not be more than 30 days after the notification is given.

(4) A clear and unambiguous directive to the secured creditor to suspend through and including the payoff date the borrower's right and ability to obtain any additional credit advances which, if made, would be secured by the security instrument.

(c) If the person who gives a credit suspension directive to a secured creditor is a person listed in subdivision (a)(4) of this section, that person shall also (i) give a copy of the credit suspension directive to the borrower and (ii) provide an additional notification to the borrower that provides substantially as follows:

**"NOTICE TO BORROWER**

You have a loan with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We will be responsible for disbursing funds in connection with a scheduled sale of the property or a new loan that will be secured by the property. A requirement of the sale or new loan transaction is that the property be conveyed or encumbered free and clear of the existing mortgage or deed of trust that secures your loan.

As permitted by North Carolina law, we are sending the (enclosed/attached/following/foregoing) notification to your lender directing that it temporarily suspend your right and ability to obtain credit advances in anticipation of the settlement of the sale or loan. The notification accompanies a request asking

the amount that must be sent to your lender to pay your loan in full and cancel the mortgage or deed of trust that secures your loan (or, if your loan will not be paid in full, to release the property from the mortgage or deed of trust that secures your loan). The information your lender provides us may be inaccurate if you obtain additional credit advances before the scheduled settlement date of the sale or new loan transaction.

When your lender receives our directive, it will temporarily suspend your right and ability to obtain credit advances. The period of suspension will continue through and including (anticipated payoff date), the anticipated payoff date, regardless of whether the settlement of the sale or new loan transaction occurs as scheduled. The suspension will not affect your responsibility to continue making payments to your lender during the suspension period. You should not attempt to obtain additional credit advances from your lender during the suspension period.

You may instruct us at any time during the suspension period to withdraw the credit suspension directive we are sending your lender, and we are required by law to comply. However, if you do so, you may jeopardize the settlement of the sale or new loan transaction because the payoff or release information provided by your lender may become inaccurate.

When proceeds from a sale or new loan transaction are used to pay an existing loan in full, lenders typically close the loan account, thereby terminating their borrower's ability to obtain additional credit advances. You should contact your lender to determine whether you will be able to obtain additional credit advances after the settlement of the sale or new loan transaction.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of attorney, bank, savings and loan association, savings bank, or credit union)"

(d) Upon receipt of a credit suspension directive, a secured creditor shall:

- (1) Subject to subsection (e) of this section, suspend the borrower's right and ability to obtain credit advances which, if made, would be secured by the security instrument. The period of suspension shall continue through and including the payoff date stated in the credit suspension directive.
- (2) Apply all sums subsequently paid during the period of suspension by or on behalf of the borrower in connection with the secured obligation, including sums paid to the secured creditor by a person responsible for the disbursement of funds in connection with the sale of, or a new loan secured by, real property then encumbered by a security instrument, to the satisfaction of the secured obligation, regardless of whether the amount or amounts paid are sufficient to pay the secured obligation and other sums secured by the security instrument in full. Sums paid to the secured creditor in excess of the amount required to pay the secured obligation and other sums secured by the security instrument in full shall be refunded by the secured creditor to or at the direction of the person who paid the excess amount.

(e) Notwithstanding a secured creditor's receipt of a credit suspension directive, a secured creditor may do any of the following, all of which shall be secured by the security instrument:

(1) The secured creditor may advance sums and incur expenses (i) for insurance, taxes, and assessments, (ii) to protect the secured creditor's interest under the security instrument, (iii) to preserve and protect the value or condition of the real property encumbered by the security instrument, or to complete the construction of improvements on the real property encumbered by the security instrument.

(2) The secured creditor may permit the borrower to obtain a credit advance, but only if the credit advance was initiated or approved before the secured creditor received the credit suspension directive.

(f) If the person giving a credit suspension directive is not a borrower, then the person giving a credit suspension directive shall be conclusively deemed the borrower's agent acting with full authority from the borrower to issue the credit suspension directive on the borrower's behalf.

(g) A credit suspension directive may be withdrawn at any time by the person who gave the directive. If the person who gives a credit suspension directive to a secured creditor is a person listed in subdivision (a)(4) of this section, that person shall promptly notify the secured creditor that the credit suspension directive is withdrawn (i) if instructed by the borrower at any time to withdraw the directive or (ii) if the anticipated sale or new loan transaction is cancelled. Upon receipt of a notice from the person who originally gave the credit suspension directive that the credit suspension directive is withdrawn, the secured creditor may reinstate the borrower's right and ability to obtain credit advances."

SECTION 7. G.S. 45-36.8 reads as rewritten:

**"§ 45-36.8. Understated payoff ~~statement~~; statement or short-pay statement; correction; effect.**

(a) If a secured creditor determines that the payoff amount it provided in a payoff statement or the short-pay amount it provided in a short-pay statement was understated, the creditor may send a corrected payoff ~~statement or short-pay statement~~. If the entitled person or the person's authorized agent receives and has a reasonable opportunity to act upon a corrected payoff statement or short-pay statement before making payment, the corrected statement supersedes an earlier statement.

(b) A secured creditor that sends a payoff statement containing an understated payoff amount or a short-pay statement containing an understated short-pay amount may not deny the accuracy of the payoff amount or short-pay amount as against any person that reasonably and detrimentally relies upon the understated payoff ~~amount~~ amount or short-pay amount.

(c) This Article does not:

(1) Affect the right of a secured creditor to recover any sum that it did not include in a payoff amount or a short-pay amount from any person liable for payment of the secured obligation; or

(2) Limit any claim or defense that a person liable for payment of a secured obligation may have under law other than this Article."

SECTION 8. G.S. 45-36.9 reads as rewritten:

**"§ 45-36.9. Secured creditor to submit satisfaction or release for recording; liability for failure.**

(a) A secured creditor shall submit for recording a satisfaction of a security instrument within 30 days after the creditor receives full payment or performance of the secured obligation. If a security instrument secures a line of credit or future advances, the secured obligation is fully performed only if, in addition to full payment, the secured creditor has

received (i) a notification requesting the creditor to terminate the line of ~~credit-credit~~, (ii) a credit suspension directive, or (iii) a notification containing a clear and unambiguous statement sufficient to terminate the effectiveness of the provision for future advances in the security instrument-instrument including, but not limited to, a request to terminate an equity line of credit given pursuant to G.S. 45-82.2 or a notice regarding future advances given pursuant to G.S. 45-82.3.

(a1) If the conditions stated in a short-pay statement are fully satisfied on or before the short-pay date stated in the short-pay statement, including the payment in full of the short-pay amount and the satisfaction of all other conditions precedent to the release set forth in the short-pay statement, then within 30 days after the short-pay date the secured creditor shall release the property which is the subject of the short-pay statement from the lien of the security instrument. The release of the property may be accomplished by a deed of release, an instrument of full or partial reconveyance, a partial release recorded pursuant to G.S. 45-36.22, the satisfaction of record of the security instrument by any of the means authorized in G.S. 45-37(a), or by any other lawful means.

...."

SECTION 9. Article 4 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

**"§ 45-36.22. Partial release: content and effect; form.**

(a) A document is a partial release if it does all of the following:

- (1) Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.
- (2) States that the person signing the partial release is the secured creditor or, if the security instrument is a deed of trust, that the person or persons signing the partial release is or are the secured creditor, the trustee, or both the secured creditor and the trustee.
- (3) Contains language releasing property or an interest in property from the lien of the security instrument.
- (4) Is signed and acknowledged as required by law for a conveyance of an interest in real property by the secured creditor or, if the security instrument is a deed of trust, by the secured creditor, the trustee, or both the secured creditor and the trustee.

(b) The register of deeds shall accept a partial release for recording unless one of the following applies:

- (1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.
- (2) The required recording fee is not paid.
- (3) The document is not signed and acknowledged as required by law for a conveyance of an interest in real property by the secured creditor or, if the security instrument is a deed of trust, by the secured creditor, the trustee, or both the secured creditor and the trustee. The register of deeds shall not be required to verify or make inquiry concerning the truth of the matters stated in any partial release or the authority of the person executing any partial release to do so.

(c) Upon recording, a partial release shall release from the lien of the security instrument the property or interest in property as is expressly described and released. With respect only to the specific property or interest in property identified and released by a partial release, the partial release shall (i) operate and have the same effect as a duly executed and recorded deed of release or reconveyance of the property or interest in the property; (ii) release

1 and discharge all of the secured creditor's interest in the property or property interest arising  
2 from the security instrument; and (iii) if the security instrument is a deed of trust, release and  
3 discharge all the interest of the trustee in the property or property interest arising from the deed  
4 of trust. The security instrument shall otherwise remain in full force and effect, and the  
5 remainder of the property and interests in property described in and encumbered by the security  
6 instrument shall remain subject to the lien of the security instrument.

7 (d) The recording of a partial release does not by itself extinguish any liability of a  
8 person for payment or performance of the secured obligation.

9 (e) The provisions of this section are not exclusive. Property and interests in property  
10 may be released from the lien of a security instrument by methods other than the filing of a  
11 partial release.

12 (f) Unless the deed of trust provides otherwise, the trustee in a deed of trust is not a  
13 necessary party to a partial release.

14 (g) No particular phrasing is required for a partial release. The following form, when  
15 properly completed, is sufficient to satisfy the requirements of G.S. 45-36.22(a):

16  
17 "PARTIAL RELEASE

18 (G.S. 45-36.22)

19 The security instrument that is the subject of this Partial Release is identified as follows:

20 Type of Security Instrument: (identify type of security instrument, such as deed of trust  
21 or mortgage)

22 Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

23 Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or  
24 secured party(ies) in the security instrument)

25 Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page  
26 \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of  
27 Deeds for \_\_\_\_\_ County, North Carolina.

28 The person or persons signing this Partial Release is/are: (check appropriate box)

29 ☐ The secured creditor.

30 ☐ The trustee or substitute trustee.

31 ☐ The secured creditor and the trustee or substitute trustee.

32 The following described property or interest in property (and no other) is released from the lien  
33 of the security instrument: (identify legal description of property or interest in property to be  
34 released)

35  
36 Date: \_\_\_\_\_

37  
38 Signature(s) of secured creditor  
39 and/or trustee

40 [Acknowledgment before officer authorized to take acknowledgments]".

41 **SECTION 10.** Article 4 of Chapter 45 of the General Statutes is amended by  
42 adding a new section to read as follows:

43 **"§ 45-36.23. Obligation release: content and effect.**

44 (a) A document is an obligation release if it does all of the following:

45 (1) Identifies the type of security instrument, the original parties to the security  
46 instrument, the recording data for the security instrument, and the office in  
47 which the security instrument is recorded.

48 (2) States that the person signing the obligation release is the owner and holder  
49 of the obligation or obligations to be released.

- (3) Identifies one or more of the specific obligations that are secured by the security instrument and contains language confirming that, with respect to each such secured obligation, the obligation is no longer secured by the security instrument.
- (4) Is signed and acknowledged as required by law for a conveyance of an interest in real property by the owner and holder of the specific obligation or obligations to be released.
- (b) The register of deeds shall accept an obligation release for recording unless one of the following applies:
- (1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.
- (2) The required recording fee is not paid.
- (3) The document is not signed and acknowledged as required by law for a conveyance of an interest in real property by the owner and holder of the obligation or obligations to be released. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any obligation release or (ii) the authority of the person executing any obligation release to do so.
- (c) From and after the date an obligation release is recorded, the obligation or obligations specifically identified and released in the obligation release (and only such obligation or obligations) shall no longer be secured by the security instrument, without regard to whether the obligation has been paid in full and satisfied. Unless the obligation release states that the secured obligation has been paid in full and satisfied, the recording of an obligation release does not by itself extinguish any liability of a person for payment or performance of the obligation or obligations released.
- (d) Secured obligations that are not specifically identified and released in an obligation release remain secured by the security instrument, and the recording of an obligation release does not extinguish any liability of a person for payment or performance of the remaining secured obligation or obligations. The recording of an obligation release has no effect on the lien of the security instrument on the real property described in the security instrument.
- (e) Unless the deed of trust provides otherwise, the trustee in a deed of trust is not a necessary party to an obligation release.
- (f) No particular phrasing is required for an obligation release. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.23(a):

"OBLIGATION RELEASE

(G.S. 45-36.23)

The undersigned is now the owner and holder of the obligation(s) to be released by this instrument. As used in this release, the term "Security Instrument" refers to the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of

Deeds for \_\_\_\_\_ County, North Carolina.

Secured obligations that are no longer secured. Each of the following obligations is no longer secured by the Security Instrument, without regard to whether the obligation has been paid in

1 full and satisfied: (identify with particularity each secured obligation that will no longer be  
2 secured by the Security Instrument)

3 (Optional provision which may be used in addition to or in lieu of the paragraph above:)

4 Secured obligations that have been paid in full and satisfied. Each of the following obligations  
5 has been paid in full and satisfied and is consequently no longer secured by the Security  
6 Instrument: (identify with particularity each secured obligation that has been paid in full and  
7 satisfied and is consequently no longer secured by the Security Instrument)

8 Date:

9 Signature of owner and holder of  
10 the obligation(s) to be released

11 [Acknowledgment before officer authorized to take acknowledgments]":

12 **SECTION 11.** Article 4 of Chapter 45 of the General Statutes is amended by  
13 adding a new section to read as follows:

14 **"§ 45-36.24. Expiration of lien of security instrument.**

15 **(a) Maturity Date. – For purposes of this section:**

16 **(1) If a secured obligation is for the payment of money:**

17 **a. If all remaining sums owing on the secured obligation are due and**  
18 **payable in full on a date specified in the secured obligation, the**  
19 **maturity date of the secured obligation is the date so specified. If no**  
20 **such date is specified in the secured obligation, the maturity date of**  
21 **the secured obligation is the last date a payment on the secured**  
22 **obligation is due and payable under the terms of the secured**  
23 **obligation.**

24 **b. If all remaining sums owing on the secured obligation are due and**  
25 **payable in full on demand or on a date specified in the secured**  
26 **obligation, whichever first occurs, the maturity date of the secured**  
27 **obligation is the date so specified. If all sums owing on the secured**  
28 **obligation are due and payable in full on demand and no alternative**  
29 **date is specified in the secured obligation for payment in full, the**  
30 **maturity date of the secured obligation is the date of the secured**  
31 **obligation.**

32 **c. The maturity date of the secured obligation is "stated" in a security**  
33 **instrument if (i) the maturity date of the secured obligation is**  
34 **specified as a date certain in the security instrument, (ii) the last date**  
35 **a payment on the secured obligation is due and payable under the**  
36 **terms of the secured obligation is specified in the security instrument,**  
37 **or (iii) the maturity date of the secured obligation or the last date a**  
38 **payment on the secured obligation is due and payable under the**  
39 **terms of the secured obligation can be ascertained or determined**  
40 **from information contained in the security instrument, such as, for**  
41 **example, from a payment schedule contained in the security**  
42 **instrument.**

43 **(2) If the secured obligation is for the performance of some obligation other than**  
44 **the payment of money:**

45 **a. If the secured obligation is required to be performed by a date**  
46 **specified in the secured obligation, the maturity date of the secured**  
47 **obligation is the date so specified.**

48 **b. If the obligation is to be performed on demand or before a date**  
49 **specified in the secured obligation, whichever first occurs, the**  
50 **maturity date of the secured obligation is the date so specified. If the**

obligation is to be performed on demand and no alternative date for performance is specified in the secured obligation, the maturity date of the secured obligation is the date of the secured obligation.

c. The maturity date of the secured obligation is "stated" in a security instrument if (i) the maturity date of the secured obligation is specified as a date certain in the security instrument or (ii) the maturity date of the secured obligation can be ascertained or determined from information contained in the security instrument.

(b) Automatic Lien Expiration. – Except as provided in subsection (g) of this section, unless the lien of a security instrument has been extended in the manner prescribed in subsection (c), (d), or (e) of this section, the security instrument has been foreclosed, or the security instrument has been satisfied of record pursuant to G.S. 45-37, the lien of a security instrument automatically expires, and the security instrument is conclusively deemed satisfied of record pursuant to G.S. 45-37, at the earliest of the following times:

(1) If the security instrument was first recorded before October 1, 2011:

a. If the maturity date of the secured obligation is stated in the security instrument, 15 years after the maturity date.

b. If the maturity date is not stated in the security instrument, 35 years after the date the security instrument was recorded in the office of the register of deeds or and acknowledged as required by law for a conveyance of an interest in real property, whichever is later.

c. Without regard to whether the maturity date of the secured obligation is stated in the security instrument, 15 years from whichever of the following occurs last:

1. The date when the conditions of the security instrument were required by its terms to have been performed.

2. The date of maturity of the last installment of debt or interest secured thereby.

3. The date an affidavit or separate instrument was recorded pursuant to the provisions of G.S. 45-37(b), if any such affidavit or separate instrument was recorded before October 1, 2011, and before the lien of the security instrument expired.

(2) If the security instrument was first recorded on or after October 1, 2011:

a. If the maturity date of the secured obligation is stated in the security instrument, 15 years after the maturity date.

b. If the maturity date of the secured obligation is not stated in the security instrument, 35 years after the date the security instrument was recorded in the office of the register of deeds or October 1, 2011, whichever is later.

(c) Methods To Extend a Lien. – The lien of a recorded security instrument may be extended one or more times by recording (i) a lien maturity extension agreement or (ii) a notice of maturity date. If more than one lien maturity extension agreement or notice of maturity date is recorded, the most recently recorded lien maturity extension agreement or notice of maturity date controls in determining when the lien of a security instrument expires. A lien maturity extension agreement or notice of maturity date is ineffective unless recorded before the lien expires. The lien of the original security instrument may not be extended to a date more than 50 years after the date the security instrument was originally recorded in the office of the register of deeds without the written agreement of the then owner of the property encumbered by the lien of the security instrument.



(d) Lien Maturity Extension Agreement. –

- (1) The lien of a recorded security instrument may be extended to a date specified in a lien maturity extension agreement, provided the lien maturity extension agreement is recorded before the lien expires. When a lien maturity extension agreement has been duly recorded, the lien of the security instrument will expire on the date specified in the lien maturity extension agreement.
- (2) A document (including any document that modifies, amends, or restates a security instrument) is a lien maturity extension agreement if it does all of the following:
- a. Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.
  - b. States the date to which the lien of the security instrument is extended.
  - c. Is signed and acknowledged as required by law for a conveyance of an interest in real property by the secured creditor and the then owner of the property encumbered by the lien of the security instrument.
- (3) No particular phrasing is required for a lien maturity extension agreement. The following form, when properly completed, is sufficient to satisfy the requirements for a lien maturity extension agreement:

"LIEN MATURITY EXTENSION AGREEMENT(G.S. 45-36.24(d))

\_\_\_\_\_ is now the secured creditor under the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

\_\_\_\_\_ is now the owner of the real property encumbered by the lien of the security instrument.

Pursuant to G.S. 45-36.24(d), the lien of the security instrument is extended to and including \_\_\_\_\_ (specify date).

Date: \_\_\_\_\_

Signature of Current Owner  
of Real Property

Signature of Secured Creditor

[Acknowledgments before officer authorized to take acknowledgments]"

(e) Notice of Maturity Date. –

- (1) The lien of a recorded security instrument may be extended by a notice of maturity date, provided the notice of maturity date is recorded before the lien expires.
- (2) When a notice of maturity date signed only by the secured creditor has been duly recorded, the lien of the security instrument will expire at the earliest of

the following times: (i) 15 years after the maturity of the secured obligation as stated in the notice of maturity date or (ii) 50 years after the date the security instrument was originally recorded in the office of the register of deeds. A document signed only by the secured creditor is a notice of maturity date if it does all of the following:

- a. Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.
- b. States that the person signing the notice of maturity date is the secured creditor.
- c. States the maturity date of the secured obligation.
- d. Is signed and acknowledged as required by law for a conveyance of an interest in real property by the secured creditor.

(3) When a notice of maturity date signed by the secured creditor and by the then owner of the property encumbered by the lien of the security instrument has been duly recorded, the lien of the security instrument will expire 15 years after the maturity date of the secured obligation as stated in the notice of maturity. A document (including any document that modifies, amends, or restates a security instrument) signed by the secured creditor and by the then owner of the property encumbered by the lien of the security instrument is a notice of maturity date if it:

- a. Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.
- b. States the maturity date of the secured obligation.
- c. Is signed and acknowledged as required by law for a conveyance of an interest in real property by the secured creditor and the then owner of the property encumbered by the lien of the security instrument.

(4) No particular phrasing is required for a notice of maturity date. The following form, when properly completed, is sufficient to satisfy the requirements for a notice of maturity date signed only by the secured creditor:

"NOTICE OF MATURITY DATE

(G.S. 45-36.24(e))

The undersigned is now the secured creditor under the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

The maturity date of the secured obligation is \_\_\_\_\_ (specify date).

Date: \_\_\_\_\_

Signature of Secured Creditor

[Acknowledgment before officer authorized to take acknowledgments]"

(f) Exception. – The register of deeds shall accept a lien maturity extension agreement or a notice of maturity date for recording and index the document as a subsequent instrument in accordance with G.S. 161-14.1, unless one of the following applies:

(1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.

(2) The required recording fee is not paid.

(3) The document is not signed and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in the document, (ii) whether the parties to the document are in fact the secured creditor and the then owner of the real property encumbered by the lien of the security instrument, or (iii) the authority of any person executing the document to do so.

(g) Foreclosure Proceedings. – No proceeding may be commenced to foreclose the lien of a security instrument unless the proceeding is commenced prior to the date on which the lien of the security instrument expires. However, if a proceeding to foreclose the lien of a security instrument is commenced before the lien of the security instrument expires, the lien created by the security instrument shall continue until final disposition of the proceeding. This provision shall not be construed as extending the lien or the right to bring or maintain any action for which a shorter period may be provided by law.

(h) No Shortening of Lien Without Secured Creditor's Consent. – Subject to the provisions of G.S. 45-37, the duration of the lien of a security instrument may not be shortened without the consent of the secured creditor.

(i) No Release or Satisfaction Necessary. – No release, satisfaction, or other instrument is necessary to discharge the lien of a security instrument that has expired; however, nothing in this section shall be construed as affecting or preventing the execution and recordation of any such release, satisfaction, or other document.

(j) Trustee in a Deed of Trust. – For purposes of this section, the trustee or substitute trustee in a deed of trust (i) shall not be considered the owner of the property encumbered by the lien of the deed of trust and (ii) shall not be a necessary party to a lien maturity extension agreement or notice of maturity date.

(k) Applicability. – This section applies to all security instruments, whether recorded before, on, or after October 1, 2011, except the following:

(1) Any security instrument securing the payment of money or securing the performance of any other obligation or obligations conclusively presumed to have been fully paid and performed pursuant to the provisions of G.S. 45-37(b) prior to October 1, 2011.

(2) Any security instrument made or given by any railroad company, or any agreement of conditional sale, equipment trust agreement, lease, chattel mortgage or other instrument relating to the sale, purchase or lease of railroad equipment or rolling stock, or of other personal property."

**SECTION 12. G.S. 45-37(b) reads as rewritten:**

**"§ 45-37. Satisfaction of record of security instruments.**

...

(b) It shall be conclusively presumed that the conditions of any security instrument recorded before October 1, 2011, securing the payment of money or securing the performance of any other obligation or obligations have been complied with or the debts secured thereby paid or obligations performed, as against creditors or purchasers for valuable consideration

from the mortgagor or grantor, from and after the expiration of 15 years from whichever of the following occurs last:

- (1) The date when the conditions of the security instrument were required by its terms to have been performed, or
- (2) The date of maturity of the last installment of debt or interest secured thereby;

provided that on or before October 1, 2011, and before the lien has expired pursuant to this subsection, the holder of the indebtedness secured by the security instrument or party secured by any provision thereof may file an affidavit with the register of deeds which affidavit shall specifically state:

- (1) The amount of debt unpaid, which is secured by the security instrument; or
- (2) In what respect any other condition thereof shall not have been complied with; or

may record a separate instrument signed by the secured creditor and witnessed by the register of deeds stating:

- (1) Any payments that have been made on the indebtedness or other obligation secured by the security instrument including the date and amount of payments and
- (2) The amount still due or obligations not performed under the security instrument.

The effect of the filing of the affidavit or the recording of a separate instrument made as herein provided shall be to postpone the effective date of the conclusive presumption of satisfaction to a date 15 years from the filing of the affidavit or from the recording of the separate instrument. There shall be only one postponement of the effective date of the conclusive presumption provided for herein. The register of deeds shall record and index the affidavit provided for herein or the separate instrument made as herein provided as a subsequent instrument in accordance with G.S. 161-14.1. This subsection shall not apply to any security instrument made or given by any railroad company, or to any agreement of conditional sale, equipment trust agreement, lease, chattel mortgage or other instrument relating to the sale, purchase or lease of railroad equipment or rolling stock, or of other personal property.

The lien of any security instrument that secured the payment of money or the performance of any other obligation or obligations and that was conclusively presumed to have been fully paid and performed prior to October 1, 2011, pursuant to the provisions of this subsection is conclusively deemed to have expired and shall be of no further force or effect. No release, satisfaction, or other instrument is necessary to discharge the lien of a security instrument that has expired; however, nothing in this section shall be construed as affecting or preventing the execution and recordation of any such release, satisfaction, or other document.

This subsection shall apply only to security instruments securing the payment of money or securing the performance of any other obligation or obligations that were conclusively presumed pursuant to this subsection to have been fully paid and performed prior to October 1, 2011. All other security instruments shall be subject to the provisions of G.S. 45-36.24."

SECTION 13. G.S. 45-37.2 reads as rewritten:

"§ 45-37.2. Recording satisfactions of—and other documents relating to security instruments.

(a) ~~When a satisfaction document, affidavit of satisfaction, or trustee's satisfaction is recorded pursuant to G.S. 45-37(a)(7), the~~ The register of deeds shall record and index the ~~instrument following instruments~~ in accordance with G.S. 161-14.1. G.S. 161-14.1:

- (1) A substitution of trustee.
- (2) A document of rescission recorded pursuant to G.S. 45-36.6.
- (3) A deed of release or reconveyance.

- (4) A partial release recorded pursuant to G.S. 45-36.22.  
(5) An obligation release recorded pursuant to G.S. 45-36.23.  
(6) A satisfaction document, affidavit of satisfaction, or trustee's satisfaction recorded pursuant to G.S. 45-37(a)(7).  
(7) A lien maturity extension agreement or notice of maturity date recorded pursuant to G.S. 45-36.24.

No fee shall be charged by the register of deeds for recording a satisfaction document, affidavit of satisfaction, or a trustee's satisfaction.

(b) When a security instrument is satisfied of record by a method other than by means of recording a satisfaction document, satisfaction affidavit, or trustee's satisfaction pursuant to G.S. 45-37(a)(7), the register of deeds shall record and index in accordance with ~~G.S. 161-14.1~~ G.S. 161-14.1 a record of satisfaction as provided for in this subsection. If the security instrument is being satisfied of record pursuant to G.S. 45-37(a)(2), the record of satisfaction may consist of either (i) all or a portion of the original security instrument rerecorded as described in subdivision (1) of this subsection or (ii) a separate instrument as described in subdivision (2) of this subsection. In all other cases, the record of satisfaction shall consist of a separate instrument as described in subdivision (2) of this subsection. No fee shall be charged by the register of deeds for recording a record of satisfaction.

...."

**SECTION 14.** Article 4 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

**"§ 45-42.3. Automatic release of real property from ancillary security instruments.**

(a) The following definitions shall apply in this section:

- (1) Ancillary security instrument. – An assignment of leases with respect to the real property, an assignment of rents from or arising out of the real property, a financing statement covering fixtures on the real property that is filed in the office of the register of deeds in the county in which the real property is located, and any other document or instrument that assigns, or creates a lien on, an interest in the real property.  
(2) Real property. – The real property described in and encumbered by the lien of a security instrument.

(b) Except as provided in subsection (c) of this section, (i) the expiration of the lien of a security instrument pursuant to G.S. 45-36.24 or the satisfaction of a security instrument of record pursuant to G.S. 45-37 shall be deemed automatically to release the real property from the operation of all ancillary security instruments that secure the same obligation or obligations secured by the security instrument and (ii) the recording of a partial release pursuant to G.S. 45-36.22 or the recording of a deed of release shall be deemed automatically to release the real property described in the partial release or deed of release from the operation of all ancillary security instruments that secure the same obligation or obligations secured by the security instrument.

(c) Subsection (b) of this section shall not apply to an ancillary security instrument if (i) the ancillary security instrument secures obligations other than, or in addition to, the obligation or obligations secured by the security instrument; (ii) the security instrument, the ancillary security instrument, or the document recorded in the office of the register of deeds to satisfy the security instrument of record expressly states that the satisfaction of the security instrument of record shall not release the real property from the operation of that particular ancillary security instrument or from ancillary security instruments in general; or (iii) the security instrument, the ancillary security instrument, the partial release, or the deed of release expressly states that the partial release or deed of release shall not release real property from the operation of that particular ancillary security instrument or ancillary security instruments in general."

SECTION 15. Article 5 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

**"§ 45-45.3. Trustee in a deed of trust.**

(a) The following definitions apply in this section:

(1) Secured creditor. – The holder, owner, or assignee of the obligation secured by a deed of trust.

(2) Trustee. – The trustee or substitute trustee then serving as such under the terms of a deed of trust.

(b) Unless the deed of trust provides otherwise, all of the following may be done without the knowledge, consent, or joinder of the trustee:

(1) Pursuant to G.S. 45-36.23, an obligation may be declared by the owner and holder of the obligation to be no longer secured by the deed of trust.

(2) Property may be released from the lien of a deed of trust by the secured creditor.

(3) The lien of a deed of trust may be released or subordinated by the secured creditor.

(4) The terms of a deed of trust may be modified by the secured creditor and the then record owner of the property encumbered by the lien of the deed of trust.

(5) The deed of trust may be satisfied of record by the secured creditor.

(c) Except in matters relating to the foreclosure of the deed of trust or the exercise of a power of sale under the terms of the deed of trust, the trustee is neither a necessary nor a proper party to any civil action or proceeding involving (i) title to the real property encumbered by the lien of the deed of trust or (ii) the priority of the lien of the deed of trust. Examples of civil actions or proceedings in which the trustee is neither a necessary nor a proper party include, but are not limited to, civil actions or proceedings relating to:

(1) Condemnation.

(2) Bankruptcy.

(3) The establishment or correction of title to real property, including, but not limited to, actions to quiet title, reform land records, or resolve boundary line disputes.

(4) Fraudulent conveyances.

(5) The creation or enforcement of an attachment or judgment lien.

(6) The foreclosure of a lien other than the lien of the deed of trust, regardless of whether the lien is superior or subordinate to the lien of the deed of trust, including, but not limited to, the foreclosure of mortgages, other deeds of trust, tax liens, and assessment liens.

(7) The establishment, perfection, or enforcement of a mechanic's or materialman's lien.

(8) The creation or enforcement of a constructive trust, resulting trust, or equitable lien relating to the property.

(9) The partition of real property.

(10) The interpretation or enforceability of a will, trust, or estate.

(11) A subrogation claim or other equitable claim or defense involving the priority or enforceability of a deed of trust.

(12) Determination or enforcement of rights and obligations involving easements or restrictive covenants.

(d) If a trustee is improperly joined as a party to an action or proceeding when this section provides that the trustee is neither a necessary nor a proper party to that action or proceeding, then:

- (1) Upon motion duly made by any party to the action or proceeding, the trustee shall be dismissed from the action or proceeding;
- (2) Regardless of whether the trustee makes an appearance in the action or proceeding, no entry of a default or default judgment shall be entered against the trustee; and
- (3) If the trustee makes an appearance in the action or proceeding, each person who improperly joined the trustee as a party to the action or proceeding shall be jointly and severally liable to the trustee for all the expenses and costs incurred by the trustee in the defense of the action or proceeding or in obtaining the trustee's dismissal from the action or proceeding, including the reasonable attorneys' fees actually incurred by the trustee.

(e) Except as expressly provided in this section, this section is not in derogation of case law and statutory provisions that vest legal title to property conveyed by a deed of trust in the trustee named therein."

**SECTION 16.** G.S. 45-68 reads as rewritten:

**"§ 45-68. Requirements.**

A security instrument, otherwise valid, shall secure the following so as to give priority as provided in G.S. 45-70:

- ...
- (1a) Existing obligations that are specifically or generally identified-identified, described, or referenced in the security instrument as being secured thereby, and all advances made at or prior to the registration of the security instrument.
- (1b) Future advances and future obligations that are specifically or generally identified, described, or referenced in the security instrument as being secured thereby that may from time to time be made or incurred under the security instrument, incurred, but only if the security instrument shows all of the following:
- a. That the security instrument is given wholly or partly to secure future advances and/or future obligations that may be made or incurred under the security instrument, obligations.

...."

**SECTION 17.** G.S. 45-69 reads as rewritten:

**"§ 45-69. Fluctuation of obligations within maximum amount.**

Unless the security instrument provides to the contrary, if the maximum amount secured by the security instrument has not been advanced or if any obligation secured thereby is paid or is reduced by partial payment, further advances may be made and additional obligations secured by the security instrument may be incurred from time to time within the time limit fixed by the security instrument. Such further advances and ~~obligations- obligations, together with interest thereon,~~ shall be secured to the same extent as original advances and obligations under the security instrument, if the provisions of G.S. 45-68 are complied with. ~~However, if at any time the aggregate outstanding principal balance of the obligation or obligations secured by the security instrument exceeds the maximum principal amount that may be secured by the security instrument at any one time, then the excess shall not be secured by the security instrument."~~

**SECTION 18.** G.S. 45-70 reads as rewritten:

**"§ 45-70. Priority of security instrument.**

(a) ~~Any~~ Subject to subsections (a1), (c), and (d) of this section, any security instrument that conforms to the requirements of this Article shall, from the time and date of registration thereof, have the same priority to the extent of all future advances and future obligations secured by it, and all interest accruing thereon, as if all the advances had been ~~made and~~ made,

1 all the obligations ~~incurred~~incurred, and all the interest accrued at the time the security  
2 instrument was registered.

3 (a) Subject to subsections (c) and (d) of this section, if at any time the aggregate  
4 outstanding principal balance of the obligation or obligations secured by a security instrument  
5 that conforms to the requirements of this Article exceeds the maximum principal amount that  
6 may be secured by the security instrument at any one time, then, unless the security instrument  
7 provides otherwise, the amount in excess and the interest accrued on the amount in excess shall  
8 be secured by the security instrument, but (i) the amount in excess and the interest accrued on  
9 the amount in excess shall not be afforded the priority provided in subsection (a) of this section  
10 and (ii) the priority of the lien of the security instrument with respect to the amount in excess  
11 and the interest accrued on the amount in excess shall be determined by other applicable law.

12 (b) Repealed by Session Laws 1989, c. 496, s. 3.

13 (c) ~~Payments made by the secured creditor for fire and extended coverage insurance,~~  
14 ~~taxes, assessments, or other necessary expenditures for the preservation of the security.~~ All  
15 payments made, sums advanced, and expenses incurred by the secured creditor for (i)  
16 insurance, taxes, and assessments, (ii) to protect the secured creditor's interest under the  
17 security instrument, or (iii) to preserve and protect the value or condition of the real property  
18 encumbered by the security instrument, shall be secured by the security instrument and shall  
19 have the same priority as if such payments had been made they had been paid, advanced, or  
20 incurred at the time the security instrument was registered. The provisions of G.S. 45-68 shall  
21 not be applicable to such payments, advances, or expenses, nor shall accrued interest or such  
22 payments payments, advances, or accrued interest expenses be considered in computing the  
23 maximum principal amount which may be that is secured by the security instrument-instrument  
24 at any one time.

25 (d) Notwithstanding any other provision of this Article, any security instrument  
6 hereafter executed which secures an obligation or obligations of an electric or telephone  
7 membership corporation incorporated or domesticated in North Carolina to the United States of  
28 America or any of its agencies, or to any other financing institution, or of an electric or gas  
29 utility operating in North Carolina, shall from the time and date of registration of said security  
30 instrument have the same priority to the extent of (i) all future obligations incurred by the  
31 membership corporation or utility to any mortgagee or beneficiary named in the security  
32 instrument, together with interest thereon, (ii) all future advances secured by it-it, together with  
33 interest thereon, and (iii) all payments made, sums advanced, and expenses incurred by the  
34 secured creditor of the types described in subsection (c) of this section, as if all the advances  
35 had been made they all had been accrued, paid, made, advanced, and incurred at the time of the  
36 execution-registration of the security instrument, regardless of whether the making of such  
37 advances is obligatory or whether the security instrument meets the requirements of  
38 G.S. 45-68."

39 SECTION 19. G.S. 45-74 reads as rewritten:

40 "§ 45-74. Article not exclusive.

41 The provisions of this Article shall not be deemed ~~exclusive, and no security instrument~~  
42 ~~securing future advances or future obligations which is otherwise valid shall be invalidated by~~  
43 ~~failure to comply with the provisions of this Article.~~ exclusive. Nothing in this Article shall  
44 invalidate or overrule any rule of validity or priority applicable to any security instrument  
45 failing to comply with the provisions of this Article."

46 SECTION 20. G.S. 45-81 reads as rewritten:

47 "§ 45-81. ~~Definition.~~ Definitions.

8 (a) ~~The term "equity line of credit" means an agreement in writing between a lender and~~  
9 ~~a borrower for an extension of credit pursuant to which:~~



- 1           (1) ~~At any time within a specified period not to exceed 30 years the borrower~~  
2           ~~may request and the lender is obligated to provide, by honoring negotiable~~  
3           ~~instruments drawn by the borrower or otherwise, advances up to an agreed~~  
4           ~~aggregate limit;~~  
5           (2) ~~Any repayments of principal by the borrower within the specified period will~~  
6           ~~reduce the amount of advances counted against the aggregate limit; and~~  
7           (3) ~~The borrower's obligation to the lender is secured by a mortgage or deed of~~  
8           ~~trust relating to real property which mortgage or deed of trust shows on its~~  
9           ~~face the maximum principal amount which may be secured at any one time~~  
10           ~~and that it secures an equity line of credit governed by the provisions of this~~  
11           ~~Article.~~

12       (b) ~~As used in subdivision (a)(1) of this section, "lender is obligated" means that the~~  
13       ~~lender is contractually bound to provide advances. The contract must set forth any events of~~  
14       ~~default by the borrower, or other events not within the lender's control, which may relieve the~~  
15       ~~lender from his obligation, and must state whether or not the lender has reserved the right to~~  
16       ~~cancel or terminate the obligation.~~

17       (e) ~~At any time when the balance of all outstanding sums secured by a mortgage or~~  
18       ~~deed of trust pursuant to the provisions of this Article is zero, the lender shall, upon the request~~  
19       ~~of the borrower, make written entry upon the security instrument showing payment and~~  
20       ~~satisfaction of the instrument; provided, however, that such security instrument shall remain in~~  
21       ~~full force and effect for the term set forth therein absent the borrower's request for such written~~  
22       ~~entry. No prepayment penalty may be charged with respect to an equity line of credit loan.~~

23       The following definitions apply in this Article:

- 24       (1) Authorized person. – Any borrower; the legal representative of any  
25       borrower; the attorney for any borrower; a title insurance company  
26       authorized pursuant to Article 26 of Chapter 58 of the General Statutes to  
27       issue title insurance policies in the State of North Carolina, but only when  
28       the company is acting in connection with a title insurance policy issued or to  
29       be issued with respect to property then encumbered by an existing equity  
30       line security instrument; or an attorney licensed to practice law in the State  
31       of North Carolina or a bank, savings and loan association, savings bank, or  
32       credit union, but only when (i) the attorney, bank, savings and loan  
33       association, savings bank, or credit union is or was responsible for the  
34       disbursement of funds in connection with the sale of, or a new loan secured  
35       by, property then encumbered by an existing equity line security instrument  
36       and (ii) a requirement of the sale or new loan transaction is or was that the  
37       property be conveyed or encumbered free and clear of the lien of the existing  
38       equity line security instrument.  
39       (2) Borrower. – A person primarily liable for payment or performance of an  
40       equity line of credit.  
41       (3) Equity line of credit. – An agreement in writing between a lender and a  
42       borrower for an extension of credit pursuant to which (i) at any time within a  
43       specified period not to exceed 30 years the borrower may request and the  
44       lender is obligated to provide advances up to an agreed aggregate limit; (ii)  
45       any repayments of principal by the borrower within the specified period will  
46       reduce the amount of advances counted against the aggregate limit; and (iii)  
47       the borrower's obligation to the lender is secured by an equity line security  
48       instrument.  
49       (4) Equity line security instrument. – An agreement, however denominated, that  
50       (i) creates or provides for an interest in real property to secure payment or

performance of an equity line of credit, whether or not it also creates or provides for a lien on personal property; (ii) shows on its face the maximum principal amount which may be secured at any one time; and (iii) shows on its face that it secures an equity line of credit governed by the provisions of this Article. The term "equity line security instrument" includes a deed of trust and a mortgage.

(5) Lender is obligated. – The lender is contractually bound to provide advances. The contract must set forth any events of default by the borrower, or other events not within the lender's control, which may relieve the lender from his obligation, and must state whether or not the lender has reserved the right to cancel or terminate the obligation.

(6) Notice regarding future advances. – A written notice submitted under G.S. 45-82.3 to a lender that prevents certain advances made pursuant to an equity line of credit from being secured by the related equity line security instrument.

(7) Owner. – Any person owning a present or future interest in the real property encumbered by an equity line security instrument, but does not mean the trustee in a deed of trust or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, judgment lien, or any other lien on, or security interest in, the real property.

(8) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) Qualified lien holder. – A person who has a mortgage or deed of trust on property already encumbered by an existing equity line security instrument, where that person's mortgage or deed of trust was recorded after the existing equity line security instrument and it appears from warranties or otherwise that the person's mortgage or deed of trust was not intended to be subordinate to the existing equity line security instrument. The term does not include a trustee under a deed of trust.

(10) Request to terminate an equity line of credit; and termination request. – A written request submitted under G.S. 45-82.2 to a lender to terminate an equity line of credit. Each of the following shall be deemed a termination request: (i) a notification given pursuant to G.S. 45-36.9(a) requesting the lender to terminate the equity line of credit, (ii) a notification given pursuant to G.S. 45-36.9(a) containing a statement sufficient to terminate the effectiveness of the provision for future advances in the equity line security instrument, and (iii) a written request made by or on behalf of a borrower to a lender pursuant to G.S. 45-37 to satisfy a related equity line security instrument as a matter of public record."

SECTION 21. G.S. 45-82 reads as rewritten:

**"§ 45-82. Priority of equity line security instrument.**

~~A mortgage or deed of trust which~~ An equity line security instrument shows on its face that it secures an equity line of credit governed by the provisions of this Article, shall, from the time and date of its registration, have the same priority to the extent of all advances secured by it as if the advances had been made at the time of the execution-registration of the equity line mortgage or deed of trust, security instrument, notwithstanding the fact that from time to time during the term of the loan-equity line of credit no balance is outstanding. Payments made by the lender for insurance, taxes, and assessments and other payments made by the lender

1 pursuant to the deed of trust shall have the same priority as if made at the time of the execution  
2 of the mortgage or deed of trust, notwithstanding the maximum principal amount set forth in  
3 the mortgage or deed of trust. Interest that accrues on the equity line of credit and all payments  
4 made, sums advanced, and expenses incurred by the lender (i) for insurance, taxes, and  
5 assessments, (ii) to protect the lender's interest under the equity line security instrument, or (iii)  
6 to preserve and protect the value or condition of the property encumbered by the equity line  
7 security instrument, shall be secured by the equity line security instrument and shall have the  
8 same priority as if they had been accrued, paid, advanced, and incurred at the time the equity  
9 line security instrument was registered. The accrued interest, payments, advances, and expenses  
10 shall not be considered in computing the principal amount that is secured by the equity line  
11 security instrument at any one time."

12 **SECTION 22.** G.S. 45-82.1 reads as rewritten:

13 **"§ 45-82.1. Extension of period for advances.**

14 (a) The period for advances agreed to pursuant to G.S. 45-81(a)(1) G.S. 45-81(3) may  
15 be extended by written agreement of the lender and borrower executed and registered prior to  
16 expiration or termination of the equity line of credit or the borrower's obligation to repay any  
17 outstanding indebtedness. Any extended period shall not exceed 30 years from the end of the  
18 preceding period for advances.

19 (b) If a lender and borrower extend the period for advances by registering a certificate  
20 as described in subsection (c) of this section, A mortgage or deed of trust that secures an equity  
21 line of credit to which the lender and borrower have agreed to an extended period for advances  
22 shall have priority with respect to advances that are made after the preceding loan period period  
23 for advances provided in the original recorded equity line security instrument or any previously  
24 recorded extension shall have priority from a date not later than the date of registration of the  
25 certificate described in subsection (c) of this section.

26 (c) The priority provided in subsection (b) of this section shall be accorded only if the  
27 grantor of the mortgage or the deed of trust securing the obligation, lender, the borrower, and, if  
28 different than the borrower, the then owners of the real property encumbered by the equity line  
29 security instrument and other record owners of the real property therein conveyed, execute a  
30 certificate evidencing the extension and register the certificate in the office of the register of  
31 deeds where the equity line mortgage or deed of trust security instrument is registered. The  
32 failure of any record owner to execute the certificate shall affect only that record owner's  
33 interest in the property, and executions by other owners shall have full effect to the extent of  
34 their interests in the property. For purposes of this section, the term "record owner" means any  
35 person owning a present or future interest of record in the real property which would be  
36 affected by the lien of the mortgage or deed of trust, but does not mean the trustee in a deed of  
37 trust or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, or  
38 any other lien or security interest in the real property.

39 (d) The certificate described in subsection (c) of this section may be in any form that  
40 fulfills the requirements of subsection (c) of this section, including the following: No particular  
41 phrasing is required for a certificate of extension under this section. The following form, when  
42 properly completed, is sufficient to satisfy the requirements of subsection (c) of this section:

44 **"Certificate of Extension of Period for Advances Under Home Equity Line of Credit**

46 Please take notice that the borrower and lender under the home equity line of credit secured  
47 by the (deed of trust) (mortgage) recorded on \_\_\_\_\_ in Book \_\_\_\_\_, at  
48 Page \_\_\_\_\_, records of this County, have agreed to extend the period within which the  
49 borrower may request advances as set forth in G.S. 45-82.1. The borrower's obligations to  
50 repay advances and related undertakings are secured by the (deed of trust) (mortgage).

WITNESS the signatures and seals of the undersigned, this \_\_\_\_\_ day of \_\_\_\_\_,

(SEAL)  
(Grantor (s))

(SEAL)  
Other record owner(s)

(SEAL)  
(Mortgagee or Beneficiary)

(Acknowledgment as required by law)."

"Certificate of Extension of Period for Advances Under Equity Line of Credit  
(G.S. 45-82.1)

\_\_\_\_\_ is now the lender and secured creditor in the security instrument identified  
as follows:

Type of Security Instrument: (identify type of security instrument, such as deed  
of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s),  
or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page  
\_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the  
Register of Deeds for \_\_\_\_\_ County, North Carolina.

The borrower(s) is/are the following:

The current owner(s) of the property described in the security instrument is/are:

The parties have agreed to extend to \_\_\_\_\_ (insert date) the period within  
which the borrower may request advances as set forth in G.S. 45-82.1.

Date: \_\_\_\_\_

Signature of secured creditor

Signature of borrower(s)  
different)

Signature of property owner(s) (if

[Acknowledgment before officer authorized to take acknowledgments]"."

**SECTION 23.** Article 9 of Chapter 45 of the General Statutes is amended by  
adding a new section to read as follows:

**"§ 45-82.2. Request to terminate an equity line of credit.**

(a) Upon receipt of a request from an authorized person to terminate an equity line of credit, the lender shall (i) terminate the borrower's right to obtain advances under the borrower's equity line of credit; (ii) apply all sums subsequently paid by or on behalf of the borrower in connection with the equity line of credit to the satisfaction of the equity line of credit and other sums secured by the related equity line security instrument; and, (iii) when the balance of all outstanding sums secured by the related equity line security instrument becomes zero, satisfy the related equity line security instrument as a matter of public record pursuant to G.S. 45-37. A request to terminate an equity line of credit shall be conclusively deemed to have been submitted by or on behalf of a borrower if it is submitted by an authorized person.

(b) No particular phrasing is required for a request to terminate an equity line of credit. The following form, when properly completed, is sufficient to serve as a request to terminate an equity line of credit:

"REQUEST TO TERMINATE AN EQUITY LINE OF CREDIT"  
(G.S. 45-82.2)

To: (name of lender)

This is a request to terminate an equity line of credit submitted pursuant to G.S. 45-82.2. For purposes of this request:

1. The borrower(s) is/are: (identify one or more of the borrowers)
2. The account number of the equity line of credit is: (specify the account number of the equity line of credit, if known by the person submitting the request)
3. The street address of the property is: (provide the street address of the property encumbered by the security instrument identified in 4.)
4. The equity line of credit is secured by the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

I request and direct that you (i) terminate the borrower's right to obtain advances under the borrower's equity line of credit; (ii) apply all sums subsequently paid by or on behalf of the borrower in connection with the equity line of credit to the satisfaction of the equity line of credit and other sums secured by the related security instrument; and, (iii) when the balance of all outstanding sums secured by the related security instrument becomes zero, satisfy the security instrument identified above as a matter of public record pursuant to G.S. 45-37.

I certify that I am:

- ☐ The borrower (or one of the borrowers, if there is more than one).
- ☐ The legal representative of a borrower.
- ☐ The attorney for a borrower.
- ☐ A title insurance company that satisfies the requirements of G.S. 45-81(1).
- ☐ An attorney licensed to practice law in the state of North Carolina that satisfies the requirements of G.S. 45-81(1).
- ☐ A bank, savings and loan association, savings bank, or credit union that satisfies the requirements of G.S. 45-81(1).

Date: \_\_\_\_\_

Signature of person submitting the request"

(c) If the person who gives a lender a request to terminate an equity line of credit is a title insurance company described in G.S. —45-81(1), that person shall give a copy of the request to the borrower accompanied by a notice that provides substantially as follows:

"NOTICE TO BORROWER"

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We are a title insurance company that has issued or has agreed to issue a title insurance policy on that property. As permitted by North Carolina law, we are sending the (enclosed / attached / following / foregoing) request to your lender asking that your equity line of credit be terminated. Our reason for making this request is: (specify reason it is appropriate for the title insurance company to request the termination of the borrower's equity line of credit)

When your lender receives our request, your lender will terminate and close your equity line of credit, and you will no longer be able to obtain credit advances. However, termination of your equity line of credit will not release you from liability for the account. All sums your lender subsequently receives in connection with your equity line of credit (including any sums we may send to your lender) will be applied by your lender to the satisfaction of your account. When the balance of your account becomes zero, your lender will be required to cancel the mortgage or deed of trust as a matter of public record.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of title insurance company)".

(d) If the person who gives a lender a request to terminate an equity line of credit is an attorney, bank, savings and loan association, savings bank, or credit union described in G.S. 45-81(1), that person shall give a copy of the request to the borrower accompanied by a notice that provides substantially as follows:

#### "NOTICE TO BORROWER

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We were responsible for disbursing funds in connection with the sale of the property or a new loan secured by the property. A requirement of the sale or new loan transaction was that the property be conveyed or encumbered free and clear of the existing mortgage or deed of trust that secures your equity line of credit.

As permitted by North Carolina law, we are sending the (enclosed / attached / following / foregoing) request to your lender asking that your equity line of credit be terminated. Our reason for making this request is to ensure that the mortgage or deed of trust on the property will be cancelled once your equity line of credit is paid in full.

When your lender receives our request, your lender will terminate and close your equity line of credit, and you will no longer be able to obtain credit advances. However, termination of your equity line of credit will not release you from liability for the account. All sums your lender subsequently receives in connection with your equity line of credit (including any sums we send to your lender in connection with the closing of the sale of the property or the new loan) will be applied by your lender to the satisfaction of your account. When the balance of your account becomes zero, your lender will be required to cancel the mortgage or deed of trust as a matter of public record.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of attorney, bank, savings and loan association, savings bank, or credit union)".

SECTION 24. Article 9 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

**"§ 45-82.3. Notice regarding future advances.**

(a) A notice regarding future advances may be submitted to a lender by an authorized person, an owner of the property, or a qualified lien holder.

(b) Except as provided in subsection (c) of this section, an advance made by a lender to a borrower pursuant to an equity line of credit will not be secured by the related equity line security instrument if the advance occurs after the lender receives and has had not less than one complete business day to act on a notice regarding future advances.

(c) Notwithstanding a lender's receipt of a notice regarding future advances, the following shall be secured by the equity line security instrument and shall have the same priority as if they had been owing, accrued, paid, advanced, or incurred at the time the equity line security instrument was registered:

(1) Sums owing to the lender under the equity line of credit at the time the lender receives the notice regarding future advances (including accrued interest), all interest that thereafter accrues on the equity line of credit, and all payments made, sums advanced, and expenses incurred by the lender before or after the lender receives the notice regarding future advances (i) for insurance, taxes, and assessments, (ii) to protect the lender's interest under the equity line security instrument, or (iii) to preserve and protect the value or condition of the real property encumbered by the equity line security instrument.

(2) Any advance made by the lender to a borrower pursuant to an equity line of credit that occurs within one complete business day after the lender receives the notice regarding future advances.

(3) Any advance made by the lender to a borrower pursuant to an equity line of credit that occurs more than one complete business day after the lender receives the notice regarding future advances, but only if the advance was initiated or approved before the lender received the notice regarding future advances.

(d) Receipt by a lender of a notice regarding future advances shall be conclusively deemed to be an action by the borrower adversely affecting the lender's security for the equity line of credit. Upon receipt of a notice regarding future advances, the lender may terminate the borrower's right and ability to obtain additional advances under the equity line of credit.

(e) No particular phrasing is required for a notice regarding future advances. The following form, when properly completed, is sufficient to serve as a notice regarding future advances:

**"NOTICE REGARDING FUTURE ADVANCES**

**(G.S. 45-82.3)**

To: (name of lender)

This is a notice regarding future advances submitted pursuant to G.S. 45-82.3. For purposes of this notice:

1. The borrower(s) is/are: (identify borrower(s))

2. The account number of the equity line of credit is: (specify the account number of the equity line of credit, if known by the person submitting the notice)

3. The street address of the property is: (provide the street address of the property encumbered by the security instrument identified in 4.)

4. The equity line of credit is secured by the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

Except as provided in G.S. 45-82.3(c), subsequent advances made by you under the equity line of credit will not be secured by the security instrument identified above.

I certify that I am:

☐ The borrower (or one of the borrowers, if there is more than one).

☐ The legal representative of a borrower.

☐ The attorney for a borrower.

☐ An owner of the property encumbered by the security instrument identified above.

☐ A title insurance company that satisfies the requirements of G.S. 45-81(1).

☐ An attorney licensed to practice law in the State of North Carolina that satisfies the requirements of G.S. 45-81(1).

☐ A bank, savings and loan association, savings bank, or credit union that satisfies the requirements of G.S. 45-81(1).

☐ A qualified lien holder as defined in G.S. 45-81(9).

Date: \_\_\_\_\_

Signature of person submitting the request"

(f) If the person who gives a lender a notice regarding future advances is (i) a title insurance company described in G.S. 45-81(1); (ii) an attorney, bank, savings and loan association, savings bank, or credit union described in G.S. 45-81(1), (iii) an owner as defined in G.S. 45-81(7), other than an owner who is also a borrower, or (iv) a qualified lien holder described in G.S. 45-81(9), then that person shall give a copy of the notice regarding future advances to the borrower accompanied by a notice that provides substantially as follows:

**"NOTICE TO BORROWER**

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

As permitted by North Carolina law, we are sending the (enclosed / attached / following / foregoing) Notice Regarding Future Advances to your lender. Subject to certain exceptions, the notice prevents any new credit advances you obtain under your equity line of credit from being secured by the mortgage or deed of trust that currently secures its repayment. Our reason for giving your lender the notice is to limit the amount secured by the mortgage or deed of trust that secures your equity line of credit and to prevent that amount from increasing.

When your lender receives our notice, your lender may elect to terminate your right and ability to obtain additional advances under your equity line of credit. However, termination of your right and ability to obtain additional advances will not



1            release you from liability for the account. You should contact your lender to  
2            determine whether you will be able to obtain additional credit advances from  
3            your lender.

4            If you have questions about this notice or our action, please contact (name of contact  
5            person or department) by calling us at (phone number) or writing to us at  
6            (mailing address).

7            (Name of insurance company, attorney, bank, savings and loan association, savings  
8            bank, credit union, owner, or qualified lien holder)".

9            **SECTION 25.** Article 9 of Chapter 45 of the General Statutes is amended by  
10          adding a new section to read as follows:

11          **"§ 45-82.4. Prepayment penalty.**

12            Except as provided in G.S. 24-9(c), no prepayment penalty may be charged with respect to  
13          an equity line of credit."

14          **SECTION 26.** G.S. 45-83 reads as rewritten:

15          **"§ 45-83. Future advances statute shall not apply.**

16            The provisions of Article 7 of this Chapter shall not apply to an equity line of credit or the  
17          equity line security instrument securing it, if the equity line security instrument shows on its  
18          face that it secures an equity line of credit governed by the provisions of this Article."

19          **SECTION 27.** G.S. 45-84 reads as rewritten:

20          **"§ 45-84. Article not exclusive.**

21            Except as otherwise provided in G.S. 45-83, the provisions of this Article are not exclusive;  
22          ~~and no mortgage or deed of trust which secures a line of credit or other obligation shall be~~  
23          ~~invalidated by failure to comply with the provisions of this Article.~~ exclusive. Nothing in this  
24          Article shall invalidate or overrule any rule of validity or priority applicable to any mortgage,  
25          deed of trust, or other security instrument failing to comply with the provisions of this Article. "

26          **SECTION 28.** G.S. 161-14.1 reads as rewritten:

27          **"§ 161-14.1. Recording subsequent entries as separate instruments.**

28            (a) As used in this section, the following terms mean:

29            ...

30            (3) Subsequent instrument. – Any instrument presented for registration that  
31            indicates in its title or within the first two pages of its text that it is intended  
32            or purports to modify, amend, supplement, assign, satisfy, terminate, revoke,  
33            or cancel a previously registered instrument. Examples of subsequent  
34            instruments include the ~~appointment or designation of a substitute trustee in~~  
35            ~~a deed of trust; an affidavit extending the life of a deed of trust; the~~  
36            ~~cancellation of a Notice of Inactive Hazardous Substance or Waste Disposal~~  
37            ~~Site registered pursuant to G.S. 130A-310.8(f); a record of satisfaction or~~  
38            ~~other instrument purporting to satisfy a security instrument registered~~  
39            ~~pursuant to G.S. 45-37 or G.S. 45-37.2; a notice of foreclosure registered~~  
40            ~~pursuant to G.S. 45-38; an assignment of a security instrument or lease; a~~  
41            ~~modification agreement; a release or partial release of property from the lien~~  
42            ~~of a security instrument; an assumption agreement; a subordination~~  
43            ~~agreement; an instrument terminating future optional advances registered~~  
44            ~~pursuant to G.S. 45-72; the revocation of a power of attorney; any~~  
45            ~~instrument authorized or directed by law to be indexed under the provisions~~  
46            ~~of this section; and any instrument for which the register of deeds is~~  
47            ~~authorized or directed by law to make a subsequent entry upon the margin of~~  
48            ~~the record of an original instrument.~~ following:

49            a.        The appointment or designation of a substitute trustee in a deed of  
50            trust.

- b. A corrective affidavit registered pursuant to G.S. 45-36.1.
- c. A lien maturity extension agreement or notice of maturity date registered pursuant to G.S. 45-36.1.
- d. A document of rescission registered pursuant to G.S. 45-36.6.
- e. The cancellation of a Notice of Inactive Hazardous Substance or Waste Disposal Site registered pursuant to G.S. 130A-310.8(f).
- f. A record of satisfaction or other instrument purporting to satisfy a security instrument registered pursuant to G.S. 45-37 or G.S. 45-37.2.
- g. A notice of foreclosure registered pursuant to G.S. 45-38.
- h. An assignment of a security instrument or lease.
- i. An amendment or modification agreement.
- j. A release or partial release of property from the lien of a security instrument, including a partial release registered pursuant to G.S. 45-36.22 or a deed of release or reconveyance.
- k. An obligation release registered pursuant to G.S. 45-36.23.
- l. An assumption agreement.
- m. A subordination agreement.
- n. An instrument terminating future optional advances registered pursuant to G.S. 45-72.
- o. A certificate of extension extending the period for advances under an equity line of credit registered pursuant to G.S. 45-82.1.
- p. A notice of extension relating to after-acquired property registered pursuant to G.S. 47-20.5.
- q. The revocation of a power of attorney.
- r. Any instrument authorized or directed by law to be indexed under the provisions of this section.
- s. Any instrument for which the register of deeds is authorized or directed by law to make a subsequent entry upon the margin of the record of an original instrument.

...."

**SECTION 29.** This act becomes effective October 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 707

Short Title: Deeds of Trust/Modernize Procedures.

(Public)

Sponsors: Representative Rhyne (Primary Sponsor).

For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Banking.

April 7, 2011

A BILL TO BE ENTITLED  
AN ACT TO MODERNIZE AND ENACT CERTAIN PROVISIONS REGARDING DEEDS  
OF TRUST, INCLUDING RELEASES, SHORT SALES, FUTURE ADVANCE  
PROVISION TERMINATIONS AND SATISFACTIONS, TERMINATIONS AND  
SATISFACTIONS FOR EQUITY LINE LIENS, RELEASE OF ANCILLARY  
DOCUMENTS, ELIMINATING TRUSTEE OF DEED OF TRUST AS NECESSARY  
PARTY FOR CERTAIN TRANSACTIONS AND LITIGATION, AND INDEXING OF  
SUBSEQUENT INSTRUMENTS RELATED THERETO.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-9 reads as rewritten:

"§ 24-9. Loans exempt from rate and fee limitations.

...

(c) The provisions of G.S. 24-1.2A, 24-11, and 24-11.1 shall not apply to equity lines of credit offered by banks. Except as provided in this subsection and notwithstanding any other provision of this Chapter or any other provision of State law, any bank may charge and collect from any borrower interest at any rate and fees and other charges in any amount that the borrower agrees to pay in connection with an equity line of credit. However, an equity line of credit made by a bank shall be subject to the following, to the extent otherwise applicable:

...

(3) Notwithstanding the limitation against prepayment penalties contained in ~~G.S. 45-81(e)~~, G.S. 45-82.4, a bank may charge and collect prepayment fees or penalties following the borrower's voluntary exercise of a right or option to repay all or any portion of the outstanding balance of a variable interest rate equity line of credit at a fixed interest rate over a specified period of time, subject to the following limitations:

...."

SECTION 2. G.S. 45-10 reads as rewritten:

"§ 45-10. Substitution of trustees in mortgages and deeds of trust.

(a) In addition to the rights and remedies now provided by law, the holders or owners of a majority in amount of the indebtedness, notes, bonds, or other instruments evidencing a promise or promises to pay money and secured by mortgages, deeds of trust, or other instruments conveying real property, or creating a lien thereon, may, in their discretion, substitute a trustee whether the trustee then named in the instrument is the original or a substituted trustee, trustee or a holder or owner of any or all of the obligations secured thereby,



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by the execution of a written document properly recorded pursuant to Chapter 47 of the North Carolina General Statutes.

...  
(c) If the trustee named in a deed of trust is also the beneficiary named in that deed of trust, the instrument shall be deemed to be a deed of trust, and any substitute trustee named under the authority of subsection (a) of this section shall succeed to all the rights, titles, authority, and duties of the trustee under the terms of the deed of trust.

SECTION 3. G.S. 45-36.4 reads as rewritten:

"§ 45-36.4. Definitions.

As used in this Article, the following terms mean:

...  
(1a) Borrower. – A person primarily liable for payment or performance of the obligation secured by the real property described in a security instrument.

(1b) Credit suspension directive. – A notification given to a secured creditor pursuant to G.S. 45-36.7A directing the secured creditor to suspend temporarily a borrower's right and ability to obtain additional credit advances in anticipation of the imminent sale of, or the imminent making of a new loan to be secured by, real property then encumbered by an existing security instrument when the anticipated transaction will involve either the satisfaction of the existing security instrument or the release of the real property from the lien of the existing security instrument.

...  
(5) ~~Entitled person. – A person liable for payment or performance of the obligation secured by the real property described in a security instrument, or the landowner.~~ A person who:

a. Is a borrower;

b. Is a landowner;

c. Has contracted to purchase real property encumbered by an existing security instrument;

d. Has made or has committed to make a loan that is secured or is to be secured by real property encumbered by an existing security instrument;

e. Is a title insurance company authorized pursuant to Article 26 of Chapter 58 of the General Statutes to issue title insurance policies in the State of North Carolina that has insured or has committed to insure title to real property encumbered by an existing security instrument;

f. Is the foreclosing trustee or the high bidder in a foreclosure sale involving real property encumbered by an existing security instrument;

g. Is a qualified lien holder; or

h. Is an attorney licensed to practice law in the State of North Carolina or a bank, savings and loan association, savings bank, or credit union, but only when:

1. The attorney, bank, savings and loan association, savings bank, or credit union is or will be responsible for the disbursement of funds in connection with the sale of, or a new loan secured by, property then encumbered by an existing security instrument; and

2. A requirement of the sale or new loan transaction is or will be that the property be conveyed or encumbered free and clear of the lien of the existing security instrument.

(7) Landowner. – A person that, before foreclosure, has the right of redemption in the real property described in a security instrument. The term does not include a person that holds only a lien on the real ~~property-property~~ or the trustee under a deed of trust.

(11) Payoff statement. – A document containing the information specified in ~~G.S. 45-36.7(d).~~ G.S. 45-36.7(e).

(12a) Qualified lien holder. – A person who holds or is the beneficiary of a security interest in or lien on real property encumbered by an existing security instrument, but only if that person's security interest in or lien on the real property arises from a mortgage or deed of trust that is subordinate in priority to the lien of the existing security instrument. The term does not include a trustee under a deed of trust.

(19a) Short-pay amount. – The sum necessary to obtain the release of all or a specific portion of the real property from the lien of a security instrument without satisfying the secured obligation in full.

(19b) Short-pay statement. – A document containing the information specified in G.S. 45-36.7(e1).

(23) Trustee. – The trustee or substitute then serving as such under the terms of a deed of trust."

SECTION 4. G.S. 45-36.6 reads as rewritten:

"§ 45-36.6. Document of rescission: effect; liability for wrongful recording.

(a) ~~In this section, "document of rescission" means a document stating that an identified satisfaction or affidavit of satisfaction of a security instrument was recorded erroneously or that a security instrument was satisfied of record erroneously, the secured obligation remains unsatisfied, and the security instrument remains in force.~~ Definitions. – The following definitions apply in this section:

(1) Document of rescission. – A document that rescinds either (i) a release that was recorded in error or (ii) the erroneous satisfaction of a security instrument.

(2) Release. – A document that either (i) releases property from the lien of a security instrument or (ii) indicates that an obligation is no longer secured by a security instrument.

(b) ~~If a person records a satisfaction or affidavit of satisfaction of a security instrument in error or if~~ If a release is recorded in error or a security instrument is erroneously satisfied of record-record, erroneously by any other means, the person or then the secured creditor or the person who caused the release to be recorded in error or the security instrument to be erroneously satisfied of record may execute and record a document of rescission. The document of rescission must be duly acknowledged before an officer authorized to make acknowledgments. Upon recording, the document of recession either (i) ~~rescinds an erroneously recorded~~ rescinds a release that was recorded in error and deprives the release of any effect or (ii) ~~satisfaction or affidavit and rescinds~~ the erroneous satisfaction of record of the security instrument and reinstates the security instrument.

(c) A recorded document of rescission has no effect on the rights of a person that:

- (1) Records an interest in the real property described in a security instrument after the recording of the ~~satisfaction or affidavit of satisfaction of the security instrument~~ a release that was recorded in error or the erroneous satisfaction of record of the security instrument ~~by other means~~ and before the recording of the document of rescission; and
- (2) Would otherwise have priority over or take free of the lien created by the security instrument as reinstated under Chapter 47 of the General Statutes.
- (d) A person that erroneously or wrongfully records a document of rescission is liable to any person injured thereby for the actual loss caused by the recording and reasonable attorneys' fees and costs.
- (e) A document is a document of rescission if it does all of the following:
- (1) Identifies the related security instrument, including the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.
- (2) If the document of rescission is intended to rescind a release that was recorded in error, (i) identifies the release that was recorded in error by its recording data and the office in which it is recorded, (ii) states that the release was recorded in error, and (iii) states that the release is rescinded.
- (3) If the document of rescission is intended to rescind the erroneous satisfaction of record of a security instrument, (i) identifies the satisfaction document that was recorded in error by its recording data and the office in which it is recorded, (ii) states that the security instrument was erroneously satisfied of record, and (iii) states that the satisfaction of the security instrument is rescinded and the security instrument reinstated.
- (4) States that the person signing the document of rescission is either (i) the secured creditor or (ii) the person who caused the release to be recorded in error or the security instrument to be erroneously satisfied of record.
- (f) The register of deeds shall accept a document of rescission for recording unless one of the following applies:
- (1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.
- (2) The required recording fee is not paid.
- (3) The document is (i) not signed by either the secured creditor or the person who caused the release to be recorded in error or the security instrument to be erroneously satisfied of record or (ii) acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any document of rescission or (ii) the authority of the person executing any document of rescission to do so.
- (g) No particular phrasing is required for a document of rescission that rescinds a release that was recorded in error. The following form, when properly completed, is sufficient to satisfy the requirements of subsection (e) of this section:

"DOCUMENT OF RESCISSION

(G.S. 45-36.6(e))

The security instrument to which this Document of Rescission relates is identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

This Document of Rescission rescinds the release recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina. The release was recorded in error, is hereby rescinded, and is declared to be of no effect.

The undersigned is: (check applicable box)

\_\_\_\_\_ The secured creditor in the security instrument identified above.

\_\_\_\_\_ The person who caused the release to be recorded in error.

Date: \_\_\_\_\_

Signature of secured creditor or person who caused the release to be recorded in error

[Acknowledgment before officer authorized to take acknowledgments]"

(h) No particular phrasing is required for a document of rescission that rescinds the erroneous satisfaction of a security instrument. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.6(e):

**"DOCUMENT OF RESCISSION**

**(G.S. 45-36.6(e))**

The security instrument to which this Document of Rescission relates is identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

The security instrument was erroneously satisfied of record by that satisfaction document recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina. The satisfaction of the security instrument is hereby rescinded, the security instrument is reinstated, and the security instrument is declared to be in full force and effect.

The undersigned is: (check applicable box)

\_\_\_\_\_ The secured creditor in the security instrument identified above.

\_\_\_\_\_ The person who caused the security instrument to be satisfied of record erroneously.

Date: \_\_\_\_\_

Signature of secured creditor or person who caused the security instrument to be satisfied of record erroneously

[Acknowledgment before officer authorized to take acknowledgments]"

**SECTION 5. G.S. 45-36.7 reads as rewritten:**

**"§ 45-36.7. Payoff and short-pay statement; statements; request and content.**

**(a) An entitled person, or an agent authorized by an entitled person to request a payoff statement, or a short-pay statement, may give to the secured creditor a notification requesting a**

1 ~~payoff statement for a specified payoff date not more than 30 days after the notification is~~  
2 ~~given, or a short-pay statement.~~ The notification must contain all of the following:

3 ...

4 (6) Whether the request is for a payoff statement or a short-pay statement.

5 (7) If the request is for a payoff statement, the specified payoff date, which may  
6 not be more than 30 days after the notification is given.

7 (8) If the request is for a short-pay statement, (i) the specified short-pay date,  
8 which may not be more than 30 days after the notification is given, (ii) a  
9 clear statement as to whether the request is for the short-pay amount required  
10 to release all of the real property described in the security instrument or only  
11 a portion of that property, and (iii) if the request is for the short-pay amount  
12 required to release only a portion of the real property described in the  
13 security instrument, a description of the specific real property to be released  
14 upon payment of the short-pay amount.

15 (b) If a notification under subsection (a) of this section directs the secured creditor to  
16 send the payoff statement or a short-pay statement to a person identified as an authorized agent  
17 of the entitled person, the secured creditor must send the statement to the agent, unless the  
18 secured creditor knows that the entitled person has not authorized the request.

19 (c) A person who gives to a secured creditor a notification requesting a payoff  
20 statement or a short-pay statement thereby represents that the person is an entitled person or the  
21 authorized agent of an entitled person. A secured creditor may rely on that representation in  
22 providing a payoff statement or a short-pay statement unless the secured creditor knows that the  
23 requesting person is neither an entitled person nor the authorized agent of an entitled person. A  
24 secured creditor has no duty to make inquiry as to whether, or to verify that, the person  
25 requesting a payoff statement or a short-pay statement is an entitled person or the authorized  
26 agent of an entitled person.

27 (d) Within 10 days after the effective date of a notification that complies with  
28 subsection (a) of this section, the secured creditor shall issue a payoff statement or a short-pay  
29 statement and send it as directed pursuant to subdivision (a)(3) of this section in the manner  
30 prescribed in G.S. 45-36.5 for giving a notification. A secured creditor that sends a payoff  
31 statement or a short-pay statement to the entitled person or the authorized agent may not claim  
32 that the notification did not satisfy subsection (a) of this section. If the person to whom the  
33 notification is given once held an interest in the secured obligation but has since assigned that  
34 interest, the person need not send a payoff statement or a short-pay statement but shall give (i) a  
35 notification of the assignment to the person to whom the payoff statement or a short-pay  
36 statement otherwise would have been sent, providing the name and address of the assignee, or  
37 (ii) a notification to the person to whom the payoff statement or a short-pay statement  
38 otherwise would have been sent, stating that the recipient claims no interest in the security  
39 instrument or the secured obligation, that the secured obligation was assigned, but that the  
40 identity and address of the assignee is not known.

41 ...

42 (e1) A short-pay statement must contain:

43 (1) The information reasonably necessary to calculate the short-pay amount as  
44 of the requested short-pay date, including the per diem interest amount, if  
45 any;

46 (2) The payment cutoff time, if any, the address or place where payment of the  
47 short-pay amount must be made, and any limitation as to the authorized  
48 method of payment;

49 (3) Any conditions precedent that must be satisfied to obtain the release of the  
50 property identified in the request for the short-pay statement from the lien of  
51 the security instrument; and



(4) Confirmation of the specific real property to be released from the lien of the security instrument upon receipt of the timely payment of the short-pay amount and satisfaction of the other conditions precedent to the release of that property.

Unless the short-pay statement expressly provides otherwise, all persons liable for payment or performance of the obligations secured by the security instrument will remain liable for the secured obligations to the extent the short-pay amount is not sufficient to satisfy the secured obligations in full.

(f) A payoff statement or a short-pay statement may contain the amount of any fees authorized under this section not included in the payoff amount. A secured creditor may require the payment in full of any fees authorized under this section before issuing a payoff statement.

(g) A secured creditor may not qualify a payoff amount or state that it is subject to change before the payoff date unless the payoff statement provides information sufficient to permit the entitled person or the person's authorized agent to request an updated payoff amount at no charge and to obtain that updated payoff amount during the secured creditor's normal business hours on the payoff date or the immediately preceding business day. A secured creditor may not qualify a short-pay amount or state that it is subject to change before the short-pay date unless the short-pay statement provides information sufficient to permit the entitled person or the person's authorized agent to request an updated short-pay amount at no charge and to obtain that updated short-pay amount during the secured creditor's normal business hours on the short-pay date or the immediately preceding business day.

(h) A secured creditor must provide upon request one payoff statement or one short-pay statement without charge during any six-month period. A secured creditor may charge a fee of twenty-five dollars (\$25.00) for each additional payoff statement and one hundred dollars (\$100.00) for each additional short-pay statement requested during that six-month period. However, a secured creditor may not charge a fee for providing an updated payoff amount or short-pay amount under subsection (f)-(g) of this section or a corrected payoff statement or short-pay statement under G.S. 45-36.8(a).

(i) Unless the security instrument provides otherwise, a secured creditor is not required to send a payoff statement or a short-pay statement by means other than first-class mail. If the creditor agrees to send a statement by another means, it may charge a reasonable fee for complying with the requested manner of delivery.

(j) Except as otherwise provided in G.S. 45-36.12, if a secured creditor to which a notification has been given pursuant to subsection (a) of this section does not send a timely payoff statement that substantially complies with subsection (d)-(e) of this section, section or a short-pay statement that substantially complies with subsection (e1) of this section, the creditor is liable to the entitled person for any actual damages caused by the failure, but not punitive damages. A creditor that does not pay the damages provided in this subsection within 30 days after receipt of a notification demanding payment shall also be liable for reasonable attorneys' fees and costs.

(k) This section does not apply unless (i) the notification requesting a payoff statement is given on or after October 1, 2005, and (ii) the notification requesting a short-pay statement is given on or after [insert effective date of amendment)]."

**SECTION 6.** Article 4 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

**"§ 45-36.7A. Credit suspension directives.**

(a) A credit suspension directive may be given to a secured creditor by any of the following:

(1) Any borrower.

(2) The legal representative of any borrower.

(3) The attorney for any borrower.

(4) An attorney licensed to practice law in the State of North Carolina or a bank, savings and loan association, savings bank, or credit union, but only when (i) the attorney, bank, savings and loan association, savings bank, or credit union is responsible for the disbursement of funds in connection with the sale of, or a new loan secured by, real property then encumbered by an existing security instrument; (ii) a requirement of the sale or new loan transaction is that the property be conveyed or encumbered free and clear of the lien of the existing security instrument; and (iii) the credit suspension directive is given to the secured creditor contemporaneously with a notification requesting a payoff statement or a short-pay statement in anticipation of and in preparation for the imminent settlement of the sale or new loan transaction.

(b) A credit suspension directive must contain all of the following:

(1) The name and authority of the person giving the directive.

(2) Sufficient information to enable the creditor to identify the secured obligation, the identity of the borrower, and the real property encumbered by the security interest.

(3) The specified payoff date, which may not be more than 30 days after the notification is given.

(4) A clear and unambiguous directive to the secured creditor to suspend through and including the payoff date the borrower's right and ability to obtain any additional credit advances which, if made, would be secured by the security instrument.

(5) If the person who gives a credit suspension directive to a secured creditor is a person listed in subdivision (a)(4) of this section, that person shall also (i) give a copy of the credit suspension directive to the borrower and (ii) provide an additional notification to the borrower that provides substantially as follows:

#### "NOTICE TO BORROWER"

You have a loan with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We will be responsible for disbursing funds in connection with a scheduled sale of the property or a new loan that will be secured by the property. A requirement of the sale or new loan transaction is that the property be conveyed or encumbered free and clear of the existing mortgage or deed of trust that secures your loan.

As permitted by North Carolina law, we are sending the (enclosed/attached/following/foregoing) notification to your lender directing that it temporarily suspend your right and ability to obtain credit advances in anticipation of the settlement of the sale or loan. The notification accompanies a request asking the amount that must be sent to your lender to pay your loan in full and cancel the mortgage or deed of trust that secures your loan (or, if your loan will not be paid in full, to release of the property from the mortgage or deed of trust that secures your loan). The information your lender provides us may be inaccurate if you obtain additional credit advances before the scheduled settlement date of the sale or new loan transaction.

1 When your lender receives our directive, it will temporarily suspend your right and  
2 ability to obtain credit advances. The period of suspension will continue through  
3 and including (anticipated payoff date), the anticipated payoff date, regardless of  
4 whether the settlement of the sale or new loan transaction occurs as scheduled. The  
5 suspension will not affect your responsibility to continue making payments to your  
6 lender during the suspension period. You should not attempt to obtain additional  
7 credit advances from your lender during the suspension period.

8  
9 You may instruct us at any time during the suspension period to withdraw the credit  
10 suspension directive we are sending your lender, and we are required by law to  
11 comply. However, if you do so, you may jeopardize the settlement of the sale or  
12 new loan transaction because the payoff or release information provided by your  
13 lender may become inaccurate.

14  
15 When proceeds from a sale or new loan transaction are used to pay an existing loan  
16 in full, lenders typically close the loan account, thereby terminating their borrower's  
17 ability to obtain additional credit advances. You should contact your lender to  
18 determine whether you will be able to obtain additional credit advances after the  
19 settlement of the sale or new loan transaction.

20  
21 If you have questions about this notice or our action, please contact (name of  
22 contact person or department) by calling us at (phone number) or writing to us at  
23 (mailing address).

24  
25 (Name of attorney, bank, savings and loan association, savings bank, or credit  
26 union)"

27 (6) Upon receipt of a credit suspension directive, a secured creditor shall:

28 a. Subject to subsection (e) of this section, suspend the borrower's right  
29 and ability to obtain credit advances which, if made, would be  
30 secured by the security instrument. The period of suspension shall  
31 continue through and including the payoff date stated in the credit  
32 suspension directive.

33 b. Apply all sums subsequently paid during the period of suspension by  
34 or on behalf of the borrower in connection with the secured  
35 obligation, including sums paid to the secured creditor by a person  
36 responsible for the disbursement of funds in connection with the sale  
37 of, or a new loan secured by, real property then encumbered by a  
38 security instrument, to the satisfaction of the secured obligation,  
39 regardless of whether the amount or amounts paid are sufficient to  
40 pay the secured obligation and other sums secured by the security  
41 instrument in full. Sums paid to the secured creditor in excess of the  
42 amount required to pay the secured obligation and other sums  
43 secured by the security instrument in full shall be refunded by the  
44 secured creditor to or at the direction of the person who paid the  
45 excess amount.

46 (7) Notwithstanding a secured creditor's receipt of a credit suspension directive,  
47 a secured creditor may do any of the following, all of which shall be secured  
48 by the security instrument:

49 a. The secured creditor may advance sums and incur expenses (i) for  
50 insurance, taxes, and assessments, (ii) to protect the secured creditor's  
51 interest under the security instrument, (iii) to preserve and protect the

1 value or condition of the real property encumbered by the security  
2 instrument, or to complete the construction of improvements on the  
3 real property encumbered by the security instrument.

4 b. The secured creditor may permit the borrower to obtain a credit  
5 advance, but only if the credit advance was initiated or approved  
6 before the secured creditor received the credit suspension directive.

7 (8) If the person giving a credit suspension directive is not a borrower, then the  
8 person giving a credit suspension directive shall be conclusively deemed the  
9 borrower's agent acting with full authority from the borrower to issue the  
10 credit suspension directive on the borrower's behalf.

11 (9) A credit suspension directive may be withdrawn at any time by the person  
12 who gave the directive. If the person who gives a credit suspension directive  
13 to a secured creditor is a person listed in subdivision (a)(4) of this section,  
14 that person shall promptly notify the secured creditor that the credit  
15 suspension directive is withdrawn (i) if instructed by the borrower at any  
16 time to withdraw the directive or (ii) if the anticipated sale or new loan  
17 transaction is cancelled. Upon receipt of a notice from the person who  
18 originally gave the credit suspension directive that the credit suspension  
19 directive is withdrawn, the secured creditor may reinstate the borrower's  
20 right and ability to obtain credit advances."

21 SECTION 7. G.S. 45-36.8 reads as rewritten:

22 **"§ 45-36.8. Understated payoff statement:~~or short-pay statement:~~ correction; effect.**

23 (a) If a secured creditor determines that the payoff amount it provided in a payoff  
24 statement or the short-pay amount it provided in a short-pay statement was understated, the  
25 creditor may send a corrected payoff ~~statement~~ or short-pay statement. If the entitled person or  
26 the person's authorized agent receives and has a reasonable opportunity to act upon a corrected  
27 payoff statement or short-pay statement before making payment, the corrected statement  
28 supersedes an earlier statement.

29 (b) A secured creditor that sends a payoff statement containing an understated payoff  
30 amount or a short-pay statement containing an understated short-pay amount may not deny the  
31 accuracy of the payoff amount or short-pay amount as against any person that reasonably and  
32 detrimentally relies upon the understated payoff ~~amount~~ amount or short-pay amount.

33 (c) This Article does not:

34 (1) Affect the right of a secured creditor to recover any sum that it did not  
35 include in a payoff amount or a short-pay amount from any person liable for  
36 payment of the secured obligation; or

37 (2) Limit any claim or defense that a person liable for payment of a secured  
38 obligation may have under law other than this Article."

39 SECTION 8. G.S. 45-36.9 reads as rewritten:

40 **"§ 45-36.9. Secured creditor to submit satisfaction for recording; liability for failure.**

41 (a) A secured creditor shall submit for recording a satisfaction of a security instrument  
42 within 30 days after the creditor receives full payment or performance of the secured  
43 obligation. If a security instrument secures a line of credit or future advances, the secured  
44 obligation is fully performed only if, in addition to full payment, the secured creditor has  
45 received (i) a notification requesting the creditor to terminate the line of ~~credit~~ credit, (ii) a  
46 credit suspension directive, or (iii) a notification containing a ~~a~~ clear and unambiguous  
47 statement sufficient to terminate the effectiveness of the provision for future advances in the  
48 security instrument-instrument including, but not limited to, a request to terminate an equity  
49 line of credit given pursuant to G.S. 45-82.2 or a notice regarding future advances given  
50 pursuant to G.S. 45-82.3.

(a) If the conditions stated in a short-pay statement are fully satisfied on or before the short-pay date stated in the short-pay statement, including the payment in full of the short-pay amount and the satisfaction of all other conditions precedent to the release set forth in the short-pay statement, then within 30 days after the short-pay date the secured creditor shall release the property which is the subject of the short-pay statement from the lien of the security instrument. The release of the property may be accomplished by a deed of release, an instrument of full or partial reconveyance, a partial release recorded pursuant to G.S. 45-36.22, the satisfaction of record of the security instrument by any of the means authorized in G.S. 45-37(a), or by any other lawful means.

...."

SECTION 9. Article 4 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

**"§ 45-36.22. Partial release: content and effect; form.**

(a) A document is a partial release if it does all of the following:

- (1) Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.
- (2) States that the person signing the partial release is the secured creditor or, if the security instrument is a deed of trust, that the person or persons signing the partial release is or are the secured creditor, the trustee, or both the secured creditor and the trustee.
- (3) Contains language releasing property or an interest in property from the lien of the security instrument.
- (4) Is signed by the secured creditor or, if the security instrument is a deed of trust, by the secured creditor, the trustee, or both the secured creditor and the trustee, and acknowledged as required by law for a conveyance of an interest in real property.

(b) The register of deeds shall accept a partial release for recording unless one of the following applies:

- (1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.
- (2) The required recording fee is not paid.
- (3) The document is not signed by the secured creditor or, if the security instrument is a deed of trust, by the secured creditor, the trustee, or both the secured creditor and the trustee, and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning the truth of the matters stated in any partial release, or the authority of the person executing any partial release to do so.

(c) Upon recording, a partial release shall release from the lien of the security instrument the property or interest in property as is expressly described and released. With respect only to the specific property or interest in property identified and released by a partial release, the partial release shall (i) operate and have the same effect as a duly executed and recorded deed of release or reconveyance of the property or interest in the property; (ii) release and discharge all of the secured creditor's interest in the property or property interest arising from the security instrument; and (iii) if the security instrument is a deed of trust, release and discharge all the interest of the trustee in the property or property interest arising from the deed of trust. The security instrument shall otherwise remain in full force and effect, and the remainder of the property and interests in property described in and encumbered by the security instrument shall remain subject to the lien of the security instrument.

(d) The recording of a partial release does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

(e) The provisions of this section are not exclusive. Property and interests in property may be released from the lien of a security instrument by methods other than the filing of a partial release.

(f) Unless the deed of trust provides otherwise, the trustee in a deed of trust is not a necessary party to a partial release.

(g) No particular phrasing is required for a partial release. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.22(a):

"PARTIAL RELEASE

(G.S. 45-36.22)

The security instrument that is the subject of this Partial Release is identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of

Deeds for \_\_\_\_\_ County, North Carolina.

The person or persons signing this Partial Release is/are: (check appropriate box)

☐ The secured creditor.

☐ The trustee or substitute trustee.

☐ The secured creditor and the trustee or substitute trustee.

The following described property or interest in property (and no other) is released from the lien of the security instrument: (identify legal description of property or interest in property to be released)

Date: \_\_\_\_\_

Signature(s) of secured creditor  
and/or trustee

[Acknowledgment before officer authorized to take acknowledgments]"

**SECTION 10.** Article 4 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

**"§ 45-36.23. Obligation release: content and effect.**

(a) A document is an obligation release if it does all of the following:

(1) Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.

(2) States that the person signing the obligation release is the owner and holder of the obligation or obligations to be released.

(3) Identifies one or more of the specific obligations that are secured by the security instrument and contains language confirming that, with respect to each such secured obligation, the obligation is no longer secured by the security instrument.

(4) Is signed by the owner and holder of the specific obligation or obligations to be released and acknowledged as required by law for a conveyance of an interest in real property.

(b) The register of deeds shall accept an obligation release for recording unless one of the following applies:

(1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.

(2) The required recording fee is not paid.

(3) The document is not signed by the owner and holder of the obligation or obligations to be released and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any obligation release or (ii) the authority of the person executing any obligation release to do so.

(c) From and after the date an obligation release is recorded, the obligation or obligations specifically identified and released in the obligation release (and only such obligation or obligations) shall no longer be secured by the security instrument, without regard to whether the obligation has been paid in full and satisfied. Unless the obligation release states that the secured obligation has been paid in full and satisfied, the recording of an obligation release does not by itself extinguish any liability of a person for payment or performance of the obligation or obligations released.

(d) Secured obligations that are not specifically identified and released in an obligation release remain secured by the security instrument, and the recording of an obligation release does not extinguish any liability of a person for payment or performance of the remaining secured obligation or obligations. The recording of an obligation release has no effect on the lien of the security instrument on the real property described in the security instrument.

(e) Unless the deed of trust provides otherwise, the trustee in a deed of trust is not a necessary party to an obligation release.

(f) No particular phrasing is required for an obligation release. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.23(a):

"OBLIGATION RELEASE

(G.S. 45-36.23)

The undersigned is now the owner and holder of the obligation(s) to be released by this instrument. As used in this release, the term "Security Instrument" refers to the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of

Deeds for \_\_\_\_\_ County, North Carolina.

Secured obligations that are no longer secured. Each of the following obligations is no longer secured by the Security Instrument, without regard to whether the obligation has been paid in full and satisfied: (identify with particularity each secured obligation that will no longer be secured by the Security Instrument)

(Optional provision which may be used in addition to or in lieu of the paragraph above:)

Secured obligations that have been paid in full and satisfied. Each of the following obligations has been paid in full and satisfied and is consequently no longer secured by the Security Instrument: (identify with particularity each secured obligation that has been paid in full and satisfied and is consequently no longer secured by the Security Instrument)

Date: \_\_\_\_\_

Signature of owner and holder of  
the obligation(s) to be released

[Acknowledgment before officer authorized to take acknowledgments]".

SECTION 11. Article 4 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

**"§ 45-36.24. Expiration of lien of security instrument.**

**(a) Maturity Date. – For purposes of this section:**

**(1) If a secured obligation is for the payment of money:**

**a. If all remaining sums owing on the secured obligation are due and payable in full on a date specified in the secured obligation, the maturity date of the secured obligation is the date so specified. If no such date is specified in the secured obligation, the maturity date of the secured obligation is the last date a payment on the secured obligation is due and payable under the terms of the secured obligation.**

**b. If all remaining sums owing on the secured obligation are due and payable in full on demand or on a date specified in the secured obligation, whichever first occurs, the maturity date of the secured obligation is the date so specified. If all sums owing on the secured obligation are due and payable in full on demand and no alternative date is specified in the secured obligation for payment in full, the maturity date of the secured obligation is the date of the secured obligation.**

**c. The maturity date of the secured obligation is "stated" in a security instrument if (i) the maturity date of the secured obligation is specified as a date certain in the security instrument, (ii) the last date a payment on the secured obligation is due and payable under the terms of the secured obligation is specified in the security instrument, or (iii) the maturity date of the secured obligation or the last date a payment on the secured obligation is due and payable under the terms of the secured obligation can be ascertained or determined from information contained in the security instrument, such as, for example, from a payment schedule contained in the security instrument.**

**(2) If the secured obligation is for the performance of some obligation other than the payment of money:**

**a. If the secured obligation is required to be performed by a date specified in the secured obligation, the maturity date of the secured obligation is the date so specified.**

**b. If the obligation is to be performed on demand or before a date specified in the secured obligation, whichever first occurs, the maturity date of the secured obligation is the date so specified. If the obligation is to be performed on demand and no alternative date for performance is specified in the secured obligation, the maturity date of the secured obligation is the date of the secured obligation.**

**c. The maturity date of the secured obligation is "stated" in a security instrument if (i) the maturity date of the secured obligation is specified as a date certain in the security instrument or (ii) the maturity date of the secured obligation can be ascertained or determined from information contained in the security instrument.**



(b) Automatic Lien Expiration. – Except as provided in subsection (g) of this section, unless the lien of a security instrument that has been extended in the manner prescribed in subsection (c), (d), or (e) of this section, the security instrument has been foreclosed, or the security instrument has been satisfied of record pursuant to G.S. 45-37, the lien of a security instrument automatically expires, and the security instrument is conclusively deemed satisfied of record pursuant to G.S. 45-37, at the earliest of the following times:

(1) If the security instrument was first recorded before the date this section becomes law:

- a. If the maturity date of the secured obligation is stated in the security instrument, 15 years after the maturity date.
- b. If the maturity date is not stated in the security instrument, 35 years after the date the security instrument was recorded in the office of the register of deeds or [the date that is 35 years from the effective date of this section], whichever is later.
- c. Without regard to whether the maturity date of the secured obligation is stated in the security instrument, 15 years from whichever of the following occurs last:
  1. The date when the conditions of the security instrument were required by its terms to have been performed.
  2. The date of maturity of the last installment of debt or interest secured thereby.
  3. The date an affidavit or separate instrument was recorded pursuant to the provisions of G.S. 45-37(b), if any such affidavit or separate instrument was recorded before [the effective date of this section] and before the lien of the security instrument expired.

(2) If the security instrument was first recorded on or after [the effective date of this section]:

- a. If the maturity date of the secured obligation is stated in the security instrument, 15 years after the maturity date.
- b. If the maturity date of the secured obligation is not stated in the security instrument, 35 years after the date the security instrument was recorded in the office of the register of deeds or [the date that is 35 years from the effective date of this section], whichever is later.

(c) Methods To Extend a Lien. – The lien of a recorded security instrument may be extended one or more times by recording (i) a lien maturity extension agreement or (ii) a notice of maturity date. If more than one lien maturity extension agreement or notice of maturity date is recorded, the most recently recorded lien maturity extension agreement or notice of maturity date controls in determining when the lien of a security instrument expires. A lien maturity extension agreement or notice of maturity date is ineffective unless recorded before the lien expires. The lien of the original security instrument may not be extended to a date more than 50 years after the date the security instrument was originally recorded in the office of the register of deeds without the written agreement of the then owner of the property encumbered by the lien of the security instrument.

(d) Lien Maturity Extension Agreement. –

- (1) The lien of a recorded security instrument may be extended to a date specified in a lien maturity extension agreement, provided the lien maturity extension agreement is recorded before the lien expires. When a lien maturity extension agreement has been duly recorded, the lien of the security instrument will expire on the date specified in the lien maturity extension agreement.

- (2) A document (including any document that modifies, amends, or restates a security instrument) is a lien maturity extension agreement if it does all of the following:
- a. Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.
  - b. States the date to which the lien of the security instrument is extended.
  - c. Is signed by the secured creditor and the then owner of the property encumbered by the lien of the security instrument, and acknowledged as required by law for a conveyance of an interest in real property.
- (3) No particular phrasing is required for a lien maturity extension agreement. The following form, when properly completed, is sufficient to satisfy the requirements for a lien maturity extension agreement:

"LIEN MATURITY EXTENSION AGREEMENT

(G.S. 45-36.24(d))

\_\_\_\_\_ is now the secured creditor under the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

\_\_\_\_\_ is now the owner of the real property encumbered by the lien of the security instrument.

Pursuant to G.S. 45-36.24(d), the lien of the security instrument is extended to and including \_\_\_\_\_ (specify date).

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Current Owner  
of Real Property

\_\_\_\_\_  
Signature of Secured Creditor

[Acknowledgments before officer authorized to take acknowledgments]"

(e) Notice of Maturity Date. –

- (1) The lien of a recorded security instrument may be extended by a notice of maturity date, provided the notice of maturity date is recorded before the lien expires.
- (2) When a notice of maturity date signed only by the secured creditor has been duly recorded, the lien of the security instrument will expire at the earliest of the following times: (i) 15 years after the maturity of the secured obligation as stated in the notice of maturity date or (ii) 50 years after the date the security instrument was originally recorded in the office of the register of deeds. A document signed only by the secured creditor is a notice of maturity date if it does all of the following:
  - a. Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.

- b. States that the person signing the notice of maturity date is the secured creditor.
- c. States the maturity date of the secured obligation.
- d. Is signed by the secured creditor, and acknowledged as required by law for a conveyance of an interest in real property.
- (3) When a notice of maturity date signed by the secured creditor and by the then owner of the property encumbered by the lien of the security instrument has been duly recorded, the lien of the security instrument will expire 15 years after the maturity date of the secured obligation as stated in the notice of maturity. A document (including any document that modifies, amends, or restates a security instrument) signed by the secured creditor and by the then owner of the property encumbered by the lien of the security instrument is a notice of maturity date if it:
- a. Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.
- b. States the maturity date of the secured obligation.
- c. Is signed by the secured creditor and the then owner of the property encumbered by the lien of the security instrument, and acknowledged as required by law for a conveyance of an interest in real property.
- (4) No particular phrasing is required for a notice of maturity date. The following form, when properly completed, is sufficient to satisfy the requirements for a notice of maturity date signed only by the secured creditor:

"NOTICE OF MATURITY DATE

(G.S. 45-36.24(e))

The undersigned is now the secured creditor under the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

The maturity date of the secured obligation is \_\_\_\_\_ (specify date).

Date: \_\_\_\_\_

Signature of Secured Creditor

[Acknowledgment before officer authorized to take acknowledgments]"

(f) Exception. – The register of deeds shall accept a lien maturity extension agreement or a notice of maturity date for recording and index the document as a subsequent instrument in accordance with G.S. 161-14.1, unless one of the following applies:

- (1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.
- (2) The required recording fee is not paid.
- (3) The document is not signed and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be

1           required to verify or make inquiry concerning (i) the truth of the matters  
2           stated in the document, (ii) whether the parties to the document are in fact  
3           the secured creditor and the then owner of the real property encumbered by  
4           the lien of the security instrument, or (iii) the authority of any person  
5           executing the document to do so.

6           (g) Foreclosure Proceedings. – No proceeding may be commenced to foreclose the lien  
7           of a security instrument unless the proceeding is commenced prior to the date on which the lien  
8           of the security instrument expires. However, if a proceeding to foreclose the lien of a security  
9           instrument is commenced before the lien of the security instrument expires, the lien created by  
10           the security instrument shall continue until final disposition of the proceeding. This provision  
11           shall not be construed as extending the lien or the right to bring or maintain any action for  
12           which a shorter period may be provided by law.

13           (h) No Shortening of Lien Without Secured Creditor's Consent. – Subject to the  
14           provisions of G.S. 45-37, the duration of the lien of a security instrument may not be shortened  
15           without the consent of the secured creditor.

16           (i) No Release or Satisfaction Necessary. – No release, satisfaction, or other instrument  
17           is necessary to discharge the lien of a security instrument that has expired; however, nothing in  
18           this section shall be construed as affecting or preventing the execution and recordation of any  
19           such release, satisfaction, or other document.

20           (j) Trustee in a Deed of Trust. – For purposes of this section, the trustee or substitute  
21           trustee in a deed of trust (i) shall not be considered the owner of the property encumbered by  
22           the lien of the deed of trust and (ii) shall not be a necessary party to a lien maturity extension  
23           agreement or notice of maturity date.

24           (k) Applicability. – This section applies to all security instruments, whether recorded  
25           before, on, or after the effective date of this section, except the following:

26           (1) Any security instrument securing the payment of money or securing the  
27           performance of any other obligation or obligations conclusively presumed to  
28           have been fully paid and performed pursuant to the provisions of  
29           G.S. 45-37(b) prior to [the effective date of this section].

30           (2) Any security instrument made or given by any railroad company, or any  
31           agreement of conditional sale, equipment trust agreement, lease, chattel  
32           mortgage or other instrument relating to the sale, purchase or lease of  
33           railroad equipment or rolling stock, or of other personal property."

34           **SECTION 12. G.S. 45-37(b) reads as rewritten:**

35           **"§ 45-37. Satisfaction of record of security instruments.**

36           ...  
37           (b) It shall be conclusively presumed that the conditions of any security instrument  
38           recorded before [the effective date of the amendment] securing the payment of money or  
39           securing the performance of any other obligation or obligations have been complied with or the  
40           debts secured thereby paid or obligations performed, as against creditors or purchasers for  
41           valuable consideration from the mortgagor or grantor, from and after the expiration of 15 years  
42           from whichever of the following occurs last:

43           (1) The date when the conditions of the security instrument were required by its  
44           terms to have been performed, or

45           (2) The date of maturity of the last installment of debt or interest secured  
46           thereby;

47           provided that on or before [the effective date of the amendment] and before the lien has expired  
48           pursuant to this subsection, the holder of the indebtedness secured by the security instrument or  
49           party secured by any provision thereof may file an affidavit with the register of deeds which  
50           affidavit shall specifically state:

51           (1) The amount of debt unpaid, which is secured by the security instrument; or

(2) In what respect any other condition thereof shall not have been complied with; or  
may record a separate instrument signed by the secured creditor and witnessed by the register of deeds stating:

(1) Any payments that have been made on the indebtedness or other obligation secured by the security instrument including the date and amount of payments and

(2) The amount still due or obligations not performed under the security instrument.

The effect of the filing of the affidavit or the recording of a separate instrument made as herein provided shall be to postpone the effective date of the conclusive presumption of satisfaction to a date 15 years from the filing of the affidavit or from the recording of the separate instrument. There shall be only one postponement of the effective date of the conclusive presumption provided for herein. The register of deeds shall record and index the affidavit provided for herein or the separate instrument made as herein provided as a subsequent instrument in accordance with G.S. 161-14.1. This subsection shall not apply to any security instrument made or given by any railroad company, or to any agreement of conditional sale, equipment trust agreement, lease, chattel mortgage or other instrument relating to the sale, purchase or lease of railroad equipment or rolling stock, or of other personal property.

The lien of any security instrument that secured the payment of money or the performance of any other obligation or obligations and that was conclusively presumed to have been fully paid and performed prior to [the effective date of the amendment] pursuant to the provisions of this subsection is conclusively deemed to have expired and shall be of no further force or effect. No release, satisfaction, or other instrument is necessary to discharge the lien of a security instrument that has expired; however, nothing in this section shall be construed as affecting or preventing the execution and recordation of any such release, satisfaction, or other document.

This subsection shall apply only to security instruments securing the payment of money or securing the performance of any other obligation or obligations that were conclusively presumed pursuant to this subsection to have been fully paid and performed prior to [the effective date of this section]. All other security instruments shall be subject to the provisions of G.S. 45-36.24."

SECTION 13. G.S. 45-37.2 reads as rewritten:

"§ 45-37.2. Recording satisfactions of and other documents relating to security instruments.

(a) ~~When a satisfaction document, affidavit of satisfaction, or trustee's satisfaction is recorded pursuant to G.S. 45-37(a)(7), the~~ The register of deeds shall record and index the instrument following instruments in accordance with G.S. 161-14.1. G.S. 161-14.1:

(1) A substitution of trustee.

(2) A document of rescission recorded pursuant to G.S. 45-36.6.

(3) A deed of release or reconveyance.

(4) A partial release recorded pursuant to G.S. 45-36.22.

(5) An obligation release recorded pursuant to G.S. 45-36.23.

(6) A satisfaction document, affidavit of satisfaction, or trustee's satisfaction recorded pursuant to G.S. 45-37(a)(7).

(7) A lien maturity extension agreement or notice of maturity date recorded pursuant to G.S. 45-36.24.

No fee shall be charged by the register of deeds for recording a satisfaction document, affidavit of satisfaction, or a trustee's satisfaction.

(b) When a security instrument is satisfied of record by a method other than by means of recording a satisfaction document, satisfaction affidavit, or trustee's satisfaction pursuant to

G.S. 45-37(a)(7), the register of deeds shall record and index in accordance with G.S. 161-14.1. G.S. 161-14.1 a record of satisfaction as provided for in this subsection. If the security instrument is being satisfied of record pursuant to G.S. 45-37(a)(2), the record of satisfaction may consist of either (i) all or a portion of the original security instrument rerecorded as described in subdivision (1) of this subsection or (ii) a separate instrument as described in subdivision (2) of this subsection. In all other cases, the record of satisfaction shall consist of a separate instrument as described in subdivision (2) of this subsection. No fee shall be charged by the register of deeds for recording a record of satisfaction.

...."

**SECTION 14.** Article 4 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

**"§ 45-42.3. Automatic release of real property from ancillary security instruments.**

(a) The following definitions shall apply in this section:

(1) Ancillary security instrument. – An assignment of leases with respect to the real property, an assignment of rents from or arising out of the real property, a financing statement covering fixtures on the real property that is filed in the office of the register of deeds in the county in which the real property is located, and any other document or instrument that assigns, or creates a lien on, an interest in the real property.

(2) Real property. – The real property described in and encumbered by the lien of a security instrument.

(b) Except as provided in subsection (c) of this section, (i) the expiration of the lien of a security instrument pursuant to G.S. 45-36.24 or the satisfaction of a security instrument of record pursuant to G.S. 45-37 shall be deemed automatically to release the real property from the operation of all ancillary security instruments that secure the same obligation or obligations secured by the security instrument and (ii) the recording of a partial release pursuant to G.S. 45-36.22 or the recording of a deed of release shall be deemed automatically to release the real property described in the partial release or deed of release from the operation of all ancillary security instruments that secure the same obligation or obligations secured by the security instrument.

(c) Subsection (b) of this section shall not apply to an ancillary security instrument if (i) the ancillary security instrument secures obligations other than, or in addition to, the obligation or obligations secured by the security instrument; (ii) the security instrument, the ancillary security instrument, or the document recorded in the office of the register of deeds to satisfy the security instrument of record expressly states that the satisfaction of the security instrument of record shall not release the real property from the operation of that particular ancillary security instrument or from ancillary security instruments in general; or (iii) the security instrument, the ancillary security instrument, the partial release, or the deed of release expressly states that the partial release or deed of release shall not release real property from the operation of that particular ancillary security instrument or ancillary security instruments in general."

**SECTION 15.** Article 5 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

**"§ 45-45.3. Trustee in a deed of trust.**

(a) The following definitions apply in this section:

(1) Secured creditor. – The holder, owner, or assignee of the obligation secured by a deed of trust.

(2) Trustee. – The trustee or substitute trustee then serving as such under the terms of a deed of trust.

(b) Unless the deed of trust provides otherwise, all of the following may be done without the knowledge, consent, or joinder of the trustee:

- (1) Pursuant to G.S. 45-36.23, an obligation may be declared by the owner and holder of the obligation to be no longer secured by the deed of trust.
- (2) Property may be released from the lien of a deed of trust by the secured creditor.
- (3) The lien of a deed of trust may be released or subordinated by the secured creditor.
- (4) The terms of a deed of trust may be modified by the secured creditor and the then record owner of the property encumbered by the lien of the deed of trust.
- (5) The deed of trust may be satisfied of record by the secured creditor.

(c) Except in matters relating to the foreclosure of the deed of trust or the exercise of a power of sale under the terms of the deed of trust, the trustee is neither a necessary nor a proper party to any civil action or proceeding involving (i) title to the real property encumbered by the lien of the deed of trust or (ii) the priority of the lien of the deed of trust. Examples of civil actions or proceedings in which the trustee is neither a necessary nor a proper party include, but are not limited to, civil actions or proceedings relating to:

- (1) Condemnation.
- (2) Bankruptcy.
- (3) The establishment or correction of title to real property, including, but not limited to, actions to quiet title, reform land records, or resolve boundary line disputes.
- (4) Fraudulent conveyances.
- (5) The creation or enforcement of an attachment or judgment lien.
- (6) The foreclosure of a lien other than the lien of the deed of trust, regardless of whether the lien is superior or subordinate to the lien of the deed of trust, including, but not limited to, the foreclosure of mortgages, other deeds of trust, tax liens, and assessment liens.
- (7) The establishment, perfection, or enforcement of a mechanic's or materialman's lien.
- (8) The creation or enforcement of a constructive trust, resulting trust, or equitable lien relating to the property.
- (9) The partition of real property.
- (10) The interpretation or enforceability of a will, trust, or estate.
- (11) A subrogation claim or other equitable claim or defense involving the priority or enforceability of a deed of trust.
- (12) Determination or enforcement of rights and obligations involving easements or restrictive covenants.

(d) If a trustee is improperly joined as a party to an action or proceeding when this section provides that the trustee is neither a necessary nor a proper party to that action or proceeding, then:

- (1) Upon motion duly made by any party to the action or proceeding, the trustee shall be dismissed from the action or proceeding;
- (2) Regardless of whether the trustee makes an appearance in the action or proceeding, no entry of a default or default judgment shall be entered against the trustee; and
- (3) If the trustee makes an appearance in the action or proceeding, each person who improperly joined the trustee as a party to the action or proceeding shall be jointly and severally liable to the trustee for all the expenses and costs incurred by the trustee in the defense of the action or proceeding or in obtaining the trustee's dismissal from the action or proceeding, including the reasonable attorneys' fees actually incurred by the trustee.

(e) Except as expressly provided in this section, this section is not in derogation of case law and statutory provisions that vest legal title to property conveyed by a deed of trust in the trustee named therein."

SECTION 16. G.S. 45-68 reads as rewritten:

**"§ 45-68. Requirements.**

A security instrument, otherwise valid, shall secure the following so as to give priority as provided in G.S. 45-70:

(1a) Existing obligations that are specifically or generally identified~~identified, described, or referenced~~ in the security instrument as being secured thereby, and all advances made at or prior to the registration of the security instrument.

(1b) Future advances and future obligations that are specifically or generally identified, described, or referenced in the security instrument as being secured thereby that may from time to time be made or incurred under the security instrument, incurred, but only if the security instrument shows all of the following:

a. That the security instrument is given wholly or partly to secure future advances and/or future ~~obligations that may be made or incurred under the security instrument~~obligations.

...."

SECTION 17. G.S. 45-69 reads as rewritten:

**"§ 45-69. Fluctuation of obligations within maximum amount.**

Unless the security instrument provides to the contrary, if the maximum amount secured by the security instrument has not been advanced or if any obligation secured thereby is paid or is reduced by partial payment, further advances may be made and additional obligations secured by the security instrument may be incurred from time to time within the time limit fixed by the security instrument. Such further advances and ~~obligations~~obligations, together with interest thereon, shall be secured to the same extent as original advances and obligations under the security instrument, if the provisions of G.S. 45-68 are complied with. ~~However, if at any time the aggregate outstanding principal balance of the obligation or obligations secured by the security instrument exceeds the maximum principal amount that may be secured by the security instrument at any one time, then the excess shall not be secured by the security instrument."~~

SECTION 18. G.S. 45-70 reads as rewritten:

**"§ 45-70. Priority of security instrument.**

(a) ~~Any Subject to subsections (a1), (c), and (d) of this section, any~~ security instrument that conforms to the requirements of this Article shall, from the time and date of registration thereof, have the same priority to the extent of all future advances and future obligations secured by it, and all interest accruing thereon, as if all the advances had been made and all the obligations ~~incurred~~incurred, and all the interest accrued at the time the security instrument was registered.

(a1) Subject to subsections (c) and (d) of this section, if at any time the aggregate outstanding principal balance of the obligation or obligations secured by a security instrument that conforms to the requirements of this Article exceeds the maximum principal amount that may be secured by the security instrument at any one time, then, unless the security instrument provides otherwise, the amount in excess and the interest accrued on the amount in excess shall be secured by the security instrument, but (i) the amount in excess and the interest accrued on the amount in excess shall not be afforded the priority provided in subsection (a) of this section and (ii) the priority of the lien of the security instrument with respect to the amount in excess and the interest accrued on the amount in excess shall be determined by other applicable law.

(b) Repealed by Session Laws 1989, c. 496, s. 3.



(c) ~~Payments made by the secured creditor for fire and extended coverage insurance, taxes, assessments, or other necessary expenditures for the preservation of the security. All payments made, sums advanced, and expenses incurred by the secured creditor for insurance, taxes, and assessments, to protect the secured creditor's interest under the security instrument, or to preserve and protect the value or condition of the real property encumbered by the security instrument shall be secured by the security instrument and shall have the same priority as if such payments had been made they had been paid, advanced, or incurred at the time the security instrument was registered. The provisions of G.S. 45-68 shall not be applicable to such payments, advances, or expenses, nor shall accrued interest or such payments payments, advances, or accrued interest expenses be considered in computing the maximum principal amount which may be that is secured by the security instrument. instrument at any one time.~~

(d) Notwithstanding any other provision of this Article, any security instrument hereafter executed which secures an obligation or obligations of an electric or telephone membership corporation incorporated or domesticated in North Carolina to the United States of America or any of its agencies, or to any other financing institution, or of an electric or gas utility operating in North Carolina, shall from the time and date of registration of said security instrument have the same priority to the extent of (i) all future obligations incurred by the membership corporation or utility to any mortgagee or beneficiary named in the security instrument, together with interest thereon, (ii) all future advances secured by it it, together with interest thereon, and (iii) all payments made, sums advanced, and expenses incurred by the secured creditor of the types described in subsection (c) of this section, as if all the advances had been made they all had been accrued, paid, made, advanced, and incurred at the time of the execution registration of the security instrument, regardless of whether the making of such advances is obligatory or whether the security instrument meets the requirements of G.S. 45-68.

**SECTION 19. G.S. 45-74 reads as rewritten:**

**"§ 45-74. Article not exclusive.**

The provisions of this Article shall not be deemed ~~exclusive, and no security instrument securing future advances or future obligations which is otherwise valid shall be invalidated by failure to comply with the provisions of this Article.~~ exclusive. Nothing in this Article shall invalidate or overrule any rule of validity or priority applicable to any security instrument failing to comply with the provisions of this Article.

**SECTION 20. G.S. 45-81 reads as rewritten:**

**"§ 45-81. Definition. Definitions.**

(a) ~~The term "equity line of credit" means an agreement in writing between a lender and a borrower for an extension of credit pursuant to which:~~

- (1) ~~At any time within a specified period not to exceed 30 years the borrower may request and the lender is obligated to provide, by honoring negotiable instruments drawn by the borrower or otherwise, advances up to an agreed aggregate limit;~~
- (2) ~~Any repayments of principal by the borrower within the specified period will reduce the amount of advances counted against the aggregate limit; and~~
- (3) ~~The borrower's obligation to the lender is secured by a mortgage or deed of trust relating to real property which mortgage or deed of trust shows on its face the maximum principal amount which may be secured at any one time and that it secures an equity line of credit governed by the provisions of this Article.~~

(b) ~~As used in subdivision (a)(1) of this section, "lender is obligated" means that the lender is contractually bound to provide advances. The contract must set forth any events of default by the borrower, or other events not within the lender's control, which may relieve the~~

1 ~~lender from his obligation, and must state whether or not the lender has reserved the right to~~  
2 ~~cancel or terminate the obligation.~~

3 (e) ~~At any time when the balance of all outstanding sums secured by a mortgage or~~  
4 ~~deed of trust pursuant to the provisions of this Article is zero, the lender shall, upon the request~~  
5 ~~of the borrower, make written entry upon the security instrument showing payment and~~  
6 ~~satisfaction of the instrument; provided, however, that such security instrument shall remain in~~  
7 ~~full force and effect for the term set forth therein absent the borrower's request for such written~~  
8 ~~entry. No prepayment penalty may be charged with respect to an equity line of credit loan.~~

9 The following definitions apply in this Article:

- 10 (1) Authorized person. – Any borrower; the legal representative of any  
11 borrower; the attorney for any borrower; a title insurance company  
12 authorized pursuant to Article 26 of Chapter 58 of the General Statutes to  
13 issue title insurance policies in the State of North Carolina, but only when  
14 the company is acting in connection with a title insurance policy issued or to  
15 be issued with respect to property then encumbered by an existing equity  
16 line security instrument; or an attorney licensed to practice law in the State  
17 of North Carolina or a bank, savings and loan association, savings bank, or  
18 credit union, but only when (i) the attorney, bank, savings and loan  
19 association, savings bank, or credit union is or was responsible for the  
20 disbursement of funds in connection with the sale of, or a new loan secured  
21 by, property then encumbered by an existing equity line security instrument  
22 and (ii) a requirement of the sale or new loan transaction is or was that the  
23 property be conveyed or encumbered free and clear of the lien of the existing  
24 equity line security instrument.
- 25 (2) Borrower. – A person primarily liable for payment or performance of an  
26 equity line of credit.
- 27 (3) Equity line of credit. – An agreement in writing between a lender and a  
28 borrower for an extension of credit pursuant to which (i) at any time within a  
29 specified period not to exceed 30 years the borrower may request and the  
30 lender is obligated to provide advances up to an agreed aggregate limit; (ii)  
31 any repayments of principal by the borrower within the specified period will  
32 reduce the amount of advances counted against the aggregate limit; and (iii)  
33 the borrower's obligation to the lender is secured by an equity line security  
34 instrument.
- 35 (4) Equity line security instrument. – An agreement, however denominated, that  
36 creates or provides for an interest in real property to secure payment or  
37 performance of an equity line of credit, whether or not it also creates or  
38 provides for a lien on personal property, shows on its face the maximum  
39 principal amount which may be secured at any one time, and shows on its  
40 face that it secures an equity line of credit governed by the provisions of this  
41 Article. The term "equity line security instrument" includes a deed of trust  
42 and a mortgage.
- 43 (5) Lender is obligated. – The lender is contractually bound to provide  
44 advances. The contract must set forth any events of default by the borrower,  
45 or other events not within the lender's control, which may relieve the lender  
46 from his obligation, and must state whether or not the lender has reserved the  
47 right to cancel or terminate the obligation.
- 48 (6) Notice regarding future advances. – A written notice submitted under  
49 G.S. 45-82.3 to a lender that prevents certain advances made pursuant to an  
50 equity line of credit from being secured by the related equity line security  
51 instrument.

- (7) Owner. – Any person owning a present or future interest in the real property encumbered by an equity line security instrument, but does not mean the trustee in a deed of trust or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, judgment lien, or any other lien on, or security interest in, the real property.
- (8) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (9) Qualified lien holder. – A person who has a mortgage or deed of trust on property already encumbered by an existing equity line security instrument, where that person's mortgage or deed of trust was recorded after the existing equity line security instrument and it appears from warranties or otherwise that the person's mortgage or deed of trust was not intended to be subordinate to the existing equity line security instrument. The term does not include a trustee under a deed of trust.
- (10) Request to terminate an equity line of credit and termination request. – A written request submitted under G.S. 45-82.2 to a lender to terminate an equity line of credit. Each of the following shall be deemed a termination request: (i) a notification given pursuant to G.S. 45-36.9(a) requesting the lender to terminate the equity line of credit, (ii) a notification given pursuant to G.S. 45-36.9(a) containing a statement sufficient to terminate the effectiveness of the provision for future advances in the equity line security instrument, and (iii) a written request made by or on behalf of a borrower to a lender pursuant to G.S. 45-37 to satisfy a related equity line security instrument as a matter of public record."

**SECTION 21. G.S. 45-82 reads as rewritten:**

**"§ 45-82. Priority of equity line security instrument.**

~~A mortgage or deed of trust which~~ An equity line security instrument shows on its face that it secures an equity line of credit governed by the provisions of this Article, shall, from the time and date of its registration, have the same priority to the extent of all advances secured by it as if the advances had been made at the time of the execution-registration of the equity line mortgage or deed of trust, security instrument, notwithstanding the fact that from time to time during the term of the loan-equity line of credit no balance is outstanding. Payments made by the lender for insurance, taxes, and assessments and other payments made by the lender pursuant to the deed of trust shall have the same priority as if made at the time of the execution of the mortgage or deed of trust, notwithstanding the maximum principal amount set forth in the mortgage or deed of trust. Interest that accrues on the equity line of credit and all payments made, sums advanced, and expenses incurred by the lender for insurance, taxes, and assessments, to protect the lender's interest under the equity line security instrument, or to preserve and protect the value or condition of the property encumbered by the equity line security instrument, shall be secured by the equity line security instrument and shall have the same priority as if they had been accrued, paid advanced, and incurred at the time the equity line security instrument was registered. The accrued interest, payments, advances, and expenses shall not be considered in computing the principal amount that is secured by the equity line security instrument at any one time."

**SECTION 22. G.S. 45-82.1 reads as rewritten:**

**"§ 45-82.1. Extension of period for advances.**

(a) The period for advances agreed to pursuant to G.S. 45-81(a)(1) may be extended by written agreement of the lender and borrower executed and registered prior to expiration or termination of the equity line of credit or the borrower's obligation to repay any outstanding

indebtedness. Any extended period shall not exceed 30 years from the end of the preceding period for advances.

(b) If a lender and borrower extend the period for advances by registering a certificate as described in subsection (c) of this section, A mortgage or deed of trust that secures an equity line of credit to which the lender and borrower have agreed to an extended period for advances shall have priority with respect to advances that are made after the preceding loan period period for advances provided in the original recorded equity line security instrument or any previously recorded extension shall have priority from a date not later than the date of registration of the certificate described in subsection (c) of this section.

(c) ~~The priority provided in subsection (b) of this section shall be accorded only if the grantor of the mortgage or the deed of trust securing the obligation, lender, the borrower, and, if different than the borrower, the then owners of the real property encumbered by the equity line security instrument and other record owners of the real property therein conveyed, execute a certificate evidencing the extension and register the certificate in the office of the register of deeds where the equity line mortgage or deed of trust security instrument is registered. The failure of any record owner to execute the certificate shall affect only that record owner's interest in the property, and executions by other owners shall have full effect to the extent of their interests in the property. For purposes of this section, the term "record owner" means any person owning a present or future interest of record in the real property which would be affected by the lien of the mortgage or deed of trust, but does not mean the trustee in a deed of trust or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, or any other lien or security interest in the real property.~~

(d) ~~The certificate described in subsection (c) of this section may be in any form that fulfills the requirements of subsection (c) of this section, including the following: No particular phrasing is required for a certificate of extension under this section. The following form, when properly completed, is sufficient to satisfy the requirements of subsection (c) of this section:~~

~~"Certificate of Extension of Period for Advances Under Home Equity Line of Credit~~

~~Please take notice that the borrower and lender under the home equity line of credit secured by the (deed of trust) (mortgage) recorded on \_\_\_\_\_ in Book \_\_\_\_\_, at Page \_\_\_\_\_, records of this County, have agreed to extend the period within which the borrower may request advances as set forth in G.S. 45-82.1. The borrower's obligations to repay advances and related undertakings are secured by the (deed of trust) (mortgage).~~

~~WITNESS the signatures and seals of the undersigned, this \_\_\_\_\_ day of~~

~~(SEAL)~~

~~(Grantor(s))~~

~~(SEAL)~~

~~Other record owner(s)~~

~~(SEAL)~~

~~(Mortgagee or Beneficiary)~~

~~(Acknowledgment as required by law)."~~

"Certificate of Extension of Period for Advances Under Equity Line of Credit

(G.S. 45-82.1)

\_\_\_\_\_ is now the lender and secured creditor in the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the

Register of Deeds for \_\_\_\_\_ County, North Carolina.

The borrower(s) is/are the following: \_\_\_\_\_

The current owner(s) of the property described in the security instrument is/are: \_\_\_\_\_

The parties have agreed to extend to \_\_\_\_\_ (insert date) the period within which the borrower may request advances as set forth in G.S. 45-82.1.

Date: \_\_\_\_\_

Signature of secured creditor

Signature of borrower(s) \_\_\_\_\_ Signature of property owner(s) (if different) \_\_\_\_\_

[Acknowledgment before officer authorized to take acknowledgments]"."

**SECTION 23.** Article 9 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

**"§ 45-82.2. Request to terminate an equity line of credit.**

(a) Upon receipt of a request from an authorized person to terminate an equity line of credit, the lender shall (i) terminate the borrower's right to obtain advances under the borrower's equity line of credit; (ii) apply all sums subsequently paid by or on behalf of the borrower in connection with the equity line of credit to the satisfaction of the equity line of credit and other sums secured by the related equity line security instrument; and, (iii) when the balance of all outstanding sums secured by the related equity line security instrument becomes zero, satisfy the related equity line security instrument as a matter of public record pursuant to G.S. 45-37. A request to terminate an equity line of credit shall be conclusively deemed to have been submitted by or on behalf of a borrower if it is submitted by an authorized person.

(b) No particular phrasing is required for a request to terminate an equity line of credit. The following form, when properly completed, is sufficient to serve as a request to terminate an equity line of credit:

**"REQUEST TO TERMINATE AN EQUITY LINE OF CREDIT**

**(G.S. 45-82.2)**

**To: (name of lender)**

**This is a request to terminate an equity line of credit submitted pursuant to G.S. 45-82.2. For purposes of this request:**

- 1. The borrower(s) is/are: (identify one or more of the borrowers)**
- 2. The account number of the equity line of credit is: (specify the account number of the equity line of credit, if known by the person submitting the request)**
- 3. The street address of the property is: (provide the street address of the property encumbered by the security instrument identified in 4.)**
- 4. The equity line of credit is secured by the security instrument identified as follows:**

**Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)**

**Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))**

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

I request and direct that you (i) terminate the borrower's right to obtain advances under the borrower's equity line of credit; (ii) apply all sums subsequently paid by or on behalf of the borrower in connection with the equity line of credit to the satisfaction of the equity line of credit and other sums secured by the related security instrument; and, (iii) when the balance of all outstanding sums secured by the related security instrument becomes zero, satisfy the security instrument identified above as a matter of public record pursuant to G.S. 45-37.

I certify that I am:

- ☐ The borrower (or one of the borrowers, if there is more than one).  
☐ The legal representative of a borrower.  
☐ The attorney for a borrower.  
☐ A title insurance company that satisfies the requirements of G.S. ---.  
☐ An attorney licensed to practice law in the state of North Carolina that satisfies the requirements of G.S. ---.  
☐ A bank, savings and loan association, savings bank, or credit union that satisfies the requirements of G.S. ---.

Date: \_\_\_\_\_

Signature of person submitting the request"

(c) If the person who gives a lender a request to terminate an equity line of credit is a title insurance company described in G.S. ---, that person shall give a copy of the request to the borrower accompanied by a notice that provides substantially as follows:

"NOTICE TO BORROWER

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We are a title insurance company that has issued or has agreed to issue a title insurance policy on that property. As permitted by North Carolina law, we are sending the (enclosed / attached / following / foregoing) request to your lender asking that your equity line of credit be terminated. Our reason for making this request is: (specify reason it is appropriate for the title insurance company to request the termination of the borrower's equity line of credit)

When your lender receives our request, your lender will terminate and close your equity line of credit, and you will no longer be able to obtain credit advances. However, termination of your equity line of credit will not release you from liability for the account. All sums your lender subsequently receives in connection with your equity line of credit (including any sums we may send to your lender) will be applied by your lender to the satisfaction of your account. When the balance of your account becomes zero, your lender will be required to cancel the mortgage or deed of trust as a matter of public record.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of title insurance company)"

(d) If the person who gives a lender a request to terminate an equity line of credit is an attorney, bank, savings and loan association, savings bank, or credit union described in G.S. ---,

that person shall give a copy of the request to the borrower accompanied by a notice that provides substantially as follows:

"NOTICE TO BORROWER

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We were responsible for disbursing funds in connection with the sale of the property or a new loan secured by the property. A requirement of the sale or new loan transaction was that the property be conveyed or encumbered free and clear of the existing mortgage or deed of trust that secures your equity line of credit.

As permitted by North Carolina law, we are sending the (enclosed / attached / following / foregoing) request to your lender asking that your equity line of credit be terminated. Our reason for making this request is to ensure that the mortgage or deed of trust on the property will be cancelled once your equity line of credit is paid in full.

When your lender receives our request, your lender will terminate and close your equity line of credit, and you will no longer be able to obtain credit advances. However, termination of your equity line of credit will not release you from liability for the account. All sums your lender subsequently receives in connection with your equity line of credit (including any sums we send to your lender in connection with the closing of the sale of the property or the new loan) will be applied by your lender to the satisfaction of your account. When the balance of your account becomes zero, your lender will be required to cancel the mortgage or deed of trust as a matter of public record.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of attorney, bank, savings and loan association, savings bank, or credit union)".

**SECTION 24.** Article 9 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

**"§ 45-82.3. Notice regarding future advances.**

**(a) A notice regarding future advances may be submitted to a lender by an authorized person, an owner of the property, or a qualified lien holder.**

**(b) Except as provided in subsection (c) of this section, an advance made by a lender to a borrower pursuant to an equity line of credit will not be secured by the related equity line security instrument if the advance occurs after the lender receives and has had not less than one complete business day to act on a notice regarding future advances.**

**(c) Notwithstanding a lender's receipt of a notice regarding future advances, the following shall be secured by the equity line security instrument and shall have the same priority as if they had been owing, accrued, paid, advanced, or incurred at the time the equity line security instrument was registered:**

- (1) Sums owing to the lender under the equity line of credit at the time the lender receives the notice regarding future advances (including accrued interest), all interest that thereafter accrues on the equity line of credit, and all payments made, sums advanced, and expenses incurred by the lender before or after the lender receives the notice regarding future advances (i) for insurance, taxes, and assessments, (ii) to protect the lender's interest under the equity line security instrument, or (iii) to preserve and protect the value or condition of the real property encumbered by the equity line security instrument.**

(2) Any advance made by the lender to a borrower pursuant to an equity line of credit that occurs within one complete business day after the lender receives the notice regarding future advances.

(3) Any advance made by the lender to a borrower pursuant to an equity line of credit that occurs more than one complete business day after the lender receives the notice regarding future advances, but only if the advance was initiated or approved before the lender received the notice regarding future advances.

(d) Receipt by a lender of a notice regarding future advances shall be conclusively deemed to be an action by the borrower adversely affecting the lender's security for the equity line of credit. Upon receipt of a notice regarding future advances, the lender may terminate the borrower's right and ability to obtain additional advances under the equity line of credit.

(e) No particular phrasing is required for a notice regarding future advances. The following form, when properly completed, is sufficient to serve as a notice regarding future advances:

"NOTICE REGARDING FUTURE ADVANCES

(G.S. 45-82.3)

To: (name of lender)

This is a notice regarding future advances submitted pursuant to G.S. 45-82.3. For purposes of this notice:

1. The borrower(s) is/are: (identify borrower(s))
2. The account number of the equity line of credit is: (specify the account number of the equity line of credit, if known by the person submitting the notice)
3. The street address of the property is: (provide the street address of the property encumbered by the security instrument identified in 4.)
4. The equity line of credit is secured by the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

Except as provided in G.S. 45-82.3(c), subsequent advances made by you under the equity line of credit will not be secured by the security instrument identified above.

I certify that I am:

☐ The borrower (or one of the borrowers, if there is more than one).

☐ The legal representative of a borrower.

☐ The attorney for a borrower.

☐ An owner of the property encumbered by the security instrument identified above.

☐ A title insurance company that satisfies the requirements of G.S. ---.

☐ An attorney licensed to practice law in the State of North Carolina that satisfies the requirements of G.S. ---.



☐ A bank, savings and loan association, savings bank, or credit union that satisfies the requirements of G.S. ---.

☐ A qualified lien holder as defined in G.S. 45-81(9).

Date:

Signature of person submitting the request"

(f) If the person who gives a lender a notice regarding future advances is (i) a title insurance company described in G.S. ---; (ii) an attorney, bank, savings and loan association, savings bank, or credit union described in G.S. ---, (iii) an owner as defined in G.S. 45-81(7), other than an owner who is also a borrower, or (iv) a qualified lien holder described in G.S. 45-81(9), then that person shall give a copy of the notice regarding future advances to the borrower accompanied by a notice that provides substantially as follows:

"NOTICE TO BORROWER

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

As permitted by North Carolina law, we are sending the (enclosed / attached / following / foregoing) Notice Regarding Future Advances to your lender. Subject to certain exceptions, the notice prevents any new credit advances you obtain under your equity line of credit from being secured by the mortgage or deed of trust that currently secures its repayment. Our reason for giving your lender the notice is to limit the amount secured by the mortgage or deed of trust that secures your equity line of credit and to prevent that amount from increasing.

When your lender receives our notice, your lender may elect to terminate your right and ability to obtain additional advances under your equity line of credit. However, termination of your right and ability to obtain additional advances will not release you from liability for the account. You should contact your lender to determine whether you will be able to obtain additional credit advances from your lender.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of insurance company, attorney, bank, savings and loan association, savings bank, credit union, owner, or qualified lien holder)".

SECTION 25. Article 9 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"§ 45-82.4. Prepayment penalty.

No prepayment penalty may be charged with respect to an equity line of credit."

SECTION 26. G.S. 45-83 reads as rewritten:

"§ 45-83. Future advances statute shall not apply.

The provisions of Article 7 of this Chapter shall not apply to an equity line of credit or the equity line security instrument securing it, if the equity line security instrument shows on its face that it secures an equity line of credit governed by the provisions of this Article."

SECTION 27. G.S. 45-84 reads as rewritten:

"§ 45-84. Article not exclusive.

Except as otherwise provided in G.S. 45-83, the provisions of this Article are not exclusive, and no mortgage or deed of trust which secures a line of credit or other obligation shall be invalidated by failure to comply with the provisions of this Article. Nothing in this Article shall invalidate or overrule any rule of validity or priority applicable to any mortgage, deed of trust, or other security instrument failing to comply with the provisions of this Article."

SECTION 28. G.S. 161-14.1 reads as rewritten:

1 **"§ 161-14.1. Recording subsequent entries as separate instruments.**

2 (a) As used in this section, the following terms mean:

3 ...  
4 (3) Subsequent instrument. – Any instrument presented for registration that  
5 indicates in its title or within the first two pages of its text that it is intended  
6 or purports to modify, amend, supplement, assign, satisfy, terminate, revoke,  
7 or cancel a previously registered instrument. Examples of subsequent  
8 instruments include the ~~appointment or designation of a substitute trustee in~~  
9 ~~a deed of trust; an affidavit extending the life of a deed of trust; the~~  
10 ~~cancellation of a Notice of Inactive Hazardous Substance or Waste Disposal~~  
11 ~~Site registered pursuant to G.S. 130A-310.8(f); a record of satisfaction or~~  
12 ~~other instrument purporting to satisfy a security instrument registered~~  
13 ~~pursuant to G.S. 45-37 or G.S. 45-37.2; a notice of foreclosure registered~~  
14 ~~pursuant to G.S. 45-38; an assignment of a security instrument or lease; a~~  
15 ~~modification agreement; a release or partial release of property from the lien~~  
16 ~~of a security instrument; an assumption agreement; a subordination~~  
17 ~~agreement; an instrument terminating future optional advances registered~~  
18 ~~pursuant to G.S. 45-72; the revocation of a power of attorney; any~~  
19 ~~instrument authorized or directed by law to be indexed under the provisions~~  
20 ~~of this section; and any instrument for which the register of deeds is~~  
21 ~~authorized or directed by law to make a subsequent entry upon the margin of~~  
22 ~~the record of an original instrument following:~~

- 23 a. The appointment or designation of a substitute trustee in a deed of  
24 trust.  
25 b. A corrective affidavit registered pursuant to G.S. 45-36.1.  
26 c. A lien maturity extension agreement or notice of maturity date  
27 registered pursuant to G.S. 45-36.24.  
28 d. A document of rescission registered pursuant to G.S. 45-36.6.  
29 e. The cancellation of a Notice of Inactive Hazardous Substance or  
30 Waste Disposal Site registered pursuant to G.S. 130A-310.8(f).  
31 f. A record of satisfaction or other instrument purporting to satisfy a  
32 security instrument registered pursuant to G.S. 45-37 or  
33 G.S. 45-37.2.  
34 g. A notice of foreclosure registered pursuant to G.S. 45-38.  
35 h. An assignment of a security instrument or lease.  
36 i. An amendment or modification agreement.  
37 j. A release or partial release of property from the lien of a security  
38 instrument, including a partial release registered pursuant to  
39 G.S. 45-36.22 or a deed of release or reconveyance.  
40 k. An obligation release registered pursuant to G.S. 45-36.23.  
41 l. An assumption agreement.  
42 m. A subordination agreement.  
43 n. An instrument terminating future optional advances registered  
44 pursuant to G.S. 45-72.  
45 o. A certificate of extension extending the period for advances under an  
46 equity line of credit registered pursuant to G.S. 45-82.1.  
47 p. A notice of extension relating to after-acquired property registered  
48 pursuant to G.S. 47-20.5.  
49 q. The revocation of a power of attorney.  
50 r. Any instrument authorized or directed by law to be indexed under the  
51 provisions of this section.

1                   s.   Any instrument for which the register of deeds is authorized or  
2                         directed by law to make a subsequent entry upon the margin of the  
3                         record of an original instrument.

4                   ...."

5                   **SECTION 29.** Sections 2, 9, 15, and 21 through 24 of this act shall become  
6 effective October 1, 2011, and shall apply to documents recorded before, on, or after that date.  
7 The remainder of this act becomes effective October 1, 2011, and applies to documents  
8 recorded on or after that date.

**Committee Sergeants at Arms**

NAME OF COMMITTEE

BANKING

DATE:

6-2-2011

Room:

1228

**House Sgt-At Arms:**

1. Name:

Reggie Sills

2. Name:

GARLAND SHEPHEARD

3. Name:

BILL MACRAE

Name:

5. Name:

**Senate Sgt-At Arms:**

1. Name:

2. Name:

3. Name:

4. Name:

5. Name:

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Banking

DATE: 6-2-2011 Room: 1228

\*Name: Wes Sutton

County: Guilford

Sponsor: Dale Falwell

\*Name: Sam Probert

County: Guilford

Sponsor: Maggie Jeffas

\*Name: A.J. Horner

County: Wilkes

Sponsor: Rep. David Guice

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:

1. Name: \_\_\_\_\_

4. Name: \_\_\_\_\_

2. Name: \_\_\_\_\_

5. Name: \_\_\_\_\_

Name: \_\_\_\_\_

6. Name: \_\_\_\_\_

# VISITOR REGISTRATION SHEET

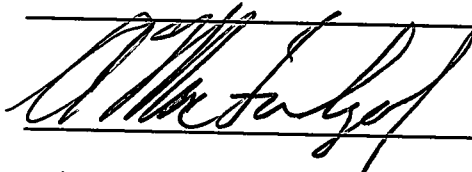
HOUSE BANKING

Name of Committee

JUNE 2, 2011

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME	FIRM OR AGENCY AND ADDRESS
	FCB
James E Creekman	First Citizens Bank
MARK S. LORENCE	FIRST CITIZENS BANK
Heather Barrett	Williams Mullen
Doug Lester	NC STA
Amy McConkey	NC Beverage Assn
Lyn-Ann C. Pugh	Carolina State Strategies
Amy Fuller	Kates
Erin McBrayer	JLF
David McHowan	NC Realtors
Perry Huffer	School of Gov.

## VISITOR REGISTRATION SHEET

HOUSE BANKING

JUNE 2, 2011

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

McNeil Chestnut	Father Comm Bks
Ha Nguyen	NCCOB
John Redenbaugh	NCCUL
Laura Whaley	NCCUL
Dan Schling	NCCUL
Paul Stet	NCCUL
Daniel Fink	NCCUL

**North Carolina House of Representatives Banking Committee**

Legislative Building, Room 1327

May 31, 2012

The North Carolina House Banking Committee met on May 31, 2012 at 12:00 noon in Room 1327 of the Legislative Building. The following members were present: Representative Brawley (Co-Chair, presiding), Representative McGee (Co-Chair), Brubaker, Dockham, Hastings, McComas (Vice Chairs), Alexander, Carney, Daughtry, Fisher, Glazier, Hager, Haire, Hurley, McCormick, McGuirt, Moore, Shepard and Steen. Chairman Brawley called the meeting to order at 12:05 pm and introduced the Pages and Sgt-at-Arms (see attachments 1 & 2).

Chairman Brawley called on Representative Moffitt to present House Bill 960 Protect Homeowners With Underwater Mortgages. Representative Moffitt explained the bill (see attachments 3 & 4). Representative McCormick moved to give the bill a favorable report and thanked Representative Moffitt for sponsoring the bill. Representative Moore seconded the motion and the motion carried.

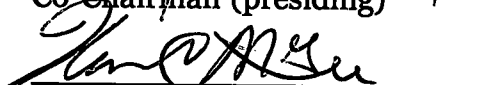
The Chair then recognized Representative Brubaker to present Senate Bill 816 Banking Law Modernization Act (attachment 5). Representative Brubaker moved to accept the House Committee Substitute for Senate Bill 816, the motion was seconded by Representative Carney and the motion carried. Chairman Brawley recognized Karen Cochrane-Brown, Committee Counsel, to give a summary of the bill (see attachment 7). Ms. Cochrane-Brown explained that the banking laws had not been rewritten since 1931 thus the charge to The Joint Legislative Study Commission on the Modernization of Banking Laws. This bill is the result of the Committee and Staff's extensive work.


Chairman Brawley then recognized Representative Brubaker to explain the bill. Representative Brubaker recognized McNeil Chestnut, Special Deputy Attorney General, State of North Carolina, Department of Justice; and the Acting Commissioner of North Carolina Banks, Ray Grace who were in the gallery. Representative Brubaker stated that the reason for the Proposed Committee Substitute was due to technical changes, and he knew of no opposition. He also stated there were no fee increases, that the fees in the bill are the same as the ones presently. Paul Stock was recognized and said this legislation was a vision of Joe Smith, Past North Carolina Commissioner of Banks.

Representative Brubaker moved for a favorable report as to the House Proposed Committee Substitute, unfavorable as to the original bill. Representative McCormick seconded the motion and the motion carried.

Chairman Brawley thanked the committee and staff and adjourned the meeting at 12:27 pm.

  
Representative William Brawley,  
Co-Chairman (presiding)

  
Representative William C. McGee,  
Co-Chairman

  
Payne A. Nelson,  
Committee Assistant



## Banking Committee

[illegible]

**Jayne Nelson (Rep. McGee)**

---

**From:** Ann Stancil (Rep. Bill Brawley)  
**Sent:** Tuesday, May 29, 2012 9:07 AM  
**To:** Sen. Harry Brown; Rep. Tim Moffitt  
**Cc:** Melissa Carter (Rep. Moffitt); Susanne Gunter (Sen. Brown)  
**Subject:** <NCGA> House Banking Committee Meeting Notice for Thu, 05-31-2012 at 12:00 Noon .

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND BILL SPONSOR  
2011-2012 SESSION**

You are hereby notified that the Committee on **Banking** will meet as follows:

**DAY & DATE:** Thursday, May 31, 2012

**TIME:** 12:00 Noon

**LOCATION:** 1327 LB

SB 816 Banking Law Modernization Act, **Sen. Brown**  
HB 949 Modify Mortgage Regulation Funding, **Rep. Brubaker**  
HB 960 Protect Homeowners With Underwater Mortgages, **Rep. Moffitt**

Respectfully,  
Representative Brawley, Chair  
Representative McGee, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
**8 AM o'clock on May 29, 2011.**

Principal Clerk  
Reading Clerk – House Chamber

**Ann Stancil (Committee Assistant)**

**CORRECTED**

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
2011-2012 SESSION**

You are hereby notified that the Committee on **Banking** will meet as follows:

**DAY & DATE:** Thursday, May 31, 2012

**TIME:** 12:00 Noon

**LOCATION:** 1327 LB

HB 949, MODIFY MORTGAGE REGULATION FUNDING , REP. BRUBAKER, SPONSOR,  
HAS BEEN REMOVED FROM THE AGENDA

Respectfully,  
Representative Brawley, Chair  
Representative McGee, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at  
11 AM o'clock on May 30, 2011.

- ☐ Principal Clerk
- ☐ Reading Clerk – House Chamber

**Ann Stancil** (Committee Assistant)



NORTH CAROLINA HOUSE of REPRESENTATIVES  
BANKING COMMITTEE  
May 31, 2012  
AGENDA

Co-Chairman

Introduction

Pages introduced

Sergeant at Arms introduced

SB 816 Banking Modernization Act  
Sen. Brown

HB 960 Protect Homeowners With Underwater Mortgages  
Rep. Moffitt

Adjournment

**Ann Stancil (Rep. Bill Brawley)**

---

**From:** Bonnie Trivette (House Page Supervisor)  
**Sent:** Thursday, May 31, 2012 9:29 AM  
**To:** Ann Stancil (Rep. Bill Brawley)  
**Subject:** Banking Pages

Christian Bauer  
Roslyn Ward  
Andrew Pelletier  
Aysha' Williams Polite  
Jesse Hart

Durham  
Wake  
Washington  
Forsyth  
Swain

Michaux  
McCormick  
Spear  
Parmon  
Haire.

*Mr Neil Chestnut  
Chairman for Banking  
Committee*

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House Committee Pages / Sergeants at ArmsNAME OF COMMITTEE BANKINGDATE: MAY 31, 2012Room: 1228\*Name: Christian BauerCounty: DurhamSponsor: Henry Michaux\*Name: Andrew PelletierCounty: WashingtonSponsor: Tim Spear\*Name: Aysha Williams PoliteCounty: ForsythSponsor: Earline Parmon\*Name: Roslyn WardCounty: WakeSponsor: McCormick

\*Name: \_\_\_\_\_

County: \_\_\_\_\_

Sponsor: \_\_\_\_\_

House Sgt-At Arms:1. Name: FRED HINES

4. Name: \_\_\_\_\_

2. Name: CARL MORELLO

5. Name: \_\_\_\_\_

Name: \_\_\_\_\_

6. Name: \_\_\_\_\_

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

## HOUSE BILL 960

Short Title: Protect Homeowners With Underwater Mortgages. (Public)

Sponsors: Representatives Moffitt, Brawley, and R. Moore (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Banking.

May 17, 2012

A BILL TO BE ENTITLED

AN ACT TO ENSURE PAYMENT OF JUST COMPENSATION TO PROPERTY OWNERS WITH MORTGAGE DEBT EXCEEDING THE FAIR MARKET VALUE OF THE PROPERTY BY AUTHORIZING THE CONSIDERATION OF OUTSTANDING MORTGAGE DEBT WHEN DETERMINING DAMAGES IN A CONDEMNATION ACTION, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON STATE-OWNED ASSETS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-112 reads as rewritten:

"§ 136-112. Measure of damages.

(a) Generally. – The following shall be the measure of damages to be followed by the commissioners, jury or judge who determines the issue of damages:

(1) Where only a part of a tract is taken, the measure of damages for said taking shall be the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking, with consideration being given to any special or general benefits resulting from the utilization of the part taken for highway purposes.

(2) Where the entire tract is taken the measure of damages for said taking shall be the fair market value of the property at the time of taking.

(b) When Condemned Property Has Mortgage Debt Exceeding Fair Market Value. – Notwithstanding any other provision of law, the commissioners, jury, or judge who determines the issue of damages may add to the amount determined pursuant to subsection (a) of this section an amount equal to the difference between the outstanding balance of any eligible mortgage and the amount determined pursuant to subsection (a) of this section, but only if the property owner proves by a preponderance of the evidence that the fair market value of the property has declined since the property was purchased solely due to a decline in the market for real property.

(c) Eligible Mortgage Defined. – For purposes of this section, the term "eligible mortgage" includes only a debt secured by a mortgage or deed of trust executed prior to July 1, 2008, to obtain money for the purchase of the property being condemned."

SECTION 2. This act is effective when it becomes law and shall expire on July 1, 2014.





# HOUSE BILL 960: Protect Homeowners With Underwater Mortgages

2011-2012 General Assembly

<b>Committee:</b>	House Banking	<b>Date:</b>	May 30, 2012
<b>Introduced by:</b>	Reps. Moffitt, Brawley, R. Moore	<b>Prepared by:</b>	Karen Cochrane-Brown
<b>Analysis of:</b>	First Edition		Committee Counsel

**SUMMARY:** *House Bill 960 amends the law to ensure payment of just compensation to property owners with mortgage debt exceeding the fair market value of the property by authorizing the consideration of outstanding mortgage debt when determining damages in a condemnation action, as recommended by the House Select Committee on State-Owned Assets.*

**CURRENT LAW:** Under current law, when private property is subject to a DOT condemnation action, the damages awarded to the owner are measured by the fair market value of the property at the time of taking. If only a portion of the property is taken, then the measure of damages is the difference between the fair market value of the entire tract immediately prior to the taking and the remainder immediately after the taking.

**BILL ANALYSIS:** House Bill 960 provides that in situations where the fair market value of the property is less than the outstanding mortgage debt secured by the property, the commissioners, jury or judge who determines damages may add an amount equal to the difference between the outstanding balance of any eligible mortgage and the fair market value, if the property owner proves by a preponderance of the evidence that the market value has declined since the property was purchased solely due to a decline in the market for real property.

For purpose of the act, the term "eligible mortgage" includes only a debt secured by a mortgage or deed of trust executed prior to July 1, 2008, to obtain money for the purchase of the property being condemned. This relief would not be available for home equity lines of credit or for refinances.

**EFFECTIVE DATE:** This act would become effective when it becomes law and would expire on July 1, 2014.

H960-SMRO-56(e1) v2



**2011 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Brawley, McGee (Chairs) for the Committee on BANKING.

☐ Committee Substitute for

**HB 960** A BILL TO BE ENTITLED AN ACT TO ENSURE PAYMENT OF JUST COMPENSATION TO PROPERTY OWNERS WITH MORTGAGE DEBT EXCEEDING THE FAIR MARKET VALUE OF THE PROPERTY BY AUTHORIZING THE CONSIDERATION OF OUTSTANDING MORTGAGE DEBT WHEN DETERMINING DAMAGES IN A CONDEMNATION ACTION, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON STATE-OWNED ASSETS.

☒ With a favorable report.

**(FOR JOURNAL USE ONLY)**

\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of \_\_\_\_\_.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

2

SENATE BILL 816\*  
Second Edition Engrossed 5/23/12

Short Title: Banking Law Modernization Act. (Public)

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Sponsors: Senators Brown; Bingham, Blake, Brunstetter, Daniel, Davis, Harrington, Hunt, Newton, Preston, Stevens, and Tillman.

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Referred to: Commerce.

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May 21, 2012

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. The title of Chapter 53 of the General Statutes reads as rewritten:

"Chapter 53.

"Banks, Regulation of Financial Services."

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

"Article 1A.

"General Provisions.

"§ 53-1.1. Banking definitions applicable to this Chapter.

Except as otherwise provided by law, the definitions contained in G.S. 53C-1-4 shall apply to terms used in this Chapter."

SECTION 4. The General Statutes are amended by adding a new Chapter to read:

"Chapter 53C.

"Regulation of Banks.

"Article 1.

"General Provisions.

"§ 53C-1-1. Title.

This Chapter shall be known and may be cited as Regulation of Banks and Other Financial Services.

"§ 53C-1-2. Scope and applicability of Chapter.

(a) Unless the context specifies otherwise, this Chapter shall apply to the following:

(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



1 enforced as required or permitted by any statute amended or repealed by the law by which this  
2 act was enacted as though the amendment or repeal had not occurred.

3 (c) Except as restricted by federal law, a federally chartered depository institution that  
4 has a branch in this State shall have all the rights, powers, and privileges and shall be entitled to  
5 the same exemptions and immunities as banks organized or created under the laws of this State.

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

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

14 **"§ 53C-1-3. Existing banks; prohibitions, injunctions.**

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

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

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

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

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

33 **"§ 53C-1-4. Definitions and application of terms.**

34 Unless the context requires otherwise, the following definitions apply in this Chapter:

35 (1) Acquire. – To obtain the right or power to vote or to direct the voting of  
36 voting securities of a bank or holding company as follows:

37 a. Through a purchase of or share exchange for shares.

38 b. By reason of an issuance of shares or the exercise of a right under a  
39 warrant, option, or convertible security or instrument to acquire  
40 shares.

41 c. Pursuant to an agreement or trust or through any similar transaction,  
42 event, or contractual right.

43 (2) Acting in concert. – Knowing participation in a joint activity or  
44 interdependent conscious parallel action toward the common goal of  
45 obtaining control of a bank or holding company, whether or not pursuant to  
46 an express agreement, including participation in a combination or pooling of  
47 voting securities of a bank holding company for such common purpose  
48 pursuant to any contract, understanding, relationship, agreement, or other  
49 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.
- (5) Banking laws. – All laws which the Commissioner or the OCOB is authorized to enforce under any applicable statute.
- (6) Bank operating subsidiary. – A subsidiary that is under the control of a bank and engages only in activities in which a bank may engage pursuant to G.S. 53C-5-1.
- (7) Bank premises. – Any improved or unimproved real estate, whether or not open to the public, that is utilized or intended to be utilized by a bank, including additional space to rent as a source of income.
- (8) Bank supervisory agency. – Any of the following agencies:  
a. The CFPB, FDIC, Federal Reserve Board, OCC, and any successor to these agencies.  
b. Any agency of another state with primary responsibility for chartering and supervising depository institutions organized under the laws of that state.  
c. Any agency of a sovereign nation with primary responsibility for chartering and supervising depository institutions organized under the laws of that nation.
- (9) Bankers' bank. – As defined in Regulation D of the Federal Reserve Board, 12 C.F.R. § 204.121.
- (10) Board of directors. – A governing board of a company that is responsible for policy, oversight, and compliance.
- (11) Branch. – An office of any bank or a depository institution organized under the banking laws of the United States, another state, or another sovereign nation, other than that depository institution's principal office, in which deposits are received. A branch may also engage in any of the functions or services authorized to be engaged in by the bank of which it is a branch. The term "branch" does not include a non-branch bank business office, automated teller machine, remote deposit facility, remote service unit, customer-bank communications terminal, point-of-sale terminal, automated banking facility or other direct or remote information processing device or machine, whether manned or unmanned, by means of which information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank terminal.
- (12) Capital. – An amount equal to the bank's "total capital" as that term is used by the FDIC in 12 C.F.R. Part 325; provided, that if the term "total capital" is replaced by a term including substantially the same elements as "total capital," the term "capital" as used in this Chapter shall mean an amount equal to the amount calculated by application of the definition of such replacement term.
- (13) Capital impairment. – The reduction of a bank's capital at any time below its required capital.
- (14) Central reserve bank. – A depository institution of which at least fifty percent (50%) of its shares are owned by other depository institutions.

- (15) CFPB. – The Consumer Financial Protection Bureau or its successor.
- (16) Charter. – A document issued by the Commissioner in accordance with Article 3 of this Chapter permitting a bank to conduct banking business.
- (17) Combination. – A merger, share exchange, or transfer or acquisition of all or substantially all assets and liabilities of a person undertaken in compliance with such federal laws and laws of this State or other states as may be applicable.
- (18) Commission. – The State Banking Commission provided for in G.S. 53C-2-1.
- (19) Commissioner. – The Commissioner of Banks provided for in G.S. 53C-2-2.
- (20) Company. – A corporation, limited liability company, partnership, joint venture, business trust, trust, syndicate, association, unincorporated organization, or other form of business entity.
- (21) Control. – The possession, directly or indirectly, of the power or right to direct or to cause the direction of the management or policies of a person by reason of an agreement, understanding, proxy, or power of attorney or through the ownership of or voting power over ten percent (10%) or more of the voting securities of the person.
- (22) Control transaction. – The acquisition of control over a bank or a holding company other than pursuant to a combination.
- (23) Credit union. – A credit union as defined in G.S. 54-109.1.
- (24) De novo branch. – A branch of a bank or of an out-of-state bank within this State that is established as a branch, and not (i) by virtue of an acquisition of the existing branch of another bank or out-of-state bank, (ii) by a combination involving the bank or out-of-state bank, or (iii) by the conversion of a non-branch bank business office to a branch.
- (25) Deposit. – A "deposit" as defined in Section 3(1) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(1).
- (26) Deposit insurance. – Insurance of a bank's deposit accounts where the beneficiaries are the holders of the insured accounts.
- (27) Depository institution. – A bank, out-of-state bank, savings institution, or federally chartered institution, the deposits of which are insured by the FDIC.
- (28) Deputy commissioner. – An individual appointed by the Commissioner to such office as provided by G.S. 53C-2-3.
- (29) Distribution. – With respect to a bank, "distribution" has the same meaning as set forth in Chapter 55.
- (30) Debt previously contracted (DPC) subsidiary. – A subsidiary of a bank that acquires in good faith an equity ownership interest through foreclosure or other realization on collateral, by way of a compromise of a disputed or contested claim, or to avoid a loss in connection with a debt previously contracted or to which the bank transfers an equity ownership interest so acquired by the bank.
- (31) Examination. – A supervisory inspection of a bank, a proposed bank, a holding company, or a branch of an out-of-state bank operating in this State that may include inspection of all relevant information, including information of or about the subsidiaries and affiliates of the bank, proposed bank holding company, or branch. "Examination" also includes an investigation of any person with respect to any violation or suspected violation of any provision of this Chapter by such person, or a review of

- 1 facts and circumstances relevant to the Commissioner's consideration of the  
2 issuance of an order pursuant to this Chapter.
- 3 (32) Equity ownership interest. – Any beneficial equity or similar interest,  
4 whether direct or indirect, including shares, limited or general partnership  
5 interests, and membership interests in a limited liability company.
- 6 (33) Farm credit system institution. – A lending institution regulated by the Farm  
7 Credit Administration.
- 8 (34) FDIC. – The Federal Deposit Insurance Corporation or its successor.
- 9 (35) Federal Reserve Board. – The Board of Governors of the Federal Reserve  
10 System or its successor.
- 11 (36) Federal savings association. – A federal savings association or federal  
12 savings bank chartered under Section 5 of the Home Owners' Loan Act, 12  
13 U.S.C. § 1464.
- 14 (37) Federally chartered institution. – A national bank or federal savings  
15 association.
- 16 (38) Financial subsidiary. – A "financial subsidiary" as defined in 12 U.S.C. §  
17 24a(g).
- 18 (39) Holding company. – A company that controls a depository institution or that  
19 controls a company that directly or indirectly controls a depository  
20 institution.
- 21 (40) Immediate family. – An individual's spouse, father, mother, children,  
22 brothers, sisters, and grandchildren; the father, mother, brothers and sisters  
23 of the individual's spouse; and the spouse of the individual's child, brother,  
24 or sister.
- 25 (41) Inadequate capital. – An amount of capital equal to at least seventy-five  
26 percent (75%) but less than one hundred percent (100%) of required capital.
- 27 (42) Individual. – A human being.
- 28 (43) Insufficient capital. – An amount of capital less than seventy-five percent  
29 (75%) of required capital.
- 30 (44) Lower-tier subsidiary. – Any bank operating subsidiary in which a bank  
31 subsidiary has an equity ownership interest.
- 32 (45) National bank. – A banking association organized under 12 U.S.C. § 21.
- 33 (46) Non-branch bank business office. – Any staffed physical location open to the  
34 public in this State in which an office of a bank, out-of-state bank,  
35 depository institution established under the laws of another state, or federally  
36 chartered institution that is not a branch, an office of a separately organized  
37 subsidiary of such depository institution, or an office of the holding  
38 company of such depository institution, at which one or more banking or  
39 banking-related products or services are offered, other than the taking of  
40 deposits. The provision of remote deposit capture facilities or services by a  
41 non-branch bank business office shall not be deemed to be a taking of  
42 deposits. Non-branch bank business offices include loan production offices,  
43 mortgage loan offices, and insurance agency offices, or a combination  
44 thereof.
- 45 (47) North Carolina financial institution. – A bank, savings institution, or trust  
46 company organized under the laws of this State. For purposes of the  
47 Securities Act of 1933 and the Securities Exchange Act of 1934, any North  
48 Carolina financial institution is a banking institution.
- 49 (48) OCOB. – The Office of the Commissioner of Banks as provided in  
50 G.S. 53C-2-3.
- 51 (49) OCC. – The Office of the Comptroller of the Currency or its successor.

- (50) Organizational documents. – The charter, certificate of organization, articles of incorporation, articles of association, certificate of limited partnership, bylaws, operating agreement, partnership agreement, and any other similar documents required to be prepared or adopted by a company in connection with its organization, and as thereafter amended from time to time.
- (51) Organizational law. – The laws of the jurisdiction of organization of a company applicable to the organization of the company and its governance, including approval of transactions by its board of directors, shareholders, partners, members, or beneficiaries, as applicable.
- (52) Organizers. – One or more individuals who are the organizers of a proposed bank responsible for the business of the proposed bank from the filing of the application to the Commission's final decision on the application.
- (53) Out-of-state bank. – A bank that is organized, chartered, or created under the laws of a state other than this State and the deposits of which are insured by the FDIC.
- (54) Person. – An individual, a company, or a group of persons who are acting in concert.
- (55) Plan of conversion. – A detailed outline of the procedure of the conversion of a depository institution from one to another charter.
- (56) Practical banker. – An individual who at the time of appointment to the Commission is, or has been during the five years preceding the appointment, a president, chief executive officer, director, or holder of five percent (5%) or more of any class of voting securities of a North Carolina financial institution.
- (57) Principal office. – The office that houses the headquarters of a bank.
- (58) Public member. – A member of the Commission who is not a practical banker 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.
- (59) Public notice. – Notice to the public of the applicable information specified in this Chapter by (i) a single publication in a newspaper of general circulation in the county in which the bank that is the subject of the publication has its principal office or in such other county as may be directed by the Commissioner to best meet the purposes for which the notice is required and (ii) a posting in the notices section of the Commissioner's Web site for at least 15 days.
- (60) Record. – Information; reports, memoranda, charts, letters, messages, extracts, summaries, analyses, compilations, transaction documentation, account statements, financial statements, and other documents, including customer financial and other information, whether created, transmitted, distributed, retained, or stored in tangible or digital form.
- (61) Registered agent. – The person named in the organizational documents of a company upon whom service of legal process is deemed binding upon the company.
- (62) Required capital. – Required capital means either of the following:
- a. In the case of a proposed bank, the amount of capital required by the Commissioner as a prerequisite to the commencement of the business of banking.
  - b. In all other cases, an amount of capital equal to at least the amount of capital required for a bank to be deemed "adequately capitalized" under applicable federal regulatory capital standards.

- (63) Savings institution. – A savings and loan association or a savings bank organized under the laws of this State or of another state, or a federal savings association or savings bank.
- (64) Shareholder. – Any person in whose name shares are registered in the records of a corporation, or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
- (65) Shares. – The units into which the equity ownership interests of a corporation are divided.
- (66) State. – Any state of the United States, the District of Columbia, or any territory of the United States other than this State.
- (67) State trust company. – A company organized under the provisions of Article 24 of Chapter 53 of the General Statutes and a trust company previously organized under other provisions of this Chapter to operate only as a trust company and not as a commercial bank.
- (68) Subsidiary. – A company over which a bank has control.
- (69) This State. – The State of North Carolina.
- (70) Trust business. – Acting as a fiduciary or in other capacities permissible for a trust institution under G.S. 53-331.
- (71) Trust company. – A trust institution that is neither a depository institution nor a foreign bank, as defined in 12 U.S.C. § 1813(s)(1), but not including a bank organized under the laws of a territory of the United States.
- (72) Trust funds. – Trust funds as defined in Section 3(p) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(p).
- (73) Trust institution. – Any company lawfully acting as a fiduciary in a state or in a foreign country.
- (74) Voting securities. – A security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the company or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote.
- (75) Well-capitalized. – The term "well-capitalized" has the same meaning as defined in Regulation Y of the Federal Reserve Board, 12 C.F.R. § 225.2(r).
- (76) Well-managed. – Except as otherwise provided in this Chapter, a company or depository institution is well-managed if the following apply:
- a. At its most recent examination, the company or institution received at least a satisfactory composite rating and at least a satisfactory rating for management, if such rating is given.
- b. In the case of a company or depository institution that has not received an inspection or examination rating, a company or depository institution is well-managed if the Commissioner has determined, after a review of the managerial and other resources of the company or depository institution and after consulting with any other appropriate bank supervisory agency for the company or institution, that the company or institution is well-managed.
- A depository institution that results from the merger of two or more depository institutions that are well-managed shall be considered to be well-managed unless the Commissioner determines otherwise after consulting with any other appropriate bank supervisory agency for each depository institution involved in the merger. A depository institution that results from the merger of a depository institution that is well-managed with one or more depository institutions that are not well-managed or have not



1           been examined shall be considered to be well-managed if the Commissioner  
2           determines, after a review of the managerial and other resources of the  
3           resulting depository institution and after consulting with any other  
4           appropriate bank supervisory agency for the institutions involved in the  
5           merger, as applicable, that the resulting institution is well-managed.

6   **"§ 53C-1-5. Severability.**

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

11                                   **"Article 2.**

12                                   **"Commission and Commissioner.**

13   **"§ 53C-2-1. The Commission.**

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

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

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

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

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

51   **"§ 53C-2-2. The Commissioner.**

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

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

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

17       (d) The Commissioner may sue and prosecute or defend in any action or proceeding in  
18 any courts of this State or any other state and in any court of the United States for the  
19 enforcement or protection of any right or pursuit of any remedy necessary or proper in  
20 connection with the subjects committed to the Commissioner for administration or in  
21 connection with any bank or the rights, liabilities, property, or assets thereof under the  
22 Commissioner's supervision. Nothing herein shall be construed to render the Commissioner  
23 liable to be sued except as other departments and agencies of the State may be liable under the  
24 general law. The Commissioner may exercise any jurisdiction, supervise, regulate, examine, or  
25 enforce any State consumer protection laws or federal laws with respect to which the  
26 Commissioner has enforcement jurisdiction.

27       (e) The Commissioner shall have a seal of office bearing the legend "State of North  
28 Carolina – Commissioner of Banks." The Commissioner may adopt other symbols or marks of  
29 office.

30 **"§ 53C-2-3. The Office of the Commissioner of Banks.**

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

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

45       (c) Except as otherwise provided in this Chapter, the OCOB and its employees are  
46 exempt from the classification and compensation rules established by the State Personnel  
47 Commission pursuant to G.S. 126-4(1) through (4); G.S. 126-4(5) only as it applies to hours  
48 and days of work, vacation, and sick leave; G.S. 126-4(6) only as it applies to promotion and  
49 transfer; G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive  
50 pay programs; and Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1.  
51 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.

**"§ 53C-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 with respect to which the budget has been presented and shall approve or modify the budget at the meeting.

**"§ 53C-2-5. Rule making.**

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

(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) 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 fewer 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 that 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

1 standard of review of a petition for judicial review of a final order of the Commission shall be  
2 as provided in G.S. 150B-51(b).

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

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

7 **"§ 53C-2-7. Official record.**

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

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

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

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

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

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

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

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

43 (7) Records of North Carolina financial institutions in dissolution that have  
44 liquidated, that are under the Commissioner's supervisory control, or that are  
45 in receivership and that contain the names or other personal information of  
46 any customers of the institutions.

47 (8) Records prepared by a compliance review committee or other committee of  
48 the board of directors of a North Carolina financial institution or established  
49 at the direction of such a board of directors that have been obtained by the  
50 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 to federal regulatory agencies by any depository institution or trust institution, or its affiliates, holding company or its subsidiaries, or any other person subject to the Commissioner's jurisdiction, 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 that 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) Notwithstanding the provisions of subsection (b) of this section which limit discovery of confidential records held by the Commissioner, such records may be produced for discovery in a criminal or enforcement proceeding if both of the following occur:
- (1) After reviewing the discovery request, the court orders the Commissioner to submit the confidential records to the court for in camera review and the court finds that the interests of justice require that the documents be discoverable or admissible in evidence.
- (2) After making the finding provided by subdivision (1) of this subsection, the court enters a protective order restricting access and public distribution or any republication of the confidential materials requested.
- (f) 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 3.

"Organization of a Bank.

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

(a) An applicant for permission to organize a bank and for a charter must file an application with the Commissioner. The application shall be in the form required by the Commissioner and shall contain such information as the Commissioner requires, set forth in sufficient detail to enable the Commissioner to evaluate the applicant's satisfaction of the criteria set forth in G.S. 53C-3-4. The applicant shall pay a nonrefundable application fee as provided by rule at the time of filing the application.

(b) Upon receipt of an application, the Commissioner shall conduct an examination of the applicant and any other matters deemed relevant by the Commissioner. The Commissioner

1 may require additional information and may require the amendment of the application in the  
2 course of the examination. An applicant's failure to furnish all required information or to pay  
3 the required fee within 30 days after filing the application may be considered an abandonment  
4 of the application.

5 **"§ 53C-3-2. Permission to organize a bank.**

6 (a) With the approval of the Commissioner, the organizers may file articles of  
7 incorporation for the proposed bank with the Secretary of State. The Commissioner shall  
8 authorize the organization of the proposed bank if the Commissioner is satisfied that each of  
9 the following conditions is met:

10 (1) The application is complete.

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

14 (3) The proposed name of the proposed bank is not likely to mislead the public  
15 as to its character or purpose and is not the same as a name already adopted  
16 by an existing depository institution or trust institution operating in this  
17 State.

18 (b) If the Commissioner approves the organization of the proposed bank, the  
19 Commissioner shall issue a certificate to the Secretary of State. The Secretary of State shall  
20 transmit to the Commissioner a certified copy of the filed articles of incorporation of the  
21 proposed bank.

22 (c) Unless and until the Commissioner issues a charter to the proposed bank:

23 (1) The proposed bank shall not transact any business except such as is  
24 incidental and necessary to its organization or the application for a charter or  
25 preparation for commencing the business of banking.

26 (2) All funds paid for shares of the proposed bank shall be placed in escrow  
27 under a written escrow with a third-party escrow agent satisfactory to the  
28 Commissioner.

29 (3) All funds for shares placed into escrow, and all dividends or interest on such  
30 funds, may be removed from escrow only with the Commissioner's approval  
31 except to the extent that such funds are refunded to subscribers or as  
32 otherwise required by law.

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

34 **"§ 53C-3-3. Articles of incorporation of a proposed bank.**

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

37 (1) The information required to be set forth in articles of incorporation under  
38 Chapter 55 of the General Statutes.

39 (2) Any provision consistent with Chapter 55 of the General Statutes and other  
40 applicable law that the organizers elect to set forth for the regulation of the  
41 internal affairs of the proposed bank and that the Commissioner authorizes  
42 or requires.

43 (3) Any provision the Commissioner requires or authorizes as a substitute for a  
44 provision that otherwise would be required by Chapter 55 of the General  
45 Statutes.

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

49 **"§ 53C-3-4. Commissioner's approval of charter issuance.**

50 (a) The Commissioner may approve a charter for a proposed bank only when the  
51 Commissioner has determined that all the following requirements have been satisfied or are

1 reasonably probable to be satisfied within a reasonable period of time specified by the  
2 Commissioner in the order of approval:

- 3       (1) The proposed bank has solicited or will solicit subscriptions for purchases of  
4 shares sufficient to provide an amount of required capital satisfactory to the  
5 Commissioner for the commencement of the business of banking.
- 6       (2) All prior public solicitations for purchases of shares and all future  
7 solicitations will be solicited with appropriate disclosure, taking into account  
8 all the circumstances of the public solicitation, including a prominent  
9 statement in any solicitation document to the effect that the solicitation has  
10 not been approved by the Commissioner or the Commission and that a  
11 representation to the contrary is a criminal offense.
- 12       (3) All payments for purchases of shares in a bank in organization are made in  
13 United States currency.
- 14       (4) The proposed bank has an operational expense fund from which to pay  
15 organizational expenses, in an amount determined by the Commissioner to  
16 be sufficient for the safe and sound operation of the proposed bank while the  
17 charter application is pending.
- 18       (5) The proposed bank has been formed for legitimate and lawful business  
19 purposes.
- 20       (6) The character, competence, and experience of the organizers, proposed  
21 directors, proposed officers, and initial holders of more than ten percent  
22 (10%) of the voting securities of the proposed bank will command the  
23 confidence of the public.
- 24       (7) The proposed officers and directors, as a group, have degrees of character,  
25 competence, and experience sufficient to justify a belief that the proposed  
26 bank will be free from improper or unlawful influence and otherwise will  
27 operate safely, soundly, and in compliance with law.
- 28       (8) The anticipated volume and nature of business of the proposed bank  
29 projected in the application are reasonable and indicate a reasonable  
30 probability of safe, sound, and profitable operation of the proposed bank.
- 31       (9) If the proposed bank intends to conduct "trust business," as defined by  
32 G.S. 53C-1-4(70), it appears that trust powers should be granted based on  
33 consideration of the various factors set forth in Article 24 of Chapter 53 of  
34 the General Statutes for considering applications and setting capital for a  
35 State trust company.

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

40       (c) If it appears to the Commissioner that the proposed bank has satisfied or is  
41 reasonably probable to satisfy the requirements for issuance of a charter, the Commissioner  
42 shall issue an order approving the application for a charter and such order shall be submitted to  
43 the Commission for its review at a public hearing. The Commissioner may, in the order  
44 approving the proposed bank's charter, impose other reasonable conditions or restrictions upon  
45 the proposed bank or the new bank, consistent with this Chapter.

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

51 "§ 53C-3-5. Notice; public hearing.

1       (a) Not less than 30 days before the public hearing of the Commission to review the  
2 Commissioner's approval of an application, the applicant shall cause to be published a public  
3 notice containing the following:

- 4           (1) A statement that the application has been filed with the Commissioner.  
5           (2) The name of the community where the proposed bank intends to locate its  
6 principal office.  
7           (3) A statement that a public hearing will be held to review the Commissioner's  
8 approval of the application.  
9           (4) A statement that any interested person may file a written statement either  
10 favoring or protesting the chartering of the proposed bank. The statement  
11 shall note that, in order to be considered at the public hearing, all written  
12 statements from interested persons must be filed with the Commission  
13 within 30 days of the date of publication of the public notice.

14       (b) At the public hearing, the Commission shall consider the findings and order of the  
15 Commissioner and shall hear such testimony as the Commissioner may wish to give or be  
16 called upon to give. To the extent that the Commission deems the information and testimony  
17 relevant to its review of the Commissioner's order, the Commission shall receive information  
18 and hear testimony from the organizers and shall hear from any other interested persons.

19 **"§ 53C-3-6. Commission decision.**

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

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

34 **"§ 53C-3-7. Issuance of charter.**

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

- 39           (1) Received payment in United States currency for the purchase of shares and  
40 will have satisfactory required capital upon commencing business, in each  
41 case in at least the amount required by the Commission's order approving the  
42 application.  
43           (2) Elected the proposed officers and directors named in the application or other  
44 officers and directors approved by the Commissioner.  
45           (3) Secured deposit insurance from the FDIC.  
46           (4) Complied with all requirements of the Commission's order approving the  
47 application for a charter.  
48           (5) Appears to be ready to commence the business of banking in the reasonable  
49 discretion of the Commissioner upon a pre-opening examination.

50       (b) The charter issued by the Commissioner shall set forth any trust powers of the bank  
51 that may be full or partial trust powers.



1       (c) If a bank does not open and engage in the business of banking within six months  
2 after the date its charter is issued or within such longer period as may be permitted by the  
3 Commissioner, the Commissioner shall revoke the charter.

4       (d) If the Commissioner determines that a charter should not be issued following  
5 Commission approval, the applicant may appeal that decision to the Commission as provided in  
6 G.S. 53C-2-6.

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

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

12           (2) The Commission denies approval of a charter.

13           (3) The charter is revoked by the Commissioner pursuant to subsection (c) of  
14 this section or other applicable law.

15                               "Article 4.

16                               "Governance of Banks.

17 **"§ 53C-4-1. Banks – form of organization.**

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

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

24 **"§ 53C-4-2. Banks controlled by boards of directors.**

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

28       (b) A bank's board of directors shall consist of not fewer than five individuals. For good  
29 cause shown, the Commissioner may approve boards of directors consisting of fewer than five  
30 individuals to the extent consistent with other applicable law.

31       (c) The board of directors shall meet at least quarterly, provided that the executive  
32 committee shall meet in any month in which there is no meeting of the board of directors, and  
33 the loan committee shall meet monthly.

34       (d) Except to the extent the provisions of this Chapter or other applicable federal or  
35 state laws and regulations impose a different standard, bank directors shall have the duties,  
36 authority, and liabilities of directors of corporations organized under Chapter 55 of the General  
37 Statutes.

38       (e) The board of directors of a bank may appoint directors with respect to such of the  
39 bank's branches as it deems useful to the business of the bank. No such advisory director shall  
40 be liable for acts or omissions undertaken as an advisory director under the laws applicable to  
41 the performance of the duties of a director of a bank, unless and only to the extent he or she  
42 undertakes or is delegated authority as a director of the bank.

43 **"§ 53C-4-3. Committees of boards of directors.**

44       (a) The board of directors shall appoint, at a minimum, an audit committee, an  
45 executive committee, and a loan committee (which may be the executive committee or the  
46 board of directors as a whole) and may appoint such other committees as it deems appropriate  
47 to provide for the safe and sound operation of the bank in a manner consistent with applicable  
48 laws and regulations.

49       (b) The Commissioner may require the board of directors of a bank to establish one or  
50 more additional committees if, in the judgment of the Commissioner, such committees are  
51 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.

**"§ 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 do either of the following:

(1) Appoint an agent in Wake County, North Carolina, for service of process.

(2) Consent, on a form satisfactory to the Commissioner, to the following:

a. The Commissioner may serve as the director's agent for service of process.

b. The director consents to jurisdiction in Wake County, North Carolina, but only for purposes of any action or proceeding brought by the Commissioner.

**"§ 53C-4-6. Liability of directors.**

(a) The standard of conduct for directors shall be as set forth in G.S. 55-8-30.

(b) Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of the bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its shareholders, or any other person shall have sustained in consequence of such violation. Any aggrieved shareholder of any bank in liquidation may prosecute an action for the enforcement of the provisions of this section. Only one such action may be brought.

**"§ 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 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.

**"§ 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.**

(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 the following:

(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.

**"§ 53C-4-11. Reserve fund.**

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

- (1) If the bank is a member of the Federal Reserve System, it shall maintain a reserve fund in accordance with the requirements of the Federal Reserve Board.
- (2) All other banks shall maintain a reserve fund as required by the Commissioner.

(b) The Commissioner may require a level of reserve fund for nonmember banks as provided in subsection (a)(2) of this section, taking into consideration the level of liquidity the Commissioner deems necessary for the safe and sound operation of the banks.

(c) In establishing the required level of reserve fund, the Commissioner shall include the following types of liquid reserves:

- (1) Cash on hand, which shall include both United States currency and exchange of any clearinghouse association or similar intermediary.
- (2) Balances on demand from designated depository institutions.
- (3) Obligations of the United States Treasury, any agency of the United States government that is guaranteed by the United States government, and any general obligation of this State or any political subdivision thereof that has an investment grade rating of A or higher by a nationally recognized rating service.

(d) Notwithstanding any other provision of this Chapter, in the event the reserve fund of a bank falls below the level required under subsection (b) of this section, the Commissioner may require the bank to do the following:

- (1) Discontinue making any new extension of credit.
- (2) Promptly restore its reserve fund to the applicable required level.

(e) In the event a bank shall fail to promptly restore its reserve fund to the applicable level required within 10 days after the Commissioner directs it to do so, the Commissioner may take such actions under Article 8 of this Chapter as the Commissioner deems necessary.

**"§ 53C-4-12. Compliance review committee.**

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

- (1) "Compliance review committee" means 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, whose functions are to audit, evaluate, report, or determine compliance with any of the following:
  - a. Loan underwriting standards.
  - b. Asset quality.
  - c. Financial reporting to federal or State regulatory agencies.
  - d. Adherence to the bank's investment, lending, accounting, ethical, or risk assessment, and financial standards.
  - e. 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 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, and not by way of limitation, a bank shall have the power to do the following:

- (1) Carry on the business of banking, which includes such activities as discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness; receiving deposits; issuing, advising, and confirming letters of credit; receiving money for transmission; and loaning money on personal security or on real or personal property.
- (2) Make any loan that could be made by a federally chartered institution doing business in this State.
- (3) Purchase or invest in loans, or a participating interest in loans, of a type that the bank could itself make.
- (4) Sell any loan, including one or more participating interests in a loan.
- (5) Make any investments authorized by G.S. 53C-5-2 or any other section of this Chapter.
- (6) Through information technology systems, processes, and capabilities, provide, deliver, or otherwise make available banking services and products, enhance the effectiveness or efficiency of its operations, and provide other benefits to its customers. Additionally, a bank may utilize its information technology systems, processes, capabilities, and capacities in the same manner and to the same extent as is permitted for national banks.
- (7) Engage in any other activities approved by rule, order, or interpretation of the Commissioner.

(b) A bank shall also have the power to engage:

- (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 that proposes to engage in any new activity shall apply to the Commissioner for approval to engage in the activity before its commencement. If the new activity will be conducted in a new or existing subsidiary in which the bank intends to make an investment, the bank shall apply to the Commissioner for approval to engage in the 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 subsection (a), (b), or (c) of this section.
- (2) The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent safety and soundness examination.
- (3) No notice or application to engage in the new activity is required to be filed by the bank with any federal banking regulator.
- (f) A bank permitted to commence a new activity without prior application and approval pursuant to subsection (e) of this section shall notify the Commissioner in writing of the commencement of the new activity no later than the 30th day after the earlier of (i) commencing the new activity or (ii) if applicable, making an investment in a subsidiary through which the new activity will be conducted.
- § 53C-5-2. Investment authority.**
- (a) In addition to any powers or investments authorized by any other section of this Chapter, a bank may invest in the following:
- (1) The shares or other securities of the following:
- a. Any other depository institution.
- b. Any industrial bank, bankers' bank, or other deposit-taking entity chartered or existing under any federal or State law, including the shares or other securities of clearing corporations defined in G.S. 25-8-102, the shares or other securities of central reserve banks, and the shares of an Edge Act bank. The investment of any bank in the shares of a central reserve bank or bank organized under the Edge

- 1                    Act, 12 U.S.C. § 611, et seq., shall at no time exceed ten percent  
2                    (10%) of the required capital of the bank making the investment.
- 3                    c.        Any company in which a federally chartered institution is authorized  
4                    to invest under any statute or any regulation, official circular,  
5                    bulletin, order, or written interpretation issued by the OCC.
- 6                    (2)        Bonds or notes issued by or fully and unconditionally guaranteed as to  
7                    principal and interest by the United States Treasury. No bank shall be  
8                    required to maintain a reserve against deposits secured by United States  
9                    Treasury bonds or notes equal in market value to the amount of such  
10                    deposits, and such bonds or notes shall be valid security for all loans and  
11                    deposits to the same extent as are any obligations of the United States.
- 12                    (3)        Federal farm loan bonds, notes, or similar obligations issued by a farm credit  
13                    system institution.
- 14                    (4)        Securities issued by federal home loan banks pursuant to the Federal Home  
15                    Loan Bank Act of 1932, as amended.
- 16                    (5)        Bonds or notes secured by a mortgage or deed of trust insured or guaranteed  
17                    by the Federal Housing Administration, Secretary of Housing and Urban  
18                    Development, or the Veterans Administration, or in mortgages or deeds of  
19                    trust on real estate that have been accepted for insurance or guarantee by the  
20                    Federal Housing Administration, Secretary of Housing and Urban  
21                    Development, or Veterans Administration, or in obligations of a national  
22                    mortgage association, which obligations are insured or guaranteed by the  
23                    United States government. No law of this State prescribing the nature,  
24                    amount, or form of security or requiring security upon which loans or  
25                    investments may be made, or prescribing the rates or time of payment of the  
26                    interest any obligation may bear, or prescribing the period for which loans or  
27                    investments may be made, shall apply to investments made pursuant to this  
28                    subsection.
- 29                    (6)        Mutual funds, but subject to rules or orders adopted by the Commissioner.
- 30                    (b)        A bank may make an investment in a subsidiary that will be operated as any of the  
31                    following:
- 32                    (1)        Bank operating subsidiary.
- 33                    (2)        Financial subsidiary.
- 34                    (3)        DPC subsidiary, as defined by G.S. 53C-1-4(30).
- 35                    (c)        An investment by a bank or a bank subsidiary pursuant to subsection (b) or (d) of  
36                    this section shall receive the same accounting and regulatory treatment as is accorded to such  
37                    investment by the bank's primary federal supervisor. No investment shall be made by a bank or  
38                    a bank subsidiary pursuant to subsection (b) or (d) of this section unless the following apply:
- 39                    (1)        The investment is approved by the board of directors of the bank.
- 40                    (2)        The bank has carefully investigated the business or activity in which the  
41                    subsidiary established by the investment will engage.
- 42                    (3)        The bank has established the risk management and financial controls  
43                    necessary to engage in the business or activity in a safe and sound manner.
- 44                    (4)        The bank has, and following the making of the investment and the  
45                    application of the provisions of this subsection, will continue to satisfy the  
46                    capital requirements of this Chapter.
- 47                    (d)        A bank operating subsidiary may make an investment of any size in a lower tier  
48                    subsidiary.
- 49                    (e)        Except as provided in subsection (f) of this section, a bank or bank operating  
50                    subsidiary proposing to make an investment described in subsection (b), (c), or (d) of this  
51                    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 that 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 of the following:

a. One in which the bank is then engaged or has previously been engaged, directly or through a different subsidiary, and for which all necessary approvals of bank supervisory agencies and of the Commissioner have previously been obtained and remain in effect.

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

(3) A bank that makes an investment pursuant to the exception created by this subsection shall nevertheless notify the Commissioner in writing of the investment within 30 days thereafter.

(g) Any bank, out-of-state bank, national bank, or any subsidiary thereof that engages in an activity subject to licensure and/or regulation under the laws of this State, other than this Chapter, shall be subject to licensure and/or regulation on a basis that does not arbitrarily discriminate by the appropriate regulatory agency which licenses and/or regulates nonbanks that engage in the same activity.

(h) The Commissioner shall monitor the impact of investment activities of banks and their subsidiaries under this section on the safety and soundness of such banks. Any securities owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the securities and, if not so disposed of, they shall be charged to profit and loss account and no longer carried on the books as an asset. The limit of time in which securities shall be disposed of or charged off the books of the bank may be extended by the Commissioner if in the Commissioner's judgment it is for the best interest of the bank that the extension be granted, provided that the limitations imposed in this section on the ownership of shares or other equity ownership interest in companies are suspended only to the extent that any bank operating under the supervision of the Commissioner may subscribe for and purchase shares and other equity ownership interests in, or debentures, bonds, or other types of securities of, any company organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors.

(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

1 five years after it is acquired unless, upon application by the bank, the  
2 Commissioner extends the time within which the sale shall be made.

3 (j) A bank's investment in any bonds or other debt obligations of any one person, other  
4 than obligations of the United States government or an agency thereof, or other obligations  
5 guaranteed by the United States, this State, another state, or other political subdivision of this  
6 State or another state, shall at no time exceed ten percent (10%) of its required capital.

7 **"§ 53C-5-3. Banks, fiduciaries authorized to invest in securities approved by the**  
8 **Secretary of Housing and Urban Development, Federal Housing**  
9 **Administration, Veterans Administration.**

10 (a) Insured Mortgages and Obligation of National Mortgage Associations and Federal  
11 Home Loan Banks. – It shall be lawful for all commercial and industrial banks, trust  
12 companies, building and loan associations, savings and loan associations, insurance companies,  
13 mortgagees and loan correspondents approved by the Secretary of Housing and Urban  
14 Development or Federal Housing Administration, and other financial institutions engaged in  
15 business in this State, and for guardians, executors, administrators, trustees, or others acting in  
16 a fiduciary capacity in this State to invest, to the same extent that such funds may be invested in  
17 interest-bearing obligations of the United States, their funds or moneys in their custody or  
18 possession that are eligible for investment, in bonds or notes secured by a mortgage or deed of  
19 trust insured or guaranteed by the Federal Housing Administration, Secretary of Housing and  
20 Urban Development, or the Veterans Administration, or in mortgages or deeds of trust on real  
21 estate which have been accepted for insurance or guarantee by the Federal Housing  
22 Administration, Secretary of Housing and Urban Development, or Veterans Administration,  
23 and in obligations of a national mortgage association, which obligations are insured or  
24 guaranteed by the United States Government, or bonds, debentures, consolidated bonds, or  
25 other obligations of any federal home loan bank or banks.

26 (b) Insured or Guaranteed Loans; Loans Purchased by National Mortgage Associations  
27 and Federal Home Loan Banks. – All such banks, trust companies, building and loan  
28 associations, savings and loan associations, insurance companies, mortgagees and loan  
29 correspondents approved by the Secretary of Housing and Urban Development or Federal  
30 Housing Administration, and other financial institutions, and also all such guardians, executors,  
31 administrators, trustees, or others acting in a fiduciary capacity in this State, may make such  
32 loans, secured by real estate, as the Secretary of Housing and Urban Development, the Federal  
33 Housing Administration, a national mortgage association, or the Veterans Administration has  
34 insured or guaranteed, or has made a commitment to insure or guarantee, and may obtain such  
35 insurance or guarantee; provided, further, that the above designated financial institutions may  
36 make loans, secured by real estate, that are eligible and committed for sale to a national  
37 mortgage association, federal home loan bank, federal home loan mortgage corporation, or  
38 other agency or instrumentality of the United States.

39 (c) Eligibility for Credit Insurance. – All banks, trust companies, building and loan  
40 associations, savings and loan associations, insurance companies, mortgagees and loan  
41 correspondents approved by the Secretary of Housing and Urban Development or Federal  
42 Housing Administration, and other financial institutions, on being approved as eligible for  
43 credit insurance by the Secretary of Housing and Urban Development, the Federal Housing  
44 Administration, or the Veterans Administration, may make such loans as are insured by the  
45 Secretary of Housing and Urban Development or Federal Housing Administration or insured or  
46 guaranteed by the Veterans Administration.

47 (d) Certain Securities Made Eligible for Collaterals. – Whenever by statute of this State  
48 collateral is required as security for the deposit of public or other funds; or deposits are required  
49 to be made with any public official or department; or an investment of capital or surplus, or a  
50 reserve or other fund is required to be maintained, consisting of designated securities, bonds,  
51 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 6.

"Bank Operations.

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

(a) A bank may make a loan or extension of credit secured by the pledge of its own shares or the shares of its holding company, provided:

(1) When a bank exercises its security interest in shares of the bank or its holding company, it shall dispose of all of the shares within a period of six months. If the shares have not been disposed of within six months, the shares shall be charged to profit and loss and no longer carried as an asset of the bank. The Commissioner may extend the six-month period not to exceed an additional six months.

(2) A bank may not extend credit to finance the purchase of or to carry shares of the bank or the shares of its holding company. For purposes of this subsection, the phrase "to carry" has the meaning set forth in 12 C.F.R. Part 221, as promulgated by the Federal Reserve Board.

(b) Loans and Extensions of Credit – Limitations:

(1) The total loans and extensions of credit, both direct and indirect, by a bank to a person, other than a municipal corporation for money borrowed, including in the liabilities of a company the liabilities of the several members of the company, outstanding at one time and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit, shall not exceed the greater of 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.

- 1           a.     The discount of bills of exchange drawn in good faith against actual  
2                 existing values.
- 3           b.     The discount of solvent trade acceptances or other solvent  
4                 commercial or business paper actually owned by the person  
5                 negotiating the same.
- 6           c.     Loans or extensions of credit secured by a segregated deposit account  
7                 in the lending bank.
- 8           d.     The purchase of bankers' acceptances of the kind described in section  
9                 13 of the Federal Reserve Act and issued by other depository  
10                institutions.
- 11          e.     The purchase of any notes and the making of any loans secured by  
12                 not less than a like face amount of bonds of the United States or any  
13                 agency of the United States; or other obligations guaranteed by the  
14                 United States government or the State of North Carolina; or  
15                 certificates of indebtedness of the United States, or agency thereof;  
16                 or other obligations guaranteed by the United States government.
- 17       (4)     For purposes of this subsection, the following definitions and conditions  
18                 apply:
- 19           a.     "Person" includes an individual or a corporation, partnership, trust,  
20                 association, joint venture, pool, syndicate, sole proprietorship,  
21                 unincorporated organization, or any other form of entity not  
22                 specifically listed; provided, the term "person" shall not include (i) a  
23                 clearing organization registered with the Commodity Futures Trading  
24                 Commission (or its successor) or the Securities and Exchange  
25                 Commission (or its successor) or any federal banking agency or (ii) a  
26                 bank's affiliates.
- 27           b.     Loans or extensions of credit to one person include loans made to  
28                 other persons when the proceeds of the loans or extensions of credit  
29                 are to be used for the direct benefit of the first person or the persons  
30                 are engaged in a common enterprise.
- 31           c.     For purposes of this section, extensions of credit by a bank to a  
32                 person shall include the bank's credit exposures to the person in  
33                 derivative transactions with the bank.
- 34           d.     "Derivative transaction" includes any transaction that is a contract,  
35                 agreement, swap, warrant, note, or option that is based, in whole or  
36                 in part, on the value of, any interest in, or any quantitative measure or  
37                 the occurrence of any event relating to one or more commodities,  
38                 securities, debt instruments, currencies, interest or other rates,  
39                 indices, or assets.
- 40           e.     Credit exposure to a person in connection with a derivative  
41                 transaction shall be determined based on an amount that the bank  
42                 reasonably determines, in accordance with customary industry  
43                 practices under the terms of the derivative transaction or otherwise,  
44                 would be its loss if the person were to default on the date of  
45                 determination, taking into account any netting and collateral  
46                 arrangements and any guarantees or other credit enhancements,  
47                 provided that the bank may elect to determine credit exposure on the  
48                 basis of such other method of determining credit exposure as may be  
49                 permitted by the bank's primary federal regulator.

1       (c) The Commissioner shall monitor the lending activities of banks under this section  
2 for undue credit concentrations and inadequate risk diversification that could adversely affect  
3 the safety and soundness of the banks.

4       (d) Rules adopted by the Commissioner to ensure that extensions of credit made by  
5 banks are in keeping with sound lending practices and to promote the purposes of this Chapter  
6 shall not prohibit a bank from making any extension of credit that is a permitted extension of  
7 credit for a federally chartered institution.

8 **"§ 53C-6-2. Deposits.**

9       (a) A bank may, consistent with applicable law and safe and sound banking practices,  
10 offer all types of deposit accounts upon such terms and conditions as the bank considers  
11 appropriate.

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

13 **"§ 53C-6-3. Securing deposits.**

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

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

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

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

24 **"§ 53C-6-4. Minors.**

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

36       (b) Any bank may lease a safe deposit box to a minor or to two or more individuals, one  
37 or more of whom are minors. With respect to any such lease, a bank may deal with the minor in  
38 all regards as if the minor were of full age and legal capacity. A minor entering a lease  
39 agreement with a bank under this subsection, whether individually or together with others, is  
40 bound by the terms of the safe deposit box agreement to the same extent as if the minor were of  
41 full age and legal capacity.

42       (c) If a minor with a deposit account, other than a joint account with right of  
43 survivorship or a Payable on Death account, dies, a parent or legal guardian of the minor may  
44 access and withdraw the funds on deposit, and the bank is discharged to the extent of any  
45 withdrawal. If a minor with a safe deposit box dies, the provisions of G.S. 28A-15-13 shall  
46 control the opening, inventory, and release of contents of the safe deposit box.

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

50 **"§ 53C-6-5. Reserved for future codification purposes.**

51 **"§ 53C-6-6. Joint accounts.**

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

(b) Unless the individuals establishing a joint account have agreed with the bank that withdrawals require more than one signature, payment by the bank to, or at the direction of, any joint tenant designated in the contract authorized by this section shall be a total discharge of the bank's obligation as to the amount so paid.

(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 provision of law relating to estate taxes.

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

(i) Where a joint account is held by two or more individuals and a joint tenant does not wish for the account to be terminated but requests to be removed from the account, the bank shall remove the joint tenant from the account. The joint account shall continue in the names of the remaining tenant or tenants. Any joint tenant who requested to be removed from an account

remains liable for any debts incurred in connection with the joint account during the period in which the individual was a named joint tenant.

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

- 1 individual account in a case of a single owner or a joint account with right of  
2 survivorship, as provided in G.S. 53C-6-6, in the case of multiple owners.  
3 (7) Prior to the death of the last surviving owner, no beneficiary shall have any  
4 ownership interest in a Payable on Death account. Funds in a Payable on  
5 Death account established pursuant to this subsection shall belong to the  
6 beneficiary or beneficiaries upon the death of the last surviving owner, and  
7 the funds shall be subject only to the personal representative's right of  
8 collection as set forth in G.S. 28A-15-10(a)(1). Payment by the bank of  
9 funds in the Payable on Death account to the beneficiary or beneficiaries  
10 shall terminate the personal representative's authority under  
11 G.S. 28A-15-10(a)(1) to collect against the bank for the funds so paid, but  
12 the personal representative's authority to collect such funds from the  
13 beneficiary or beneficiaries is not terminated.

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

19 "BANK (or name of institution)  
20 PAYABLE ON DEATH ACCOUNT  
21 G.S. 53C-6-7

22 I (or we) understand that by establishing a Payable on Death account under the provisions  
23 of North Carolina General Statute 53C-6-7 that:

- 24 1. During my (or our) lifetime I (or we), individually or jointly, may withdraw  
25 the money in the account.  
26 2. By written direction to the bank (or name of institution) I (or we),  
27 individually or jointly, may change the beneficiary or beneficiaries.  
28 3. Upon my (or our) death, the money remaining in the account will belong to  
29 the beneficiary or beneficiaries, and the money will not be inherited by my  
30 (or our) heirs or be controlled by will.  
31 "

32 (b) This section shall not be deemed exclusive. Deposit accounts not conforming to this  
33 section shall be governed by other applicable provisions of the General Statutes or the common  
34 law, as appropriate.

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

38 (d) This section does not repeal or modify any provisions of law relating to estate taxes.  
39 "§ 53C-6-8. Personal agency accounts.

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

- 45 (1) Make, sign, or execute checks drawn on the account or otherwise make  
46 withdrawals from the account.  
47 (2) Endorse checks made payable to the principal for deposit only into the  
48 account.  
49 (3) Deposit cash or negotiable instruments, including instruments endorsed by  
50 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.
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 that 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.

**"§ 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 the following terms apply:

- (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 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.

**"§ 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 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.



1       (b) For purposes of this section, an account statement is deemed to have been  
2 "rendered" to a depositor as of the earlier of the date the statement is mailed to the depositor's  
3 address as shown on bank records and the date the account is posted to the bank's Web site in a  
4 manner and a form ensuring the statement to be readily available to the depositor; provided  
5 however, the bank and the depositor may agree that an account statement may be rendered by  
6 other means.

7       (c) Nothing in this section shall be construed to relieve the depositor from the duty of  
8 exercising due diligence in the review of an account statement rendered by the bank and of  
9 timely notification to the bank upon discovery of any error.

10 **"§ 53C-6-13. Safe deposit boxes; unpaid rentals; procedure; escheats.**

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

27       (b) If the contents of the safe deposit box have not been claimed within two years of the  
28 mailing or other permissible delivery of the copy of the certificate to the lessee, the bank may  
29 send a further notice to the last known address of the lessee by registered mail or certified mail,  
30 return receipt requested, to the last known address of the lessee or by a means otherwise  
31 previously agreed to in writing by the lessor bank and the lessee, stating that unless the  
32 accumulated charges are paid within 30 days of the date of the mailing of the notice, the  
33 contents of the box will be delivered to the State Treasurer as abandoned property under the  
34 provisions of Chapter 116B of the General Statutes.

35       (c) The bank shall submit to the State Treasurer a verified inventory of all of the  
36 contents of the safe deposit box upon delivery of the contents of the box or such part thereof as  
37 shall be required by the State Treasurer under G.S. 116B-55, but the bank may deduct from any  
38 cash of the lessee in the safe deposit box an amount equal to accumulated charges for rental and  
39 shall submit to the State Treasurer a verified statement of the charges and deduction. If there is  
40 no cash or insufficient cash to pay accumulated charges in the safe deposit box, the bank may  
41 submit to the State Treasurer a verified statement of accumulated charges or balance of the  
42 accumulated charges due, and the State Treasurer shall remit to the bank the charges or balance  
43 due, up to the value of the property in the safe deposit box delivered to the State Treasurer, less  
44 any costs or expenses of sale; but if the charges or balance due exceeds the value of the  
45 property, the State Treasurer shall remit only the value of the property, less costs or expenses of  
46 sale. Any accumulated charges for safe deposit box rental paid by the State Treasurer to the  
47 bank shall be deducted from the value of the property of the lessee delivered to the State  
48 Treasurer.

49       (d) Any property, including documents or writings of a private nature, that has little or  
50 no apparent financial value need not be sold but may be destroyed by the bank if the State  
51 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 that is capable of accurately converting the records into tangible form within a reasonable time. Each such converted tangible form of record also shall be deemed a record.

(b) Any tangible form of a record shall be deemed for all purposes to be an original record and shall be admissible in evidence in all courts and administrative agencies in this State, if otherwise admissible, and the bank may destroy or otherwise dispose of the original form of the record; provided, however, that a bank shall retain either the originals or convertible form of its records for such period as may be required by law or by rule or order of the Commissioner. Any bank may dispose of any original or convertible form of a record that has been retained for the period prescribed by law or by rule or order of the Commissioner for its class.

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

**"CERTIFICATE REGARDING BANK RECORDS**

1. The accompanying documents are true and correct copies of the records of [name of bank]. The records were made in the regular course of business of the bank at or near the time of the acts, events, or conditions they reflect.
2. The undersigned is authorized to execute this certificate.
3. This certificate is issued pursuant to G.S. 53C-6-14.

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

Date: \_\_\_\_\_

Signature

Print or type name

Title

[Notarize as required by law for an affidavit]"

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

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

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

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

(c) A bank seeking authority to establish a branch shall make application to the Commissioner in a form acceptable to the Commissioner. Not more than 30 days before nor

less than 10 days after the filing of the application with the Commissioner, the applicant shall publish public notice of the filing of the application. The public notice shall contain all of the following:

- (1) A statement that the application has been filed with the Commissioner.
- (2) The physical address or location of the proposed branch, including street and city or town.
- (3) A statement that any interested person may make written comment on the application to the Commissioner and that comments received by the Commissioner within 14 days of the date of publication of the public notice shall be considered. The public notice shall provide the then current mailing address of the Commissioner.

(d) A bank may conduct any activities at a branch in another state authorized under this section that are permissible for a bank chartered by the other state where the branch is located, except to the extent the activities are expressly prohibited by the laws of this State or by any rule or order of the Commissioner applicable to the bank.

(e) Upon receipt of an application to establish a branch, the Commissioner shall conduct an examination of the pertinent facts and information and may request such additional information as the Commissioner deems necessary to make a decision on the application. In deciding whether to approve a branch application, the Commissioner shall take into account such factors as the financial condition and history of the applicant; the adequacy of its capital; the applicant's future earnings prospects; the character, competency, and experience of its management; the probable impact of the branch on the condition of the applicant bank and existing depository institutions in the community to be served; and the convenience and needs of the community the proposed branch is to serve.

**"§ 53C-6-16. 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.

**"§ 53C-6-17. Branch closings.**

A bank may close a branch upon providing written notice to the Commissioner and the customers of the branch at least 90 days prior to the proposed closing. The notice shall include the date the branch will close and posting, in a conspicuous manner on the branch premises for

1 a period of 30 days prior to the proposed closing date, a notice of its intent to close the branch.  
2 The consolidation of two or more branches into a single location in the same vicinity shall not  
3 be considered a closure subject to the 90-day and 30-day notice requirements of this section. To  
4 be considered a consolidation, the bank shall request consolidation treatment from the  
5 Commissioner, who shall decide, in his or her discretion, whether the branches to be  
6 consolidated are considered to be in the same vicinity, with due consideration to the distance  
7 between the branches and the nature of the market in which the branches are situated.

8 **"§ 53C-6-18. Non-branch bank business offices.**

9 (a) A bank may establish one or more non-branch bank business offices as defined by  
10 G.S. 53C-1-4(46).

11 (1) If a proposed non-branch bank business office will offer a product, service,  
12 or other type of business not previously engaged in by the bank, the bank  
13 shall provide the Commissioner with written notification of the intent to  
14 open the office. The notification shall include the proposed location of the  
15 office and a description of the business to be conducted at the office. If the  
16 Commissioner does not request additional information or object to its  
17 establishment within 10 days of the date of receipt of the notification, the  
18 non-branch bank business office shall be deemed approved. In deciding  
19 whether to object to the establishment of a non-branch bank business office,  
20 the Commissioner shall consider, without limitation, whether the business  
21 proposed to be conducted at the non-branch bank business office is  
22 permissible for a bank, the costs of its establishment and ongoing operation  
23 and the impact of the costs on the bank's capital and profitability, and the  
24 ability of the bank's management to conduct the proposed business.

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

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

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

33 (d) No deposits may be taken at a non-branch bank business office.

34 **"§ 53C-6-19. Operations; suspension.**

35 (a) A bank, any of its branches, and any of its non-branch bank business offices may  
36 operate on such days and during such hours, and may observe such holidays, as the bank's  
37 board of directors shall designate.

38 (b) Whenever the Commissioner determines that an emergency exists or is pending in  
39 this State or any part thereof, the Commissioner may authorize banks operating in the affected  
40 area or areas to suspend any or all of their operations in such area or areas for such period or  
41 periods as the Commissioner establishes. An emergency is any condition or occurrence that  
42 may interfere with a bank's operations or poses an existing or imminent threat to the safety or  
43 security of persons or property, or both.

44 (c) In the event that an emergency exists or is pending in this State or any part thereof  
45 and a bank operating in the affected area or areas is unable to communicate the existence or  
46 pendency of the emergency to the OCOB, an officer of the bank may suspend any or all of the  
47 bank's operations in the affected area or areas without the prior approval of the Commissioner.  
48 The bank shall give notice of such closing to the Commissioner as soon as practicable.

49 **"Article 7.**

50 **"Control Transactions; Combinations; Conversions.**

51 **"Part 1. Change in Control.**

1 "§ 53C-7-101. Control transactions.

2 (a) Except as otherwise expressly permitted by this section, a person shall not engage in  
3 a control transaction, as defined by G.S. 53C-1-4(22), involving a bank without the prior  
4 approval of the Commissioner. A person may contract to engage in a control transaction with  
5 the consummation of such control transaction being subject to receipt of the approval of the  
6 Commissioner. Each bank shall report to the Commissioner any changes in its directors,  
7 president, chief executive officer, chief financial officer, chief loan officer, or chief credit  
8 officer by the close of the second day on which the holding company is open for business  
9 following such change.

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

15 (c) The following transactions shall not constitute a control transaction requiring the  
16 prior approval of the Commissioner:

17 (1) The acquisition of control over voting securities in connection with securing,  
18 collecting, or satisfying a debt previously contracted for in good faith and  
19 not for the purpose of acquiring control of the bank, if the acquiring person  
20 files a notice with the Commissioner, in the form required by the  
21 Commissioner, describing such transaction at least 10 days before the  
22 acquiring person first votes or directs the voting of the voting securities.

23 (2) The acquisition of control over voting securities by a person who has  
24 previously engaged in a control transaction with respect to the bank after  
25 receiving the approval of the Commissioner under this Article, which  
26 approval permits the acquisition of control over additional voting securities,  
27 or any person who is an affiliate of the person previously engaging in the  
28 approved control transaction with the permission and who is identified in the  
29 application submitted for the approval, if the acquiring person files a notice  
30 with the Commissioner, in the form required by the Commissioner,  
31 describing the transaction at least 10 days before the acquiring person or  
32 affiliate thereof first votes or directs the voting of the voting securities.

33 (3) An acquisition of control over voting securities by operation of law, will, or  
34 intestate succession, if the acquiring person files a notice with the  
35 Commissioner, in the form required by the Commissioner, describing the  
36 acquisition or transfer at least 10 days before the acquiring person first votes  
37 or directs the voting of the voting securities.

38 (4) Bona fide gifts.

39 (5) A transaction exempted by rules, orders, or declaratory rulings of the  
40 Commissioner issued because approval of such a transaction is not necessary  
41 to achieve the objectives of this Chapter.

42 (6) An acquisition of control over voting securities in a transaction subject to  
43 approval under section 3 of the Bank Holding Company Act, as amended  
44 (12 U.S.C. § 1842).

45 (d) Upon receipt of a notice described in subsection (c), the Commissioner may, before  
46 the 10th day following the receipt, notify the acquiring person of the Commissioner's objection  
47 to the exercise of control over the voting securities or may require the acquiring party to submit  
48 further information before exercising control over the voting securities. An acquiring person  
49 receiving a notice of objection shall be required to submit an application for approval of a  
50 control transaction. An acquiring person receiving a notice to submit further information may  
51 be required to provide any information that would be included in an application for approval of

1 a control transaction. In the event such an acquiring person is comprised of a group of persons,  
2 the Commissioner may require each member of the group to submit relevant information.

3 (e) All voting securities over which control has been acquired by an acquiring person  
4 shall not be voted on any matter submitted to a vote of the holders of the outstanding voting  
5 securities of the bank and shall be deemed authorized but unissued for purposes of determining  
6 the presence of a quorum of holders of voting securities until such time as follows:

7 (1) The Commissioner has approved an application for approval of a control  
8 transaction with respect to the voting securities.

9 (2) The transaction is one listed in subsection (c) of this section that does not  
10 require the filing of a notice with the Commissioner.

11 (3) The transaction is one listed in subsection (c) of this section that requires a  
12 notice to be filed with the Commissioner and the Commissioner has not  
13 issued an objection to the notice and any requirement of the Commissioner  
14 for the filing of further information has been determined by the  
15 Commissioner to have been satisfied.

16 **"§ 53C-7-102. Application regarding a control transaction.**

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

19 (1) An application in the form prescribed by the Commissioner.

20 (2) All filing fees required by a rule of the Commissioner.

21 (3) Such information as is required by a rule of the Commissioner or as is  
22 deemed by the Commissioner to achieve the objectives of this Chapter.

23 (b) In the event a person submitting an application is a group of persons, the  
24 Commissioner may require each member of the group to submit information relevant to the  
25 application.

26 (c) Notwithstanding any laws to the contrary, information about the character,  
27 competence, or experience of an acquiring person or its proposed management personnel or  
28 affiliates shall be deemed a record of the Commissioner and subject to G.S. 53C-2-8.

29 **"§ 53C-7-103. Public notice.**

30 A person filing an application for approval of a control application shall publish a public  
31 notice of the filing of the application not more than 30 days before nor more than 10 days after  
32 the filing of the application with the Commissioner. The public notice shall contain the  
33 following:

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

35 (2) The name of the applicable bank and the address of its principal office.

36 (3) A statement that any interested person may make written comment on the  
37 proposed control transaction and that comments received by the  
38 Commissioner within 14 days of the date of the publication of the public  
39 notice shall be considered. The public notice shall provide the current  
40 mailing address of the Commissioner.

41 **"§ 53C-7-104. Actions on control transaction applications.**

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

49 (b) The Commissioner may deny an application for approval of a control transaction for  
50 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.

**"§ 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 or non-depository institutions, provided that the bank is the surviving entity in any combination with a non-depository institution. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee as set forth by rule.

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

(a) A bank seeking approval of a combination shall file with the Commissioner an application for approval, copies of the agreement under which the bank proposes to effect the combination, and such additional information as the Commissioner shall require by rule or as is required by the Commissioner in connection with the application in order to achieve the objectives of this Chapter.

(b) A bank filing an application for approval of a combination shall publish a public notice of the filing of the application not more than 30 days before nor more than 10 days after the filing of the application with the Commissioner. The public notice shall contain the following:

- (1) A statement that the application has been filed with the Commissioner.
- (2) The names of the parties to the proposed combination and the addresses of their principal offices.
- (3) A statement that any interested person may make written comment on the proposed combination and that comments received by the Commissioner

1           within 14 days of the date of the publication of the public notice shall be  
2           considered. The public notice shall contain the current mailing address of the  
3           Commissioner.

4           (c) The Commissioner shall examine the proposed combination, including the  
5           character, competency, and experience of the proposed directors and executive officers of the  
6           surviving party of the combination, to determine whether the interests of the customers of and  
7           communities served by the parties to the combination would be adversely affected by the  
8           proposed combination.

9           (d) Notwithstanding any laws to the contrary, information about the character,  
10          competence, or experience of the directors and executive officers of the parties to a  
11          combination received by the Commissioner shall be subject to G.S. 53C-2-7(b).

12          **"§ 53C-7-203. Decision on application.**

13          Based on the application and the Commissioner's examination, the Commissioner shall  
14          enter an order approving or denying approval of the proposed combination not later than the  
15          60th day following the date the Commissioner notifies the parties that the application is  
16          complete, unless extraordinary circumstances require a longer period of review.

17          **"§ 53C-7-204. Interim banks.**

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

23          **"§ 53C-7-205. Fiduciary powers and liabilities of North Carolina financial institutions**  
24          **combining or transferring assets and liabilities.**

25          Whenever any North Carolina financial institution or federally chartered institution doing  
26          business in this State shall combine with or shall sell to and transfer its assets and liabilities to  
27          any other bank, trust institution, savings institution, or other company, as provided by the laws  
28          of this State or the United States, all the then existing fiduciary rights, powers, duties, and  
29          liabilities of the combining transferring institution, including the rights, powers, duties, and  
30          liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity,  
31          whether under appointment by order of court, will, deed, or other instrument, shall, upon the  
32          effective date of the combination or sale and transfer, vest in, devolve upon, and thereafter be  
33          performed by the surviving or transferee company, and such latter institution shall be deemed  
34          substituted for and shall have all the rights and powers of the transferring institution.

35          **"§ 53C-7-206. Combination with federally chartered institution.**

36          A combination by a bank with a federally chartered institution in which the federally  
37          chartered institution will be the surviving party shall be subject to approval by the chartering  
38          authority of the federally chartered institution in accordance with the laws of the United States.

39          **"§ 53C-7-207. Combination with a subsidiary.**

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

41               (1) Combine with a subsidiary, so long as a bank is the resulting entity of the  
42               combination.

43               (2) Combine a subsidiary with another company, if a subsidiary is the resulting  
44               entity.

45               (3) Combine two or more subsidiaries of two or more banks under common  
46               control of the same holding company.

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



1       **(b) The bank seeking approval of the combination shall file with the Commissioner an**  
2 **application for approval and such additional information as the Commissioner shall require by**  
3 **rule or as is required by the Commissioner in connection with the application in order to**  
4 **achieve the objectives of this Chapter. The bank shall pay to the Commissioner a fee as set**  
5 **forth by rule.**

6       **(c) The Commissioner shall examine the proposed combination to determine whether**  
7 **the customers and communities served by the bank would be adversely affected by the**  
8 **combination, the combination would cause the bank to not be solvent, have inadequate capital,**  
9 **or not be in compliance with this Chapter or the rules of the Commissioner, or the combination**  
10 **would present other risks to the safe and sound operation of the bank deemed unacceptable by**  
11 **the Commissioner.**

12 **"§ 53C-7-208. Fiduciary powers and liabilities of combining banks.**

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

19 **"§ 53C-7-209. Appeal.**

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

22                       **"Part 3. Charter Conversion.**

23 **"§ 53C-7-301. Conversion to a North Carolina bank charter.**

24       **(a) Any depository institution that is not a bank may apply to the Commissioner for**  
25 **permission to convert into a bank and for certification of related amendments to its**  
26 **organizational documents necessary to effect the conversion. The application for approval shall**  
27 **be in the form required by the Commissioner and shall be accompanied by a fee as set forth by**  
28 **rule.**

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

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

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

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

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

42               **(4) The plan of conversion is not in violation of the converting institution's**  
43 **applicable organizational law.**

44               **(5) Adequate written disclosure of the material terms of the plan of conversion**  
45 **and other relevant material information has been or will be made to the**  
46 **converting institution's equity ownership interest holders as required by the**  
47 **converting institution's organizational law, including a statement in any such**  
48 **written disclosure that any materials used to solicit the votes of the holders**  
49 **have not been approved by the Commission or the Commissioner and that**  
50 **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 do the following:

(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.

**"§ 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 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 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 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.

**"§ 53C-8-2. Assessments and fees.**

Banks shall pay the following assessments and fees into the OCOB within 10 days after receipt of an invoice:

(1) Annual assessments. – Each bank shall pay a cumulative assessment based on its total assets as shown on its report of condition made to the Commissioner as of December 31 each year or the date most nearly approximating the same, not to exceed the amount determined by applying the following schedule:

a. On the first fifty million dollars (\$50,000,000) of assets, or fraction thereof, ten thousand dollars (\$10,000).

b. On assets greater than fifty million dollars (\$50,000,000) but not more than two hundred fifty million dollars (\$250,000,000), fourteen dollars (\$14.00) per hundred thousand dollars (\$100,000), or fraction thereof.

c. On assets greater than two hundred fifty million dollars (\$250,000,000), but not more than five hundred million dollars (\$500,000,000), eleven dollars (\$11.00) per hundred thousand dollars (\$100,000), or fraction thereof.

d. On assets greater than five hundred million dollars (\$500,000,000), but not more than one billion dollars (\$1,000,000,000), seven dollars (\$7.00) per hundred thousand dollars (\$100,000), or fraction thereof.

e. On assets greater than one billion dollars (\$1,000,000,000), but not more than ten billion dollars (\$10,000,000,000), four dollars (\$4.00) per hundred thousand dollars (\$100,000), or fraction thereof.

f. On assets greater than ten billion dollars (\$10,000,000,000), two dollars (\$2.00) per hundred thousand dollars (\$100,000), or fraction thereof.

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

(3) Special assessments. – If the Commissioner determines that the financial condition or manner of operation of a bank warrants further examination or an increased level of supervision, or in the event of a combination or conversion, the Commissioner may charge, and the institutions shall pay, an assessment equal to the reasonable cost of further examination, increased level of supervision, or supervision with regard to the combination or conversion. The Commissioner's determination of the cost of further examination shall be, in the absence of manifest error, dispositive of the issue of reasonableness.

(4) In the first half of each calendar year, the Commission shall review the estimated cost of maintaining each division of the OCOB for the next fiscal

1           year. If the estimated assessments provided for under this Chapter for any  
2           division shall exceed the estimated cost of maintaining that division for the  
3           next fiscal year, then the Commission may reduce by a uniform percentage  
4           any assessments provided for in this Chapter for that division. If the  
5           estimated assessments provided for in this Chapter for any division shall be  
6           less than the estimated cost of maintaining that division for the next fiscal  
7           year, then the Commission may increase by a uniform percentage any  
8           assessments provided for in this Chapter for that division to an amount that  
9           will increase the amount of assessments to be collected to an amount at least  
10           equal to the estimated cost of maintaining that division of the OCOB for the  
11           next fiscal year.

12   **"§ 53C-8-3. Reports required of banks.**

13       (a)   Each bank shall file the following with the Commissioner, at such times, on such  
14       forms, and in such formats as the Commissioner may require:

15           (1)   Annual reports of conditions.

16           (2)   Periodic reports for interim periods within a year, not less than monthly in  
17           any case.

18       (b)   In addition to the reports filed pursuant to subsection (a) of this section, each bank  
19       shall provide to the Commissioner copies of all applications and reports of condition filed by it  
20       under applicable federal law contemporaneously with the filing of such application and reports  
21       by the bank with its primary federal regulator.

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

25   **"§ 53C-8-4. Examination by Commissioner.**

26       (a)   The Commissioner may examine everything relating to the business of a bank or its  
27       holding company, and may appoint examiners to make such examination. The examiners shall  
28       file with the Commissioner a full report of the findings resulting from the examination,  
29       including any violation of law or any unauthorized or unsafe practices of the bank or the  
30       holding company disclosed by the examination.

31       (b)   Examinations under subsection (a) of this section shall be conducted pursuant to  
32       practices and procedures established by the OCOB, provided the Commissioner may take into  
33       consideration the guidelines and requirements for such activity of the primary federal  
34       supervisor of the bank or holding company.

35       (c)   The Commissioner shall furnish a copy of the report of examination to the bank or  
36       the holding company examined and may, upon request, furnish a copy of the report to the  
37       primary federal regulator of the bank or its holding company and to the FDIC if not the bank's  
38       primary federal regulator.

39   **"§ 53C-8-5. Examination of affiliates.**

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

45   **"§ 53C-8-6. Access to books and records; right to issue subpoenas, administer oaths, and**  
46       **examine witnesses.**

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

48           (1)   Shall have free access to all books and records of a bank, its holding  
49           company, and their affiliates that relate to the business of the bank or the  
50           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.

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

If any bank examiner shall knowingly and willfully make any false or fraudulent report of the condition of any bank that the examiner has examined with the intent to aid or abet the bank or its affiliates in committing violations of any provision of this Chapter, or if any examiner shall keep or accept any bribe or gratuity given for the purpose of inducing the examiner not to file any report of examination of any bank, or if any examiner shall neglect to make an examination of any bank by reason of having received or accepted any bribe or gratuity, the examiner shall be guilty of a Class H felony.

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

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

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

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

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

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

Any person who shall willfully and maliciously make, circulate, transmit, or otherwise communicate any statement, rumor, or suggestion to one or more other persons that is directly or by inference false and derogatory to the financial condition, or affects the solvency or financial standing, of any bank, or who shall counsel, aid, procure, or induce another to make,

1 circulate, transmit, or otherwise communicate any such statement or rumor, shall be guilty of a  
2 Class 1 misdemeanor.

3 **"§ 53C-8-11. Misapplication, embezzlement of funds.**

4 (a) Any person who, with intent to defraud or injure a bank or any other person or with  
5 intent to deceive an officer of the bank or an employee of the OCOB appointed to examine the  
6 affairs of the bank, commits any of the following acts shall be guilty of a felony:

7 (1) Embezzles, converts, or misapplies any of the money, funds, credit, or  
8 property of the bank, whether owned by it or held in trust.

9 (2) Issues or puts forth a certificate of deposit; draws an order or bill of  
10 exchange; makes an acceptance; assigns a note, bond, draft, bill of exchange,  
11 mortgage, judgment, or decree; or fictitiously borrows or solicits, obtains, or  
12 receives money for a bank not in good faith.

13 (3) Makes or permits to be made a false entry in a record of a bank, or conceals  
14 or permits to be concealed, by any means or manner, the true and correct  
15 entries in a record of a bank.

16 (4) Knowingly makes an extension of credit, or permits an extension of credit,  
17 by a bank to any insolvent person or to a person who has ceased to exist, or  
18 that never had any existence, or upon collateral consisting of stocks or bonds  
19 of an insolvent or nonexistent person.

20 (5) Makes or publishes, or knowingly permits to be made or published, a false  
21 report, statement, or certificate as to the true financial condition of a bank.

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

26 **"§ 53C-8-12. Enforcement of the banking laws.**

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

30 (b) Every bank failing to make and transmit any report that the Commissioner is  
31 authorized to require by this Chapter, and in and according to the form prescribed by the  
32 Commissioner, within 10 business days after the receipt of a request or requisition therefor, or  
33 within the extension of time granted by the Commissioner, shall be notified by the  
34 Commissioner, and if the failure continues for five business days after the receipt of the notice,  
35 the delinquent bank shall be subject to a penalty of up to one thousand dollars (\$1,000). The  
36 penalty provided by this section shall be recovered in a civil action in any court of competent  
37 jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions.

38 (c) In addition to any other powers conferred by this Chapter, the Commissioner shall  
39 have the power to do the following:

40 (1) Order any bank, trust company, or subsidiary thereof, or any director,  
41 officer, or employee, or any other person the Commissioner is authorized to  
42 regulate, to cease and desist violating any provision of this Chapter or any  
43 lawful rule issued thereunder.

44 (2) Order any bank, trust company, or subsidiary thereof, or any director,  
45 officer, or employee, or any other person the Commissioner is authorized to  
46 regulate, to cease and desist from a course of conduct that is unsafe or  
47 unsound and that is likely to cause insolvency or dissipation of assets or is  
48 likely to jeopardize or otherwise seriously prejudice the interests of a  
49 depositor.

50 (d) Consistent with Article 3A of Chapter 150B of the General Statutes, notice and  
51 opportunity for hearing shall be provided before any of the actions authorized by this section

1 shall be undertaken by the Commissioner. In cases involving extraordinary circumstances  
2 requiring immediate action, the Commissioner may take such action but shall promptly afford a  
3 subsequent hearing upon application to rescind the action taken.

4 (e) The Commissioner shall have the power to subpoena witnesses, compel their  
5 attendance, require the production of evidence, administer oaths, and examine any person under  
6 oath in connection with any subject related to a duty imposed or a power vested in the  
7 Commissioner.

8 (f) The Commissioner may impose a civil money penalty of not more than one  
9 thousand dollars (\$1,000) for each violation by any bank, trust company, or subsidiary thereof,  
10 or any director, officer, or employee, or any other person the Commissioner is authorized to  
11 regulate, of an order issued under subdivision (1) of subsection (c) of this section. The  
12 Commissioner may impose a civil money penalty of not more than five hundred dollars  
13 (\$500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any  
14 director, officer, or employee, or any other person the Commissioner is authorized to regulate,  
15 violates a cease and desist order issued under subdivision (2) of subsection (c) of this section.  
16 The proceeds of civil money penalties imposed pursuant to this subsection, net of documented  
17 expenses of examination and enforcement, shall be remitted to the Civil Penalty and Forfeiture  
18 Fund in accordance with G.S. 115C-457.2.

19 (g) Administrative orders issued by the Commissioner and civil money penalties  
20 imposed for violation of such orders shall be subject to review by the Commission, which shall  
21 have power to amend, modify, or disapprove the same at any regular or special meeting.

22 (h) Notwithstanding any penalty imposed by the Commissioner, the Commission may,  
23 after notice of and opportunity for hearing, impose, enter judgment for, and enforce, by  
24 appropriate process, a penalty of not more than ten thousand dollars (\$10,000) against any  
25 bank, trust company, or subsidiary thereof, or against any of its directors, officers, or  
26 employees, or any other person the Commissioner is authorized to regulate, for violating any  
27 lawful order of the Commission or Commissioner. The proceeds of civil money penalties  
28 imposed pursuant to this subsection, net of documented expenses of examination and  
29 enforcement, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with  
30 G.S. 115C-457.2.

31 (i) If the Commissioner believes that a violation of a criminal statute has occurred, the  
32 Commissioner may refer the matter to the appropriate prosecutorial agency.

33 **"§ 53C-8-13. Immediate action orders.**

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

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

45 **"§ 53C-8-14. Supervisory control.**

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

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

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

9 (c) The Commissioner may appoint an agent to supervise and monitor the operations of  
10 the bank during the period of supervisory control. During the period of supervisory control, the  
11 bank shall act in accordance with any instructions and directions as may be given by the  
12 Commissioner, directly or through the agent, and shall not act or fail to act except when to do  
13 so would violate an outstanding order of its federal bank supervisory agent or the FDIC if the  
14 FDIC is not its primary federal regulator.

15 (d) Within 180 days of the date of the order taking supervisory control, the  
16 Commissioner shall issue an order approving a plan for the termination of supervisory control  
17 on the 30th day following the issuance of the order. The plan may provide for the following:

18 (1) The issuance by the bank of debt instruments or shares.

19 (2) The appointment or removal of one or more officers and/or one or more  
20 directors.

21 (3) The reorganization or combination of the bank.

22 (4) A control transaction with respect to the bank.

23 (5) The dissolution and liquidation of the bank.

24 (e) The reasonable costs of the Commissioner under this section shall be paid by the  
25 bank. The Commissioner's determination of the costs shall be, in the absence of manifest error,  
26 dispositive of the issue of reasonableness.

27 **"§ 53C-8-15. Removal of directors, officers, and employees.**

28 (a) If the Commissioner determines that a director, officer, or employee of a bank has  
29 participated in or consented to any violation of this Chapter or an order of the Commissioner,  
30 or has engaged in any unsafe or unsound business practice in the operation of the bank, or has  
31 been dishonest, incompetent, or reckless in the management of the affairs of the bank, or has  
32 persistently violated the laws of this State, or repeatedly violated or failed to comply with any  
33 of the bank's organizational documents, and that as a result, a situation exists requiring prompt  
34 corrective action in order to protect the bank, its customers, or the public, the Commissioner  
35 may issue an order temporarily removing the director, officer, or employee pending a hearing  
36 that shall occur not less 10 days after removal. The order shall state that it is a "Temporary  
37 Order of Removal" and shall further state the grounds upon which it was issued together with  
38 the date, time, and location of a hearing on the matter. For good cause shown, the  
39 Commissioner may grant the director, officer, or employee subject to the order a 10-day  
40 extension of the hearing date, but the temporary removal order shall remain in full force and  
41 effect. Upon a hearing before the Commissioner within the prescribed time, the temporary  
42 removal order may be dissolved or made permanent in whole or in part.

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

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

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



1 **"§ 53C-8-16. Emergency powers.**

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

5 **"§ 53C-8-17. Interstate regulatory agreements.**

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

12 **"Article 9.**

13 **"Supervisory Liquidation; Voluntary Dissolution and Liquidation.**

14 **"Part 1. General Provisions.**

15 **"§ 53C-9-101. Supervisory combinations.**

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

25 **"§ 53C-9-102. Distributions; assignments restricted.**

26 A bank that is in the process of involuntary or voluntary dissolution pursuant to this Article  
27 may not make or pay distributions to its shareholders unless the bank has the prior written  
28 approval of the Commissioner. No bank shall make any general assignment for the benefit of  
29 its creditors except by surrendering possession of its assets to the Commissioner for dissolution  
30 and liquidation pursuant to G.S. 53-9-301, and any other purported assignment by the bank for  
31 the benefit of its creditors shall be void.

32 **"§ 53C-9-103. Cancellation of charter.**

33 Whenever a combination, dissolution, or other transaction occurs by which a bank ceases to  
34 exist or ceases to be eligible for a charter, the Commissioner shall by order cancel the bank's  
35 charter and shall publish the order in accordance with G.S. 53-1-4(59). A copy of the order  
36 shall be filed by the Commissioner with the Secretary of State. The bank shall continue to exist  
37 under Chapter 55 of the General Statutes for the purpose of dissolving and liquidating its  
38 business and affairs.

39 **"Part 2. Voluntary Dissolution and Liquidation.**

40 **"§ 53C-9-201. Voluntary dissolution prior to receipt of charter.**

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

45 **"§ 53C-9-202. Voluntary dissolution.**

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

48 (b) If, by a majority vote, the board of directors of a bank should determine that in their  
49 judgment the bank should be dissolved and liquidated, then the board of directors shall submit  
50 immediately to the Commissioner the following documents, certified by an appropriate officer  
51 of the bank:

- (1) The board of directors' resolution.
- (2) The bank's proposed articles of dissolution.
- (3) The board of directors' plan for liquidation.
- (4) Any notices or proxy solicitation materials proposed to be sent to shareholders.

(c) The Commissioner shall examine the documents submitted under subsection (b) of this section and such other matters as the Commissioner deems relevant and may issue an order authorizing the bank and its board of directors to proceed with dissolution and liquidation as provided in G.S. 53C-9-203. Examination by the Commissioner of the materials referred to in subsection (b)(4) of this section shall not be deemed to be approval of the documents for any purpose.

(d) At any annual or special meeting of shareholders called for the purpose of voting upon a proposal for voluntary dissolution of a bank, the shareholders of the bank may, by an affirmative vote, in person or by proxy, of the holders of shares representing at least two-thirds of the votes entitled to be cast on such matters, resolve to dissolve and liquidate the bank in accordance with the order of the Commissioner issued under subsection (c) of this section.

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

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

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

- (1) Inform the FDIC and the bank's federal supervisory agency if other than the FDIC.
- (2) Select and appoint a receiver or receiver in liquidation, just as if the liquidation were involuntary under G.S. 53C-9-301.
- (3) Attach a certificate of approval to the articles of dissolution, and the bank shall then file the certified articles with the Secretary of State.

(b) Upon the filing of the articles of dissolution with the Secretary of State, it shall be unlawful for the bank to accept any additional deposit accounts or additions to deposit accounts or make any additional extensions of credit, but all its income and receipts in excess of actual expenses of liquidation of the bank shall be applied to the discharge of its liabilities.

(c) The persons charged with liquidation of the bank in the approved plan of dissolution shall cause to be published a public notice stating the bank has closed and will dissolve and liquidate and notifying its depositors and creditors to present their claims for payment, specifying the method for doing so.

(d) The bank may pay reasonable compensation, subject to the approval of the Commissioner, to the persons charged with its liquidation.

(e) Any bank in the process of voluntary dissolution and liquidation shall be subject to examination by the Commissioner and shall furnish any reports required by the Commissioner.

(f) If the Commissioner determines at any time that the voluntary liquidation plan is not working, the Commissioner may place the bank in receivership pursuant to G.S. 53C-9-301.

**"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 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 nonconfidential written communication that is either directly from the Commissioner or is joined in by the Commissioner.

(c) The Commissioner shall appoint as receiver or coreceivers one or more qualified persons for the purpose of receivership and liquidation of the bank of which the Commissioner has taken custody under subsection (a) of this section, which receiver shall furnish a bond in such form and amount, and with such surety, as the Commissioner may require.

(d) The Commissioner may appoint the FDIC or its nominee as the receiver, and the receiver shall be permitted to serve without posting bond. In the event of such an appointment, the Commissioner shall thereafter be forever relieved of any and all responsibility and liability in respect to the receivership and the liquidation of the bank.

(e) In the event the Commissioner takes custody of a bank and then appoints a receiver for the bank, the Commissioner shall serve personally at the bank's principal office through the officer who is present and appears to be in charge, the Commissioner's order taking possession and, if applicable, the Commissioner's order appointing a receiver for the bank in liquidation. The Commissioner shall also mail a certified copy of the order taking possession and the appointing order by certified mail or by express delivery to any previous receiver or other legal custodian of the bank and to the Clerk of Superior Court of Wake County. The Commissioner shall give notice to the public of the Commissioner's actions by posting a notice summarizing the Commissioner's actions near the entrance to each branch of the bank, and the Commissioner shall issue a similar public notice as defined in G.S. 53C-1-4(59).

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

- (1) The receiver, by operation of law and without any conveyance or other instrument, act, or deed, shall succeed to all the rights, titles, powers, and privileges of the bank, its shareholders, officers, and directors, or any of them, and to the titles to the books, records, and assets of every description of any previous receiver or other legal custodian of the bank. Neither the shareholders, officers, or directors, nor any of them, shall thereafter, except as expressly provided in this section, have or exercise any 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.

**"§ 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 that has completed the process of dissolution and liquidation shall be held in such place as in the Commissioner's judgment will provide for their proper safekeeping and protection.

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

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

7 **"§ 53C-9-403. Authority to serve as trustee terminated.**

8     Whenever any bank that has been, or shall be, appointed trustee in any indenture, deed of  
9 trust, or other instrument of like character, executed to secure the payment of any bonds, notes,  
10 or other evidences of indebtedness, has been or shall be placed in receivership, the powers and  
11 duties of the bank as trustee in any such instrument shall, upon the entry of an order of the clerk  
12 of superior court having jurisdiction under G.S. 53C-9-405 appointing a successor trustee, upon  
13 a petition as described in this Part, immediately cease.

14 **"§ 53C-9-404. Petition for new trustee; upon parties interested.**

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

25 **"§ 53C-9-405. Appointment of substitute trustee where no objection made.**

26     If, upon the day fixed in the notice, no person appears and objects to the appointment of a  
27 substitute trustee, the clerk of superior court shall, upon such terms as he or she deems  
28 advisable to the best interest of all parties, appoint a competent person authorized to act as  
29 substitute trustee, who shall be vested with and shall exercise all the powers conferred upon the  
30 trustee named in the instrument.

31 **"§ 53C-9-406. Hearing where objection made; appeal from order.**

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

35 **"§ 53C-9-407. Registration of final order.**

36     The final order of appointment of a new trustee or trustees under this Part shall be certified  
37 by the clerk of superior court issuing the order and shall be recorded in the office of the register  
38 of deeds in the county or counties in which the instrument under which the appointment has  
39 been made is recorded.

40 **"§ 53C-9-408. Petition and order applicable to all instruments involved.**

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

44 **"§ 53C-9-409. Additional remedy.**

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

47                     "Article 10.

48                     "Bank Holding Companies.

49                     "Part 1. Change in Control.

50 **"§ 53C-10-101. Holdings companies.**

1 Every holding company, as defined in G.S. 53C-1-4(39), of a bank shall register with the  
2 Commissioner and maintain that registration on an annual basis in the form prescribed by the  
3 Commissioner.

4 **"§ 53C-10-102. Holding company control transaction.**

5 (a) Except as otherwise expressly permitted by this section, a person shall not engage in  
6 a control transaction to which a holding company formed under the laws of this State and  
7 having a bank as a subsidiary is a party without the prior approval of the Commissioner. A  
8 person may contract to engage in a control transaction with the consummation of the control  
9 transaction being subject to receipt of the approval of the Commissioner.

10 (b) The Commissioner may require a person who is obligated to file a notice or an  
11 application under this section to appoint an agent resident in this State for service of process  
12 upon the filing of the notice or application or as a condition to the acceptance of the notice or  
13 application for review. An application for approval shall be in a form required by the  
14 Commissioner and shall be accompanied by such fee as may be required by rule.

15 (c) The following transactions shall not constitute a control transaction under this  
16 section requiring the prior approval of the Commissioner:

17 (1) The acquisition of control over voting securities by a person who has  
18 previously engaged in a control transaction with respect to the holding  
19 company after receiving the approval of the Commissioner under this  
20 Article, which approval permits the acquisition of control over additional  
21 voting securities, or any person who is an affiliate of the person previously  
22 engaging in the approved control transaction with such permission and who  
23 is identified in the application submitted for the approval, if the acquiring  
24 person files a notice with the Commissioner, in the form required by the  
25 Commissioner, describing the transaction at least 10 days before the  
26 acquiring person or affiliate thereof first votes or directs the voting of the  
27 voting securities.

28 (2) An acquisition of control over voting securities by operation of law, will, or  
29 intestate succession, if the acquiring person files a notice with the  
30 Commissioner, in the form required by the Commissioner, describing the  
31 acquisition or transfer at least 10 days before the acquiring person first votes  
32 or directs the voting of the voting securities.

33 (3) Bona fide gifts.

34 (4) A transaction exempted by rules, orders, or declaratory rulings of the  
35 Commissioner, issued because approval of the transaction is not necessary to  
36 achieve the objectives of this Chapter.

37 (5) An acquisition of control over voting shares exempt from the prior approval  
38 requirements set forth in section 3 of the Bank Holding Company Act, as  
39 amended (12 U.S.C. § 1842), pursuant to the exceptions described in items  
40 (A), (B) or (C) of that section.

41 (d) Upon receipt of a notice described in subsection (c) of this section, the  
42 Commissioner may, before the 10th day following the receipt, notify the acquiring person of  
43 the Commissioner's objection to the exercise of control over the voting securities or may  
44 require the acquiring party to submit further information before exercising control over the  
45 voting securities. An acquiring person receiving a notice of objection shall be required to  
46 submit an application for approval of a control transaction. An acquiring person receiving a  
47 notice to submit further information may be required to provide any information that would be  
48 included in an application for approval of a control transaction. In the event such an acquiring  
49 person is comprised of a group of persons, the Commissioner may require each member of the  
50 group to submit relevant information.

(e) All voting securities over which control has been acquired by an acquiring person shall not be voted on any matter submitted to a vote of the holders of the outstanding voting securities of the holding company of a bank and shall be deemed authorized but unissued for purposes of determining the presence of a quorum of holders of voting securities until such time as follows:

- (1) The Commissioner has approved an application for approval of a control transaction with respect to the voting securities.
- (2) The transaction is one listed in subsection (c) of this section that does not require the filing of a notice with the Commissioner.
- (3) The transaction is one listed in subsection (c) of this section that requires a notice to be filed with the Commissioner and the Commissioner has not issued an objection to the notice and any requirement of the Commissioner for the filing of further information had been determined by the Commissioner to have been satisfied.

**"§ 53C-10-103. Application regarding a control transaction.**

(a) A person seeking approval of a control transaction to which a holding company of a bank is a party under this Article shall file the following with the Commissioner:

- (1) An application in the form prescribed by the Commissioner.
- (2) All filing fees required by rule of the Commissioner.
- (3) Any other information required by a rule of the Commissioner or deemed by the Commissioner to achieve the objectives of this Chapter.

(b) In the event a person submitting an application is a group of persons, the Commissioner may require each member of the group to submit information relevant to the application.

(c) Notwithstanding any laws to the contrary, information about the character, competence, or experience of an acquiring person or its proposed management personnel or affiliates shall be deemed a confidential record of the Commissioner subject to G.S. 53C-2-7(b).

**"§ 53C-10-104. 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 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 publication of the public notice shall be considered. The public notice shall provide the current mailing address of the Commissioner.

**"§ 53C-10-105. Actions on control transaction applications.**

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



(b) The Commissioner may deny an application for approval of a control for any of the following reasons:

- (1) The financial condition of the person seeking approval of a control transaction could jeopardize the financial stability of the holding company, one or more bank subsidiaries of the holding company, or the financial interests of the bank's customers.
- (2) An examination of the character, competence, or experience of any acquiring person or of any of the proposed management personnel of the holding company shows that it would not be in the interest of the customers of one or more of the bank subsidiaries of the holding company or in the interest of the public to permit the person to control the holding company.
- (3) The plans or proposals of the person seeking approval with respect to exercising control over the holding company would not be in the best interests of the customers of one or more bank subsidiaries of the holding company.
- (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.

**"§ 53C-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. 53C-2-6.

**"Part 2. Combinations.**

**"§ 53C-10-201. Combination authority.**

With the approval of the Commissioner, a holding company of a bank may combine with one or more other holding companies or other companies. The application for approval shall be in the form required by the Commissioner and shall be accompanied by such fee as may be required by rule.

**"§ 53C-10-202. Combination application and investigation.**

(a) A holding company of a bank seeking approval of a combination shall file with the Commissioner an application for approval, copies of the agreement under which the holding company proposes to effect the combination, and any additional information that the Commissioner shall require by rule or as is required by the Commissioner in connection with the application in order to achieve the objectives of this Chapter.

(b) A holding company filing an application for approval of a combination shall publish a public notice of the filing of the application not more than 30 days before nor more than 10

1 days after the filing of the application with the Commissioner. The public notice shall contain  
2 the following:

- 3       (1) A statement that the application has been filed with the Commissioner.  
4       (2) The names of the parties to the proposed combination and the addresses of  
5 its principal offices.  
6       (3) A statement that any interested person may make written comment on the  
7 proposed combination and that comments received by the Commissioner  
8 within 14 days of the publication of the public notice shall be considered.  
9 The public notice shall provide the current mailing address of the  
10 Commissioner.

11       (c) The Commissioner shall examine the proposed combination, including the  
12 character, competency, and experience of the proposed directors and executive officers of the  
13 surviving party of the combination, to determine whether the interests of the customers and  
14 communities served by the banks controlled by the parties to the combination would be  
15 adversely affected by the proposed combination.

16       (d) Notwithstanding any laws to the contrary, information about the character,  
17 competence, and experience of the directors and executive officers of the parties to a  
18 combination received by the Commissioner shall be deemed a confidential record of the  
19 Commissioner subject to G.S. 53C-2-7(b).

20 **"§ 53C-10-203. Decision on application.**

21 Based on the application and the Commissioner's examination, the Commissioner shall  
22 enter an order approving or denying approval of the proposed combination not later than the  
23 60th day following the date the Commissioner notifies the parties that the application is  
24 complete, unless extraordinary circumstances require a longer period of review.

25 **"§ 53C-10-204. Appeal.**

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

28 **"Part 3. General Authority.**

29 **"§ 53C-10-301. Cease and desist order.**

30 Upon a finding that any action of a holding company subject to this Article may be in  
31 violation of any banking laws, the Commissioner, after a reasonable notice to the holding  
32 company and an opportunity for it to be heard, shall have the authority to order it to cease and  
33 desist from such action. If the holding company fails to appeal the decision within 10 days of  
34 the date of the issuance of the order in accordance with G.S. 53C-2-6, and continues to engage  
35 in the action in violation of the Commissioner's order to cease and desist such action, it shall be  
36 subject to a civil money penalty of twenty thousand dollars (\$20,000) for each day it remains in  
37 violation of the order. The penalty provision of this section shall be in addition to and not in  
38 lieu of any other provision of law applicable to a holding company's failure to comply with an  
39 order of the Commissioner. The clear proceeds of the civil money penalty shall be remitted to  
40 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

41 **"§ 53C-10-302. Other control changes.**

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

45 **SECTION 5. G.S. 1-339.1(a) reads as rewritten:**

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

49 ...

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

...."

**SECTION 6.** G.S. 24-1.1A(d) reads as rewritten:

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

**SECTION 7.** 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, 53C-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 8.** 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. 53C-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 9.** 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 10.** 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 that 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

1 fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When  
2 fiduciary funds are deposited by the trust department in the commercial department of the bank,  
3 the deposit thereof shall not be deemed to constitute a use of such funds in the general business  
4 of the bank. To the extent and in the amount such deposits may be insured by the FDIC, the  
5 amount of security required for such deposits by this section may be reduced. The Banking  
6 Commission shall have power to make such rules as it may deem necessary for the enforcement  
7 of the provisions of this section."

8 **SECTION 11. G.S. 53-167 reads as rewritten:**

9 **"§ 53-167. Expenses of supervision.**

10 Each licensee, for For the purpose of defraying necessary expenses of the Commissioner of  
11 Banks and his agents in supervising them, Office of Commissioner of Banks for supervision,  
12 each licensee shall pay to the Commissioner of Banks the fees prescribed in G.S. 53-122 at the  
13 times therein specified, an assessment not to exceed eighteen dollars (\$18.00) per one hundred  
14 thousand dollars (\$100,000) of assets, or fraction thereof, plus a fee of three hundred dollars  
15 (\$300.00) per office; provided, however, a consumer finance licensee shall pay a minimum  
16 annual assessment of not less than five hundred dollars (\$500.00). The assessment shall be  
17 determined on a consumer finance licensee's total assets as shown on its report of condition  
18 made to the Commissioner as of December 31 of each year, or the date most nearly  
19 approximating that date. If the Commissioner determines that the financial condition or manner  
20 of operation of a consumer finance licensee warrants further examination or an increased level  
21 of supervision, the licensee may be subject to assessment not to exceed the amount determined  
22 in accordance with the schedule set forth in this section."

23 **SECTION 12. G.S. 53-184(a) reads as rewritten:**

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

50 **SECTION 13. G.S. 53-188 reads as rewritten:**

51 **"§ 53-188. Review of regulations, order or act of Commission or Commissioner.**

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

8 **SECTION 14.** G.S. 53-208.27(b) reads as rewritten:

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

17 **SECTION 15.** G.S. 53-215 reads as rewritten:

18 **"§ 53-215. Appeal of Commissioner's decision.**

19 Any aggrieved party in a proceeding under ~~G.S. 53-211~~ G.S. 53-211, 53C-10-102, or  
20 ~~G.S. 53-227.1~~ 53C-10-201 may, within 20 days after final decision of the Commissioner,  
21 appeal in writing any decision to the State Banking Commission. An appeal under this section  
22 shall be made pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6. Notwithstanding any other provision of  
23 law, any aggrieved party to a decision of the State Banking Commission shall be entitled to  
24 petition for judicial review pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6."

25 **SECTION 16.** G.S. 53-217 reads as rewritten:

26 **"§ 53-217. Enforcement.**

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

32 **SECTION 17.** G.S. 53-224.11(b) reads as rewritten:

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

42 **SECTION 18.** G.S. 53-224.18 reads as rewritten:

43 **"§ 53-224.18. Authority of State banks to establish interstate branches by merger.**

44 With the prior approval of the Commissioner, a North Carolina State bank may establish,  
45 maintain, and operate one or more branches in a state other than North Carolina pursuant to an  
46 interstate merger transaction in which the North Carolina State bank is the resulting bank. Not  
47 later than the date on which the required application for the interstate merger transaction is filed  
48 with the responsible federal bank supervisory agency, the applicant North Carolina State bank  
49 shall file an application on a form prescribed by the ~~Commissioner and pay the fee prescribed~~  
50 ~~by regulation pursuant to G.S. 53-122.~~ Commissioner. The applicant shall also comply with the  
51 applicable provisions of ~~G.S. 53-12.~~ Part 2 of Article 7 of Chapter 53C of the General Statutes.

1 If the Commissioner finds that (i) the proposed transaction will not be detrimental to the safety  
2 and soundness of the applicant or the resulting bank, (ii) any new officers and directors of the  
3 resulting bank are qualified by character, experience, and financial responsibility to direct and  
4 manage the resulting bank, and (iii) the proposed merger is consistent with the convenience and  
5 needs of the communities to be served by the resulting bank in this State and is otherwise in the  
6 public interest, it shall approve the interstate merger transaction and the operation of branches  
7 outside of North Carolina by the North Carolina State bank. Such an interstate merger  
8 transaction may be consummated only after the applicant has received the Commissioner's  
9 written approval."

10 **SECTION 19.** G.S. 53-224.20 reads as rewritten:

11 **"§ 53-224.20. Notice and filing requirements.**

12 Any out-of-state bank that will be the resulting bank pursuant to an interstate merger  
13 transaction involving a North Carolina bank shall notify the Commissioner of the proposed  
14 merger not later than the date on which it files an application for an interstate merger  
15 transaction with the responsible federal bank supervisory agency, and shall submit a copy of  
16 that application to the Commissioner and pay the filing fee required by the Commissioner. All  
17 banks which are parties to such interstate merger transaction involving a North Carolina State  
18 bank shall comply with G.S. 53-12 Part 2 of Article 7 of Chapter 53C of the General Statutes  
19 and with other applicable state and federal laws. Any out-of-state bank which shall be the  
20 resulting bank in such an interstate merger transaction shall comply with Article 15 of Chapter  
21 55 of the North Carolina General Statutes."

22 **SECTION 20.** G.S. 53-224.24(a) reads as rewritten:

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

29 **SECTION 21.** G.S. 53-224.30 reads as rewritten:

30 **"§ 53-224.30. Appeal of Commissioner's decision.**

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

37 **SECTION 22.** G.S. 53-232.12(b) is repealed.

38 **SECTION 23.** G.S. 53-232.17 reads as rewritten:

39 **"§ 53-232.17. Appeal of Commissioner's decision.**

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

46 **SECTION 24.** G.S. 53-244.120(c) reads as rewritten:

47 "(c) The requirements of G.S. 53-99(b).G.S. 53C-2-7 regarding the privacy or  
48 confidentiality of any information or material provided under subsections (a) and (b) of this  
49 section, and any privilege arising under any other federal or State law with respect to such  
50 information or material, shall continue to apply to the information or material after it has been  
51 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 25.** 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. 53C-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. 53C-2-6."

**SECTION 26.** 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. 53C-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. 53C-2-6."

**SECTION 27.** 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. 53C-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. 53C-2-6."

**SECTION 28.** 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. 53C-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. 53C-2-6."

**SECTION 29.** 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. 53C-1-4(11).

...."

**SECTION 30.** 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. 53C-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. 53C-7-205."

**SECTION 31.** 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. 53C-7-205.

(4) ~~G.S. 53-68;~~

(5) ~~G.S. 53-77.3;~~

(6) ~~G.S. 53-85;~~

(7) Article 8 of ~~this Chapter~~ 53C of the General Statutes, 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. 53C-8-2.

b. ~~G.S. 53-104;~~ G.S. 53C-8-3.

c. ~~G.S. 53-105;~~ G.S. 53C-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 16 of Chapter 53 of the General Statutes.

(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 32.** G.S. 53-368(c) is repealed.

**SECTION 33.** 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 34.** 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. 53C-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. 53C-2-6."

**SECTION 35.** 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. 53C-1-4(5), insofar as applicable and not in conflict with the provisions hereof shall apply to land mortgage associations."~~

1       **SECTION 36.** G.S. 54B-4(b) reads as rewritten:

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

3       ...

4       (14a) "Commissioner" means the Commissioner of Banks authorized pursuant to  
5       G.S. 53-92, Article 2 of Chapter 53C of the General Statutes.

6       ...."

7       **SECTION 37.** G.S. 54B-34.2(a) reads as rewritten:

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

17      **SECTION 38.** G.S. 54B-46(a) reads as rewritten:

18      "(a) Any bank, as defined in ~~G.S. 53-1~~, G.S. 53C-1-4(4), may convert to a stock  
19      association as provided in this section."

20      **SECTION 39.** G.S. 54B-47(a) reads as rewritten:

21      "(a) Any State association, upon a majority vote of its board of directors, may apply to  
22      the Commissioner of Banks for permission to merge with any bank, as defined in ~~G.S. 53-1~~.  
23      G.S. 53C-1-4(4)."

24      **SECTION 40.** G.S. 54B-54 reads as rewritten:

25      **"§ 54B-54. Deputy commissioner of Savings Institutions Division.**

26      There shall be a deputy commissioner of the Savings Institutions Division as appointed by  
27      the Commissioner in ~~G.S. 53-93.1(b)~~, G.S. 53C-2-2. The deputy commissioner authorized by  
28      this section shall perform any duties and exercise any powers directed by the Commissioner."

29      **SECTION 41.** G.S. 54B-158 reads as rewritten:

30      **"§ 54B-158. Insured or guaranteed loans.**

31      An association may make insured or guaranteed loans in accordance with the provisions of  
32      ~~G.S. 53-45~~, G.S. 53C-5-3."

33      **SECTION 42.** G.S. 54C-4(b) reads as rewritten:

34      "(b) Unless the context otherwise requires, the following definitions apply in this  
35      Chapter:

36      ...

37      (8a) Commissioner. – The Commissioner of Banks authorized pursuant to  
38      G.S. 53-92, Article 2 of Chapter 53C of the General Statutes.

39      ...."

40      **SECTION 43.** G.S. 54C-40(a) reads as rewritten:

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

44      **SECTION 44.** G.S. 54C-47(a) reads as rewritten:

45      "(a) A State savings bank, upon a majority vote of its board of directors, may apply to  
46      the Commissioner of Banks for permission to convert to a bank, as defined under ~~G.S. 53-1(1)~~,  
47      G.S. 53C-1-4(4), or to a national bank or other form of depository institution and for  
48      certification of appropriate amendments to its certificate of incorporation to effect the change.  
49      Upon receipt of an application to so convert, the Commissioner of Banks shall examine all facts  
50      connected with the conversion, including receipt of approval of the converting institution's plan  
51      of conversion by other federal or state regulatory agencies having jurisdiction over the

1 institution upon completion of its conversion. The depository institution applying for  
2 permission to convert shall pay all the expenses and costs of examination."

3 **SECTION 45.** G.S. 54C-122(e) reads as rewritten:

4 "(e) A savings bank may make insured or guaranteed loans in accordance with  
5 ~~G.S. 53-45~~G.S. 53C-5-3."

6 **SECTION 46.** G.S. 116B-55 reads as rewritten:

7 **"§ 116B-55. Contents of safe deposit box or other safekeeping depository.**

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

14 **SECTION 47.** G.S. 120-123 reads as rewritten:

15 **"§ 120-123. Service by members of the General Assembly on certain boards and  
16 commissions.**

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

19 ...

20 (3a) The State Banking Commission, as established by ~~G.S. 53-92~~Article 2 of  
21 Chapter 53C of the General Statutes.

22 ...."

23 **SECTION 48.** G.S. 143-143.9(1) reads as rewritten:

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

28 **SECTION 49.** G.S. 164-11.6(a) reads as rewritten:

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

33 **SECTION 50.** G.S. 164-11.7(a) reads as rewritten:

34 "(a) The chapters, subchapters, articles and sections now comprising Volumes 2B and  
35 2C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting  
36 of ~~G.S. 53-1~~G.S. 53C-1-1 to G.S. 105-462, now in force, as amended, are hereby reenacted and  
37 designated as 1965 Replacement Volumes 2B, 2C and 2D of the General Statutes of North  
38 Carolina."

39 **SECTION 51.** This act becomes effective October 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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D

SENATE BILL 816\*  
Second Edition Engrossed 5/23/12  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S816-CSRO-34 [v.1]

5/31/2012 9:32:06 AM

Short Title: Banking Law Modernization Act.

(Public)

Sponsors:

Referred to:

May 21, 2012

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.** The title of Chapter 53 of the General Statutes reads as rewritten:

**"Chapter 53.**

**"Banks, Regulation of Financial Services."**

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

**"Article 1A.**

**"General Provisions.**

**"§ 53-1.1. Banking definitions applicable to this Chapter.**

**Except as otherwise provided by law, the definitions contained in G.S. 53C-1-4 shall apply to terms used in this Chapter."**

**SECTION 4.** The General Statutes are amended by adding a new Chapter to read:

**"Chapter 53C.**

**"Regulation of Banks.**

**"Article 1.**

**"General Provisions.**

**"§ 53C-1-1. Title.**

**This Chapter shall be known and may be cited as Regulation of Banks and Other Financial Services.**

**"§ 53C-1-2. Scope and applicability of Chapter.**

**(a) Unless the context specifies otherwise, this Chapter shall apply to the following:**

**(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.**



\* S 8 1 6 - C S R O - 3 4 - V - 1 \*

(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.

**"§ 53C-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 do either of the following:

(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.

(2) Use any sign, letterhead, circular, or Web site 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.

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

Unless the context requires otherwise, the following definitions apply in this Chapter:

(1) Acquire. – To obtain the right or power to vote or to direct the voting of voting securities of a bank or holding company as follows:

a. Through a purchase of or share exchange for shares.

b. By reason of an issuance of shares or the exercise of a right under a warrant, option, or convertible security or instrument to acquire shares.

c. Pursuant to an agreement or trust or through any similar transaction, event, or contractual right.

(2) Acting in concert. – Knowing participation in a joint activity or interdependent conscious parallel action toward the common goal of obtaining control of a bank or holding company, whether or not pursuant to an express agreement, including participation in a combination or pooling of voting securities of a bank holding company for such common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise.

- (3) Affiliate. – A person that, directly or indirectly, controls, is controlled by, or is under common control with another person. Each member of a group of persons acting in concert shall be deemed an affiliate of the group.
- (4) Bank. – Any corporation, other than a credit union, savings institution, or trust 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.
- (5) Bank operating subsidiary. – A subsidiary that is under the control of a bank and engages only in activities in which a bank may engage pursuant to G.S. 53C-5-1.
- (6) Bank premises. – Any improved or unimproved real estate, whether or not open to the public, that is utilized or intended to be utilized by a bank, including additional space to rent as a source of income.
- (7) Bank supervisory agency. – Any of the following agencies:
- a. The CFPB, FDIC, Federal Reserve Board, OCC, and any successor to these agencies.
- b. Any agency of another state with primary responsibility for chartering and supervising depository institutions organized under the laws of that state.
- c. Any agency of a sovereign nation with primary responsibility for chartering and supervising depository institutions organized under the laws of that nation.
- (8) Bankers' bank. – As defined in Regulation D of the Federal Reserve Board, 12 C.F.R. § 204.121.
- (9) Banking laws. – All laws which the Commissioner or the OCOB is authorized to enforce under any applicable statute.
- (10) Board of directors. – A governing board of a company that is responsible for policy, oversight, and compliance.
- (11) Branch. – An office of any bank or a depository institution organized under the banking laws of the United States, another state, or another sovereign nation, other than that depository institution's principal office, in which deposits are received. A branch may also engage in any of the functions or services authorized to be engaged in by the bank of which it is a branch. The term "branch" does not include a non-branch bank business office, automated teller machine, remote deposit facility, remote service unit, customer-bank communications terminal, point-of-sale terminal, automated banking facility or other direct or remote information processing device or machine, whether manned or unmanned, by means of which information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank terminal.
- (12) Capital. – An amount equal to the bank's "total capital" as that term is used by the FDIC in 12 C.F.R. Part 325; provided, that if the term "total capital" is replaced by a term including substantially the same elements as "total capital," the term "capital" as used in this Chapter shall mean an amount equal to the amount calculated by application of the definition of such replacement term.
- (13) Capital impairment. – The reduction of a bank's capital at any time below its required capital.
- (14) Central reserve bank. – A depository institution of which at least fifty percent (50%) of its shares are owned by other depository institutions.

- (15) CFPB. – The Consumer Financial Protection Bureau or its successor.
- (16) Charter. – A document issued by the Commissioner in accordance with Article 3 of this Chapter permitting a bank to conduct banking business.
- (17) Combination. – A merger, share exchange, or transfer or acquisition of all or substantially all assets and liabilities of a person undertaken in compliance with such federal laws and laws of this State or other states as may be applicable.
- (18) Commission. – The State Banking Commission provided for in G.S. 53C-2-1.
- (19) Commissioner. – The Commissioner of Banks provided for in G.S. 53C-2-2.
- (20) Company. – A corporation, limited liability company, partnership, joint venture, business trust, trust, syndicate, association, unincorporated organization, or other form of business entity.
- (21) Control. – The possession, directly or indirectly, of the power or right to direct or to cause the direction of the management or policies of a person by reason of an agreement, understanding, proxy, or power of attorney or through the ownership of or voting power over ten percent (10%) or more of the voting securities of the person.
- (22) Control transaction. – The acquisition of control over a bank or a holding company other than pursuant to a combination.
- (23) Credit union. – A credit union as defined in G.S. 54-109.1.
- (24) De novo branch. – A branch of a bank or of an out-of-state bank within this State that is established as a branch, and not (i) by virtue of an acquisition of the existing branch of another bank or out-of-state bank, (ii) by a combination involving the bank or out-of-state bank, or (iii) by the conversion of a non-branch bank business office to a branch.
- (25) Deposit. – A "deposit" as defined in Section 3(1) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(1).
- (26) Deposit insurance. – Insurance of a bank's deposit accounts where the beneficiaries are the holders of the insured accounts.
- (27) Depository institution. – A bank, out-of-state bank, savings institution, or federally chartered institution, the deposits of which are insured by the FDIC.
- (28) Deputy commissioner. – An individual appointed by the Commissioner to such office as provided by G.S. 53C-2-3.
- (29) Distribution. – With respect to a bank, "distribution" has the same meaning as set forth in Chapter 55.
- (30) DPC subsidiary. – A debt previously contracted subsidiary of a bank that acquires in good faith an equity ownership interest through foreclosure or other realization on collateral, by way of a compromise of a disputed or contested claim, or to avoid a loss in connection with a debt previously contracted or to which the bank transfers an equity ownership interest so acquired by the bank.
- (31) Equity ownership interest. – Any beneficial equity or similar interest, whether direct or indirect, including shares, limited or general partnership interests, and membership interests in a limited liability company.
- (32) Examination. – A supervisory inspection of a bank, a proposed bank, a holding company, or a branch of an out-of-state bank operating in this State that may include inspection of all relevant information, including information of or about the subsidiaries and affiliates of the bank, proposed bank holding company, or branch. "Examination" also includes an

- 1 investigation of any person with respect to any violation or suspected  
2 violation of any provision of this Chapter by such person, or a review of  
3 facts and circumstances relevant to the Commissioner's consideration of the  
4 issuance of an order pursuant to this Chapter.
- 5 (33) Farm credit system institution. – A lending institution regulated by the Farm  
6 Credit Administration.
- 7 (34) FDIC. – The Federal Deposit Insurance Corporation or its successor.
- 8 (35) Federal Reserve Board. – The Board of Governors of the Federal Reserve  
9 System or its successor.
- 10 (36) Federal savings association. – A federal savings association or federal  
11 savings bank chartered under Section 5 of the Home Owners' Loan Act, 12  
12 U.S.C. § 1464.
- 13 (37) Federally chartered institution. – A national bank or federal savings  
14 association.
- 15 (38) Financial subsidiary. – A "financial subsidiary" as defined in 12 U.S.C. §  
16 24a(g).
- 17 (39) Holding company. – A company that controls a depository institution or that  
18 controls a company that directly or indirectly controls a depository  
19 institution.
- 20 (40) Immediate family. – An individual's spouse, father, mother, children,  
21 brothers, sisters, and grandchildren; the father, mother, brothers and sisters  
22 of the individual's spouse; and the spouse of the individual's child, brother,  
23 or sister.
- 24 (41) Inadequate capital. – An amount of capital equal to at least seventy-five  
25 percent (75%) but less than one hundred percent (100%) of required capital.
- 26 (42) Individual. – A human being.
- 27 (43) Insufficient capital. – An amount of capital less than seventy-five percent  
28 (75%) of required capital.
- 29 (44) Lower-tier subsidiary. – Any bank operating subsidiary in which a bank  
30 subsidiary has an equity ownership interest.
- 31 (45) National bank. – A banking association organized under 12 U.S.C. § 21.
- 32 (46) Non-branch bank business office. – Any staffed physical location open to the  
33 public in this State in which an office of a bank, out-of-state bank,  
34 depository institution established under the laws of another state, or federally  
35 chartered institution that is not a branch, an office of a separately organized  
36 subsidiary of such depository institution, or an office of the holding  
37 company of such depository institution, at which one or more banking or  
38 banking-related products or services are offered, other than the taking of  
39 deposits. The provision of remote deposit capture facilities or services by a  
40 non-branch bank business office shall not be deemed to be a taking of  
41 deposits. Non-branch bank business offices include loan production offices,  
42 mortgage loan offices, and insurance agency offices, or a combination  
43 thereof.
- 44 (47) North Carolina financial institution. – A bank, savings institution, or trust  
45 company organized under the laws of this State. For purposes of the  
46 Securities Act of 1933 and the Securities Exchange Act of 1934, any North  
47 Carolina financial institution is a banking institution.
- 48 (48) OCC. – The Office of the Comptroller of the Currency or its successor.
- 49 (49) OCOB. – The Office of the Commissioner of Banks as provided in  
50 G.S. 53C-2-3.



- (50) Organizational documents. – The charter, certificate of organization, articles of incorporation, articles of association, certificate of limited partnership, bylaws, operating agreement, partnership agreement, and any other similar documents required to be prepared or adopted by a company in connection with its organization, and as thereafter amended from time to time.
- (51) Organizational law. – The laws of the jurisdiction of organization of a company applicable to the organization of the company and its governance, including approval of transactions by its board of directors, shareholders, partners, members, or beneficiaries, as applicable.
- (52) Organizers. – One or more individuals who are the organizers of a proposed bank responsible for the business of the proposed bank from the filing of the application to the Commission's final decision on the application.
- (53) Out-of-state bank. – A bank that is organized, chartered, or created under the laws of a state other than this State and the deposits of which are insured by the FDIC.
- (54) Person. – An individual, a company, or a group of persons who are acting in concert.
- (55) Plan of conversion. – A detailed outline of the procedure of the conversion of a depository institution from one to another charter.
- (56) Practical banker. – An individual who at the time of appointment to the Commission is, or has been during the five years preceding the appointment, a president, chief executive officer, director, or holder of five percent (5%) or more of any class of voting securities of a North Carolina financial institution.
- (57) Principal office. – The office that houses the headquarters of a bank.
- (58) Public member. – A member of the Commission who is not a practical banker 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.
- (59) Public notice. – Notice to the public of the applicable information specified in this Chapter by (i) a single publication in a newspaper of general circulation in the county in which the bank that is the subject of the publication has its principal office or in such other county as may be directed by the Commissioner to best meet the purposes for which the notice is required and (ii) a posting in the notices section of the Commissioner's Web site for at least 15 days.
- (60) Record. – Information, reports, memoranda, charts, letters, messages, extracts, summaries, analyses, compilations, transaction documentation, account statements, financial statements, and other documents, including customer financial and other information, whether created, transmitted, distributed, retained, or stored in tangible or digital form.
- (61) Registered agent. – The person named in the organizational documents of a company upon whom service of legal process is deemed binding upon the company.
- (62) Required capital. – Required capital means either of the following:
- a. In the case of a proposed bank, the amount of capital required by the Commissioner as a prerequisite to the commencement of the business of banking.
- b. In all other cases, an amount of capital equal to at least the amount of capital required for a bank to be deemed "adequately capitalized" under applicable federal regulatory capital standards.

- (63) Savings institution. – A savings and loan association or a savings bank organized under the laws of this State or of another state, or a federal savings association or savings bank.
- (64) Shareholder. – Any person in whose name shares are registered in the records of a corporation, or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
- (65) Shares. – The units into which the equity ownership interests of a corporation are divided.
- (66) State. – Any state of the United States, the District of Columbia, or any territory of the United States other than this State.
- (67) State trust company. – A company organized under the provisions of Article 24 of Chapter 53 of the General Statutes and a trust company previously organized under other provisions of this Chapter to operate only as a trust company and not as a commercial bank.
- (68) Subsidiary. – A company over which a bank has control.
- (69) This State. – The State of North Carolina.
- (70) Trust business. – Acting as a fiduciary or in other capacities permissible for a trust institution under G.S. 53-331.
- (71) Trust company. – A trust institution that is neither a depository institution nor a foreign bank, as defined in 12 U.S.C. § 1813(s)(1), but not including a bank organized under the laws of a territory of the United States.
- (72) Trust funds. – Trust funds as defined in Section 3(p) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(p).
- (73) Trust institution. – Any company lawfully acting as a fiduciary in a state or in a foreign country.
- (74) Voting securities. – A security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the company or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote.
- (75) Well-capitalized. – The term "well-capitalized" has the same meaning as defined in Regulation Y of the Federal Reserve Board, 12 C.F.R. § 225.2(r).
- (76) Well-managed. – Except as otherwise provided in this Chapter, a company or depository institution is well-managed if the following apply:
- a. At its most recent examination, the company or institution received at least a satisfactory composite rating and at least a satisfactory rating for management, if such rating is given.
- b. In the case of a company or depository institution that has not received an inspection or examination rating, a company or depository institution is well-managed if the Commissioner has determined, after a review of the managerial and other resources of the company or depository institution and after consulting with any other appropriate bank supervisory agency for the company or institution, that the company or institution is well-managed.
- A depository institution that results from the merger of two or more depository institutions that are well-managed shall be considered to be well-managed unless the Commissioner determines otherwise after consulting with any other appropriate bank supervisory agency for each depository institution involved in the merger. A depository institution that results from the merger of a depository institution that is well-managed with one or more depository institutions that are not well-managed or have not

1 been examined shall be considered to be well-managed if the Commissioner  
2 determines, after a review of the managerial and other resources of the  
3 resulting depository institution and after consulting with any other  
4 appropriate bank supervisory agency for the institutions involved in the  
5 merger, as applicable, that the resulting institution is well-managed.

6 **"§ 53C-1-5. Severability.**

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

11 **"Article 2.**

12 **"Commission and Commissioner.**

13 **"§ 53C-2-1. The Commission.**

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

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

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

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

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

51 **"§ 53C-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.

**"§ 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 by 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.

1       (d) The Attorney General shall assign an attorney from the Department of Justice to  
2 work full time with the Commission. The attorney shall be subject to all provisions of Chapter  
3 126 of the General Statutes relating to the State Personnel System. The Commission shall fully  
4 reimburse the Department of Justice for the compensation, secretarial support, equipment,  
5 supplies, records, and other property to support the attorney.

6 **"§ 53C-2-4. Administration of the Office of the Commissioner of Banks.**

7       (a) As authorized in Chapters 54B, 54C, and this Chapter, the OCOB shall be funded  
8 by annual or periodic assessments, licensing fees and charges, and reimbursements for  
9 examination costs. This list is not exclusive. The OCOB may not levy assessments, fees, or  
10 other charges except as expressly provided in this Chapter or by rule adopted in accordance  
11 with the provisions of Chapter 150B of the General Statutes and the provisions of this section.  
12 The Commissioner is authorized, in the exercise of reasonable discretion, to establish the time,  
13 place, and method for the payment of assessments, fees, charges, and costs.

14       (b) Not less than 30 days prior to the commencement of each fiscal year, the OCOB  
15 shall prepare and submit to the Commission a budget for the upcoming fiscal year, including  
16 the estimated revenues and expenses for the year. The Commission shall review the budget in a  
17 meeting prior to the commencement of the fiscal year with respect to which the budget has  
18 been presented and shall approve or modify the budget at the meeting.

19 **"§ 53C-2-5. Rule making.**

20       (a) The Commissioner, subject to review and approval by the Commission, may make  
21 all necessary rules with respect to the establishment, operation, conduct, and termination of any  
22 and all activities and businesses that are subject to licensing, regulation, supervision, or  
23 examination by the Commissioner under this Chapter.

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

27 **"§ 53C-2-6. Hearings and appeals.**

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

30       (b) Upon an appeal to the Commission by any party from an order entered by the  
31 Commissioner following an administrative hearing pursuant to Article 3A of Chapter 150B of  
32 the General Statutes, the chair of the Commission may appoint an appellate review panel of not  
33 fewer than three members to review the record on appeal, hear oral arguments, and make a  
34 recommended decision to the Commission. Unless another time period for appeals is provided  
35 by this Chapter, any party to an order by the Commissioner may, within 20 days after the order  
36 and upon written notice to the Commissioner, appeal the Commissioner's order to the  
37 Commission for review. The notice of appeal shall state the grounds for the appeal and set forth  
38 in numbered order the assignments of error for review by the Commission. Failure to state the  
39 grounds for the appeal and assignments of error shall constitute grounds to dismiss the appeal.  
40 Failure to comply with the briefing schedule provided by the Commission shall also constitute  
41 grounds to dismiss the appeal. Upon receipt of a notice of appeal, the Commissioner shall,  
42 within 30 days of the notice, certify to the Commission the record on appeal. Any party to a  
43 proceeding before the Commission may, within 20 days after final order of the Commission,  
44 petition the Superior Court of Wake County for judicial review of a final determination of any  
45 question of law that may be involved. The petition for judicial review shall be entitled "(insert  
46 name) Petitioner v. State of North Carolina on Relation of the Commission." A copy of the  
47 petition for judicial review shall be served upon the Commissioner pursuant to G.S. 150B-46.  
48 The petition shall be placed on the civil issue docket of the court and shall have precedence  
49 over other civil actions. Within 15 days of service of the petition for judicial review, the  
50 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.

**"§ 53C-2-7. Official record.**

(a) The Commissioner shall keep a record in the OCOB of the Commissioner's official acts, rulings, and transactions that, 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 the conduct of 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 and that 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 to federal regulatory agencies by any depository institution or trust institution, or its affiliates, holding company or its subsidiaries, or any other person subject to the Commissioner's jurisdiction, 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 that 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) Notwithstanding the provisions of subsection (b) of this section which limit discovery of confidential records held by the Commissioner, such records may be produced for discovery in a criminal or enforcement proceeding if both of the following occur:
- (1) After reviewing the discovery request, the court orders the Commissioner to submit the confidential records to the court for in camera review and the court finds that the interests of justice require that the documents be discoverable or admissible in evidence.
- (2) After making the finding provided by subdivision (1) of this subsection, the court enters a protective order restricting access and public distribution or any republication of the confidential materials requested.
- (f) 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 3.

"Organization of a Bank.

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

(a) An applicant for permission to organize a bank and for a charter must file an application with the Commissioner. The application shall be in the form required by the Commissioner and shall contain such information as the Commissioner requires, set forth in sufficient detail to enable the Commissioner to evaluate the applicant's satisfaction of the criteria set forth in G.S. 53C-3-4. The applicant shall pay a nonrefundable application fee as provided by rule at the time of filing the application.

(b) Upon receipt of an application, the Commissioner shall conduct an examination of the applicant and any other matters deemed relevant by the Commissioner. The Commissioner

may require additional information and may require the amendment of the application in the course of the examination. An applicant's failure to furnish all required information or to pay the required fee within 30 days after filing the application may be considered an abandonment of the application.

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

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

- (1) The application is complete.
- (2) The Commissioner's examination as provided for in G.S. 53C-3-1 indicates that the requirements for the issuance of a charter to the applicant are reasonably probable of satisfaction.
- (3) The proposed name of the proposed bank is not likely to mislead the public as to its character or purpose and is not the same as a name already adopted by an existing depository institution or trust institution operating in this State.

(b) If the Commissioner approves the organization of the proposed bank, the Commissioner shall issue a certificate to the Secretary of State. The Secretary of State shall transmit to the Commissioner a certified copy of the filed articles of incorporation of the proposed bank.

(c) Unless and until the Commissioner issues a charter to the proposed bank:

- (1) The proposed bank shall not transact any business except such as is incidental and necessary to its organization or the application for a charter or preparation for commencing the business of banking.
- (2) All funds paid for shares of the proposed bank shall be placed in escrow under a written escrow with a third-party escrow agent satisfactory to the Commissioner.
- (3) All funds for shares placed into escrow, and all dividends or interest on such funds, may be removed from escrow only with the Commissioner's approval except to the extent that such funds are refunded to subscribers or as otherwise required by law.

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

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

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

- (1) The information required to be set forth in articles of incorporation under Chapter 55 of the General Statutes.
- (2) Any provision consistent with Chapter 55 of the General Statutes and other applicable law that the organizers elect to set forth for the regulation of the internal affairs of the proposed bank and that the Commissioner authorizes or requires.
- (3) Any provision the Commissioner requires or authorizes as a substitute for a provision that otherwise would be required by Chapter 55 of the General Statutes.

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

**"§ 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



1 reasonably probable to be satisfied within a reasonable period of time specified by the  
2 Commissioner in the order of approval:

- 3       (1) The proposed bank has solicited or will solicit subscriptions for purchases of  
4 shares sufficient to provide an amount of required capital satisfactory to the  
5 Commissioner for the commencement of the business of banking.
- 6       (2) All prior public solicitations for purchases of shares and all future  
7 solicitations will be solicited with appropriate disclosure, taking into account  
8 all the circumstances of the public solicitation, including a prominent  
9 statement in any solicitation document to the effect that the solicitation has  
10 not been approved by the Commissioner or the Commission and that a  
11 representation to the contrary is a criminal offense.
- 12       (3) All payments for purchases of shares in a bank in organization are made in  
13 United States currency.
- 14       (4) The proposed bank has an operational expense fund from which to pay  
15 organizational expenses, in an amount determined by the Commissioner to  
16 be sufficient for the safe and sound operation of the proposed bank while the  
17 charter application is pending.
- 18       (5) The proposed bank has been formed for legitimate and lawful business  
19 purposes.
- 20       (6) The character, competence, and experience of the organizers, proposed  
21 directors, proposed officers, and initial holders of more than ten percent  
22 (10%) of the voting securities of the proposed bank will command the  
23 confidence of the public.
- 24       (7) The proposed officers and directors, as a group, have degrees of character,  
25 competence, and experience sufficient to justify a belief that the proposed  
26 bank will be free from improper or unlawful influence and otherwise will  
27 operate safely, soundly, and in compliance with law.
- 28       (8) The anticipated volume and nature of business of the proposed bank  
29 projected in the application are reasonable and indicate a reasonable  
30 probability of safe, sound, and profitable operation of the proposed bank.
- 31       (9) If the proposed bank intends to conduct "trust business," as defined by  
32 G.S. 53C-1-4(70), it appears that trust powers should be granted based on  
33 consideration of the various factors set forth in Article 24 of Chapter 53 of  
34 the General Statutes for considering applications and setting capital for a  
35 State trust company.

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

40       (c) If it appears to the Commissioner that the proposed bank has satisfied or is  
41 reasonably probable to satisfy the requirements for issuance of a charter, the Commissioner  
42 shall issue an order approving the application for a charter and such order shall be submitted to  
43 the Commission for its review at a public hearing. The Commissioner may, in the order  
44 approving the proposed bank's charter, impose other reasonable conditions or restrictions upon  
45 the proposed bank or the new bank, consistent with this Chapter.

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

51 "§ 53C-3-5. Notice; public hearing.

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

- (1) A statement that the application has been filed with the Commissioner.
- (2) The name of the community where the proposed bank intends to locate its principal office.
- (3) A statement that a public hearing will be held to review the Commissioner's approval of the application.
- (4) A statement that any interested person may file a written statement either favoring or protesting the chartering of the proposed bank. The statement shall note that, in order to be considered at the public hearing, all written statements from interested persons must be filed with the Commission within 30 days of the date of publication of the public notice.

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

**"§ 53C-3-6. Commission decision.**

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

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

**"§ 53C-3-7. Issuance of charter.**

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

- (1) Received payment in United States currency for the purchase of shares and will have satisfactory required capital upon commencing business, in each case in at least the amount required by the Commission's order approving the application.
- (2) Elected the proposed officers and directors named in the application or other officers and directors approved by the Commissioner.
- (3) Secured deposit insurance from the FDIC.
- (4) Complied with all requirements of the Commission's order approving the application for a charter.
- (5) Appears to be ready to commence the business of banking in the reasonable discretion of the Commissioner upon a pre-opening examination.

(b) The charter issued by the Commissioner shall set forth any trust powers of the bank that may be full or partial trust powers.

(c) If a bank does not open and engage in the business of banking within six months after the date its charter is issued or within such longer period as may be permitted by the Commissioner, the Commissioner shall revoke the charter.

(d) If the Commissioner determines that a charter should not be issued following Commission approval, the applicant may appeal that decision to the Commission as provided in G.S. 53C-2-6.

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

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

(2) The Commission denies approval of a charter.

(3) The charter is revoked by the Commissioner pursuant to subsection (c) of this section or other applicable law.

"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 fewer than five individuals. For good cause shown, the Commissioner may approve boards of directors consisting of fewer than five individuals to the extent consistent with other applicable law.

(c) The board of directors shall meet at least quarterly, provided that the executive committee shall meet in any month in which there is no meeting of the board of directors, and the loan committee shall meet monthly.

(d) Except to the extent the provisions of this Chapter or other applicable federal or state laws and regulations impose a different standard, bank directors shall have the duties, authority, and liabilities of directors of corporations organized under Chapter 55 of the General Statutes.

(e) The board of directors of a bank may appoint directors with respect to such of the bank's branches as it deems useful to the business of the bank. No such advisory director 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, and a loan committee (which may be the executive committee or the board of directors as a whole) and may appoint such other committees as it deems appropriate to provide for the safe and sound operation of the bank in a manner consistent with applicable laws and regulations.

(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.

**"§ 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 do either of the following:

(1) Appoint an agent in Wake County, North Carolina, for service of process.

(2) Consent, on a form satisfactory to the Commissioner, to the following:

a. The Commissioner may serve as the director's agent for service of process.

b. The director consents to jurisdiction in Wake County, North Carolina, but only for purposes of any action or proceeding brought by the Commissioner.

**"§ 53C-4-6. Liability of directors.**

(a) The standard of conduct for directors shall be as set forth in G.S. 55-8-30.

(b) Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of the bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its shareholders, or any other person shall have sustained in consequence of such violation. Any aggrieved shareholder of any bank in liquidation may prosecute an action for the enforcement of the provisions of this section. Only one such action may be brought.

**"§ 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 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.

**"§ 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.**

(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 the following:

(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.

**"§ 53C-4-11. Reserve fund.**

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

- (1) If the bank is a member of the Federal Reserve System, it shall maintain a reserve fund in accordance with the requirements of the Federal Reserve Board.
- (2) All other banks shall maintain a reserve fund as required by the Commissioner.

(b) The Commissioner may require a level of reserve fund for nonmember banks as provided in subsection (a)(2) of this section, taking into consideration the level of liquidity the Commissioner deems necessary for the safe and sound operation of the banks.

(c) In establishing the required level of reserve fund, the Commissioner shall include the following types of liquid reserves:

- (1) Cash on hand, which shall include both United States currency and exchange of any clearinghouse association or similar intermediary.
- (2) Balances on demand from designated depository institutions.
- (3) Obligations of the United States Treasury, any agency of the United States government that is guaranteed by the United States government, and any general obligation of this State or any political subdivision thereof that has an investment grade rating of A or higher by a nationally recognized rating service.

(d) Notwithstanding any other provision of this Chapter, in the event the reserve fund of a bank falls below the level required under subsection (b) of this section, the Commissioner may require the bank to do the following:

- (1) Discontinue making any new extension of credit.
- (2) Promptly restore its reserve fund to the applicable required level.

(e) In the event a bank shall fail to promptly restore its reserve fund to the applicable level required within 10 days after the Commissioner directs it to do so, the Commissioner may take such actions under Article 8 of this Chapter as the Commissioner deems necessary.

**"§ 53C-4-12. Compliance review committee.**

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

- (1) "Compliance review committee" means 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, whose functions are to audit, evaluate, report, or determine compliance with any of the following:
  - a. Loan underwriting standards.
  - b. Asset quality.
  - c. Financial reporting to federal or State regulatory agencies.
  - d. Adherence to the bank's investment, lending, accounting, ethical, or risk assessment, and financial standards.
  - e. Compliance with federal or State statutory requirements.

- (2) "Compliance review documents" means documents prepared for or created by a compliance review committee.
- (3) "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.
- (4) "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.

(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 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, and not by way of limitation, a bank shall have the power to do the following:

- (1) Carry on the business of banking, which includes such activities as discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness; receiving deposits; issuing, advising, and confirming letters of credit; receiving money for transmission; and loaning money on personal security or on real or personal property.
- (2) Make any loan that could be made by a federally chartered institution doing business in this State.
- (3) Purchase or invest in loans, or a participating interest in loans, of a type that the bank could itself make.
- (4) Sell any loan, including one or more participating interests in a loan.
- (5) Make any investments authorized by G.S. 53C-5-2 or any other section of this Chapter.
- (6) Through information technology systems, processes, and capabilities, provide, deliver, or otherwise make available banking services and products, enhance the effectiveness or efficiency of its operations, and provide other benefits to its customers. Additionally, a bank may utilize its information technology systems, processes, capabilities, and capacities in the same manner and to the same extent as is permitted for national banks.
- (7) Engage in any other activities approved by rule, order, or interpretation of the Commissioner.

(b) A bank shall also have the power to engage:

- (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 that proposes to engage in any new activity shall apply to the Commissioner for approval to engage in the activity before its commencement. If the new activity will be conducted in a new or existing subsidiary in which the bank intends to make an investment, the bank shall apply to the Commissioner for approval to engage in the 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 subsection (a), (b), or (c) of this section.

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

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

(f) A bank permitted to commence a new activity without prior application and approval pursuant to subsection (e) of this section shall notify the Commissioner in writing of the commencement of the new activity no later than the 30th day after the earlier of (i) commencing the new activity or (ii) if applicable, making an investment in a subsidiary through which the new activity will be conducted.

**"§ 53C-5-2. Investment authority.**

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

(1) The shares or other securities of the following:

a. Any other depository institution.

b. Any industrial bank, bankers' bank, or other deposit-taking entity chartered or existing under any federal or State law, including the shares or other securities of clearing corporations defined in G.S. 25-8-102, the shares or other securities of central reserve banks, and the shares of an Edge Act bank. The investment of any bank in the shares of a central reserve bank or bank organized under the Edge

- 1 Act, 12 U.S.C. § 611, et seq., shall at no time exceed ten percent  
2 (10%) of the required capital of the bank making the investment.
- 3 c. Any company in which a federally chartered institution is authorized  
4 to invest under any statute or any regulation, official circular,  
5 bulletin, order, or written interpretation issued by the OCC.
- 6 (2) Bonds or notes issued by or fully and unconditionally guaranteed as to  
7 principal and interest by the United States Treasury. No bank shall be  
8 required to maintain a reserve against deposits secured by United States  
9 Treasury bonds or notes equal in market value to the amount of such  
10 deposits, and such bonds or notes shall be valid security for all loans and  
11 deposits to the same extent as are any obligations of the United States.
- 12 (3) Federal farm loan bonds, notes, or similar obligations issued by a farm credit  
13 system institution.
- 14 (4) Securities issued by federal home loan banks pursuant to the Federal Home  
15 Loan Bank Act of 1932, as amended.
- 16 (5) Bonds or notes secured by a mortgage or deed of trust insured or guaranteed  
17 by the Federal Housing Administration, Secretary of Housing and Urban  
18 Development, or the Veterans Administration, or in mortgages or deeds of  
19 trust on real estate that have been accepted for insurance or guarantee by the  
20 Federal Housing Administration, Secretary of Housing and Urban  
21 Development, or Veterans Administration, or in obligations of a national  
22 mortgage association, which obligations are insured or guaranteed by the  
23 United States government. No law of this State prescribing the nature,  
24 amount, or form of security or requiring security upon which loans or  
25 investments may be made, or prescribing the rates or time of payment of the  
26 interest any obligation may bear, or prescribing the period for which loans or  
27 investments may be made, shall apply to investments made pursuant to this  
28 subsection.
- 29 (6) Mutual funds, but subject to rules or orders adopted by the Commissioner.
- 30 (b) A bank may make an investment in a subsidiary that will be operated as any of the  
31 following:
- 32 (1) Bank operating subsidiary.  
33 (2) Financial subsidiary.  
34 (3) DPC subsidiary, as defined by G.S. 53C-1-4(30).
- 35 (c) An investment by a bank or a bank subsidiary pursuant to subsection (b) or (d) of  
36 this section shall receive the same accounting and regulatory treatment as is accorded to such  
37 investment by the bank's primary federal supervisor. No investment shall be made by a bank or  
38 a bank subsidiary pursuant to subsection (b) or (d) of this section unless the following apply:
- 39 (1) The investment is approved by the board of directors of the bank.  
40 (2) The bank has carefully investigated the business or activity in which the  
41 subsidiary established by the investment will engage.  
42 (3) The bank has established the risk management and financial controls  
43 necessary to engage in the business or activity in a safe and sound manner.  
44 (4) The bank has, and following the making of the investment and the  
45 application of the provisions of this subsection, will continue to satisfy the  
46 capital requirements of this Chapter.
- 47 (d) A bank operating subsidiary may make an investment of any size in a lower tier  
48 subsidiary.
- 49 (e) Except as provided in subsection (f) of this section, a bank or bank operating  
50 subsidiary proposing to make an investment described in subsection (b), (c), or (d) of this  
51 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 that 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 of the following:

a. One in which the bank is then engaged or has previously been engaged, directly or through a different subsidiary, and for which all necessary approvals of bank supervisory agencies and of the Commissioner have previously been obtained and remain in effect.

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

(3) A bank that makes an investment pursuant to the exception created by this subsection shall nevertheless notify the Commissioner in writing of the investment within 30 days thereafter.

(g) Any bank, out-of-state bank, national bank, or any subsidiary thereof that engages in an activity subject to licensure and/or regulation under the laws of this State, other than this Chapter, shall be subject to licensure and/or regulation on a basis that does not arbitrarily discriminate by the appropriate regulatory agency which licenses and/or regulates nonbanks that engage in the same activity.

(h) The Commissioner shall monitor the impact of investment activities of banks and their subsidiaries under this section on the safety and soundness of such banks. Any securities owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the securities and, if not so disposed of, they shall be charged to profit and loss account and no longer carried on the books as an asset. The limit of time in which securities shall be disposed of or charged off the books of the bank may be extended by the Commissioner if in the Commissioner's judgment it is for the best interest of the bank that the extension be granted, provided that the limitations imposed in this section on the ownership of shares or other equity ownership interest in companies are suspended only to the extent that any bank operating under the supervision of the Commissioner may subscribe for and purchase shares and other equity ownership interests in, or debentures, bonds, or other types of securities of, any company organized under the laws of the United States for the purposes of insuring the depositors a part or all of their funds on deposit in banks to the extent as security ownership is required in order to obtain the benefits of deposit insurance for such depositors.

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

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

(2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or through deeds in lieu of foreclosure or other settlements affecting security of those debts. All real property acquired under this subdivision shall be sold by the bank within

five years after it is acquired unless, upon application by the bank, the Commissioner extends the time within which the sale shall be made.

(j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent (10%) of its required capital.

"§ 53C-5-3. Banks, fiduciaries authorized to invest in securities approved by the Secretary of Housing and Urban Development, Federal Housing Administration, Veterans Administration.

(a) Insured Mortgages and Obligation of National Mortgage Associations and Federal Home Loan Banks. – It shall be lawful for all commercial and industrial banks, trust companies, building and loan associations, savings and loan associations, insurance companies, mortgagees and loan correspondents approved by the Secretary of Housing and Urban Development or Federal Housing Administration, and other financial institutions engaged in business in this State, and for guardians, executors, administrators, trustees, or others acting in a fiduciary capacity in this State to invest, to the same extent that such funds may be invested in interest-bearing obligations of the United States, their funds or moneys in their custody or possession that are eligible for investment, in bonds or notes secured by a mortgage or deed of trust insured or guaranteed by the Federal Housing Administration, Secretary of Housing and Urban Development, or the Veterans Administration, or in mortgages or deeds of trust on real estate which have been accepted for insurance or guarantee by the Federal Housing Administration, Secretary of Housing and Urban Development, or Veterans Administration, and in obligations of a national mortgage association, which obligations are insured or guaranteed by the United States Government, or bonds, debentures, consolidated bonds, or other obligations of any federal home loan bank or banks.

(b) Insured or Guaranteed Loans; Loans Purchased by National Mortgage Associations and Federal Home Loan Banks. – All such banks, trust companies, building and loan associations, savings and loan associations, insurance companies, mortgagees and loan correspondents approved by the Secretary of Housing and Urban Development or Federal Housing Administration, and other financial institutions, and also all such guardians, executors, administrators, trustees, or others acting in a fiduciary capacity in this State, may make such loans, secured by real estate, as the Secretary of Housing and Urban Development, the Federal Housing Administration, a national mortgage association, or the Veterans Administration has insured or guaranteed, or has made a commitment to insure or guarantee, and may obtain such insurance or guarantee; provided, further, that the above designated financial institutions may make loans, secured by real estate, that are eligible and committed for sale to a national mortgage association, federal home loan bank, federal home loan mortgage corporation, or other agency or instrumentality of the United States.

(c) Eligibility for Credit Insurance. – All banks, trust companies, building and loan associations, savings and loan associations, insurance companies, mortgagees and loan correspondents approved by the Secretary of Housing and Urban Development or Federal Housing Administration, and other financial institutions, on being approved as eligible for credit insurance by the Secretary of Housing and Urban Development, the Federal Housing Administration, or the Veterans Administration, may make such loans as are insured by the Secretary of Housing and Urban Development or Federal Housing Administration or insured or guaranteed by the Veterans Administration.

(d) Certain Securities Made Eligible for Collaterals. – Whenever by statute of this State collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or other fund is required to be maintained, consisting of designated securities, bonds, and notes secured by a mortgage or deed of trust insured or guaranteed by the Secretary of

Housing and Urban Development, Federal Housing 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 6.

"Bank Operations.

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

(a) A bank may make a loan or extension of credit secured by the pledge of its own shares or the shares of its holding company, provided:

(1) When a bank exercises its security interest in shares of the bank or its holding company, it shall dispose of all of the shares within a period of six months. If the shares have not been disposed of within six months, the shares shall be charged to profit and loss and no longer carried as an asset of the bank. The Commissioner may extend the six-month period not to exceed an additional six months.

(2) A bank may not extend credit to finance the purchase of or to carry shares of the bank or the shares of its holding company. For purposes of this subsection, the phrase "to carry" has the meaning set forth in 12 C.F.R. Part 221, as promulgated by the Federal Reserve Board.

(b) Loans and Extensions of Credit – Limitations:

(1) The total loans and extensions of credit, both direct and indirect, by a bank to a person, other than a municipal corporation for money borrowed, including in the liabilities of a company the liabilities of the several members of the company, outstanding at one time and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit, shall not exceed the greater of 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.

- 1           a.     The discount of bills of exchange drawn in good faith against actual  
2                 existing values.  
3           b.     The discount of solvent trade acceptances or other solvent  
4                 commercial or business paper actually owned by the person  
5                 negotiating the same.  
6           c.     Loans or extensions of credit secured by a segregated deposit account  
7                 in the lending bank.  
8           d.     The purchase of bankers' acceptances of the kind described in section  
9                 13 of the Federal Reserve Act and issued by other depository  
10                institutions.  
11          e.     The purchase of any notes and the making of any loans secured by  
12                 not less than a like face amount of bonds of the United States or any  
13                 agency of the United States; or other obligations guaranteed by the  
14                 United States government or the State of North Carolina; or  
15                 certificates of indebtedness of the United States, or agency thereof;  
16                 or other obligations guaranteed by the United States government.  
17       (4)     For purposes of this subsection, the following definitions and conditions  
18                 apply:  
19           a.     "Person" includes an individual or a corporation, partnership, trust,  
20                 association, joint venture, pool, syndicate, sole proprietorship,  
21                 unincorporated organization, or any other form of entity not  
22                 specifically listed; provided, the term "person" shall not include (i) a  
23                 clearing organization registered with the Commodity Futures Trading  
24                 Commission (or its successor) or the Securities and Exchange  
25                 Commission (or its successor) or any federal banking agency or (ii) a  
26                 bank's affiliates.  
27           b.     Loans or extensions of credit to one person include loans made to  
28                 other persons when the proceeds of the loans or extensions of credit  
29                 are to be used for the direct benefit of the first person or the persons  
30                 are engaged in a common enterprise.  
31           c.     For purposes of this section, extensions of credit by a bank to a  
32                 person shall include the bank's credit exposures to the person in  
33                 derivative transactions with the bank.  
34           d.     "Derivative transaction" includes any transaction that is a contract,  
35                 agreement, swap, warrant, note, or option that is based, in whole or  
36                 in part, on the value of, any interest in, or any quantitative measure or  
37                 the occurrence of any event relating to one or more commodities,  
38                 securities, debt instruments, currencies, interest or other rates,  
39                 indices, or assets.  
40           e.     Credit exposure to a person in connection with a derivative  
41                 transaction shall be determined based on an amount that the bank  
42                 reasonably determines, in accordance with customary industry  
43                 practices under the terms of the derivative transaction or otherwise,  
44                 would be its loss if the person were to default on the date of  
45                 determination, taking into account any netting and collateral  
46                 arrangements and any guarantees or other credit enhancements,  
47                 provided that the bank may elect to determine credit exposure on the  
8                 basis of such other method of determining credit exposure as may be  
-9                 permitted by the bank's primary federal regulator.

(c) The Commissioner shall monitor the lending activities of banks under this section for undue credit concentrations and inadequate risk diversification that could adversely affect the safety and soundness of the banks.

(d) Rules adopted by the Commissioner to ensure that extensions of credit made by banks are in keeping with sound lending practices and to promote the purposes of this Chapter shall not prohibit a bank from making any extension of credit that is a permitted extension of credit for a federally chartered institution.

**"§ 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 the bank 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 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.

**"§ 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 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.

**"§ 53C-6-5. Reserved for future codification purposes.**

**"§ 53C-6-6. Joint accounts.**

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

(b) Unless the individuals establishing a joint account have agreed with the bank that withdrawals require more than one signature, payment by the bank to, or at the direction of, any joint tenant designated in the contract authorized by this section shall be a total discharge of the bank's obligation as to the amount so paid.

(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 provision of law relating to estate taxes.

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

(i) Where a joint account is held by two or more individuals and a joint tenant does not wish for the account to be terminated but requests to be removed from the account, the bank shall remove the joint tenant from the account. The joint account shall continue in the names of the remaining tenant or tenants. Any joint tenant who requested to be removed from an account

remains liable for any debts incurred in connection with the joint account during the period in which the individual was a named joint tenant.

(j) Any joint account created under the provisions of G.S. 53-146.1 as it existed prior to 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 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. 53C-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. 53C-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. 53C-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. 53C-6-7

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 53C-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.

"§ 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 do the following:

- (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. 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.

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 that 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.

"§ 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 the following terms apply:

(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 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.

**"§ 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 statements to be rendered annually or on request.**

(a) Every bank shall render an account statement for each deposit account at least annually to the depositor; provided, however, the statements are not required for time deposits. Every bank shall render a statement of account for each deposit account, including time deposits upon receipt of an appropriate request reasonably made by a depositor.

(b) For purposes of this section, an account statement is deemed to have been "rendered" to a depositor as of the earlier of the date the statement is mailed to the depositor's address as shown on bank records and the date the account is posted to the bank's Web site in a manner and a form ensuring the statement to be readily available to the depositor; provided however, the bank and the depositor may agree that an account statement may be rendered by other means.

(c) Nothing in this section shall be construed to relieve the depositor from the duty of exercising due diligence in the review of an account statement rendered by the bank and of timely notification to the bank upon discovery of any error.

**"§ 53C-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 by 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 then shall 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, that 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 that is capable of accurately converting the records into tangible form within a reasonable time. Each such converted tangible form of record also shall be deemed a record.

(b) Any tangible form of a record shall be deemed for all purposes to be an original record and shall be admissible in evidence in all courts and administrative agencies in this State, if otherwise admissible, and the bank may destroy or otherwise dispose of the original form of the record; provided, however, that a bank shall retain either the originals or convertible form of its records for such period as may be required by law or by rule or order of the Commissioner. Any bank may dispose of any original or convertible form of a record that has been retained for the period prescribed by law or by rule or order of the Commissioner for its class.

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

**"CERTIFICATE REGARDING BANK RECORDS**

1. The accompanying documents are true and correct copies of the records of [name of bank]. The records were made in the regular course of business of the bank at or near the time of the acts, events, or conditions they reflect.
2. The undersigned is authorized to execute this certificate.
3. This certificate is issued pursuant to G.S. 53C-6-14.

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or type name

\_\_\_\_\_  
Title

[Notarize as required by law for an affidavit]"

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

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

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

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

(c) A bank seeking authority to establish a branch shall make application to the Commissioner in a form acceptable to the Commissioner. Not more than 30 days before nor

less than 10 days after the filing of the application with the Commissioner, the applicant shall publish public notice of the filing of the application. The public notice shall contain all of the following:

- (1) A statement that the application has been filed with the Commissioner.
- (2) The physical address or location of the proposed branch, including street and city or town.
- (3) A statement that any interested person may make written comment on the application to the Commissioner and that comments received by the Commissioner within 14 days of the date of publication of the public notice shall be considered. The public notice shall provide the then current mailing address of the Commissioner.

(d) A bank may conduct any activities at a branch in another state authorized under this section that are permissible for a bank chartered by the other state where the branch is located, except to the extent the activities are expressly prohibited by the laws of this State or by any rule or order of the Commissioner applicable to the bank.

(e) Upon receipt of an application to establish a branch, the Commissioner shall conduct an examination of the pertinent facts and information and may request such additional information as the Commissioner deems necessary to make a decision on the application. In deciding whether to approve a branch application, the Commissioner shall take into account such factors as the financial condition and history of the applicant; the adequacy of its capital; the applicant's future earnings prospects; the character, competency, and experience of its management; the probable impact of the branch on the condition of the applicant bank and existing depository institutions in the community to be served; and the convenience and needs of the community the proposed branch is to serve.

**"§ 53C-6-16. 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.

**"§ 53C-6-17. Branch closings.**

A bank may close a branch upon providing written notice to the Commissioner and the customers of the branch at least 90 days prior to the proposed closing. The notice shall include the date the branch will close and posting, in a conspicuous manner on the branch premises for

a period of 30 days prior to the proposed closing date, a notice of its intent to close the branch. The consolidation of two or more branches into a single location in the same vicinity shall not be considered a closure subject to the 90-day and 30-day notice requirements of this section. To be considered a consolidation, the bank shall 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. Non-branch bank business offices.**

(a) A bank may establish one or more non-branch bank business offices as defined by G.S. 53C-1-4(46).

(1) If a proposed non-branch 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 of the date of receipt of the notification, the non-branch bank business office shall be deemed approved. In deciding whether to object to the establishment of a non-branch bank business office, the Commissioner shall consider, without limitation, whether the business proposed to be conducted at the non-branch 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 non-branch 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 non-branch bank business office in this State upon written notice to the Commissioner.

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

(d) No deposits may be taken at a non-branch bank business office.

**"§ 53C-6-19. Operations; suspension.**

(a) A bank, any of its branches, and any of its non-branch bank business offices may operate on such days and during such hours, and may observe such holidays, as the bank's board of directors shall designate.

(b) Whenever the Commissioner determines that an emergency exists or is pending in this State or any part thereof, the Commissioner may authorize banks operating in the affected area or areas to suspend any or all of their operations in such area or areas for such period or periods as the Commissioner establishes. An emergency is any condition or occurrence that may interfere with a bank's operations or poses an existing or imminent threat to the safety or security of persons or property, or both.

(c) In the event that an emergency exists or is pending in this State or any part thereof and a bank operating in the affected area or areas is unable to communicate the existence or pendency of the emergency to the OCOB, an officer of the bank may suspend any or all of the bank's operations in the affected area or areas without the prior approval of the Commissioner. The bank shall give notice of such closing to the Commissioner as soon as practicable.

**"Article 7.**

**"Control Transactions; Combinations; Conversions.**

**"Part 1. Change in Control.**

1 "§ 53C-7-101. Control transactions.

2     (a) Except as otherwise expressly permitted by this section, a person shall not engage in  
3 a control transaction, as defined by G.S. 53C-1-4(22), involving a bank without the prior  
4 approval of the Commissioner. A person may contract to engage in a control transaction with  
5 the consummation of such control transaction being subject to receipt of the approval of the  
6 Commissioner. Each bank shall report to the Commissioner any changes in its directors,  
7 president, chief executive officer, chief financial officer, chief loan officer, or chief credit  
8 officer by the close of the second day on which the holding company is open for business  
9 following such change.

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

15     (c) The following transactions shall not constitute a control transaction requiring the  
16 prior approval of the Commissioner:

17         (1) The acquisition of control over voting securities in connection with securing,  
18 collecting, or satisfying a debt previously contracted for in good faith and  
19 not for the purpose of acquiring control of the bank, if the acquiring person  
20 files a notice with the Commissioner, in the form required by the  
21 Commissioner, describing such transaction at least 10 days before the  
22 acquiring person first votes or directs the voting of the voting securities.

23         (2) The acquisition of control over voting securities by a person who has  
24 previously engaged in a control transaction with respect to the bank after  
25 receiving the approval of the Commissioner under this Article, which  
26 approval permits the acquisition of control over additional voting securities,  
27 or any person who is an affiliate of the person previously engaging in the  
28 approved control transaction with the permission and who is identified in the  
29 application submitted for the approval, if the acquiring person files a notice  
30 with the Commissioner, in the form required by the Commissioner,  
31 describing the transaction at least 10 days before the acquiring person or  
32 affiliate thereof first votes or directs the voting of the voting securities.

33         (3) An acquisition of control over voting securities by operation of law, will, or  
34 intestate succession, if the acquiring person files a notice with the  
35 Commissioner, in the form required by the Commissioner, describing the  
36 acquisition or transfer at least 10 days before the acquiring person first votes  
37 or directs the voting of the voting securities.

38         (4) Bona fide gifts.

39         (5) A transaction exempted by rules, orders, or declaratory rulings of the  
40 Commissioner issued because approval of such a transaction is not necessary  
41 to achieve the objectives of this Chapter.

42         (6) An acquisition of control over voting securities in a transaction subject to  
43 approval under section 3 of the Bank Holding Company Act, as amended  
44 (12 U.S.C. § 1842).

45     (d) Upon receipt of a notice described in subsection (c), the Commissioner may, before  
46 the 10th day following the receipt, notify the acquiring person of the Commissioner's objection  
47 to the exercise of control over the voting securities or may require the acquiring party to submit  
48 further information before exercising control over the voting securities. An acquiring person  
49 receiving a notice of objection shall be required to submit an application for approval of a  
50 control transaction. An acquiring person receiving a notice to submit further information may  
51 be required to provide any information that would be included in an application for approval of



1 a control transaction. In the event such an acquiring person is comprised of a group of persons,  
2 the Commissioner may require each member of the group to submit relevant information.

3 (e) All voting securities over which control has been acquired by an acquiring person  
4 shall not be voted on any matter submitted to a vote of the holders of the outstanding voting  
5 securities of the bank and shall be deemed authorized but unissued for purposes of determining  
6 the presence of a quorum of holders of voting securities until such time as follows:

7 (1) The Commissioner has approved an application for approval of a control  
8 transaction with respect to the voting securities.

9 (2) The transaction is one listed in subsection (c) of this section that does not  
10 require the filing of a notice with the Commissioner.

11 (3) The transaction is one listed in subsection (c) of this section that requires a  
12 notice to be filed with the Commissioner and the Commissioner has not  
13 issued an objection to the notice and any requirement of the Commissioner  
14 for the filing of further information has been determined by the  
15 Commissioner to have been satisfied.

16 **"§ 53C-7-102. Application regarding a control transaction.**

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

19 (1) An application in the form prescribed by the Commissioner.

20 (2) All filing fees required by a rule of the Commissioner.

21 (3) Such information as is required by a rule of the Commissioner or as is  
22 deemed by the Commissioner to achieve the objectives of this Chapter.

23 (b) In the event a person submitting an application is a group of persons, the  
24 Commissioner may require each member of the group to submit information relevant to the  
25 application.

26 (c) Notwithstanding any laws to the contrary, information about the character,  
27 competence, or experience of an acquiring person or its proposed management personnel or  
28 affiliates shall be deemed a record of the Commissioner and subject to G.S. 53C-2-8.

29 **"§ 53C-7-103. Public notice.**

30 A person filing an application for approval of a control application shall publish a public  
31 notice of the filing of the application not more than 30 days before nor more than 10 days after  
32 the filing of the application with the Commissioner. The public notice shall contain the  
33 following:

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

35 (2) The name of the applicable bank and the address of its principal office.

36 (3) A statement that any interested person may make written comment on the  
37 proposed control transaction and that comments received by the  
38 Commissioner within 14 days of the date of the publication of the public  
39 notice shall be considered. The public notice shall provide the current  
40 mailing address of the Commissioner.

41 **"§ 53C-7-104. Actions on control transaction applications.**

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

49 (b) The Commissioner may deny an application for approval of a control transaction for  
50 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.

**"§ 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 or non-depository institutions, provided that the bank is the surviving entity in any combination with a non-depository institution. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee as set forth by rule.

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

(a) A bank seeking approval of a combination shall file with the Commissioner an application for approval, copies of the agreement under which the bank proposes to effect the combination, and such additional information as the Commissioner shall require by rule or as is required by the Commissioner in connection with the application in order to achieve the objectives of this Chapter.

(b) A bank filing an application for approval of a combination shall publish a public notice of the filing of the application not more than 30 days before nor more than 10 days after the filing of the application with the Commissioner. The public notice shall contain the following:

- (1) A statement that the application has been filed with the Commissioner.
- (2) The names of the parties to the proposed combination and the addresses of their principal offices.
- (3) A statement that any interested person may make written comment on the proposed combination and that comments received by the Commissioner

within 14 days of the date of the publication of the public notice shall be considered. The public notice shall contain the current mailing address of the Commissioner.

(c) The Commissioner shall examine the proposed combination, including the character, competency, and experience of the proposed directors and executive officers of the surviving party of the combination, to determine whether the interests of the customers 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 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.

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

Whenever any North Carolina financial institution or federally chartered institution doing business in this State shall combine with or shall sell to and transfer its assets and liabilities to any other bank, trust institution, savings institution, or other company, as provided by the laws of this State or the United States, all the then existing fiduciary rights, powers, duties, and liabilities of the combining transferring institution, including the rights, powers, duties, and liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity, whether under appointment by order of court, will, deed, or other instrument, shall, upon the effective date of the combination or sale and transfer, vest in, devolve upon, and thereafter be performed by the surviving or transferee company, and such latter institution shall be deemed substituted for and shall have all the rights and powers of the transferring institution.

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

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

**"§ 53C-7-207. 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.

**"§ 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 Conversion.**

**"§ 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 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 the following:

- (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 do the following:

(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.

**"§ 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 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 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 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.

**"§ 53C-8-2. Assessments and fees.**

Banks shall pay the following assessments and fees into the OCOB within 10 days after receipt of an invoice:

(1) Annual assessments. – Each bank shall pay a cumulative assessment based on its total assets as shown on its report of condition made to the Commissioner as of December 31 each year or the date most nearly approximating the same, not to exceed the amount determined by applying the following schedule:

- a. On the first fifty million dollars (\$50,000,000) of assets, or fraction thereof, ten thousand dollars (\$10,000).
- b. On assets greater than fifty million dollars (\$50,000,000) but not more than two hundred fifty million dollars (\$250,000,000), fourteen dollars (\$14.00) per hundred thousand dollars (\$100,000), or fraction thereof.
- c. On assets greater than two hundred fifty million dollars (\$250,000,000), but not more than five hundred million dollars (\$500,000,000), eleven dollars (\$11.00) per hundred thousand dollars (\$100,000), or fraction thereof.
- d. On assets greater than five hundred million dollars (\$500,000,000), but not more than one billion dollars (\$1,000,000,000), seven dollars (\$7.00) per hundred thousand dollars (\$100,000), or fraction thereof.
- e. On assets greater than one billion dollars (\$1,000,000,000), but not more than ten billion dollars (\$10,000,000,000), four dollars (\$4.00) per hundred thousand dollars (\$100,000), or fraction thereof.
- f. On assets greater than ten billion dollars (\$10,000,000,000), two dollars (\$2.00) per hundred thousand dollars (\$100,000), or fraction thereof.

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

(3) Special assessments. – If the Commissioner determines that the financial condition or manner of operation of a bank warrants further examination or an increased level of supervision, or in the event of a combination or conversion, the Commissioner may charge, and the institutions shall pay, an assessment equal to the reasonable cost of further examination, increased level of supervision, or supervision with regard to the combination or conversion. The Commissioner's determination of the cost of further examination shall be, in the absence of manifest error, dispositive of the issue of reasonableness.

(4) In the first half of each calendar year, the Commission shall review the estimated cost of maintaining each division of the OCOB for the next fiscal

year. If the estimated assessments provided for under this Chapter for any division shall exceed the estimated cost of maintaining that division for the next fiscal year, then the Commission may reduce by a uniform percentage any assessments provided for in this Chapter for that division. If the estimated assessments provided for in this Chapter for any division shall be less than the estimated cost of maintaining that division for the next fiscal year, then the Commission may increase by a uniform percentage any assessments provided for in this Chapter for that division to an amount that will increase the amount of assessments to be collected to an amount at least equal to the estimated cost of maintaining that division of the OCOB for the next fiscal year.

**"§ 53C-8-3. Reports required of banks.**

(a) Each bank shall file the following with the Commissioner, at such times, on such forms, and in such formats as the Commissioner may require:

(1) Annual reports of conditions.

(2) Periodic reports for interim periods within a year, not less than monthly in any case.

(b) In addition to the reports filed pursuant to subsection (a) of this section, each bank shall provide to the Commissioner copies of all applications and reports of condition filed by it under applicable federal law contemporaneously with the filing of such application and reports by the bank with its primary federal regulator.

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

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

(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.

**"§ 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 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.

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

If any bank examiner shall knowingly and willfully make any false or fraudulent report of the condition of any bank that the examiner has examined with the intent to aid or abet the bank or its affiliates in committing violations of any provision of this Chapter, or if any examiner shall keep or accept any bribe or gratuity given for the purpose of inducing the examiner not to file any report of examination of any bank, or if any examiner shall neglect to make an examination of any bank by reason of having received or accepted any bribe or gratuity, the examiner shall be guilty of a Class H felony.

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

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

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

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

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

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

Any person who shall willfully and maliciously make, circulate, transmit, or otherwise communicate any statement, rumor, or suggestion to one or more other persons that is directly or by inference false and derogatory to the financial condition, or affects the solvency or financial standing, of any bank, or who shall counsel, aid, procure, or induce another to make,

1 circulate, transmit, or otherwise communicate any such statement or rumor, shall be guilty of a  
2 Class 1 misdemeanor.

3 **"§ 53C-8-11. Misapplication, embezzlement of funds.**

4 (a) Any person who, with intent to defraud or injure a bank or any other person or with  
5 intent to deceive an officer of the bank or an employee of the OCOB appointed to examine the  
6 affairs of the bank, commits any of the following acts shall be guilty of a felony:

7 (1) Embezzles, converts, or misapplies any of the money, funds, credit, or  
8 property of the bank, whether owned by it or held in trust.

9 (2) Issues or puts forth a certificate of deposit; draws an order or bill of  
10 exchange; makes an acceptance; assigns a note, bond, draft, bill of exchange,  
11 mortgage, judgment, or decree; or fictitiously borrows or solicits, obtains, or  
12 receives money for a bank not in good faith.

13 (3) Makes or permits to be made a false entry in a record of a bank, or conceals  
14 or permits to be concealed, by any means or manner, the true and correct  
15 entries in a record of a bank.

16 (4) Knowingly makes an extension of credit, or permits an extension of credit,  
17 by a bank to any insolvent person or to a person who has ceased to exist, or  
18 that never had any existence, or upon collateral consisting of stocks or bonds  
19 of an insolvent or nonexistent person.

20 (5) Makes or publishes, or knowingly permits to be made or published, a false  
21 report, statement, or certificate as to the true financial condition of a bank.

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

26 **"§ 53C-8-12. Enforcement of the banking laws.**

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

30 (b) Every bank failing to make and transmit any report that the Commissioner is  
31 authorized to require by this Chapter, and in and according to the form prescribed by the  
32 Commissioner, within 10 business days after the receipt of a request or requisition therefor, or  
33 within the extension of time granted by the Commissioner, shall be notified by the  
34 Commissioner, and if the failure continues for five business days after the receipt of the notice,  
35 the delinquent bank shall be subject to a penalty of up to one thousand dollars (\$1,000). The  
36 penalty provided by this section shall be recovered in a civil action in any court of competent  
37 jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions.

38 (c) In addition to any other powers conferred by this Chapter, the Commissioner shall  
39 have the power to do the following:

40 (1) Order any bank, trust company, or subsidiary thereof, or any director,  
41 officer, or employee, or any other person the Commissioner is authorized to  
42 regulate, to cease and desist violating any provision of this Chapter or any  
43 lawful rule issued thereunder.

44 (2) Order any bank, trust company, or subsidiary thereof, or any director,  
45 officer, or employee, or any other person the Commissioner is authorized to  
46 regulate, to cease and desist from a course of conduct that is unsafe or  
47 unsound and that is likely to cause insolvency or dissipation of assets or is  
48 likely to jeopardize or otherwise seriously prejudice the interests of a  
49 depositor.

50 (d) Consistent with Article 3A of Chapter 150B of the General Statutes, notice and  
51 opportunity for hearing shall be provided before any of the actions authorized by this section



1 shall be undertaken by the Commissioner. In cases involving extraordinary circumstances  
2 requiring immediate action, the Commissioner may take such action but shall promptly afford a  
3 subsequent hearing upon application to rescind the action taken.

4 (e) The Commissioner shall have the power to subpoena witnesses, compel their  
5 attendance, require the production of evidence, administer oaths, and examine any person under  
6 oath in connection with any subject related to a duty imposed or a power vested in the  
7 Commissioner.

8 (f) The Commissioner may impose a civil money penalty of not more than one  
9 thousand dollars (\$1,000) for each violation by any bank, trust company, or subsidiary thereof,  
10 or any director, officer, or employee, or any other person the Commissioner is authorized to  
11 regulate, of an order issued under subdivision (1) of subsection (c) of this section. The  
12 Commissioner may impose a civil money penalty of not more than five hundred dollars  
13 (\$500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any  
14 director, officer, or employee, or any other person the Commissioner is authorized to regulate,  
15 violates a cease and desist order issued under subdivision (2) of subsection (c) of this section.  
16 The proceeds of civil money penalties imposed pursuant to this subsection, net of documented  
17 expenses of examination and enforcement, shall be remitted to the Civil Penalty and Forfeiture  
18 Fund in accordance with G.S. 115C-457.2.

19 (g) Administrative orders issued by the Commissioner and civil money penalties  
20 imposed for violation of such orders shall be subject to review by the Commission, which shall  
21 have power to amend, modify, or disapprove the same at any regular or special meeting.

22 (h) Notwithstanding any penalty imposed by the Commissioner, the Commission may,  
23 after notice of and opportunity for hearing, impose, enter judgment for, and enforce, by  
24 appropriate process, a penalty of not more than ten thousand dollars (\$10,000) against any  
25 bank, trust company, or subsidiary thereof, or against any of its directors, officers, or  
26 employees, or any other person the Commissioner is authorized to regulate, for violating any  
27 lawful order of the Commission or Commissioner. The proceeds of civil money penalties  
28 imposed pursuant to this subsection, net of documented expenses of examination and  
29 enforcement, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with  
30 G.S. 115C-457.2.

31 (i) If the Commissioner believes that a violation of a criminal statute has occurred, the  
32 Commissioner may refer the matter to the appropriate prosecutorial agency.

33 **"§ 53C-8-13. Immediate action orders.**

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

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

45 **"§ 53C-8-14. Supervisory control.**

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

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

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

9 (c) The Commissioner may appoint an agent to supervise and monitor the operations of  
10 the bank during the period of supervisory control. During the period of supervisory control, the  
11 bank shall act in accordance with any instructions and directions as may be given by the  
12 Commissioner, directly or through the agent, and shall not act or fail to act except when to do  
13 so would violate an outstanding order of its federal bank supervisory agent or the FDIC if the  
14 FDIC is not its primary federal regulator.

15 (d) Within 180 days of the date of the order taking supervisory control, the  
16 Commissioner shall issue an order approving a plan for the termination of supervisory control  
17 on the 30th day following the issuance of the order. The plan may provide for the following:

18 (1) The issuance by the bank of debt instruments or shares.

19 (2) The appointment or removal of one or more officers and/or one or more  
20 directors.

21 (3) The reorganization or combination of the bank.

22 (4) A control transaction with respect to the bank.

23 (5) The dissolution and liquidation of the bank.

24 (e) The reasonable costs of the Commissioner under this section shall be paid by the  
25 bank. The Commissioner's determination of the costs shall be, in the absence of manifest error,  
26 dispositive of the issue of reasonableness.

27 **"§ 53C-8-15. Removal of directors, officers, and employees.**

28 (a) If the Commissioner determines that a director, officer, or employee of a bank has  
29 participated in or consented to any violation of this Chapter or an order of the Commissioner,  
30 or has engaged in any unsafe or unsound business practice in the operation of the bank, or has  
31 been dishonest, incompetent, or reckless in the management of the affairs of the bank, or has  
32 persistently violated the laws of this State, or repeatedly violated or failed to comply with any  
33 of the bank's organizational documents, and that as a result, a situation exists requiring prompt  
34 corrective action in order to protect the bank, its customers, or the public, the Commissioner  
35 may issue an order temporarily removing the director, officer, or employee pending a hearing  
36 that shall occur not less 10 days after removal. The order shall state that it is a "Temporary  
37 Order of Removal" and shall further state the grounds upon which it was issued together with  
38 the date, time, and location of a hearing on the matter. For good cause shown, the  
39 Commissioner may grant the director, officer, or employee subject to the order a 10-day  
40 extension of the hearing date, but the temporary removal order shall remain in full force and  
41 effect. Upon a hearing before the Commissioner within the prescribed time, the temporary  
42 removal order may be dissolved or made permanent in whole or in part.

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

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

9 (d) An individual who is the subject of an order of the Commissioner under this section  
50 may appeal the order to the Commission pursuant to G.S. 53C-2-6 no later than 10 days after  
51 the date of 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 (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.****"§ 53C-9-101. Supervisory combinations.**

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

**"§ 53C-9-102. Distributions; assignments restricted.**

A bank that is in the process of involuntary or voluntary dissolution pursuant to this Article may not make or pay distributions to its shareholders unless the bank has the prior written approval of the Commissioner. No bank shall make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the Commissioner for dissolution and liquidation pursuant to G.S. 53-9-301, and any other purported assignment by the bank for the benefit of its creditors shall be void.

**"§ 53C-9-103. Cancellation of charter.**

Whenever a combination, dissolution, or other transaction occurs by which a bank ceases to exist or ceases to be eligible for a charter, the Commissioner shall by order cancel the bank's charter and shall publish the order in accordance with G.S. 53-1-4(59). A copy of the order shall be filed by the Commissioner with the Secretary of State. The bank shall continue to exist under Chapter 55 of the General Statutes for the purpose of dissolving and liquidating its business and affairs.

**"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 Statutes.

**"§ 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.
- (4) Any notices or proxy solicitation materials proposed to be sent to shareholders.

(c) The Commissioner shall examine the documents submitted under subsection (b) of this section and such other matters as the Commissioner deems relevant and may issue an order authorizing the bank and its board of directors to proceed with dissolution and liquidation as provided in G.S. 53C-9-203. Examination by the Commissioner of the materials referred to in subsection (b)(4) of this section shall not be deemed to be approval of the documents for any purpose.

(d) At any annual or special meeting of shareholders called for the purpose of voting upon a proposal for voluntary dissolution of a bank, the shareholders of the bank may, by an affirmative vote, in person or by proxy, of the holders of shares representing at least two-thirds of the votes entitled to be cast on such matters, resolve to dissolve and liquidate the bank in accordance with the order of the Commissioner issued under subsection (c) of this section.

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

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

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

- (1) Inform the FDIC and the bank's federal supervisory agency if other than the FDIC.
- (2) Select and appoint a receiver or receiver in liquidation, just as if the liquidation were involuntary under G.S. 53C-9-301.
- (3) Attach a certificate of approval to the articles of dissolution, and the bank shall then file the certified articles with the Secretary of State.

(b) Upon the filing of the articles of dissolution with the Secretary of State, it shall be unlawful for the bank to accept any additional deposit accounts or additions to deposit accounts or make any additional extensions of credit, but all its income and receipts in excess of actual expenses of liquidation of the bank shall be applied to the discharge of its liabilities.

(c) The persons charged with liquidation of the bank in the approved plan of dissolution shall cause to be published a public notice stating the bank has closed and will dissolve and liquidate and notifying its depositors and creditors to present their claims for payment, specifying the method for doing so.

(d) The bank may pay reasonable compensation, subject to the approval of the Commissioner, to the persons charged with its liquidation.

(e) Any bank in the process of voluntary dissolution and liquidation shall be subject to examination by the Commissioner and shall furnish any reports required by the Commissioner.

(f) If the Commissioner determines at any time that the voluntary liquidation plan is not working, the Commissioner may place the bank in receivership pursuant to G.S. 53C-9-301.

**"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 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 nonconfidential written communication that is either directly from the Commissioner or is joined in by the Commissioner.

(c) The Commissioner shall appoint as receiver or coreceivers one or more qualified persons for the purpose of receivership and liquidation of the bank of which the Commissioner has taken custody under subsection (a) of this section, which receiver shall furnish a bond in such form and amount, and with such surety, as the Commissioner may require.

(d) The Commissioner may appoint the FDIC or its nominee as the receiver, and the receiver shall be permitted to serve without posting bond. In the event of such an appointment, the Commissioner shall thereafter be forever relieved of any and all responsibility and liability in respect to the receivership and the liquidation of the bank.

(e) In the event the Commissioner takes custody of a bank and then appoints a receiver for the bank, the Commissioner shall serve personally at the bank's principal office through the officer who is present and appears to be in charge, the Commissioner's order taking possession and, if applicable, the Commissioner's order appointing a receiver for the bank in liquidation. The Commissioner shall also mail a certified copy of the order taking possession and the appointing order by certified mail or by express delivery to any previous receiver or other legal custodian of the bank and to the Clerk of Superior Court of Wake County. The Commissioner shall give notice to the public of the Commissioner's actions by posting a notice summarizing the Commissioner's actions near the entrance to each branch of the bank, and the Commissioner shall issue a similar public notice as defined in G.S. 53C-1-4(59).

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

- 1           (1)   The receiver, by operation of law and without any conveyance or other  
2           instrument, act, or deed, shall succeed to all the rights, titles, powers, and  
3           privileges of the bank, its shareholders, officers, and directors, or any of  
4           them, and to the titles to the books, records, and assets of every description  
5           of any previous receiver or other legal custodian of the bank. Neither the  
6           shareholders, officers, or directors, nor any of them, shall thereafter, except  
7           as expressly provided in this section, have or exercise any rights, powers, or  
8           privileges or act in connection with any assets or property of any nature of  
9           the bank in receivership.
- 10          (2)   The Commissioner may, at any time, direct the receiver (unless it is the  
11          FDIC) to return the bank to its previous or a newly constituted management  
12          and its shareholders.
- 13          (3)   A receiver, other than the FDIC, may, at any time during the receivership  
14          and before final liquidation, be removed and a replacement appointed by the  
15          Commissioner.
- 16          (g)   A receiver may perform any of the following acts:
- 17               (1)   Demand, sue for, collect, receive, and take into possession all the goods and  
18               chattels, rights and credits, moneys and effects, lands and tenements, books,  
19               papers, choses in action, bills, instruments, notes, intangible interests, and  
20               property of every description of the bank.
- 21               (2)   Foreclose mortgages, deeds of trust, and other liens granted to the bank to  
22               the extent the bank would have the right to do so.
- 23               (3)   Seek injunctions and institute suits for the recovery of any property,  
24               damages, or demands existing in favor of the bank, and shall, upon the  
25               receiver's own application, be substituted as party plaintiff in the place of the  
26               bank in any suit or proceeding pending at the time of the receiver's  
27               appointment.
- 28               (4)   Sell, convey, and assign any or all of the property rights and interests owned  
29               by the bank.
- 30               (5)   Appoint agents and engage independent contractors.
- 31               (6)   Examine papers and investigate persons.
- 32               (7)   Make and carry out agreements with the FDIC for the payment or  
33               assumption of the bank's liabilities, in whole or in part, and to sell, convey,  
34               transfer, pledge, or assign assets as security or otherwise and to make  
35               guarantees in connection therewith.
- 36               (8)   Perform all other acts that might be done by the employees, officers, and  
37               directors of the bank.

38          These powers shall be continued in effect until liquidation of the bank or until return of the  
39          bank to its prior or newly constituted management.

40          (h)   The Commissioner may, unless the FDIC has been appointed as receiver, determine  
41          that the receivership proceedings of a bank should be discontinued and the possession of the  
42          bank returned to newly constituted management. The Commissioner shall then remove the  
43          receiver and restore all the rights, powers, and privileges of the bank's depositors, shareholders,  
44          customers, employees, officers, and directors. The return of a bank to a newly constituted  
45          management from the possession of a receiver shall, by operation of law and without any  
46          conveyance or other instrument, act, or deed, vest in the bank the title to all property held by  
47          the receiver in the capacity as receiver for the bank.

8          (i)   Claims against a bank in receivership shall have the following order of priority for  
9          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.

"§ 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 that has completed the process of dissolution and liquidation shall be held in such place as in the Commissioner's judgment will provide for their proper safekeeping and protection.

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

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

**"§ 53C-9-403. Authority to serve as trustee terminated.**

Whenever any bank that 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; 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.

**"§ 53C-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 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 cases 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 substitution for any other remedy provided by law.

**"Article 10.**

**"Bank Holding Companies.**

**"Part 1. Change in Control.**

**"§ 53C-10-101. Holdings companies.**



Every holding company, as defined in G.S. 53C-1-4(39), of a bank shall register with the Commissioner and maintain that registration on an annual basis in the form prescribed by the Commissioner.

**"§ 53C-10-102. 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 10 days before the acquiring person or affiliate thereof first votes or directs the voting of the voting securities.

(2) An acquisition of control over voting securities by operation of law, will, or intestate succession, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the acquisition or transfer at least 10 days before the acquiring person first votes or directs the voting of the voting securities.

(3) Bona fide gifts.

(4) A transaction exempted by rules, orders, or declaratory rulings of the Commissioner, issued because approval of the transaction is not necessary to achieve the objectives of this Chapter.

(5) An acquisition of control over voting shares exempt from the prior approval requirements set forth in section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842), pursuant to the exceptions described in items (A), (B) or (C) of 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 person of the Commissioner's objection to the exercise of control over the voting securities or may require the acquiring party to submit further information before exercising control over the voting securities. An acquiring person receiving a notice of objection shall be required to submit an application for approval of a control transaction. An acquiring person receiving a notice to submit further information may be required to provide any information that would be included in an application for approval of a control transaction. In the event such an acquiring person is comprised of a group of persons, the Commissioner may require each member of the group to submit relevant information.

(e) All voting securities over which control has been acquired by an acquiring person shall not be voted on any matter submitted to a vote of the holders of the outstanding voting securities of the holding company of a bank and shall be deemed authorized but unissued for purposes of determining the presence of a quorum of holders of voting securities until such time as follows:

- (1) The Commissioner has approved an application for approval of a control transaction with respect to the voting securities.
- (2) The transaction is one listed in subsection (c) of this section that does not require the filing of a notice with the Commissioner.
- (3) The transaction is one listed in subsection (c) of this section that requires a notice to be filed with the Commissioner and the Commissioner has not issued an objection to the notice and any requirement of the Commissioner for the filing of further information had been determined by the Commissioner to have been satisfied.

**"§ 53C-10-103. Application regarding a control transaction.**

(a) A person seeking approval of a control transaction to which a holding company of a bank is a party under this Article shall file the following with the Commissioner:

- (1) An application in the form prescribed by the Commissioner.
- (2) All filing fees required by rule of the Commissioner.
- (3) Any other information required by a rule of the Commissioner or deemed by the Commissioner to achieve the objectives of this Chapter.

(b) In the event a person submitting an application is a group of persons, the Commissioner may require each member of the group to submit information relevant to the application.

(c) Notwithstanding any laws to the contrary, information about the character, competence, or experience of an acquiring person or its proposed management personnel or affiliates shall be deemed a confidential record of the Commissioner subject to G.S. 53C-2-7(b).

**"§ 53C-10-104. 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 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 publication of the public notice shall be considered. The public notice shall provide the current mailing address of the Commissioner.

**"§ 53C-10-105. Actions on control transaction applications.**

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

(b) The Commissioner may deny an application for approval of a control for any of the following reasons:

- (1) The financial condition of the person seeking approval of a control transaction could jeopardize the financial stability of the holding company, one or more bank subsidiaries of the holding company, or the financial interests of the bank's customers.
- (2) An examination of the character, competence, or experience of any acquiring person or of any of the proposed management personnel of the holding company shows that it would not be in the interest of the customers of one or more of the bank subsidiaries of the holding company or in the interest of the public to permit the person to control the holding company.
- (3) The plans or proposals of the person seeking approval with respect to exercising control over the holding company would not be in the best interests of the customers of one or more bank subsidiaries of the holding company.
- (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.

**"§ 53C-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. 53C-2-6.

**"Part 2. Combinations.**

**"§ 53C-10-201. Combination authority.**

With the approval of the Commissioner, a holding company of a bank may combine with one or more other holding companies or other companies. The application for approval shall be in the form required by the Commissioner and shall be accompanied by such fee as may be required by rule.

**"§ 53C-10-202. Combination application and investigation.**

(a) A holding company of a bank seeking approval of a combination shall file with the Commissioner an application for approval, copies of the agreement under which the holding company proposes to effect the combination, and any additional information that the Commissioner shall require by rule or as is required by the Commissioner in connection with the application in order to achieve the objectives of this Chapter.

(b) A holding company filing an application for approval of a combination shall publish a public notice of the filing of the application not more than 30 days before nor more than 10

days after the filing of the application with the Commissioner. The public notice shall contain the following:

- (1) A statement that the application has been filed with the Commissioner.
- (2) The names of the parties to the proposed combination and the addresses of its principal offices.
- (3) A statement that any interested person may make written comment on the proposed combination and that comments received by the Commissioner within 14 days of the publication of the public notice shall be considered. The public notice shall provide the current mailing address of the Commissioner.

(c) The Commissioner shall examine the proposed combination, including the character, competency, and experience of the proposed directors and executive officers of the surviving party of the combination, to determine whether the interests of the customers and communities served by the banks controlled by the parties to the combination would be adversely affected by the proposed combination.

(d) Notwithstanding any laws to the contrary, information about the character, competence, and experience of the directors and executive officers of the parties to a combination received by the Commissioner shall be deemed a confidential record of the Commissioner subject to G.S. 53C-2-7(b).

**"§ 53C-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.

**"§ 53C-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. 53C-2-6.

**"Part 3. General Authority.**

**"§ 53C-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 10 days of the date of the issuance of the order in accordance with G.S. 53C-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) 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.

**"§ 53C-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 5. 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 9 of Chapter 53C of the General Statutes, or

...."

**SECTION 6.** G.S. 24-1.1A(d) reads as rewritten:

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

**SECTION 7.** 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, 53C-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 8.** 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. 53C-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 9.** 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 10.** 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 that 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

1 fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When  
2 fiduciary funds are deposited by the trust department in the commercial department of the bank,  
3 the deposit thereof shall not be deemed to constitute a use of such funds in the general business  
4 of the bank. To the extent and in the amount such deposits may be insured by the FDIC, the  
5 amount of security required for such deposits by this section may be reduced. The Banking  
6 Commission shall have power to make such rules as it may deem necessary for the enforcement  
7 of the provisions of this section."

8 **SECTION 11. G.S. 53-167 reads as rewritten:**

9 **"§ 53-167. Expenses of supervision.**

10 ~~Each licensee, for~~ For the purpose of defraying necessary expenses of the Commissioner of  
11 ~~Banks and his agents in supervising them, Office of Commissioner of Banks for supervision,~~  
12 each licensee shall pay to the Commissioner of Banks the fees prescribed in G.S. 53-122 at the  
13 times therein specified, an assessment not to exceed eighteen dollars (\$18.00) per one hundred  
14 thousand dollars (\$100,000) of assets, or fraction thereof, plus a fee of three hundred dollars  
15 (\$300.00) per office; provided, however, a consumer finance licensee shall pay a minimum  
16 annual assessment of not less than five hundred dollars (\$500.00). The assessment shall be  
17 determined on a consumer finance licensee's total assets as shown on its report of condition  
18 made to the Commissioner as of December 31 of each year, or the date most nearly  
19 approximating that date. If the Commissioner determines that the financial condition or manner  
20 of operation of a consumer finance licensee warrants further examination or an increased level  
21 of supervision, the licensee may be subject to assessment not to exceed the amount determined  
22 in accordance with the schedule set forth in this section."

23 **SECTION 12. G.S. 53-184(a) reads as rewritten:**

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

50 **SECTION 13. G.S. 53-188 reads as rewritten:**

51 **"§ 53-188. Review of regulations, order or act of Commission or Commissioner.**

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

8 **SECTION 14.** G.S. 53-208.27(b) reads as rewritten:

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

17 **SECTION 15.** G.S. 53-215 reads as rewritten:

18 **"§ 53-215. Appeal of Commissioner's decision.**

19 Any aggrieved party in a proceeding under ~~G.S. 53-211~~ G.S. 53-211, 53C-10-102, or  
20 ~~G.S. 53-227.1~~ 53C-10-201 may, within 20 days after final decision of the Commissioner,  
21 appeal in writing any decision to the State Banking Commission. An appeal under this section  
22 shall be made pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6. Notwithstanding any other provision of  
23 law, any aggrieved party to a decision of the State Banking Commission shall be entitled to  
24 petition for judicial review pursuant to ~~G.S. 53-92(d)~~, G.S. 53C-2-6."

25 **SECTION 16.** G.S. 53-217 reads as rewritten:

26 **"§ 53-217. Enforcement.**

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

32 **SECTION 17.** G.S. 53-224.11(b) reads as rewritten:

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

42 **SECTION 18.** G.S. 53-224.18 reads as rewritten:

43 **"§ 53-224.18. Authority of State banks to establish interstate branches by merger.**

44 With the prior approval of the Commissioner, a North Carolina State bank may establish,  
45 maintain, and operate one or more branches in a state other than North Carolina pursuant to an  
46 interstate merger transaction in which the North Carolina State bank is the resulting bank. Not  
47 later than the date on which the required application for the interstate merger transaction is filed  
48 with the responsible federal bank supervisory agency, the applicant North Carolina State bank  
49 shall file an application on a form prescribed by the ~~Commissioner and pay the fee prescribed~~  
50 ~~by regulation pursuant to G.S. 53-122.~~ Commissioner. The applicant shall also comply with the  
51 applicable provisions of ~~G.S. 53-12~~, Part 2 of Article 7 of Chapter 53C of the General Statutes.

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 19.** 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 7 of Chapter 53C of the General Statutes 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 20.** 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 8 of Chapter 53C of the General Statutes apply to such examinations."

**SECTION 21.** 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. 53C-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. 53C-2-6."

**SECTION 22.** G.S. 53-232.12(b) is repealed.

**SECTION 23.** 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. 53C-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. 53C-2-6."

**SECTION 24.** G.S. 53-244.120(c) reads as rewritten:

"(c) The requirements of G.S. 53-99(b) G.S. 53C-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 25.** 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. 53C-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. 53C-2-6."

**SECTION 26.** 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. 53C-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. 53C-2-6."

**SECTION 27.** 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. 53C-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. 53C-2-6."

**SECTION 28.** 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. 53C-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. 53C-2-6."

**SECTION 29.** 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. 53C-1-4(11).

SECTION 30. 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. 53C-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. 53C-7-205."

SECTION 31. 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. 53C-7-205.

(4) G.S. 53-68;

(5) G.S. 53-77.3;

(6) G.S. 53-85;

(7) Article 8 of ~~this Chapter~~ 53C of the General Statutes, 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. 53C-8-2.

b. G.S. 53-104; G.S. 53C-8-3.

c. G.S. 53-105; G.S. 53C-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 16 of Chapter 53 of the General Statutes.

(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 32.** G.S. 53-368(c) is repealed.

**SECTION 33.** 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 34.** 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. 53C-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. 53C-2-6."

**SECTION 35.** 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. 53C-1-4(5), insofar as applicable and not in conflict with the provisions hereof shall apply to land mortgage associations."~~

1       **SECTION 36.** G.S. 54B-4(b) reads as rewritten:

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

3       ...

4       (14a) "Commissioner" means the Commissioner of Banks authorized pursuant to  
5       G.S. 53-92, Article 2 of Chapter 53C of the General Statutes.

6       ...."

7       **SECTION 37.** G.S. 54B-34.2(a) reads as rewritten:

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

17       **SECTION 38.** G.S. 54B-46(a) reads as rewritten:

18       "(a) Any bank, as defined in G.S. 53-1, G.S. 53C-1-4(4), may convert to a stock  
19       association as provided in this section."

20       **SECTION 39.** G.S. 54B-47(a) reads as rewritten:

21       "(a) Any State association, upon a majority vote of its board of directors, may apply to  
22       the Commissioner of Banks for permission to merge with any bank, as defined in G.S. 53-1,  
23       G.S. 53C-1-4(4)."

24       **SECTION 40.** G.S. 54B-54 reads as rewritten:

25       "**§ 54B-54. Deputy commissioner of Savings Institutions Division.**

26       There shall be a deputy commissioner of the Savings Institutions Division as appointed by  
27       the Commissioner in G.S. 53-93.1(b), G.S. 53C-2-2. The deputy commissioner authorized by  
28       this section shall perform any duties and exercise any powers directed by the Commissioner."

29       **SECTION 41.** G.S. 54B-158 reads as rewritten:

30       "**§ 54B-158. Insured or guaranteed loans.**

31       An association may make insured or guaranteed loans in accordance with the provisions of  
32       G.S. 53-45, G.S. 53C-5-3."

33       **SECTION 42.** G.S. 54C-4(b) reads as rewritten:

34       "(b) Unless the context otherwise requires, the following definitions apply in this  
35       Chapter:

36       ...

37       (8a) Commissioner. – The Commissioner of Banks authorized pursuant to  
38       G.S. 53-92, Article 2 of Chapter 53C of the General Statutes.

39       ...."

40       **SECTION 43.** G.S. 54C-40(a) reads as rewritten:

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

44       **SECTION 44.** G.S. 54C-47(a) reads as rewritten:

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

1 institution upon completion of its conversion. The depository institution applying for  
2 permission to convert shall pay all the expenses and costs of examination."

3 **SECTION 45.** G.S. 54C-122(e) reads as rewritten:

4 "(e) A savings bank may make insured or guaranteed loans in accordance with  
5 ~~G.S. 53-45~~ G.S. 53C-5-3."

6 **SECTION 46.** G.S. 116B-55 reads as rewritten:

7 **"§ 116B-55. Contents of safe deposit box or other safekeeping depository.**

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

14 **SECTION 47.** G.S. 120-123 reads as rewritten:

15 **"§ 120-123. Service by members of the General Assembly on certain boards and  
16 commissions.**

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

19 ...

20 (3a) The State Banking Commission, as established by ~~G.S. 53-92~~ Article 2 of  
21 Chapter 53C of the General Statutes.

22 ...."

23 **SECTION 48.** G.S. 143-143.9(1) reads as rewritten:

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

28 **SECTION 49.** G.S. 164-11.6(a) reads as rewritten:

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

33 **SECTION 50.** G.S. 164-11.7(a) reads as rewritten:

34 "(a) The chapters, subchapters, articles and sections now comprising Volumes 2B and  
35 2C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting  
36 of ~~G.S. 53-1~~ G.S. 53C-1-1 to G.S. 105-462, now in force, as amended, are hereby reenacted and  
37 designated as 1965 Replacement Volumes 2B, 2C and 2D of the General Statutes of North  
38 Carolina."

39 **SECTION 51.** The repeal of G.S. 53-92, as enacted by Section 1 of this act,  
40 becomes effective April 1, 2013.

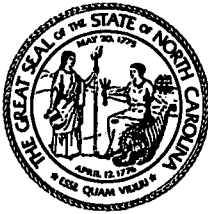
41 **SECTION 52.(a)** G.S. 53C-2-1, as enacted by Section 4 of this act, becomes  
42 effective April 1, 2013. In order to reduce the number of members of the State Banking  
43 Commission from 22 to 15 as required by G.S. 53C-2-1, the terms of the following members  
44 appointed by the Governor shall be terminated:

45 Dalip Awasthi	(public member)
46 G. Rick Edwards	(public member)
47 Scott Falmlen	(public member)
48 Robert "Robbie" O. Hill	(public member)
49 Mary Clara Capel	(practical banker)
50 Larry R. Chavis	(practical banker)
51 Harold T. Keen	(Savings Institution CEO)

1 The terms of the remaining members shall expire under the current schedule and the  
2 Governor shall make appointments to fill vacancies as they occur, provided that the Governor  
3 shall fill one of the practical banker vacancies with a consumer finance licensee.

4 **SECTION 52.(b)** Effective April 1, 2013, the General Assembly shall review the  
5 appointment to the State Banking Commission made upon the recommendation of the Speaker  
6 of the House of Representatives to determine whether the appointee meets the qualifications for  
7 the appointment and shall adjust the appointment accordingly.

8 **SECTION 53.** Except as otherwise provided, this act becomes effective October 1,  
9 2012.



## SENATE BILL 816: Banking Law Modernization Act

2011-2012 General Assembly

Committee: House Banking

Introduced by: Sen. Brown

Analysis of: PCS to Second Edition  
S816-CSRO-34

Date: May 31, 2012

Prepared by: Karen Cochrane-Brown  
Committee Counsel

**SUMMARY:** *Senate Bill 816 rewrites much of the State's banking law as recommended by the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws.*

*The PCS makes technical changes to put the definitions in alphabetical order and to provide for the transition of the Banking Commission.*

[As introduced, this bill was identical to H951, as introduced by Rep. Brubaker, which is currently in House Banking.]

**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.

**JILL ANALYSIS:** Senate Bill 816 repeals Articles 1 through 10, 12 and 13 of Chapter 53 of the General Statutes and creates a new Chapter 53C entitled "Regulation of Banks". The bill also renames Chapter 53 of the General Statutes "Regulation of Financial Services" to more accurately reflect the scope of the Chapter.

A new section is added to Chapter 53 to link the definitions from Chapter 53C to terms used in Chapter 53.

The following is a summary of the new Articles found in Chapter 53C:

### Article 1 – General Provisions

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

### Article 2 – 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.

# Senate PCS 816

Page 2

- 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. *The bill was amended on the Senate Floor to allow the court to order the restricted release of documents for discovery in a criminal enforcement proceeding under limited conditions.*

## **Article 3 – 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 4 – 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 5 – 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 6 – 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 7 – 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 8 – 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 9 – 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.

# Senate PCS 816

Page 5

- 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 10 – 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 7.
- 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 7.
- 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 5 through 50 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.

Section 51 keeps the current State Banking Commission in place until April 1, 2013, and Section 52 provides for the reduction of the board from 22 to 15 members, effective April 1, 2013.

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

*S816-SMRO-58(CSRO-34) v2*

**2011 COMMITTEE REPORT  
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Brawley, McGee (Chairs) for the Committee on BANKING.

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☐ Committee Substitute for

**SB 816** 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.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to the original bill.

**(FOR JOURNAL USE ONLY)**

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\_\_\_\_\_ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on \_\_\_\_\_.

\_\_\_\_\_ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is placed on the Calendar of \_\_\_\_\_. (The original bill resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

\_\_\_\_\_ The (House) committee substitute bill/(joint) resolution (No. \_\_\_\_\_) is re-referred to the Committee on \_\_\_\_\_. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. \_\_\_\_\_) is placed on the Unfavorable Calendar.

## VISITOR REGISTRATION SHEET

HOUSE BANKING

MAY 31, 2012

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kenzie Rakes	NCDOJ
Hilary Delbridge	NCDOJ
Josyell A. Smith, Tr.	Payne Spruiell LLP
RAY GRACE	NCCOB
Nathan Batts	NC Bankers Assoc.
Ben Davis	Brooks Pierce / NCBA
Elizabeth Bisen	Brooks Pierce
Rochelle Sparko	NC Justice Center
Chris Kulka	CMU
Ellen Hamrick	CRL
Al Ripley	NC Justice Ctr

## VISITOR REGISTRATION SHEET

## HOUSE BANKING

**Name of Committee**

MAY 31, 2012

**Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

**NAME****FIRM OR AGENCY AND ADDRESS**

Penny. Guff

School of Gov.

Tim KENT

NC Beer & Wine

John McAlistar

Bank of America

John Tallent

## Progress NC

Lisa Martin

NC Home Builders