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SENATE BILL 860  
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Short Title: Interstate Trust Business.

(Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CHARTERING OF INDEPENDENT TRUST COMPANIES, TO PERMIT BANKS AND TRUST COMPANIES TO CONDUCT TRUST BUSINESS ON AN INTERSTATE BASIS, AND TO MODIFY THE RESIDENCY REQUIREMENTS FOR A BANK'S BOARD OF DIRECTORS.

The General Assembly of North Carolina enacts:

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

"Article 24.

"Trust Companies and Interstate Trust Business.

"Part 1. Definitions.

**"§ 53-301. Definitions.**

(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:

(1) 'Account' means the client relationship established with a trust institution involving the transfer of real or personal property to the trust institution or the assumption of duties by the trust institution concerning real or personal property.

(2) 'Act as a fiduciary' means:

a. To (i) act as trustee under a written instrument or by judicial appointment or order; (ii) receive money or other property as trustee for investment or reinvestment in real or personal property; (iii) act as custodian or custodial trustee under a gifts to minors act, a transfers to minors act, a custodial trust act, or similar statute; (iv) act as personal representative of the estate of a deceased person; (v) act as trustee, guardian, or conservator for the person or estate of an incompetent such as a minor or

- 1                   incapacitated person, or in other circumstances in which a  
2                   guardian may be appointed; or (vi) act in a capacity similar to  
3                   one listed in (i) through (v), however such capacity may be  
4                   designated under applicable law or governing instrument; or  
5                   b.    To possess, purchase, sell, safekeep, or otherwise manage or  
6                   administer property in any other fiduciary capacity.
- 7           (3)   'Affiliate' means a company that directly or indirectly controls, is  
8           controlled by, or is under common control with another company.
- 9           (4)   'Authorized trust institution' means any State trust company and any  
10           trust office or representative trust office of a trust institution located in  
11           this State that is not a bank.
- 12           (5)   'Bank' has the meaning set forth in 12 U.S.C. § 1813(a)(1), except that  
13           'bank' does not include a trust company.
- 14           (6)   'Bank supervisory agency' means:
- 15           a.    Any agency of another state or a home country with primary  
16           responsibility for chartering or supervising a trust institution;  
17           and
- 18           b.    The Office of the Comptroller of the Currency, the Federal  
19           Deposit Insurance Corporation, the Board of Governors of the  
20           Federal Reserve System, a Federal Reserve Bank acting in a  
21           supervisory capacity over any bank or bank holding company,  
22           the Office of Thrift Supervision, and any successor to these  
23           agencies.
- 24           (7)   'Branch' has the meaning set forth in G.S. 53-1(1a).
- 25           (8)   'Charter' means a charter issued to a State trust company by the  
26           Commissioner or a charter, license, or other authority issued by the  
27           Commissioner or a bank supervisory agency authorizing a trust  
28           institution to act as a fiduciary in its home state or home country, and  
29           the issuance of the charter, license, or other authority.
- 30           (9)   'Client' means a person to whom a trust institution owes a duty or  
31           obligation under an account.
- 32           (10)  'Commission' means the North Carolina State Banking Commission.
- 33           (11)  'Commissioner' means the Commissioner of Banks for the State of  
34           North Carolina.
- 35           (12)  'Company' includes a bank, trust company, corporation, partnership,  
36           association, limited liability company, trust, business trust, joint  
37           venture, foundation, pool, syndicate, unincorporated organization, or  
38           other form of entity not specifically listed herein.
- 39           (13)  'Control,' with respect to a State trust company, means:
- 40           a.    The ownership of or ability or power to vote directly, acting  
41           through one or more other persons, or otherwise indirectly, ten

- 1                   percent (10%) or more of the outstanding shares of a class of  
2                   voting securities of the State trust company;  
3                   b.   The ability to control, directly or indirectly, the election of a  
4                   majority of the board of the State trust company; or  
5                   c.   The power to exercise, directly or indirectly, a controlling  
6                   influence over the management or policies of the State trust  
7                   company.  
8                   (14) 'Debt security' means a marketable obligation evidencing indebtedness  
9                   of a company in the form of a bond, note, debenture, or other debt  
10                   instrument.  
11                   (15) 'Depository institution' means any company within any of the  
12                   definitions of "insured depository institution" set forth in 12 U.S.C.  
13                   § 1813(c).  
14                   (16) 'Equity capital' means the amount by which the total assets of a State  
15                   trust company exceed its total liabilities.  
16                   (17) 'Equity security' means:  
17                   a.   Stock, other than adjustable rate preferred stock and money  
18                   market (auction rate) preferred stock;  
19                   b.   A certificate of interest or participation in a profit-sharing  
20                   agreement, collateral-trust certificate, preorganization  
21                   certificate or subscription, transferable share, investment  
22                   contract, or voting-trust certificate;  
23                   c.   A security immediately convertible at the option of the holder  
24                   without payment of significant additional consideration into a  
25                   security described by this subdivision;  
26                   d.   A security carrying a warrant or right to subscribe to or  
27                   purchase a security described by this subdivision; and  
28                   e.   A certificate of interest or participation in, temporary or interim  
29                   certificate for, or receipt for a security described by this  
30                   subdivision that evidences an existing or contingent equity  
31                   ownership interest.  
32                   (18) 'Executive officer' means an officer of a company who is named an  
33                   executive officer by the company or who participates in major policy-  
34                   making functions of the company.  
35                   (19) 'Federally chartered savings association' means a company described  
36                   in 12 U.S.C. § 1813(b)(2).  
37                   (20) 'Fiduciary record' means a matter written, transcribed, recorded,  
38                   received, or otherwise in the possession or control of a trust institution,  
39                   whether in physical, electronic, magnetic, or other form, that preserves  
40                   information concerning an account or a client.

- 1           (21) 'Foreign bank' means a foreign bank, as defined in 12 U.S.C.  
2           § 1813(s)(1), except for a bank organized under the laws of a territory  
3           of the United States.
- 4           (22) 'Foreign trust institution' means a trust institution, other than a foreign  
5           bank, chartered in a foreign country.
- 6           (23) 'Hazardous condition' with respect to a trust institution means:
- 7           a.     A refusal by the trust institution to permit examination of its  
8           books, papers, accounts, records, or affairs by the  
9           Commissioner or a duly appointed or authorized examiner of  
10           the Commissioner, or a refusal by the officers or directors of a  
11           trust institution to be examined under oath regarding its affairs;
- 12           b.     A material violation by a trust institution of a condition of its  
13           chartering or an agreement entered into between the trust  
14           institution and the Commissioner; or
- 15           c.     A circumstance or condition in which an unreasonable risk of  
16           loss is threatened to clients, creditors, or shareholders of a trust  
17           institution because the trust institution:
- 18                 1.     Has equity capital that is, or is in substantial danger of  
19                 becoming, inadequate for the safe and sound conduct of  
20                 its business without regard to whether it is, or is in  
21                 substantial danger of becoming, insolvent;
- 22                 2.     Has concentrated an excessive or unreasonable portion  
23                 of its assets in a particular type or character of  
24                 investment;
- 25                 3.     Violates or fails to comply with this Article, another  
26                 statute or rule applicable to trust institutions, or any duly  
27                 issued order of the Commissioner;
- 28                 4.     Is in a condition that renders the continuation of a  
29                 particular business practice hazardous to its clients,  
30                 creditors, or shareholders; or
- 31                 5.     Conducts business in an unsafe or unsound manner,  
32                 which includes conducting business with:
- 33                         I.     Materially inexperienced or inattentive  
34                         management;
- 35                         II.    Dangerous operating practices;
- 36                         III.   Materially infrequent or inadequate audits;
- 37                         IV.   Materially deficient administration of assets in  
38                         relation to the volume and character of the assets  
39                         it administers or the trust institution's  
40                         responsibility for such assets;
- 41                         V.    Materially frequent or serious failures to adhere to  
42                         sound administrative practices;

- 1 VI. Materially frequent or serious violations of  
2 applicable laws, rules, or terms of instruments  
3 governing accounts; or
- 4 VII. Materially serious self-dealing or conflicts of  
5 interest.
- 6 (24) 'Home country' means a foreign country in which a foreign trust  
7 institution is chartered.
- 8 (25) 'Home country regulator' means the bank supervisory agency with  
9 primary responsibility for chartering and supervising a foreign trust  
10 institution.
- 11 (26) 'Home state' means:
- 12 a. With respect to a federally chartered savings association and a  
13 national bank, the state in which the institution maintains its  
14 principal office;
- 15 b. With respect to a foreign bank, the home state of the foreign  
16 bank as determined in accordance with the International  
17 Banking Act of 1978, 12 U.S.C. §§ 3101, et seq., and Article  
18 18A of this Chapter or, if there is no such home state, the state  
19 in which the foreign bank maintains its principal office in the  
20 United States; and
- 21 c. With respect to any other trust institution, the state or home  
22 country which chartered the institution.
- 23 (27) 'Home state regulator' means the bank supervisory agency with  
24 primary responsibility for chartering and supervising an out-of-state  
25 trust institution.
- 26 (28) 'Host state' means a state other than the home state of a trust  
27 institution, or a foreign country, in which the trust institution maintains  
28 or seeks to establish or acquire and maintain a trust office or  
29 representative trust office.
- 30 (29) 'Initial capital' means the amount of equity capital required for  
31 approval of a charter pursuant to G.S. 53-337.
- 32 (30) 'Insolvent,' with respect to a State trust company, means a  
33 circumstance or condition in which a State trust company:
- 34 a. Is unable or lacks the means to meet its current obligations as  
35 they come due in the regular and ordinary course of business,  
36 without regard to whether its assets exceed its liabilities;
- 37 b. Has equity capital less than one-fourth of its initial capital,  
38 except as otherwise specified by the Commissioner; or
- 39 c. Has purported to make a voluntary assignment of its assets for  
40 the benefit of creditors or to take any action for protection  
41 against creditors under any bankruptcy or insolvency law.

- 1           (31) 'Jeopardized' means insolvent, in a hazardous condition, or in such  
2           other condition as the Commissioner determines warrants the use of  
3           procedures set forth in this Article relating to jeopardized State trust  
4           companies.
- 5           (32) 'License', with respect to a State trust company, means the authority  
6           granted by the Commissioner pursuant to G.S. 53-160.
- 7           (33) 'National bank' means a bank chartered under 12 U.S.C. § 21.
- 8           (34) 'Office' with respect to a trust institution means its principal office, a  
9           trust office, or a representative trust office, but not a branch.
- 10          (35) 'Out-of-state trust institution' means a trust institution that is neither a  
11          State trust institution nor a foreign trust institution.
- 12          (36) 'Person' means an individual or a company.
- 13          (37) 'Principal office' means:
- 14            a.        With respect to a State trust company, a location, registered  
15            with the Commissioner as the State trust company's principal  
16            office, at which:
- 17                1.        The State trust company does business; and  
18                2.        At least one executive officer of the State trust company  
19                maintains a customary place of work; and
- 20            b.        With respect to a trust institution other than a State trust  
21            company, its principal place of business.
- 22          (38) 'Principal shareholder' means a person who owns or has the ability or  
23          power to vote, directly, acting through one or more other persons, or  
24          otherwise indirectly, ten percent (10%) or more of the outstanding  
25          shares of any class of voting securities of a company.
- 26          (39) 'Private trust company' means a State trust company that is organized  
27          to engage in business with one or more family members and does not  
28          transact business with the general public, as defined in G.S. 53-363.
- 29          (40) 'Representative trust office' means an office at which a trust institution  
30          engages in trust marketing, but not trust business.
- 31          (41) 'Savings association' has the meaning set forth in 12 U.S.C. §  
32          1813(b)(1).
- 33          (42) 'State' means any state of the United States, the District of Columbia,  
34          and any territory of the United States.
- 35          (43) 'State bank' means:
- 36            a.        A bank organized under the provisions of this Chapter and  
37            authorized to act as a fiduciary by this State or
- 38            b.        A foreign bank lawfully doing business in this State pursuant to  
39            Article 18A of this Chapter.
- 40          (44) 'State savings association' means a savings association organized under  
41          the laws of this State and authorized to act as a fiduciary pursuant to  
42          Chapter 54B or Chapter 54C of the General Statutes.

1           (45) 'State trust company' means a corporation organized under the  
2           provisions of this Article and a trust company previously organized  
3           under other provisions of Chapter 53 of the General Statutes to operate  
4           only as a trust company and not as a commercial bank.

5           (46) 'State trust company facility' has the meaning set forth in G.S. 53-340.

6           (47) 'State trust institution' means a trust institution organized under the  
7           laws of, or having its principal office in, this State.

8           (48) 'Subsidiary' means a company that is controlled by another company,  
9           and includes a subsidiary of a subsidiary.

10          (49) 'Territory of the United States' means any geographic area over which  
11          the United States exercises sovereignty.

12          (50) 'Trust business' means acting as a fiduciary or in other capacities  
13          permissible for a trust institution under G.S. 53-331.

14          (51) 'Trust company' means a trust institution that is neither a depository  
15          institution nor a foreign bank.

16          (52) 'Trust institution' means any company lawfully acting as a fiduciary in  
17          a state or in a foreign country.

18          (53) 'Trust office' means an office, other than the principal office, at which  
19          a trust institution acts as a fiduciary.

20          (54) 'Trust marketing' means the holding out by a company to the public by  
21          advertising, solicitation, or other means that the company is available  
22          to act as a fiduciary.

23          (55) 'Unauthorized trust activity' means:

24           a. Engaging in trust business within this State by a company other  
25           than one identified in G.S. 53-303; or

26           b. Maintenance of a representative trust office by an out-of-state  
27           trust institution without approval from or in violation of an  
28           order issued by the Commissioner.

29          (b) These definitions shall be liberally construed to accomplish the purposes of  
30          this Article. The Commission may adopt other definitions to accomplish the purposes of  
31          this Article.

32          (c) References to statutory laws of North Carolina and of the United States of  
33          America shall be deemed to refer to recodified, amended, predecessor, or successor  
34          statutes. References to agencies of North Carolina and of the United States of America  
35          shall be deemed to refer to predecessor or successor agencies.

36                                   "Part 2. Multistate Trust Institutions Act.

37   "Subpart A. General.

38          "§ 53-302. Title and purposes.

39           (a) This Part may be cited as the Multistate Trust Institutions Act.

40           (b) It is the express intent of this Part to permit trust institutions to engage in trust  
41           business on a multistate and international basis subject to the provisions of this Part.

42                                   "Subpart B. Companies Authorized to Engage in Trust Business.

**"§ 53-303. Companies authorized to engage in trust business.**

(a) No company shall engage in trust business in this State except:

- (1) A State trust company;
- (2) A State bank;
- (3) A State savings association;
- (4) A national bank having its principal office in this State;
- (5) A federally chartered savings association having its principal office in this State;
- (6) An out-of-state trust institution in accordance with and subject to the provisions of Subpart D of this Part;
- (7) A foreign trust institution in accordance with and subject to the provisions of Subpart E of this Part; or
- (8) A company otherwise authorized to engage in trust business or to act in a particular capacity described in G.S. 53-331(b)(2) under the laws of this State or of the United States.

(b) No company shall engage in unauthorized trust activity, and all companies shall engage in trust business in accordance with and subject to all applicable laws of this State.

**"§ 53-304. Activities not requiring a charter, license, or approval.**

Notwithstanding any other provision of this Article, a company does not act as a fiduciary; engage in trust business or in any other business requiring a charter, license, or approval under the provisions of this Chapter; or engage in unauthorized trust activity by:

- (1) Acting in a manner authorized by law as an agent of a trust institution with respect to any activity that is not unauthorized trust activity;
- (2) Rendering legal services in a manner authorized by the North Carolina State Bar;
- (3) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;
- (4) Receiving and distributing rents and proceeds of sales of real property in a manner authorized by the North Carolina Real Estate Commission;
- (5) Engaging in securities transactions or providing investment advisory services in accordance with applicable securities laws;
- (6) Engaging in the issuance, sale, or administration of an insurance or annuity product in a manner authorized by the North Carolina Department of Insurance;
- (7) Engaging in the lawful sale of prepaid funeral benefits in accordance with and subject to Article 13D of Chapter 90 of the General Statutes or engaging in the lawful business of a perpetual care cemetery corporation in accordance with and subject to Chapter 65 of the General Statutes;



- 1           (8) Acting as trustee under a voting trust;  
2           (9) Acting as fiduciary by an organization described in paragraphs (1)  
3 through (5) of section 170(c) or section 501(c) of the Internal Revenue  
4 Code of 1986, as amended, with respect to endowment funds or other  
5 funds owned, controlled, provided to, or otherwise made available to  
6 the organization with respect to its exempt purposes (including,  
7 without limitation, trust funds in which the organization has a  
8 beneficial interest).  
9           (10) Engaging in other activities expressly excluded from the application of  
10 this Article by rule, order, or declaratory ruling of the Commissioner;  
11           (11) Rendering services as a certified public accountant in a manner  
12 authorized by the North Carolina State Board of Certified Public  
13 Accountant Examiners;  
14           (12) Provided the company is a trust institution and is not barred by order  
15 of the Commissioner from engaging in trust marketing in this State  
16 pursuant to G.S. 53-321(b), (i) marketing or soliciting in this State  
17 with respect to acting as a fiduciary outside this State; (ii) delivering  
18 money or other intangible assets to, and receiving money or other  
19 intangible assets for administration outside this State from, a person in  
20 this State; or (iii) accepting an account outside this State or otherwise  
21 engaging in trust business outside this State; or  
22           (13) Receiving, holding, administering, or distributing real or personal  
23 property for or on behalf of another person solely incidental to a  
24 lawfully conducted activity or transaction.

25 **"§ 53-305. Trust business of State trust institution.**

26 A State trust institution may conduct any activities outside this State that are  
27 permissible for a trust institution in the host state, subject to the laws of this State and,  
28 in the case of a State bank or a State trust company, subject to rules, orders, or  
29 declaratory rulings of the Commissioner.

30 **"§ 53-306. Trust business of out-of-state trust institution.**

31 An out-of-state trust institution that establishes or acquires and maintains one or  
32 more trust offices or representative trust offices in this State under the provisions of this  
33 Part or that maintains one or more branches in this State may, subject to the provisions  
34 of this Part, conduct any activity at such a trust office, representative trust office, or  
35 branch that a State trust company or a State bank is authorized to conduct at a trust  
36 office, representative trust office, or branch under the laws of this State.

37 **"§ 53-307. Trust business of foreign trust institution.**

38 A foreign trust institution that establishes or acquires and maintains one or more  
39 trust offices in this State under the provisions of this Part may, subject to the provisions  
40 of this Part, also establish or acquire one or more representative trust offices and  
41 conduct any activity at the trust offices or representative trust offices that a State trust

1 company is authorized to conduct at trust offices or representative trust offices under the  
2 laws of this State.

3 **"§ 53-308. Name of trust institution.**

4 Subject to other provisions of applicable law, a person may register or reserve any  
5 name with the Secretary of State in connection with engaging or proposing to engage in  
6 trust business or trust marketing in this State, except that the Commissioner may  
7 determine that a name registered or reserved is potentially misleading to the public and  
8 require the use of a name that is not potentially misleading.

9 **"§ 53-309. Trust deposits of authorized trust institutions.**

10 (a) Subsection (b) of G.S. 36A-63 shall not apply to an authorized trust  
11 institution.

12 (b) In the absence of a contrary provision in an instrument governing an account,  
13 an authorized trust institution may deposit client funds with itself to satisfy its duties  
14 under G.S. 36A-63(a) provided:

15 (1) It maintains, as collateral for the deposits, a separate fund of readily  
16 marketable commercial bonds having not less than a recognized "A"  
17 rating equal to one hundred and twenty-five percent (125%) of the  
18 funds so deposited;

19 (2) The separate fund is designated as such; and

20 (3) The separate fund either is maintained under the control of another  
21 trust institution, a bank, or a government agency, or is held by the  
22 authorized trust institution for the benefit of the accounts with deposits  
23 secured by the separate fund; provided, that the Commissioner may  
24 require such a separate fund of an authorized trust institution that is  
25 insolvent, in a hazardous condition, or jeopardized, to be held by a  
26 separate trust institution or bank approved by the Commissioner.

27 (c) An authorized trust institution may make periodic withdrawals from or  
28 additions to the separate fund required by subsection (b) of this section as long as the  
29 required value is maintained. Income from the separate fund belongs to the authorized  
30 trust institution.

31 (d) Collateral is not required for a deposit under subsection (b) of this section to  
32 the extent the deposit is insured by the Federal Deposit Insurance Corporation.

33 "Subpart C. State Trust Company Trust Offices and Representative Trust Offices.

34 **"§ 53-310. Offices of State trust companies.**

35 (a) A State trust company may engage in trust business or trust marketing at its  
36 principal office and at each trust office as permitted by this Part.

37 (b) A State trust company may engage in trust marketing at a representative trust  
38 office as permitted by this Part.

39 (c) A State trust company may engage in trust business and trust marketing in  
40 out-of-state trust offices or representative trust offices to the same extent permitted for  
41 trust institutions located in the host state in which those out-of-state trust offices or

1 representative trust offices are located, subject to the laws of this State and as provided  
2 by rules, orders, or declaratory rulings of the Commissioner.

3 **"§ 53-311. State trust company principal office.**

4 (a) Each State trust company is required to maintain a principal office in this  
5 State and to register that principal office with the Commissioner by setting forth the  
6 current street address and telephone number of the principal office.

7 (b) Each executive officer at a principal office is an agent of the State trust  
8 company for service of process.

9 (c) Before changing the location of its principal office, a State trust company  
10 shall file a notice with the Commissioner setting forth the name of the State trust  
11 company, the current street address and telephone number of its principal office, the  
12 street address, and telephone number if known, of the proposed new principal office,  
13 and a copy of the resolution adopted by the board of directors or duly authorized  
14 committee of the board of directors of the State trust company authorizing the change. If  
15 the State trust company is unable to provide the Commissioner with the telephone  
16 number for the proposed new principal office at the time of the notice, it shall do so  
17 immediately after beginning to operate at the new principal office location.

18 (d) The change of principal office shall take effect on the thirty-first day  
19 following the date the Commissioner receives the notice described in subsection (c) of  
20 this section, unless prior to the thirty-first day following receipt of the notice, the  
21 Commissioner (i) establishes an earlier or later date, or (ii) notifies the State trust  
22 company that the notice raises issues that require additional information or additional  
23 time for analysis, or (iii) disapproves the proposed trust office or representative trust  
24 office.

25 (e) If the Commissioner gives a notification described in subsection (d) of this  
26 section, the State trust company may change the location of its principal office only on  
27 approval by the Commissioner. The Commissioner may disapprove the change of  
28 location if the Commissioner finds that the change will adversely affect the safe and  
29 sound operation of the State trust company.

30 **"§ 53-312. Trust offices; representative trust offices.**

31 (a) Before establishing or acquiring and maintaining a trust office or  
32 representative trust office in this State, a State trust company shall file a notice with the  
33 Commissioner, in the form required by the Commissioner, setting forth the name of the  
34 State trust company, the location of the proposed trust office or representative trust  
35 office, and whether the office will be a trust office or a representative trust office. The  
36 State trust company also shall furnish a copy of the resolution adopted by the board of  
37 directors or duly authorized committee of the board of directors of the State trust  
38 company authorizing the trust office or representative trust office and shall pay the  
39 filing fee, if any, set by rule.

40 (b) The State trust company may commence business at the trust office or  
41 representative trust office on the thirty-first day after the date the Commissioner  
42 receives the notice, unless the Commissioner (i) establishes an earlier or later date; (ii)

1 notifies the State trust company that the notice raises issues that require additional  
2 information or additional time for analysis; or (iii) disapproves the proposed trust office  
3 or representative trust office.

4 (c) If the Commissioner gives a notification described in subsection (b) of this  
5 section, the State trust company may establish the trust office or representative trust  
6 office only on approval by the Commissioner. The Commissioner may disapprove the  
7 proposed trust office or representative trust office if the Commissioner finds that the  
8 State trust company lacks sufficient resources to undertake the proposed expansion  
9 without adversely affecting its safety or soundness.

10 **"§ 53-313. Out-of-state trust offices and representative trust offices.**

11 (a) Before establishing or acquiring and maintaining a trust office or  
12 representative trust office in a host state, a State trust company shall file a notice with  
13 the Commissioner, in the form required by the Commissioner, that sets forth the name  
14 of the State trust company, the location of the proposed trust office or representative  
15 trust office, whether the office will be a trust office or a representative trust office, and  
16 whether the laws of the host state permit the trust office or representative trust office to  
17 be maintained by the State trust company. The State trust company also shall furnish a  
18 copy of the resolution adopted by the board of directors or duly authorized committee of  
19 the board of directors of the State trust company authorizing the out-of-state trust office  
20 or representative trust office and shall pay the filing fee, if any, set by rule.

21 (b) The State trust company may commence business at the trust office or  
22 representative trust office on the thirty-first day following the date the Commissioner  
23 receives the notice, unless the Commissioner (i) establishes an earlier or later date;  
24 (ii) notifies the State trust company that the notice raises issues that require additional  
25 information or additional time for analysis; or (iii) disapproves the proposed trust office  
26 or representative trust office.

27 (c) If the Commissioner gives a notification described in subsection (b) of this  
28 section, the State trust company may establish the trust office or representative trust  
29 office only on approval by the Commissioner. The Commissioner may disapprove the  
30 proposed trust office or representative trust office if the Commissioner finds that the  
31 State trust company lacks sufficient resources to undertake the proposed expansion  
32 without adversely affecting its safety or soundness.

33 "Subpart D. Out-of-State Trust Institution Trust Offices and Representative Trust  
34 Offices.

35 **"§ 53-314. Trust business at a branch or trust office.**

36 An out-of-state trust institution may engage in trust business in this State only if it  
37 (i) maintains a trust office in this State as permitted by this Subpart, (ii) was allowed to  
38 maintain a trust office in this State under laws, or rules or orders of the Commissioner in  
39 effect prior to the date of enactment of this Article, but only to the extent allowed and  
40 subject to all limitations and conditions imposed under those laws, rules, or orders, or  
41 (iii) is a depository institution that maintains a branch in this State.

42 **"§ 53-315. Establishing an interstate trust office.**

1 An out-of-state trust institution that obtains approval from the Commissioner in  
2 accordance with the provisions of this Subpart may establish and maintain a trust office  
3 in this State; provided that the Commissioner shall not grant that approval unless the  
4 home state of the out-of-state trust institution permits a State trust institution to establish  
5 and maintain a trust office in that home state under restrictions not materially greater  
6 than those imposed by this Article.

7 **"§ 53-316. Acquiring an interstate trust office.**

8 An out-of-state trust institution that obtains approval from the Commissioner in  
9 accordance with the provisions of this Subpart may acquire and maintain a trust office  
10 in this State; provided that the Commissioner shall not grant that approval unless the  
11 home state of the out-of-state trust institution permits a State trust institution to acquire  
12 and maintain a trust office in that home state under restrictions not materially greater  
13 than those imposed by this Article.

14 **"§ 53-317. Requirement of notice.**

15 Before establishing or acquiring and maintaining a trust office in this State, an  
16 out-of-state trust institution shall provide, or cause its home state regulator to provide,  
17 notice to the Commissioner, in the form required by the Commissioner, along with  
18 copies of any applications, notices, or similar filings made with the home state regulator  
19 regarding the trust office. The notice shall be preceded or accompanied by:

- 20 (1) Evidence satisfactory to the Commissioner of compliance by the  
21 out-of-state trust institution with any applicable requirements of  
22 Article 15 of Chapter 55 of the General Statutes;
- 23 (2) Evidence satisfactory to the Commissioner of compliance by the  
24 out-of-state trust institution with any applicable requirements of its  
25 home state regulator for maintenance of capital, for expansion within  
26 the borders of the home state, and for acquiring or establishing and  
27 maintaining each trust office in this State;
- 28 (3) Evidence satisfactory to the Commissioner that the out-of-state trust  
29 institution is not in a hazardous condition;
- 30 (4) A copy of the resolution adopted by the board of directors of the out-  
31 of-state trust institution (or similar governing body or a duly-  
32 authorized committee thereof) authorizing the trust office; and
- 33 (5) Payment of any fee set by rule.

34 **"§ 53-318. Action on notice.**

35 (a) The out-of-state trust institution may commence business in this State at the  
36 trust office on the sixty-first day following the date the Commissioner receives the  
37 notice described in G.S. 53-317 unless the Commissioner, within 60 days of receiving  
38 the notice:

- 39 (1) Specifies an earlier or later date for commencing business,
- 40 (2) Extends the period of review on a determination that the notice raises  
41 issues that require additional information or additional time for  
42 analysis; or

1           (3) Disapproves the proposed trust office.

2           (b) If the Commissioner gives a notification described in subdivision (2) of  
3 subsection (a) of this section, the out-of-state trust institution may establish the trust  
4 office only on approval by the Commissioner. The Commissioner may disapprove the  
5 proposed trust office if the Commissioner finds that the out-of-state trust institution  
6 lacks sufficient resources to undertake the proposed expansion without adversely  
7 affecting its safety or soundness or that the requirements of G.S. 53-315 or G.S. 53-316  
8 have not been satisfied.

9 **"§ 53-319. Additional trust offices; representative trust offices.**

10          (a) An out-of-state trust institution that maintains a trust office in this State may  
11 establish or acquire and maintain additional trust offices or one or more representative  
12 trust offices in this State to the same extent that a State trust institution may establish or  
13 acquire and maintain trust offices or representative trust offices in this State and shall  
14 follow the procedures for establishing or acquiring and maintaining trust offices or  
15 representative trust offices set forth in G.S. 53-312.

16          (b) An out-of-state trust institution that does not maintain a trust office in this  
17 State shall file a notice with the Commissioner, in the form required by the  
18 Commissioner, before establishing or acquiring a representative trust office in this State.  
19 The notice shall be preceded or accompanied by:

20           (1) Evidence satisfactory to the Commissioner of compliance by the  
21 out-of-state trust institution with any applicable requirements of  
22 Article 15 of Chapter 55 of the General Statutes;

23           (2) Evidence satisfactory to the Commissioner of compliance by the  
24 out-of-state trust institution with any applicable requirements of its  
25 home state regulator for maintenance of capital, for expansion within  
26 the borders of the home state, and for acquiring or establishing and  
27 maintaining each representative trust office in this State;

28           (3) Evidence satisfactory to the Commissioner that the out-of-state trust  
29 institution is not in a hazardous condition;

30           (4) A copy of the resolution adopted by the board of directors of the out-  
31 of-state trust institution (or similar governing body or a duly  
32 authorized committee thereof) authorizing the representative trust  
33 office;

34           (5) The proposed location of each proposed representative trust office; and

35           (6) Payment of any fee set by rule.

36          (c) The out-of-state trust institution may commence business at the representative  
37 trust office on the thirty-first day following the date the Commissioner receives the  
38 notice described in subsection (b) of this section, unless the Commissioner, within 30  
39 days of receiving the notice:

40           (1) Specifies an earlier or later date for commencing business;

1           (2) Extends the period of review on a determination that the notice raises  
2           issues that require additional information or additional time for  
3           analysis; or

4           (3) Disapproves the proposed representative trust office.

5           (d) If the Commissioner gives a notification described in subdivision (2) of  
6 subsection (c) of this section, the out-of-state trust institution may commence business  
7 at the representative trust office only on approval by the Commissioner. The  
8 Commissioner may disapprove the representative trust office if the Commissioner finds  
9 that the out-of-state trust institution lacks sufficient resources to undertake the proposed  
10 expansion without adversely affecting its safety or soundness or that the requirements of  
11 G.S. 53-315 or G.S. 53-316 have not been satisfied.

12           (e) An out-of-state trust institution that was allowed to maintain a representative  
13 trust office in this State under laws, or rules or orders of the Commissioner in effect  
14 prior to the effective date of this Article may continue to do so, but only to the extent  
15 allowed and subject to all limitations and conditions imposed under those laws, rules, or  
16 orders.

17 **"§ 53-320. Examinations; periodic reports; cooperative agreements; assessment of**  
18 **fees.**

19           (a) The Commissioner may examine any trust office or representative trust office  
20 maintained in this State by an out-of-state trust institution to determine whether the trust  
21 office or representative trust office is being operated in compliance with the laws of this  
22 State and in accordance with safe and sound practices. The pertinent provisions of Part  
23 4 of this Article shall apply to these examinations.

24           (b) The Commissioner may require periodic reports regarding any out-of-state  
25 trust institution that maintains a trust office or representative trust office in this State  
26 pursuant to this Subpart. The required reports shall be provided by the trust institution  
27 or by the home state regulator. Any reporting requirements shall be (i) consistent, to the  
28 extent practicable, with the reporting requirements applicable to State trust companies  
29 and (ii) appropriate for the purpose of enabling the Commissioner to carry out the  
30 Commissioner's responsibilities under the provisions of this Article. The pertinent  
31 provisions of Part 4 of this Article shall apply to these reports.

32           (c) The Commissioner may enter into cooperative, coordinating, and  
33 information-sharing agreements with bank supervisory agencies, including agreements  
34 arranged by an organization composed of, affiliated with, or representing one or more  
35 bank supervisory agencies, with respect to the periodic supervision and examination of  
36 any trust office or representative trust office of an out-of-state trust institution in this  
37 State, or any trust office or representative trust office of a State trust institution in any  
38 host state. The Commissioner may accept and rely upon a report of examination and  
39 report of investigation of a bank supervisory agency in lieu of conducting a separate  
40 examination or investigation.

41           (d) The Commissioner may enter into agreements with any bank supervisory  
42 agency supervising (i) a State trust institution engaging in trust business outside this

1 State or (ii) an out-of-state trust institution maintaining a trust office or representative  
2 trust office in this State to engage the services of the agency's examiners at a reasonable  
3 rate of compensation or to provide the services of the Commissioner's examiners to the  
4 agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General  
5 Statutes does not apply to agreements authorized by this subsection.

6 (e) The Commissioner may enter into joint examinations or joint enforcement  
7 actions with bank supervisory agencies supervising any trust office or representative  
8 trust office maintained in this State by an out-of-state trust institution or any trust office  
9 or representative trust office maintained by a State trust institution in any host state;  
10 provided, that the Commissioner may at any time take actions independently if the  
11 Commissioner considers the actions to be necessary or appropriate to carry out the  
12 Commissioner's responsibilities under the provisions of this Article or to ensure  
13 compliance with the laws of this State.

14 (f) Each out-of-state trust institution that maintains one or more trust offices or  
15 representative trust offices in this State may be assessed and, if assessed, shall pay  
16 supervisory and examination fees as provided by rules of the Commissioner. The fees  
17 may be shared with bank supervisory agencies or any organization composed of,  
18 affiliated with, or representing one or more bank supervisory agencies as agreed  
19 between those bank supervisory agencies and organizations and the Commissioner.

20 **"§ 53-321. Enforcement.**

21 (a) Consistent with Article 3A of Chapter 150B of the General Statutes, after  
22 notice and opportunity for hearing, the Commissioner may determine:

23 (1) That a trust office maintained by an out-of-state trust institution in this  
24 State is being operated in violation of the laws of this State or any rule,  
25 order, or declaratory ruling issued by the Commissioner, or in an  
26 unsafe and unsound manner, or that the out-of-state trust institution  
27 does not meet or no longer meets the requirements of this Subpart for  
28 maintaining a trust office in this State; or

29 (2) That an out-of-state trust institution is engaged in unauthorized trust  
30 activity.

31 In either event, the Commissioner may take any enforcement actions the  
32 Commissioner would be authorized to take if the trust office or the out-of-state trust  
33 institution were a State trust company and may issue an order temporarily or  
34 permanently prohibiting the out-of-state trust institution from engaging in trust business  
35 in this State.

36 (b) Consistent with Article 3A of Chapter 150B of the General Statutes, after  
37 notice and opportunity for hearing, the Commissioner may determine by order that an  
38 out-of-state trust institution maintaining a representative trust office in this State does  
39 not meet or no longer meets the requirements of this Subpart for maintaining a  
40 representative trust office in this State. The order shall be effective on the date of  
41 issuance or any other date the Commissioner determines.



1       (c) In cases involving extraordinary circumstances requiring immediate action,  
2 the Commissioner may take any action permitted by subsection (a) or (b) of this section  
3 without notice or opportunity for hearing but shall promptly afford a subsequent hearing  
4 upon an application to rescind the action taken.

5       (d) The Commissioner shall promptly give notice to the home state regulator and  
6 any other bank supervisory agency supervising the out-of-state trust institution of each  
7 enforcement action taken against an out-of-state trust institution and may consult and  
8 cooperate with other bank supervisory agencies in pursuing and resolving the  
9 enforcement action.

10 **"§ 53-322. Notice of transactions that cause a change in control.**

11 Each out-of-state trust institution that maintains a trust office or representative trust  
12 office in this State, or the home state regulator of the trust institution, shall give at least  
13 30 days' notice or, in the case of an emergency transaction, as much notice as  
14 practicable, to the Commissioner of:

- 15       (1) Any merger, consolidation, share exchange, or other transaction that  
16 would cause a change in control of an out-of-state trust institution (i)  
17 that would be subject to Subpart D of Part 3 of this Article if the out-  
18 of-state trust institution were a State trust company or (ii) is required to  
19 be filed with any bank supervisory agency;
- 20       (2) Any transfer of all or substantially all of the accounts or account assets  
21 of the out-of-state trust institution to another person; or
- 22       (3) The closing or transfer of any trust office or representative trust office  
23 in this State.

24 "Subpart E. Foreign Trust Institution Trust Offices and Representative Trust Offices.

25 **"§ 53-323. Foreign trust institution application for trust office or representative**  
26 **trust office.**

27 Before establishing or acquiring and maintaining a trust office in this State, a foreign  
28 trust institution shall make application to the Commissioner for permission to do so in  
29 the English language and in the form required by the Commissioner. The application  
30 shall be preceded or accompanied by:

- 31       (1) Evidence satisfactory to the Commissioner of compliance with any  
32 applicable requirements of Article 15 of Chapter 55 of the General  
33 Statutes;
- 34       (2) Evidence satisfactory to the Commissioner of compliance by the  
35 foreign trust institution with any applicable requirements of its home  
36 country regulator for maintenance of capital, for expansion within the  
37 borders of its home country or within a political subdivision of its  
38 home country, and for acquiring or establishing and maintaining the  
39 trust office in this State;
- 40       (3) Evidence satisfactory to the Commissioner that the foreign trust  
41 institution is not in a hazardous condition;

1           (4) A copy of the resolution adopted by the board of directors of the  
2           foreign trust institution, or similar governing body or a duly-authorized  
3           committee thereof, authorizing the trust office; and

4           (5) Payment of any fee set by rule.

5           The Commissioner may require any materials not written in the English language to  
6           be translated, and the translation certified in a manner satisfactory to the Commissioner,  
7           at the expense of the foreign trust institution.

8           **"§ 53-324. Conditions for approval.**

9           (a) A foreign trust institution may engage in trust business in this State only on  
10          approval by the Commissioner of an application described in G.S. 53-323, which may  
11          be given upon conditions required by the the Commissioner for prudential reasons  
12          consistent with any applicable international agreements to which the United States is a  
13          party.

14          (b) The Commissioner may deny approval of the application if the Commissioner  
15          finds that the foreign trust institution lacks sufficient resources to undertake the  
16          proposed expansion without adversely affecting its safety or soundness or that the  
17          management, integrity, or reputation of the foreign trust institution does not justify  
18          approval. The Commissioner also may deny approval if the Commissioner is unable to  
19          determine from the application materials whether the foreign trust institution possesses  
20          sufficient resources to undertake the proposed expansion without adversely affecting its  
21          safety or soundness or whether the management, integrity, or reputation of the foreign  
22          trust institution justifies approval.

23          **"§ 53-325. Additional trust offices and representative trust offices.**

24          A foreign trust institution that maintains a trust office in this State under the  
25          provisions of this Subpart may establish or acquire and maintain additional trust offices  
26          or representative trust offices in this State in the manner provided by G.S. 53-319 for  
27          out-of-state trust institutions, except that the Commissioner may require any additional  
28          information and impose any additional conditions as the Commissioner deems  
29          necessary for prudential reasons consistent with any applicable international agreements  
30          to which the United States is a party.

31          **"§ 53-326. Examinations; periodic reports; cooperative agreements; assessment of**  
32          **fees.**

33          (a) The Commissioner may examine any trust office or representative trust office  
34          maintained in this State by a foreign trust institution to determine whether the trust  
35          office or representative trust office is being operated in compliance with the laws of this  
36          State and in accordance with safe and sound practices. The pertinent provisions of Part  
37          4 of this Article shall apply to these examinations.

38          (b) The Commissioner may require periodic reports regarding any foreign trust  
39          institution that maintains a trust office or representative trust office in this State. The  
40          required reports shall be provided in the English language by the trust institution or by  
41          its home country regulator. The reporting requirements shall be those the Commissioner  
42          considers appropriate for the purpose of enabling the Commissioner to carry out the

1 Commissioner's responsibilities under the provisions of this Article for prudential  
2 reasons consistent with any applicable international agreements to which the United  
3 States is a party. The pertinent provisions of Part 4 of this Article shall apply to these  
4 reports.

5 (c) The Commissioner may enter into cooperative, coordinating, and  
6 information-sharing agreements with bank supervisory agencies supervising foreign  
7 trust institutions, including agreements arranged by an organization composed of,  
8 affiliated with, or representing one or more bank supervisory agencies, with respect to  
9 the periodic supervision and examination of any trust office or representative trust office  
10 of a foreign trust institution in this State, or any trust office or representative trust office  
11 of a State trust institution engaged in trust business or trust marketing in a foreign  
12 country. The Commissioner may accept and rely upon a report of examination and  
13 report of investigation of a bank supervisory agency in lieu of conducting a separate  
14 examination or investigation of a foreign trust institution.

15 (d) The Commissioner may enter into agreements with bank supervisory  
16 agencies supervising (i) a State trust institution engaging in trust business in a foreign  
17 country or (ii) a foreign trust institution maintaining a trust office or representative trust  
18 office in this State to engage the services of the bank supervisory agency's examiners at  
19 a reasonable rate of compensation or to provide the services of the Commissioner's  
20 examiners to the bank supervisory agency at a reasonable rate of compensation. Article  
21 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by  
22 this section.

23 (e) The Commissioner may enter into joint examinations or joint enforcement  
24 actions with bank supervisory agencies supervising any trust office or representative  
25 trust office maintained in this State by a foreign trust institution or any trust office or  
26 representative trust office maintained by a State trust institution in any foreign country;  
27 provided, that the Commissioner may at any time take actions independently if the  
28 Commissioner considers the actions to be necessary or appropriate to carry out the  
29 Commissioner's responsibilities under the provisions of this Article or to ensure  
30 compliance with the laws of this State.

31 (f) Each foreign trust institution that maintains one or more trust offices or  
32 representative trust offices in this State may be assessed and, if assessed, shall pay  
33 supervisory and examination fees as provided by rules of the Commissioner. The fees  
34 may be shared with bank supervisory agencies or with any organization composed of,  
35 affiliated with, or representing one or more bank supervisory agencies, as agreed  
36 between the bank supervisory agencies and organizations and the Commissioner.

37 **"§ 53-327. Enforcement.**

38 (a) Consistent with Article 3A of Chapter 150B of the General Statutes, after  
39 notice and opportunity for hearing, the Commissioner may determine:

- 40 (1) That a trust office or representative trust office maintained by a foreign  
41 trust institution in this State is being operated in violation of the laws  
42 of this State or any rule, order, or declaratory ruling issued by the

1 Commissioner, or in an unsafe and unsound manner, or that the foreign  
2 trust institution does not meet or no longer meets the requirements of  
3 this Subpart for maintaining a trust office or representative trust office  
4 in this State; or

5 (2) That a foreign trust institution is engaged in unauthorized trust activity.

6 In either event, the Commissioner may take any enforcement actions the  
7 Commissioner would be authorized to take if the foreign trust institution were a State  
8 trust company and may issue an order temporarily or permanently prohibiting the  
9 foreign trust institution from engaging in trust business or trust marketing in this State.

10 (b) Consistent with Article 3A of Chapter 150B of the General Statutes, after  
11 notice and opportunity for hearing, the Commissioner may determine by order that a  
12 foreign trust institution maintaining a representative trust office in this State does not  
13 meet or no longer meets the requirements of this Subpart for maintaining a  
14 representative trust office in this State. The order shall be effective on the date of  
15 issuance or any other date the Commissioner determines.

16 (c) In cases involving extraordinary circumstances requiring immediate action,  
17 the Commissioner may take any action permitted by subsection (a) or (b) of this section  
18 without notice or opportunity for hearing but shall promptly afford a subsequent hearing  
19 upon request to rescind the action taken.

20 (d) The Commissioner shall promptly give notice to the home country regulator  
21 and any other bank supervisory agency supervising the foreign trust institution of each  
22 enforcement action taken against a foreign trust institution and may consult and  
23 cooperate with bank supervisory agencies in pursuing and resolving the enforcement  
24 action.

25 **"§ 53-328. Notice of transactions that cause a change in control.**

26 Each foreign trust institution that maintains a trust office or representative trust  
27 office in this State, or the home country regulator of the foreign trust institution, shall  
28 give at least 30 days' notice (or, in the case of an emergency transaction, as much notice  
29 as practicable) to the Commissioner, in the form required by the Commissioner, of:

30 (1) Any merger, consolidation, share exchange, or other transaction that  
31 would cause a change of control of a foreign trust institution:

32 a. That would be subject to Subpart D of Part 3 of this Article if  
33 the foreign trust institution were a State trust company; or

34 b. Is required to be filed with any bank supervisory agency;

35 (2) Any transfer of all or substantially all of the accounts or account assets  
36 of the foreign trust institution to another person; or

37 (3) The closing or transfer of any trust office or representative trust office  
38 in this State.

39 **"§ 53-329. International agreements.**

40 If any provision of this Article concerning foreign trust institutions, or the  
41 application of that provision, is found by any competent adjudicatory body to violate  
42 any international agreement to which the United States is a party, the provision shall be

1 deemed modified only to the extent and only in the particular circumstances necessary  
2 to make the provision as modified comply with the international agreement, and the  
3 remaining provisions of this Article shall not be affected and shall continue to apply to  
4 foreign trust institutions.

5 "Part 3. State Trust Company Charter Act.

6 "Subpart A. General.

7 **"§ 53-330. Title and purposes.**

8 (a) This Part may be cited as the State Trust Company Charter Act.

9 (b) It is the express intent of this Part to provide for the chartering of trust  
10 companies apart from the provisions of Article 2 of this Chapter and to permit trust  
11 companies to engage in trust business subject to the provisions of this Article.

12 "Subpart B. Organization and Powers of State Trust Company.

13 **"§ 53-331. Organization and powers of State trust company.**

14 (a) Subject to the other provisions of this Part, one or more persons may organize  
15 and charter a State trust company, which may be incorporated in the manner described  
16 in this Part and in no other way.

17 (b) Subject to G.S. 53-313 and G.S. 53-336(b) and other applicable provisions of  
18 State and federal law, a State trust company may:

19 (1) Act as a fiduciary within or outside this State;

20 (2) Act within or outside this State as agent, advisory agent, assignee,  
21 assignee for the benefit of creditors, attorney-in-fact, authenticating  
22 agent, bailee, bond or indenture trustee, conservator, conversion agent,  
23 curator, custodian, escrow agent, exchange agent, fiscal or paying  
24 agent, financial adviser, investment adviser, investment manager,  
25 managing agent, purchase agent, receiver, registrar, safekeeping agent,  
26 subscription agent, transfer agent, warrant agent, or in similar  
27 capacities generally performed by corporate trustees, and in so acting  
28 to possess, purchase, sell, invest, reinvest, safekeep, or otherwise  
29 manage or administer real or personal property of other persons;

30 (3) Engage in trust marketing within this State; and

31 (4) Exercise the powers of a business corporation organized under North  
32 Carolina law and any incidental powers that are reasonably necessary  
33 to enable it to fully exercise, in accordance with commonly accepted  
34 fiduciary customs and usages, a power conferred in this Article.

35 **"§ 53-332. Articles of incorporation of State trust company.**

36 The articles of incorporation of a State trust company shall be signed and  
37 acknowledged by or on behalf of each organizer and shall contain:

38 (1) The information required to be set forth in G.S. 55-2-02(a) and, except  
39 for telephone information, G.S. 53-311(c); and

40 (2) Any provision consistent with G.S. 55-2-02(b) and other applicable  
41 law that the organizers elect to set forth in the articles of incorporation  
42 for the regulation of the internal affairs of the State trust company.

1 **"§ 53-333. Application for State trust company charter and permission to**  
2 **incorporate State trust company.**

3 (a) An application for a State trust company charter and permission to  
4 incorporate the State trust company shall be made to the Commissioner in the form  
5 required by the Commissioner and shall be supported by information, data, and records  
6 that the Commissioner requires. The application shall be accompanied by the fee set by  
7 the Commissioner by rule.

8 (b) Upon receipt of the application, the Commissioner shall at once conduct an  
9 examination of all relevant facts connected with the formation of the proposed State  
10 trust company. The Commissioner may consider the following factors:

11 (1) The proposed market or markets to be served;

12 (2) Whether the proposed organizational and capital structure and the  
13 amount of initial capital appear adequate in relation to the proposed  
14 business and market or markets;

15 (3) Whether the anticipated volume and nature of business indicate a  
16 reasonable probability of success and profitability based on the market  
17 or markets proposed to be served;

18 (4) Whether the proposed officers and directors, as a group, have  
19 sufficient experience, ability, standing, competence, trustworthiness,  
20 and integrity to justify a belief that the proposed State trust company  
21 will be free from improper or unlawful influence and otherwise will  
22 operate in compliance with law, and that success of the proposed State  
23 trust company is reasonably probable; and

24 (5) Whether the proposed name of the proposed State trust company is  
25 likely to mislead the public as to its character or purpose or is the same  
26 as a name already adopted by an existing bank, savings association, or  
27 trust institution in this State, or so similar thereto as to be likely to  
28 mislead the public.

29 (c) The failure of an applicant to furnish required information, data, other  
30 material, or the required fee within 30 days after a request may be considered an  
31 abandonment of the application.

32 **"§ 53-334. Notice and investigation of charter application.**

33 (a) The Commissioner shall notify the organizers when the application is  
34 complete and accepted for filing and all required fees have been paid.

35 (b) The Commissioner shall investigate the application and inquire into the  
36 identity and character of each proposed director, officer, and principal shareholder.  
37 Notwithstanding any laws to the contrary, information in the application bearing on the  
38 character, or information about the personal finances, of an existing or proposed  
39 organizer, officer, director, or shareholder is confidential and not subject to public  
40 disclosure.

41 **"§ 53-335. Decision on charter application and hearing.**

1       (a)   The Commissioner, based on the application and investigation described in  
2 this Subpart, shall enter an order approving or denying approval of the application.

3       (b)   If the Commissioner orders that the proposed State trust company may be  
4 formed, the Commissioner shall issue a State trust company charter and a certification  
5 to the Secretary of State permitting the incorporation of the State trust company. The  
6 Commissioner may make approval of any application conditional and shall include any  
7 conditions in the order granting the charter.

8       (c)   Any order entered by the Commissioner with respect to a charter application  
9 shall be subject to review by the Commission for entry of final agency decision.

10 **"§ 53-336. Issuance of charter.**

11       (a)   A proposed State trust company shall not be incorporated or engage in trust  
12 business or trust marketing until it receives a charter issued by the Commissioner. The  
13 Commissioner shall not issue the charter until the State trust company certifies that it  
14 has:

15           (1)   Received cash or United States government securities having a market  
16 value on the date of capitalization in at least the full amount of  
17 required initial capital from subscriptions for the issuance of shares;

18           (2)   Elected the initial officers and directors named in the application for  
19 charter or other officers and directors approved by the Commissioner;  
20 and

21           (3)   Complied with all other requirements of this Subpart relative to the  
22 organization of a State trust company.

23       (b)   The charter issued by the Commissioner shall set forth the trust powers of the  
24 State trust company, which may be stated as:

25           (1)   All powers granted to a State trust company in this State; or

26           (2)   Specific powers that the State trust company chooses and is authorized  
27 by the Commissioner to exercise.

28       (c)   If a State trust company does not open and engage in trust business within six  
29 months after the date it receives its charter, or within such further period as may be  
30 extended by the Commissioner, the Commissioner may cancel the charter.

31 **"§ 53-337. Required initial capital.**

32       (a)   The Commissioner shall not issue a charter to a proposed State trust company  
33 having initial capital of less than two million dollars (\$2,000,000), except as provided in  
34 subsection (b) of this section.

35       (b)   The Commissioner may require additional initial capital for a proposed State  
36 trust company if the Commissioner finds the proposed scope or type of operation of a  
37 proposed State trust company requires additional initial capital for the safe and sound  
38 operation of the State trust company. The Commissioner may reduce the amount of  
39 minimum initial capital required for a proposed State trust company if the  
40 Commissioner finds the proposed scope or type of operation of a proposed State trust  
41 company may be formed with reduced initial capital consistent with the safe and sound

1 operation of the State trust company. The safety and soundness factors to be considered  
2 by the Commissioner in the exercise of the Commissioner's discretion include:

- 3 (1) The nature and type of business proposed to be conducted;
- 4 (2) The nature and liquidity of assets proposed to be held in a corporate  
5 capacity;
- 6 (3) The amount of fiduciary assets projected to be under management;
- 7 (4) The type of fiduciary assets proposed to be held and the proposed  
8 depository of the assets;
- 9 (5) The complexity of fiduciary duties and degree of discretion proposed  
10 to be undertaken;
- 11 (6) The competence and experience of proposed management;
- 12 (7) The extent and adequacy of proposed internal controls;
- 13 (8) The proposed presence or absence of annual unqualified audits by an  
14 independent certified public accountant;
- 15 (9) The reasonableness of business plans for retaining or acquiring  
16 additional equity capital; and
- 17 (10) The existence and adequacy of insurance proposed to be obtained by  
18 the trust company for the purpose of protecting its clients,  
19 beneficiaries, and grantors.

20 **"§ 53-338. Subordinated notes or debentures.**

21 The amount of any outstanding notes or debentures that are subordinated to creditors  
22 or classes of creditors of the State trust company may be treated as equity capital of the  
23 State trust company for purposes of determining equity capital adequacy, hazardous  
24 condition, or insolvency, and for other purposes, as provided by rules, orders, or  
25 declaratory rulings of the Commissioner.

26 **"§ 53-339. Application of laws relating to general business corporations.**

27 Chapter 55 of the General Statutes applies to a State trust company to the extent not  
28 inconsistent with this Article. Except for the filing of annual reports and statement of  
29 change of registered agent or registered office, unless expressly authorized by this  
30 Article or a rule adopted by the Commission, a State trust company shall not take an  
31 action authorized by Chapter 55 of the General Statutes that requires a filing with the  
32 Secretary of State without first obtaining the approval of the Commissioner.

33 "Subpart C. Investments and Activities.

34 **"§ 53-340. Investment in State trust company facilities.**

35 (a) A State trust company may invest in one or more State trust company  
36 facilities consistent with the safe and sound operation of a State trust company.

37 (b) For the purposes of this Part, 'State trust company facility' means real estate  
38 owned, or leased to the extent the lease or the leasehold improvements are capitalized,  
39 by a State trust company for the purposes of:

- 40 (1) Providing space for State trust company employees, officers, and  
41 directors to perform their duties and space for appropriate parking;



1           (2) Conducting trust business, including meeting the reasonable needs and  
2 convenience of the State trust company's customers, employees,  
3 officers, and directors, and providing for necessary computer  
4 operations, data processing, maintenance, and record retention and  
5 storage;

6           (3) Future expansion of the State trust company's facilities; or

7           (4) Conducting another activity authorized by law or by rules, orders, or  
8 declaratory rulings of the Commissioner.

9           (c) Without the approval of the Commissioner, a State trust company shall not,  
10 within the first three years following issuance of its charter, directly or indirectly, invest  
11 an amount in excess of one-half of its initial capital in State trust company facilities,  
12 furniture, fixtures, and equipment. Except as otherwise provided by rules, orders, or  
13 declaratory rulings of the Commissioner, in computing this limitation, a State trust  
14 company shall include:

15           (1) Its direct investment in State trust company facilities;

16           (2) Any investment in a company with an interest in a State trust company  
17 facility;

18           (3) Any indebtedness incurred on State trust company facilities by an  
19 affiliate of the State trust company.

20           Except as otherwise provided by rules, orders, or declaratory rulings of the  
21 Commissioner, in computing this limitation, a State trust company may exclude an  
22 amount included under subdivisions (1) through (3) of this subsection to the extent any  
23 lease of a facility from the company holding title to the facility is capitalized by the  
24 State trust company.

25           (d) Real estate acquired under subdivision (3) of subsection (b) of this section  
26 ceases to be a State trust company facility if it is not used for a purpose listed in  
27 subdivision (1), (2), or (4) of subsection (b) of this section on the third anniversary of  
28 the date of its acquisition unless the Commissioner grants approval to hold the real  
29 estate for a longer period.

30 **"§ 53-341. Other real estate.**

31           (a) A State trust company shall not acquire real estate other than a State trust  
32 company facility for its own account except:

33           (1) Securitized interests in real estate and obligations secured by real  
34 estate;

35           (2) As necessary to avoid or minimize a loss on an investment previously  
36 made in good faith; or

37           (3) As provided by rules, orders, or declaratory rulings of the  
38 Commissioner.

39           (b) To the extent reasonably necessary to avoid or minimize loss on real estate  
40 acquired as permitted by subsection (a) of this section or under G.S. 53-340, a State  
41 trust company may exchange real estate for other real estate or personal property, invest  
42 additional funds in or improve such real estate, or acquire additional real estate.

1       (c) Except as provided in subsection (d) of this section, a State trust company  
2 shall dispose of any real estate acquired as permitted by subdivision (2) of subsection  
3 (a) of this section or under G.S. 53-340:

4           (1) In the case of real estate acquired under subdivision (2) of subsection  
5 (a) of this section, on or before the fifth anniversary of:

6               a. The date it was acquired; or

7               b. The date it ceases to be used as a State trust company facility if  
8 it began to be so used after its acquisition.

9           (2) In the case of real estate acquired under G.S. 53-340, on or before the  
10 third anniversary of the date it ceases to be a State trust company  
11 facility as provided by G.S. 53-340.

12       (d) The Commissioner may grant one or more extensions of time for disposing of  
13 real estate if the Commissioner determines that:

14           (1) The State trust company has made a good faith effort to dispose of the  
15 real estate and has been unable to do so on reasonably advantageous  
16 terms; or

17           (2) Disposal of the real estate otherwise would be detrimental to the State  
18 trust company.

19 **"§ 53-342. Securities and other investments.**

20       (a) A State trust company may invest its corporate funds in any type or character  
21 of equity securities or debt securities subject to the limitations provided by this section.

22       (b) Unless the Commissioner approves maintenance of a lesser amount, a State  
23 trust company shall invest and maintain an amount equal to at least forty percent (40%)  
24 of its equity capital in unencumbered cash, cash equivalents, and readily marketable  
25 securities.

26       (c) Subject to subsections (d) and (e) of this section, the total investment in  
27 equity and investment securities of any one issuer, obligor, or maker held by a State  
28 trust company for its own account shall not exceed an amount equal to fifteen percent  
29 (15%) of the State trust company's equity capital. The Commissioner may authorize  
30 investments in excess of this limitation if the Commissioner concludes that the safe and  
31 sound operation of a State trust company would not be adversely affected by a proposed  
32 investment exceeding this limitation.

33       (d) In calculating compliance with the investment limits set forth in subsection  
34 (c) of this section, a State trust company shall not be required to combine:

35           (1) The State trust company's pro rata share of the securities of an issuer in  
36 the portfolio of a collective investment vehicle with the State trust  
37 company's pro rata share of the securities of that issuer held by another  
38 collective investment vehicle in which the State trust company has  
39 invested; or

40           (2) The State trust company's own direct investment in the securities of an  
41 issuer with the State trust company's pro rata share of the securities of

1 that issuer held by collective investment vehicles in which the State  
2 trust company has invested under the provisions of this section.

3 (e) Notwithstanding subsection (c) of this section, a State trust company may  
4 purchase for its own account, without limitation and subject only to the exercise of  
5 prudent judgment:

6 (1) Bonds and other general obligations of a state, an agency, or political  
7 subdivision of a state, the United States, or an agency or  
8 instrumentality of the United States;

9 (2) A debt security that this State, an agency or political subdivision of  
10 this State, the United States, or an agency or instrumentality of the  
11 United States has unconditionally agreed to purchase, insure, or  
12 guarantee;

13 (3) Securities that are offered and sold under 15 U.S.C. § 77d(5);

14 (4) Mortgage-related securities as defined in 15 U.S.C. § 78c(a);

15 (5) Investment securities issued or guaranteed by the Federal Home Loan  
16 Mortgage Corporation, Fannie Mae, the Government National  
17 Mortgage Association, the Federal Agricultural Mortgage Association,  
18 or the Federal Farm Credit Banks Funding Corporation; and

19 (6) Investment securities issued or guaranteed by the North American  
20 Development Bank.

21 (f) The Commissioner may allow State trust companies to make other  
22 investments of its corporate funds not specified in this Subpart by rules, orders, or  
23 declaratory rulings.

24 **"§ 53-343. Prohibited distributions, acquisitions, liens, or pledges.**

25 A State trust company shall not make any distribution to its shareholders, acquire its  
26 own shares, acquire a lien upon its own shares, or pledge its own assets while an order  
27 of the Commissioner prohibiting such distributions, acquisitions, liens, or pledges is in  
28 effect.

29 **"§ 53-344. Subsidiaries.**

30 (a) Before acquiring, establishing, or performing activities through a subsidiary,  
31 a State trust company shall file a notice with the Commissioner, in the form required by  
32 the Commissioner, describing in detail the proposed activities of the subsidiary, the  
33 amount of the State trust company's proposed investment in the subsidiary, and the State  
34 trust company's proposed ownership interest in the subsidiary.

35 (b) The State trust company may acquire or establish a subsidiary or begin  
36 performing activities in an existing subsidiary 30 days following the date the  
37 Commissioner receives the notice, unless the Commissioner:

38 (1) Establishes an earlier or later date;

39 (2) Notifies the State trust company that the notice raises issues that  
40 require additional information or additional time for analysis; or

41 (3) Disapproves the acquisition, establishment, or performance of  
42 activities through the subsidiary.

1 (c) If the Commissioner gives a notification described in subdivision (2) of  
2 subsection (b) of this section, the State trust company may acquire, establish or conduct  
3 activities through the subsidiary only on approval by the Commissioner. The  
4 Commissioner may disapprove the subsidiary if the Commissioner finds that the State  
5 trust company lacks sufficient resources to undertake the proposed expansion or  
6 perform the activity without adversely affecting its safety or soundness.

7 (d) The Commissioner may make the establishment, acquisition, or performance  
8 of new activities through a subsidiary conditional and shall include any such conditions  
9 in an order.

10 (e) The provisions of this section, rather than G.S. 53-342, shall apply to the  
11 establishment of a subsidiary by a State trust company.

12 (f) Changes in ownership or control of a subsidiary of a State trust company  
13 shall be made only upon the approval of the Commissioner obtained in accordance with  
14 the procedures set forth in this section.

15 **"§ 53-345. Engaging in commerce prohibited.**

16 Except as otherwise provided by this Part, or by rules, orders, or declaratory rulings  
17 of the Commissioner, a State trust company shall not engage in trade or commerce by  
18 buying, selling, or otherwise dealing in goods, or by conducting business other than  
19 trust business and trust marketing, except as necessary to fulfill a fiduciary obligation to  
20 a client.

21 **"§ 53-346. Lending and lease financing; conversion to State bank.**

22 (a) Except as may be appropriate for extensions of credit in connection with trust  
23 or other account relationships, and as provided in and subject to the provisions of  
24 Article 5 of Chapter 36A of the General Statutes and other provisions of applicable law,  
25 a State trust company shall not engage in a loan business or in lease financing  
26 transactions as the party extending credit.

27 (b) Notwithstanding any other provision of this Chapter, a State trust company  
28 may, with the approval of the Commissioner, convert to a State bank by following the  
29 procedures and requirements set forth in Article 2 of this Chapter, subject to any  
30 modifications to those procedures and requirements that are necessary and appropriate  
31 for the conversion of a State trust company. The Commissioner may make  
32 modifications to procedures or requirements of Article 2 of this Chapter by rule, order  
33 or declaratory ruling.

34 "Subpart D. Ownership; Governance; Mergers.

35 **"§ 53-347. Acquisition of control.**

36 (a) Except as this section otherwise expressly permits, a person shall not, without  
37 the approval of the Commissioner, directly or indirectly acquire control of a State trust  
38 company.

39 (b) This Subpart does not prohibit a person from contracting to acquire control of  
40 a State trust company subject to required approvals.

41 (c) This Subpart does not require the approval of the Commissioner for the  
42 acquisition of securities in the following circumstances:

- 1           (1) The acquisition of securities in connection with securing, collecting, or  
2 satisfying a debt previously contracted for in good faith if the  
3 acquiring person files notice of acquisition of control with the  
4 Commissioner, in the form required by the Commissioner, at least 10  
5 days before the person votes the securities acquired;
- 6           (2) The acquisition of additional voting securities in any class or series by  
7 a controlling person who previously has complied with and received  
8 approval under the provisions of this Article or who was identified as a  
9 controlling person in a prior application filed with and approved by the  
10 Commissioner if the acquiring person files notice of acquisition of  
11 those securities with the Commissioner, in the form required by the  
12 Commissioner, at least 10 days before the person votes the securities  
13 acquired;
- 14           (3) An acquisition or transfer of securities by operation of law, will, or  
15 intestate succession if the acquiring person files notice of acquisition  
16 of control with the Commissioner, in the form required by the  
17 Commissioner, at least 10 days before the person votes the securities  
18 acquired;
- 19           (4) An acquisition of securities by gift, unless the gift is made for the  
20 purpose of circumventing this section, if the acquiring person files  
21 notice of acquisition of control with the Commissioner, in the form  
22 required by the Commissioner, at least 10 days before the person votes  
23 the securities acquired; or
- 24           (5) A transaction exempted by the Commissioner by rules, orders, or  
25 declaratory rulings because (i) the transaction is not within the  
26 purposes of this Article, or (ii) regulation of the transaction is not  
27 necessary or appropriate to achieve the objectives of this Article.
- 28           (d) Information provided under the provisions of subsection (c) of this section  
29 shall be subject to G.S. 53-348(c), and persons providing that information shall be  
30 subject to G.S. 53-348(d).
- 31           (e) Upon receiving a notice described in subsection (c) of this section, the  
32 Commissioner may, on or before the tenth day after the acquiring person files the  
33 notice, notify the acquiring person of objection to the voting of securities by the  
34 acquiring person or of a request for further information concerning the acquisition of  
35 control. If the Commissioner notifies the acquiring person of the objection or request for  
36 further information, the acquiring person may vote the shares only on approval by the  
37 Commissioner and:
- 38               (1) The acquiring person shall follow the procedures prescribed in this  
39 Subpart for an application to acquire control of a State trust company;
- 40               (2) The Commissioner may request any information that may be requested  
41 under the procedures prescribed in this Subpart in connection with an  
42 application to acquire control of a State trust company; and

- 1           (3) For purposes of determining a quorum of shareholders of a State trust  
2 company, the shares shall be treated as authorized but unissued shares  
3 unless (i) the Commissioner approves the application to vote the  
4 securities or (ii) the acquiring person no longer has the power to vote  
5 the shares, either directly or indirectly.

6 **"§ 53-348. Application regarding acquisition of control.**

7           (a) A person seeking approval to acquire control of a State trust company shall  
8 file with the Commissioner:

9               (1) An application in the form required by the Commissioner;

10              (2) Any filing fee required by rule; and

11              (3) All information required by rule or that the Commissioner requires in  
12 connection with a particular application in order to make an informed  
13 decision to approve or reject the proposed acquisition of control.

14           (b) If any group of individuals or entities acting in concert seek approval to  
15 acquire control, the information the Commissioner may require under the provisions of  
16 this Subpart may be required of each member of the group.

17           (c) Notwithstanding any laws to the contrary, information bearing on the  
18 character or information about the personal finances of an existing or proposed  
19 shareholder of a State trust company or other individual is confidential and not subject  
20 to public disclosure.

21           (d) If a person seeking approval to acquire control is not a North Carolina  
22 resident, a North Carolina corporation, or an out-of-state corporation qualified to do  
23 business in this State, the Commissioner may require the person to appoint a resident  
24 agent for service of process.

25 **"§ 53-349. Decision on acquisition of control.**

26           (a) Not later than the sixtieth day following receipt of the application, the  
27 Commissioner shall either approve or deny the proposed acquisition of control.

28           (b) The Commissioner may deny an acquisition of control if:

29               (1) The financial condition of the person seeking approval to acquire  
30 control, or any member of a group seeking approval to acquire control,  
31 might jeopardize the financial stability of the State trust company or  
32 the interests of its clients;

33               (2) Investigation of the character, competence, general fitness, experience,  
34 or integrity of the person seeking approval to acquire control, or any  
35 member of a group seeking approval to acquire control, shows that the  
36 proposed acquisition of control would not be in the best interests of the  
37 clients of the State trust company;

38               (3) Plans or proposals to operate, liquidate, or sell the State trust company  
39 or its assets following the acquisition of control are not in the best  
40 interests of the State trust company's clients;

1           (4) The State trust company would not be solvent, have adequate equity  
2           capital, or be in compliance with the laws of this State after the  
3           acquisition of control; or

4           (5) The person seeking approval to acquire control has failed to furnish all  
5           information required by the Commissioner.

6           (c) If an application filed under the provisions of this section is approved by the  
7           Commissioner, the transaction may be consummated. Any written commitment from the  
8           person seeking approval to acquire control made as a condition for approval of the  
9           application is enforceable against the State trust company and the person acquiring  
10          control.

11 **"§ 53-350. Appeal.**

12          Any order entered by the Commissioner with respect to an application for  
13          acquisition or control of a State trust company shall be subject to review by the  
14          Commission for entry of a final agency decision.

15 **"§ 53-351. Report of changes in chief executive officer or directors.**

16          Each State trust company shall report to the Commissioner within 48 hours, on the  
17          forms and with the information required by the Commissioner, any changes in the chief  
18          executive officer or the directors of the State trust company, including in its report a  
19          statement of the past and current business and professional affiliations of each new chief  
20          executive officer or director.

21 **"§ 53-352. Board of directors.**

22          (a) All corporate powers of a State trust company shall be exercised under the  
23          authority of, and the business and affairs of a State trust company shall be managed  
24          under the direction of, its board of directors. Without the approval of the Commissioner,  
25          the board shall consist of not less than five directors. The shareholders of a State trust  
26          company, at any shareholders' meeting, may authorize not more than two additional  
27          directorships which may be left unfilled and to be filled in the discretion of the directors  
28          of the State trust company during the interval between shareholders' meetings. Except as  
29          specifically provided otherwise in this section, the number, election, term, and  
30          classification of the directors of a State trust company shall be governed by the  
31          provisions of Chapter 55 of the General Statutes.

32          (b) Before each term to which a person is elected to serve as a director of a State  
33          trust company, the person shall submit an affidavit for filing in the minutes of the State  
34          trust company stating that the person:

35               (1) Accepts the position;

36               (2) Will not knowingly violate, or knowingly permit an officer, director,  
37               or employee of the State trust company to violate, any law applicable  
38               to the conduct of business of the State trust company; and

39               (3) Will diligently perform the duties of a director.

40          (c) A person designated with a title such as advisory director is not considered a  
41          director if that person:

42               (1) Is not elected by the shareholders of the State trust company; and

- 1           (2) Does not vote on matters before the board of directors or any  
2           committee of the board and is not counted for purposes of determining  
3           a quorum of the board or any committee of the board.

4 **"§ 53-353. Required board meetings.**

5           The board of directors of a State trust company shall hold at least one regular  
6 meeting each quarter. At each regular meeting, the board shall review and approve, or  
7 disapprove and correct, the minutes of the prior meeting and review the operations,  
8 activities, and financial condition of the State trust company. The board may designate  
9 committees from among its members to perform these duties and approve or disapprove  
10 the committees' reports at each regular meeting. All material actions of the board shall  
11 be recorded in its minutes.

12 **"§ 53-354. Officers.**

13           The board of directors shall annually appoint the officers of the State trust company  
14 who shall serve at the pleasure of the board. The contract rights of officers, if any, shall  
15 be governed by applicable provisions of Chapter 55 of the General Statutes and general  
16 law. The State trust company shall have a chief executive officer primarily responsible  
17 for the execution of board policies and operation of the State trust company. The State  
18 trust company also shall have an officer responsible for the maintenance and storage of  
19 all corporate books and records of the State trust company and for required attestation of  
20 signatures. These positions shall not be held by the same person. The board may appoint  
21 any other officers of the State trust company, including assistants to the officers  
22 required by this section, the board considers necessary or appropriate.

23 **"§ 53-355. Certain criminal offenses.**

24           (a) An officer, director, employee, or shareholder of a State trust company  
25 commits an offense if the person knowingly:

- 26           (1) Conceals information or a fact, or removes, destroys, or conceals a  
27 book or record of the State trust company for the purpose of  
28 concealing information or a fact, from the Commissioner or an agent  
29 of the Commissioner; or

- 30           (2) For the purpose of concealing information or a fact, removes or  
31 destroys any book or record of the State trust company that is material  
32 to a pending or anticipated legal or administrative proceeding.

33           (b) An officer, director, or employee of a State trust company commits an offense  
34 if the person knowingly makes a false entry in the books or records or in any report or  
35 statement of the State trust company.

36           (c) An offense under the provisions of this section shall be a Class H felony.

37 **"§ 53-356. Responsibility of directors.**

38           (a) The standard of conduct for directors shall be as set forth in G.S. 55-8-30.

39           (b) Any director of a State trust company who shall knowingly violate, or who  
40 shall knowingly permit to be violated by any officers, agents, or employees of such  
41 State trust company, any of the provisions of this Article shall be held personally and  
42 individually liable for all damages which the State trust company, its shareholders, or



1 any other person has sustained in consequence of the violation. Any aggrieved  
2 shareholder of any State trust company in liquidation may prosecute an action for the  
3 enforcement of the provisions of this section. Only one such action may be brought. The  
4 procedure shall follow, as much as possible, that prescribed by Article 3 of Chapter 44A  
5 of the General Statutes, relative to suits on bonds of contractors with municipal  
6 corporations.

7 **"§ 53-357. Record keeping.**

8 A State trust company shall keep its fiduciary records separate and distinct from its  
9 other records. The fiduciary records shall contain all material information relative to  
10 each account as appropriate under the circumstances.

11 **"§ 53-358. Bonding requirements; reports of apparent crime.**

12 (a) The board of directors of a State trust company shall require protection and  
13 indemnity for the State trust company and its clients in amounts established by rules,  
14 orders, or declaratory rulings of the Commissioner, or otherwise in reasonable amounts,  
15 against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses,  
16 with corporate insurance or surety companies:

17 (1) Authorized to do business in this State; or

18 (2) Acceptable to the Commissioner and otherwise lawfully permitted to  
19 issue coverage against those losses in this State.

20 (b) Except as otherwise provided by rules, orders, or declaratory rulings of the  
21 Commissioner, coverage required under subsection (a) of this section shall include each  
22 director, officer, and employee of the State trust company without regard to whether the  
23 person receives salary or other compensation.

24 (c) A State trust company that is the victim of a robbery, has a shortage of  
25 corporate or account assets in excess of five thousand dollars (\$5,000), or is the victim  
26 of an apparent or suspected misapplication of its corporate property or account assets in  
27 any amount shall report the robbery, shortage, or apparent or suspected misapplication  
28 to the Commissioner within 48 hours after the time it is discovered. The initial report  
29 may be oral if a written report is made promptly following the oral report. Neither the  
30 State trust company nor any director, officer, employee, or agent of the State trust  
31 company is subject to any liability for providing any information in any such report in  
32 good faith.

33 **"§ 53-359. Merger, share exchange, or asset transfer authority.**

34 (a) With the approval of the Commissioner, a State trust company may merge or  
35 exchange its shares with, or acquire or be acquired through a merger or share exchange  
36 with, another company, or may transfer to another company all or substantially all of its  
37 assets and liabilities, or may acquire from another company all or substantially all of its  
38 assets and liabilities.

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

1 **"§ 53-360. Merger, share exchange, or asset transfer application.**

2 (a) A copy of the proposed articles of merger or share exchange, or asset transfer  
3 agreement, and an application in the form required by the Commissioner, shall be filed  
4 with the Commissioner. The Commissioner shall investigate the condition of the parties  
5 proposing to engage in the merger, share exchange, or asset transfer and may require the  
6 submission of additional information.

7 (b) The Commissioner may approve the merger or share exchange if:

8 (1) Each resulting trust institution will be solvent and have adequate  
9 capitalization;

10 (2) Each resulting trust institution appears able and ready to comply  
11 substantially with the statutes and rules relative to its organization;

12 (3) Each resulting State trust company will be a 'domestic corporation' as  
13 that term is defined in G.S. 55-1-40(4);

14 (4) All fiduciary obligations and liabilities of each trust institution that is a  
15 party to the merger, share exchange, or asset transfer have been  
16 discharged properly or otherwise have been or will be assumed or  
17 retained properly by a person;

18 (5) Each surviving, new, acquiring, or transferring party that is not  
19 authorized to engage in trust business will not engage in trust business  
20 and appears able and ready to comply substantially with applicable  
21 laws and rules; and

22 (6) All conditions imposed by the Commissioner have been satisfied or  
23 otherwise resolved.

24 **"§ 53-361. Notice and investigation of merger, share exchange, or asset transfer;**  
25 **decision, hearing, and appeal.**

26 (a) The Commissioner shall notify the parties to the proposed merger, share  
27 exchange, or asset transfer when the application is complete and all required fees have  
28 been paid. Promptly following this notification, the parties shall provide notice to clients  
29 who may be affected by the proposed merger, share exchange, or asset transfer in the  
30 form and manner specified by the Commissioner.

31 (b) At the expense of the parties to the proposed merger, share exchange, or asset  
32 transfer, the Commissioner may investigate the proposed transaction, including the  
33 character of the proposed directors, officers, and principal shareholders of each resulting  
34 trust institution and of any other person proposed to succeed to the accounts of the  
35 applying institutions. Notwithstanding any laws to the contrary, information bearing on  
36 the character or information about the personal finances of an existing or proposed  
37 organizer, officer, director, or shareholder is confidential and not subject to public  
38 disclosure.

39 (c) Based on the application and investigation, the Commissioner shall enter an  
40 order approving or denying approval of the proposed merger, share exchange, or asset  
41 transfer not later than the sixtieth day following the date the Commissioner notifies the

1 parties that the application is complete, unless extraordinary circumstances require a  
2 longer period of review.

3 (d) Any written commitment made by a person proposing to engage in the  
4 merger, share exchange, or asset transfer as a condition for approval of the application is  
5 enforceable against that person.

6 (e) Any order entered by the Commissioner under the provisions of this section  
7 shall be subject to review by the Commission for entry of a final agency decision.

8 **"§ 53-362. Rights of dissenters to mergers, share exchanges, or asset transfers.**

9 A shareholder of a State trust company may dissent from the proposed merger, share  
10 exchange, or asset transfer to the extent allowed under, and by following the procedures  
11 prescribed by, Article 13 of Chapter 55 of the General Statutes.

12 "Subpart E. Private Trust Companies.

13 **"§ 53-363. Private trust companies.**

14 (a) The following definitions apply in this Subpart:

15 (1) 'Designated relative' means the individual required to be named in the  
16 application under G.S. 53-364(a)(5) requesting an exemption from  
17 certain provisions of this Act pursuant to G.S. 53-364.

18 (2) 'Family member' means the designated relative and

19 a. Any individual within the fifth degree of lineal kinship to the  
20 designated relative computed in accordance with G.S. 104A-1;

21 b. Any individual within the ninth degree of collateral kinship to  
22 the designated relative computed in accordance with G.S.  
23 104A-1;

24 c. The spouse of the designated relative and of any individual  
25 qualifying as a family member under sub-subdivision a. and b.  
26 of this subdivision;

27 d. A company controlled by one or more family members;

28 e. A trust established by (i) a family member or (ii) an individual  
29 who is not a family member if income or principal of the trust  
30 could be distributed currently to or for the benefit of a family  
31 member;

32 f. The estate of a family member; or

33 g. A charitable foundation or other charitable entity created by a  
34 family member.

35 For purposes of this subdivision, a legally adopted individual shall be treated  
36 as a natural child of the adoptive parents.

37 (3) 'Transact business with the general public' means to engage in any  
38 sales, solicitations, arrangements, agreements, or transactions to  
39 provide trust business services, whether or not for a fee, commission,  
40 or other type of remuneration, to more than 35 persons who are not  
41 family members, except that rules, orders, or declaratory rulings of the  
42 Commissioner may provide for other circumstances in which a State

1 trust company either does or does not transact business with the  
2 general public. For the purposes of this subdivision, an estate, a trust,  
3 or any other legal entity having multiple beneficiaries or owners shall  
4 be deemed to constitute one person.

5 (b) A private trust company engaging in trust business in this State shall comply  
6 with all provisions of this Article applicable to a State trust company unless expressly  
7 exempted from this Article by the Commissioner pursuant to this section or prior to the  
8 enactment of this Article.

9 (c) A private trust company or proposed private trust company may request in  
10 writing that it be exempted from specified provisions of G.S. 53-333(b), 53-337(a),  
11 53-340, 53-341, 53-342, 53-345, 53-346, and 53-394(b). The Commissioner may grant  
12 the exemption request in whole or in part. The Commissioner also may issue rules,  
13 orders, or declaratory rulings granting exemptions to all private trust companies, or to  
14 private trust companies that meet specified conditions.

15 (d) The Commissioner may examine or investigate the private trust company or  
16 proposed private trust company in connection with the application for exemption.  
17 Unless the application presents novel or unusual questions, the Commissioner shall  
18 approve or deny the application for exemption no later than the sixty-first day after the  
19 date the Commissioner considers the application complete and accepted for filing. The  
20 Commissioner may require the submission of additional information in order to make an  
21 informed decision to approve or reject the proposed exemption.

22 (e) Any exemption granted under the provisions of this section may be made  
23 subject to conditions or limitations imposed by the Commissioner consistent with this  
24 Subpart, and those conditions or limitations shall be included in an order.

25 (f) Rules, orders, or declaratory rulings of the Commissioner may provide for  
26 other circumstances that justify exemption from specific provisions of this Article,  
27 specifying the provisions of this Act that are subject to the exemption request, and  
28 establishing procedures and requirements for obtaining, maintaining, or revoking  
29 exemptions.

30 **"§ 53-364. Requirements to apply for and maintain status as a private trust**  
31 **company.**

32 (a) A private trust company or a proposed private trust company requesting an  
33 exemption from the provisions of this Article pursuant to G.S. 53-363 shall file an  
34 application with the Commissioner, in the form required by the Commissioner,  
35 containing, preceded, or accompanied by:

36 (1) An application fee as set by rules of the Commissioner;

37 (2) A statement under oath of the reasons for requesting the exemption;

38 (3) A statement under oath showing that the private trust company is not  
39 currently transacting business with the general public and that the  
40 company will not transact business with the general public without the  
41 approval of the Commissioner;

1           (4) A listing of the specific provisions of the Act from which exemption is  
2           requested; and

3           (5) The name of the designated relative whose relationship to other  
4           individuals determines whether the individuals are family members  
5           under G.S. 53-363(a)(2). The designated relative must be living and 18  
6           years of age or older at the time the application is made.

7           (b) The Commissioner may make further inquiry and investigation as the  
8           Commissioner deems appropriate. Notwithstanding any other law to the contrary,  
9           information bearing on actual or proposed accounts of the private trust company or  
10           proposed private trust company applying for the exemption is confidential and not  
11           subject to public disclosure.

12           (c) To maintain its status as a private trust company and to maintain any  
13           exemptions from the provisions of this Article granted by the Commissioner, a private  
14           trust company shall file with the Commissioner an annual certification that it is in  
15           compliance with the provisions of this Subpart and the conditions and limitations of all  
16           exemptions granted. This annual certification shall be filed in the form required by the  
17           Commissioner and accompanied by any fee required by the Commissioner by rule. The  
18           annual certification shall be filed on or before December 31 of each year. The  
19           Commissioner may examine or investigate the private trust company periodically as  
20           necessary to verify the certification.

21           (d) In any transaction involving a private trust company for which an application  
22           is required under G.S. 53-360, any exemption from the provisions of this Article granted  
23           to the private trust company shall automatically terminate upon the consummation of  
24           the transaction unless the Commissioner approves the continuation of the exemption.

25           (e) The Commissioner may revoke any exemption from the provisions of this  
26           Article granted to a private trust company in the following circumstances:

27           (1) An officer or director of the private trust company makes a false  
28           statement under oath on any document required to be filed by this  
29           Article or by any rules or orders of the Commissioner;

30           (2) The private trust company fails to submit to an examination as  
31           required by G.S. 53-367;

32           (3) An officer or director of the private trust company withholds requested  
33           information from the Commissioner; or

34           (4) The private trust company violates any provision of this Subpart or  
35           fails to meet any condition on which the exemption is based.

36           (f) If the Commissioner determines from examination or other credible evidence  
37           that a private trust company has violated any of the requirements of this Subpart or fails  
38           to meet any condition or limitation on which an exemption from the provisions of this  
39           Article is based, the Commissioner may by personal delivery or registered or certified  
40           mail, return receipt requested, notify the private trust company that the private trust  
41           company's exemptions from the provisions of this Article will be revoked unless the  
42           private trust company corrects the violation or failure or shows cause why any

1 exemptions should not be revoked. The notification shall state grounds for the  
2 revocation with reasonable certainty and shall advise of an opportunity for a hearing.  
3 The notice shall state the date upon which the revocation shall become effective absent  
4 a correction or showing of cause why the exemption should not be revoked, which shall  
5 not be before the thirtieth day after the date the notification is mailed or delivered,  
6 except as provided in subsection (g) of this section. The revocation shall take effect for  
7 the private trust company on the date stated in the notice if the private trust company  
8 does not request a hearing in writing before the effective date. After the revocation takes  
9 effect, the private trust company shall be subject to all of the requirements and  
10 provisions of this Article applicable to a State trust company.

11 (g) If the Commissioner determines from examination or other credible evidence  
12 that a private trust company appears to be engaging or attempting to engage in acts  
13 intended, designed, or likely to deceive or defraud the public, the Commissioner may  
14 shorten or eliminate the 30-day notice period specified in subsection (f) of this section,  
15 but shall promptly afford a subsequent hearing upon request to rescind the action taken.

16 (h) If the private trust company does not comply with all of the provisions of this  
17 Article or correct any failure to meet any condition or limitation on which an exemption  
18 is based within the notice period specified in subsection (f) of this section, the  
19 Commissioner may institute any action or remedy prescribed by this Article or any  
20 applicable rule.

21 **"§ 53-365. Conversion to public trust company.**

22 (a) Before transacting business with the general public, a private trust company  
23 shall file a notice on a form prescribed by the Commissioner, which shall set forth the  
24 name of the private trust company and an acknowledgment that any exemption granted  
25 or otherwise applicable to the private trust company pursuant to G.S. 53-363 shall cease  
26 to apply once the Commissioner terminates private trust company status. The private  
27 trust company shall furnish a copy of the resolution adopted by its board of directors  
28 authorizing the private trust company to commence transacting business with the  
29 general public, and shall pay the filing fee, if any, prescribed by rule of the  
30 Commissioner.

31 (b) The private trust company may commence transacting business with the  
32 general public on the thirty-first day after the date the Commissioner receives the notice,  
33 unless the Commissioner:

34 (1) Establishes an earlier or later date;

35 (2) Notifies the private trust company that the notice raises issues that  
36 require additional information or additional time for analysis; or

37 (3) Disapproves the termination of private trust company status.

38 (c) If the Commissioner gives a notification described in subdivision (2) of  
39 subsection (b) of this section, the private trust company status may be terminated only  
40 on approval by the Commissioner.

41 (d) The Commissioner may deny approval of the proposed termination of private  
42 trust company status if the Commissioner finds that the private trust company lacks

1 sufficient resources to undertake the proposed conversion without adversely affecting its  
2 safety or soundness or if the Commissioner determines that the private trust company  
3 could not within a reasonable period be in compliance with any provision of this Article  
4 from which it previously had been exempted pursuant to G.S. 53-363.

5 "Part 4. Applicable Law; Enforcement Actions.

6 "Subpart A. Supervision and Examination.

7 **"§ 53-366. Applicability of other laws to authorized trust institutions; status of**  
8 **State trust company.**

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

11 (1) G.S. 53-14;

12 (2) G.S. 53-16;

13 (3) G.S. 53-17;

14 (4) G.S. 53-68;

15 (5) G.S. 53-77.3;

16 (6) G.S. 53-85;

17 (7) Article 8 of this Chapter, except where it clearly appears from the  
18 context that a particular provision is not applicable to trust business or  
19 trust marketing, and except that the provisions of this Article shall  
20 apply in lieu of:

21 a. G.S. 53-95;

22 b. G.S. 53-104;

23 c. G.S. 53-105;

24 d. G.S. 53-106; and

25 e. G.S. 53-107.1(a), (b) and (d).

26 (8) Article 9 of this Chapter, except where it clearly appears from the  
27 context that a particular provision is not applicable to trust business or  
28 trust marketing, and except that the provisions of this Article shall  
29 apply in lieu of G.S. 53-119.

30 (9) Article 10 of this Chapter, except where it clearly appears from the  
31 context that a particular provision is not applicable to trust business or  
32 trust marketing, and except that the provisions of this Article shall  
33 apply in lieu of G.S. 53-135, and except that G.S. 53-131 and G.S. 53-  
34 132 shall not apply to authorized trust institutions.

35 (10) Article 14 of this Chapter.

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

41 (c) Activities of authorized trust institutions for clients shall not be considered  
42 the sale or issuance of checks under G.S. 53-194.

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

6       (e) Notwithstanding any other provision of this Chapter, a State trust company:

7           (1) Is a 'banking entity' for purposes of G.S. 53-127;

8           (2) Is a 'bank' for purposes of laws made applicable to authorized trust  
9 institutions in this section and for purposes of G.S. 53-277.

10          (3) Is a trust company organized and doing business under the laws of the  
11 State of North Carolina, a substantial part of the business of which is  
12 exercising fiduciary powers similar to those permitted national banks  
13 under authority of the Comptroller of the Currency, and which is  
14 subject by law to supervision and examination by the Commissioner as  
15 a banking institution; and

16          (4) Is a financial institution similar to a bank.

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

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

30 **"§ 53-367. Commissioner shall have supervision over authorized trust institutions**  
31 **and shall examine.**

32       Every authorized trust institution shall be under the supervision of the  
33 Commissioner. The Commissioner may periodically examine and require reports from  
34 authorized trust institutions, and shall execute and enforce, through examiners and any  
35 other agents as are now or may hereafter be created or appointed, all laws and all rules,  
36 orders, and declaratory rulings relating to authorized trust institutions. All authorized  
37 trust institutions shall conduct their business in a manner consistent with all laws and all  
38 rules, orders, and declaratory rulings that may be adopted or issued by the  
39 Commissioner relating to authorized trust institutions.

40 **"§ 53-368. Assessment of State trust companies.**

41       (a) For the purpose of operating and maintaining the office of the Commissioner,  
42 each State trust company shall pay into the office of the Commissioner, within 10 days



1 after notice, an annual assessment of six thousand dollars (\$6,000) plus one dollar  
2 (\$1.00) per one hundred thousand dollars (\$100,000) of assets held for its accounts,  
3 exclusive of nonsecuritized real estate interests. For purposes of this assessment, the  
4 amount of assets held for accounts shall be determined as of the close of business on  
5 December 31 of each year.

6 (b) If an application for merger, share exchange, sale of assets, change of control,  
7 conversion, or a similar transaction occasions an examination or if the Commissioner  
8 determines that the financial condition or manner of operation of a State trust company  
9 warrants further examination or an increased level of supervision, a State trust company  
10 may be subject to an additional assessment not to exceed the amount required of all  
11 State trust companies by subsection (a) of this section.

12 (c) Except as set forth in this section, fees and assessments of a State trust  
13 company shall be governed by G.S. 53-122. Fees and assessments collected under the  
14 provisions of this section shall be considered to be part of the total fees collected under  
15 G.S. 53-122(d).

16 "Subpart B. Enforcement Orders; Trust Company Management.

17 "§ 53-369. Administrative orders; penalties for violation; increase of equity  
18 capital.

19 (a) In addition to any other powers conferred by this Chapter, the Commissioner  
20 may:

21 (1) Order any authorized trust institution, or affiliate thereof, or any  
22 director, officer, or employee of an authorized trust institution, to cease  
23 and desist violating any provision of this Article or any rule issued  
24 thereunder.

25 (2) Order any authorized trust institution, or affiliate thereof, or any  
26 director, officer, or employee of an authorized trust institution, to cease  
27 and desist from a course of conduct that is unsafe or unsound and  
28 which is likely to cause insolvency or dissipation of the assets of an  
29 authorized trust institution, or is likely to jeopardize or otherwise  
30 seriously prejudice the interests of the clients, creditors, shareholders,  
31 or the public in their relationships with the authorized trust institution.

32 (3) Order any company to cease engaging in unauthorized trust activity.

33 (4) Enter orders described in G.S. 53-321, 53-327, and 53-343.

34 (b) The Commissioner may impose a civil money penalty of not more than one  
35 thousand dollars (\$1,000) for each violation of an order issued under subdivision (1) of  
36 subsection (a) of this section. The Commissioner may impose a civil money penalty of  
37 not more than five hundred dollars (\$500.00) per day for each violation of a cease and  
38 desist order issued under subdivision (2) or (3) of subsection (a) or this section. The  
39 clear proceeds of civil money penalties imposed pursuant to this section shall be  
40 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

41 (c) The Commissioner may order that a State trust company in a hazardous  
42 condition increase its equity capital to a level that is adequate for the safe and sound

1 conduct of its business. The order shall specify the period of time for meeting the  
2 requirement to increase equity capital, which period of time may be extended by further  
3 order of the Commissioner.

4 **"§ 53-370. Notice and opportunity for hearing.**

5 Consistent with Chapter 150B of the General Statutes, notice and opportunity for  
6 hearing shall be provided before the Commissioner may act under the provisions of this  
7 Subpart. In cases involving extraordinary circumstances requiring immediate action,  
8 however, the Commissioner may take action without a hearing, but shall promptly  
9 afford a subsequent hearing upon request to rescind the action taken.

10 **"§ 53-371. Removal of directors, officers, and employees.**

11 The Commissioner may require the immediate removal from office of any officer,  
12 director, or employee of any State trust company, who shall be found to be dishonest,  
13 incompetent, or reckless in the management of the affairs of the State trust company, or  
14 who persistently violates the laws of this State or the rules, orders, and declaratory  
15 rulings issued by the Commissioner.

16 "Part 5. Dissolution and Receivership; Conservatorship;  
17 Jeopardized State Trust Companies.

18 "Subpart A. Voluntary Dissolution and Liquidation.

19 **"§ 53-372. Required vote of shareholders.**

20 With the approval of the Commissioner, a State trust company may go into  
21 voluntary liquidation, be closed, and surrender its charter and franchise as a corporation  
22 of this State by the affirmative vote of its shareholders owning two-thirds of its stock.

23 **"§ 53-373. Corporate procedure.**

24 Shareholder action to liquidate a State trust company shall be taken at a meeting of  
25 the shareholders duly called by resolution of the board of directors. Notice of the  
26 meeting, stating the purpose of the meeting, shall be mailed to each shareholder,  
27 addressed to the shareholder's last known residence at least 10 days prior to the date of  
28 the meeting. If the shareholders, by the required vote, elect to liquidate a trust company,  
29 a certified copy of all proceedings of the meeting at which the action was taken, verified  
30 by the oath of the president and secretary, shall be transmitted to the Commissioner for  
31 approval.

32 **"§ 53-374. Authority to liquidate; publication.**

33 If the Commissioner approves the liquidation, the Commissioner shall issue to the  
34 State trust company, under the Commissioner's seal, a permit for liquidation. No permit  
35 shall be issued by the Commissioner until the Commissioner is satisfied that provision  
36 has been made by the State trust company to satisfy and pay off all creditors and to  
37 transfer all client accounts and fiduciary records to successor fiduciaries in the manner  
38 provided by G.S. 53-383(c). If not so satisfied, the Commissioner shall refuse to issue a  
39 permit, and shall be authorized to take possession of the State trust company and its  
40 assets and business and to hold and liquidate the State trust company in the manner  
41 provided in this Part. When the Commissioner approves the voluntary liquidation of a  
42 State trust company, the directors of the State trust company shall notify clients of the

1 State trust company in the manner prescribed by the Commissioner and shall cause to be  
2 published in a newspaper in the county in which the principal office of the trust  
3 company is located, or if no newspaper is published in that county, then in a newspaper  
4 having a general circulation in that county, a notice that the State trust company is  
5 closing down its affairs and going into liquidation and that creditors of the State trust  
6 company shall present their claims for payment. The notice shall be published once a  
7 week for four consecutive weeks.

8 **"§ 53-375. Examination and reports.**

9 When any State trust company is in the process of voluntary liquidation, it shall be  
10 subject to examination by the Commissioner and shall furnish any reports required by  
11 the Commissioner.

12 **"§ 53-376. Unclaimed property.**

13 All unclaimed property remaining with a State trust company voluntarily liquidated  
14 under the provisions of this Subpart shall be subject to the provisions of Chapter 116B  
15 of the General Statutes.

16 "Subpart B. Seizure by Commissioner; Involuntary Dissolution and Liquidation.

17 **"§ 53-377. When Commissioner may take charge.**

18 The Commissioner may take possession of the business and property of any State  
19 trust company whenever it appears that the trust company:

- 20 (1) Is in a hazardous condition;
- 21 (2) Has become insolvent or is in substantial danger of becoming  
22 insolvent;
- 23 (3) Has sold or attempted to sell substantially all of its assets or has  
24 merged or attempted to merge its business with another entity without  
25 meeting the requirements of this Article;
- 26 (4) Has dissolved or liquidated or attempted to dissolve or liquidate  
27 without meeting the requirements of this Article; or
- 28 (5) Has suspended operations.

29 **"§ 53-378. Directors may act.**

30 A State trust company may place its assets and business under the control of the  
31 Commissioner by a resolution of a majority of its directors upon notice to the  
32 Commissioner, and, upon taking possession of the State trust company, the  
33 Commissioner shall retain possession thereof until the State trust company is authorized  
34 by the Commissioner to resume business or until the affairs of the State trust company  
35 are fully liquidated as provided in this Subpart. No State trust company shall make any  
36 general assignment for the benefit of its creditors except by surrendering possession of  
37 its assets to the Commissioner as provided in this Subpart; and any other purported  
38 general assignment for the benefit of creditors by a State trust company shall be void.

39 **"§ 53-379. Notice of seizure; bar to attachment of liens.**

40 When the Commissioner takes possession of any State trust company under G.S.  
41 53-377 or G.S. 53-378, the Commissioner shall, within 48 hours, file with the clerk of  
42 the superior court in the county where the principal office of the State trust company is

1 located a notice of the action which shall state the reason for the action, and which shall  
2 be deemed the equivalent of a summons and complaint against the State trust company  
3 in an action in the superior court except that it shall not be necessary to serve the notice.  
4 The taking possession of any State trust company shall be effective on the date when the  
5 authority is first exercised and from and after that time all assets and property of the  
6 State trust company, of whatever nature, shall be deemed to be in possession of the  
7 Commissioner, and the exercise of the authority shall operate as a bar to any attachment  
8 or other legal proceeding against the State trust company or its assets. After the  
9 Commissioner's exercise of authority, no lien shall attach in any manner binding or  
10 affecting any of the assets of the State trust company, and every purported transfer or  
11 assignment made thereafter by the State trust company, or by its authority, of the whole  
12 or any part of its assets, shall be null and void; and the Commissioner shall be  
13 substituted in place of the State trust company in any civil actions or proceedings  
14 pending at the time of the exercise of the authority.

15 **"§ 53-380. Notice to trust institutions, corporations, and others holding assets;**  
16 **existing liens.**

17 Upon taking possession of the assets and business of any State trust company, the  
18 Commissioner shall forthwith give notice, by mail or otherwise, of the action to all  
19 banks, clearing corporations, brokers, trust institutions, or other persons or corporations  
20 holding, or having in possession, any assets of the State trust company. No lien against  
21 any assets of the State trust company shall be enforced in any manner other than as  
22 provided in this Article after the Commissioner has taken possession of the State trust  
23 company.

24 **"§ 53-381. Permission to resume business.**

25 (a) After the Commissioner has taken possession of a State trust company under  
26 the provisions of this Subpart, the State trust company may resume business only upon  
27 approval and subject to terms and conditions specified by the Commissioner.

28 (b) When possession of a State trust company has been taken pursuant to either  
29 G.S. 53-377 or G.S. 53-378, the terms and conditions under which it may resume  
30 business shall be fully stated in writing, and a copy thereof shall be filed with the clerk  
31 of superior court of the county in which the action is pending.

32 (c) Notwithstanding subsections (a) and (b) of this section, no State trust  
33 company possessed by the Commissioner under the provisions of this Article shall  
34 resume trust business unless and until the State trust company has been completely  
35 restored to solvency and it clearly appears to the Commissioner that the State trust  
36 company may be reopened with safety to the clients, creditors, and shareholders of the  
37 State trust company and to the public.

38 (d) If the Commissioner determines that the State trust company shall not resume  
39 business, the State trust company shall be liquidated in accordance with the provisions  
40 of this Part and shall cancel the charter and revoke the license of the State trust company  
41 as provided in G.S. 53-414.

42 **"§ 53-382. Remedy for seizure; answer to notice; injunction; appeal; and motions.**

1       (a) Whenever any State trust company of which the Commissioner has taken  
2 possession under G.S. 53-377 shall deem itself aggrieved thereby, it may file an answer  
3 to the notice as in other civil actions and may also, upon notice to the Commissioner,  
4 apply to the resident or presiding judge of the superior court for an injunction to enjoin  
5 further proceedings by the Commissioner. The judge of the superior court may cite the  
6 Commissioner to show cause why further proceedings should not be enjoined and, after  
7 hearing the allegations and proof of the parties with respect to the condition of the State  
8 trust company, may dismiss an application for injunction or may enjoin further  
9 proceedings under the provisions of this section by the Commissioner. If the judge  
10 enjoins further action of the Commissioner and permits the reopening of the State trust  
11 company, the judge may require of the State trust company a surety bond as the judge  
12 deems necessary, payable to the Commissioner for the sole benefit of the creditors and  
13 clients of the State trust company and upon any terms the judge deems proper. Either  
14 party has the right to appeal a decision as in other civil actions.

15       (b) The State trust company or any person interested may be heard by motion as  
16 to actions taken or proposed to be taken by the Commissioner, but the judge hearing the  
17 motion shall enter an order as in the judge's discretion will best serve the parties  
18 interested.

19 **"§ 53-383. Collection of debts and claims; Commissioner succeeds to all property**  
20 **of the State trust company.**

21       (a) Upon taking possession of the assets and business of any State trust company,  
22 the Commissioner is authorized to collect all money due the State trust company and to  
23 do any other acts necessary to conserve its assets and property. The Commissioner shall  
24 collect all debts due and claims belonging to the State trust company, and by order of  
25 the court may sell, compromise, or compound any bad or doubtful debt or claim or sell  
26 the real and personal property of the State trust company on any terms provided by the  
27 order. Where the sale is made under power contained in any mortgage or lien bond or  
28 other paper wherein the title is retained for sale and the terms of sale set out, sale may  
29 be made under that authority.

30       (b) Upon taking possession of any State trust company under the provisions of  
31 this section, the Commissioner shall have the possession and the right to the possession  
32 of all the property, assets, choses in action, rights, and privileges of the State trust  
33 company. The property rights and privileges shall vest in the Commissioner absolutely  
34 for the purpose of liquidating, selling, or conveying the property rights and privileges,  
35 together with all other incidental rights, privileges, and powers necessary for the right of  
36 conveyance and sale.

37       (c) Upon taking possession of any State trust company under the provisions of  
38 this section, the Commissioner shall administer each account of the State trust company  
39 on a temporary basis until either (i) a successor to the State trust company is appointed  
40 or the account is terminated in the manner provided by the terms of its governing  
41 instrument consistent with applicable law, or by applicable law in the absence of a  
42 provision in the governing instrument, or (ii) the Commissioner has granted the State

1 trust company permission to resume business under the provisions of G.S. 53-381. The  
2 Commissioner may take appropriate steps for the appointment of successors or  
3 termination of accounts as the Commissioner deems necessary as to some or all of the  
4 accounts of the State trust company. If the governing instrument or other applicable law  
5 do not prescribe methods for appointing successors, or if the methods prescribed are  
6 unfeasible, the applicable law for appointment of a successor shall be as set forth in G.S.  
7 53-399.

8 (d) The officers and directors of any State trust company that is in the possession  
9 of the Commissioner under this Part shall not exercise any powers declared by this  
10 Subpart to be vested in the Commissioner.

11 **"§ 53-384. Bond of the Commissioner; surety; condition; minimum penalty.**

12 Upon taking possession of any State trust company, the Commissioner shall execute  
13 and file a bond payable to this State for the benefit of creditors, clients, and shareholders  
14 of the State trust company, with some surety company as surety thereon, with the clerk  
15 of the superior court of the county in which the action is pending, conditioned upon the  
16 faithful performance of all duties imposed upon the Commissioner under the provisions  
17 of this Subpart with respect to the State trust company, the penal sum of the bond to be  
18 fixed by order of the Commissioner, which in no case shall be less than two hundred  
19 fifty thousand dollars (\$250,000). Any person interested, by motion in the pending  
20 action, shall be heard by the resident or presiding judge of the superior court as to the  
21 sufficiency of the bond. The judge hearing the motion may fix the bond.

22 **"§ 53-385. Inventory.**

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

31 **"§ 53-386. Notice and time for filing claims.**

32 Notice shall be given by advertisement once a week for four consecutive weeks in a  
33 newspaper published in the county where the principal office of the State trust company  
34 is located, or if no newspaper is published in the county, then in some newspaper having  
35 a general circulation in the county, calling on all persons who may have claims against  
36 the State trust company to present them to the Commissioner at the principal office of  
37 the State trust company, and within the time to be specified in the notice which time  
38 shall not be less than 90 days from the date of the first publication. A copy of this notice  
39 shall be mailed to all persons whose names appear as creditors upon the books of the  
40 State trust company. Affidavit by the Commissioner to the effect that the notice was  
41 mailed shall be conclusive evidence thereof. For purposes of this section, clients and

1 accounts of the State trust company shall not be considered creditors of the State trust  
2 company as to the assets held by the State trust company for the benefit of its accounts.

3 **"§ 53-387. Power to reject claims; notice; affidavit of service; action on claims.**

4 If the Commissioner doubts the validity of any claim, the Commissioner may reject  
5 the claim, in whole or in part, and serve notice of the rejection upon the claimant, either  
6 personally or by certified mail, and an affidavit of the service of the notice shall be filed  
7 in the office of the clerk of the superior court of the county in which the action is  
8 pending and shall be conclusive evidence of the notice. Any action or suit upon a  
9 rejected claim shall be brought by the claimant against the Commissioner in the superior  
10 court of the county in which the action is pending within 90 days after service, or the  
11 action or suit shall be barred. Objections to any claim not rejected by the Commissioner  
12 may be made by any person interested by filing the objection in the pending action and  
13 by serving a copy thereof on the Commissioner. The Commissioner, after investigation,  
14 shall either allow the objection and reject the claim, or disallow the objection. If the  
15 objection is not allowed and the claim is not rejected, the Commissioner shall file a  
16 notice in the pending action and serve the notice upon the person making the claim and  
17 the person objecting to the claim. Within 10 days after the notice is filed, the person  
18 filing objection by motion in the pending action may question the validity of the claim,  
19 and the questions of law and issues of fact shall thereupon be determined as in other  
20 civil actions.

21 **"§ 53-388. List of claims presented, copies, and proviso.**

22 Upon the expiration of the time fixed for presentation of claims, the Commissioner  
23 shall make a full and complete list of the claims presented, including and specifying any  
24 claims that have been rejected. One copy shall be filed in the office of the clerk of the  
25 superior court of the county in which the action is pending, and one copy shall be kept  
26 on file with the inventory in the principal office of the State trust company for  
27 examination. Any indebtedness against any State trust company which has been  
28 established or recognized as a valid liability of the State trust company before it went  
29 into liquidation, for which no claimant has filed claim, or any liability for which a claim  
30 has been filed and rejected, shall be listed by the Commissioner in the office of the clerk  
31 of the superior court of the county in which the action is pending. Any claim that may  
32 be presented after the expiration of the time fixed for the presentation of claims in the  
33 notice provided in G.S. 53-386 shall, if allowed, share pro rata in the distribution but  
34 only as to those assets of the State trust company in the hands of the Commissioner that  
35 are undistributed at the time the claim is presented.

36 **"§ 53-389. Declaration of dividends; order of preference in distribution.**

37 (a) At any time after the expiration of the date fixed by the Commissioner for the  
38 presentation of claims against the State trust company, and from time to time thereafter,  
39 the Commissioner may declare and pay dividends to the creditors and shareholders of  
40 the State trust company. In paying and calculating dividends, all disputed claims shall  
41 be taken into account, but no dividend shall be paid upon the disputed claims until the

1 claims have been finally determined. The following shall be the order of preference in  
2 the distribution of the assets of any State trust company liquidated hereunder:

- 3 (1) State, county, and federal taxes owed and fees due the Commissioner  
4 other than those due under the provisions of this Subpart;
- 5 (2) Wages and salaries due officers and employees of the State trust  
6 company for a period of not more than four months;
- 7 (3) Expenses of liquidation, including those described in G.S. 53-391 and  
8 G.S. 53-395;
- 9 (4) Amounts due creditors, honoring the priorities of valid security  
10 interests and subject to orders of the court concerning disputes among  
11 creditors;
- 12 (5) Amounts due shareholders.

13 (b) A statement of all dividends paid shall be filed in the office of the clerk of the  
14 superior court of the county in which the action is pending, and the statements shall  
15 show the expenses deducted and the disputed claims in determining dividends.

16 **"§ 53-390. Deposit of funds collected.**

17 All funds collected by the Commissioner, in liquidating any State trust company,  
18 shall be deposited from time to time in a bank as may be selected by the Commissioner  
19 and shall be subject to withdrawal by check of the Commissioner.

20 **"§ 53-391. Employment of counsel, accountants, and other experts; compensation.**

21 The Commissioner, for the purpose of exercising any power under the provisions of  
22 this Subpart, may (i) employ any liquidating agents, attorneys, accountants, consultants,  
23 and clerks necessary to properly conduct the business of or liquidate and distribute the  
24 assets of a State trust company; (ii) fix the compensation for the agents, attorneys,  
25 accountants, consultants, and clerks; and (iii) pay the compensation of those persons out  
26 of the assets of the State trust company. Provided, that all expenditures described in this  
27 section shall be approved by the resident or presiding judge in the county in which the  
28 action is pending. Payments made by the Commissioner pursuant to this section shall  
29 not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes.  
30 As used in this Subpart, the term 'Commissioner' includes the Commissioner's duly  
31 appointed agents.

32 **"§ 53-392. Unclaimed dividends held in trust.**

33 Unclaimed dividends for claims described in subdivisions (a)(1) through (a)(4) of  
34 G.S. 53-389 shall be held by the Commissioner in trust for the claimants to whom the  
35 dividends are owed; and the dividends so held by the Commissioner shall be paid over  
36 to the persons entitled to the dividends when they furnish satisfactory evidence of their  
37 right to the dividends. In case of doubtful or conflicting claims, the Commissioner may  
38 apply to the superior court, by motion in the pending action, for an order from the  
39 resident or presiding judge of the superior court directing the payment of the dividends  
40 so claimed. Issues of fact raised by motion may, upon request of any claimant, be  
41 determined as in other civil actions. Interest earned on any unclaimed dividends so held  
42 shall be applied toward defraying the expenses incurred in the distribution of the



1 unclaimed dividends. The balance of interest, if any, shall be deposited and held as  
2 other funds to the credit of the Commissioner. After the Commissioner has held any  
3 unclaimed dividends in trust under the provisions of this statute for the creditors of the  
4 liquidated State trust company for a period of three years following the resumption of  
5 business by or cancellation of the charter of the State trust company, the unclaimed  
6 dividends shall be subject to the provisions of Chapter 116B of the General Statutes.  
7 Upon payment of unclaimed dividends to the State Treasurer, the Commissioner shall  
8 be fully discharged from all further liability therefor.

9 **"§ 53-393. Action by the Commissioner following full settlement.**

10 Whenever the Commissioner has paid all duly proven and allowed claims described  
11 in subdivisions (a)(1) through (a)(4) of G.S. 53-389, has made proper provision for  
12 unclaimed and unpaid and disputed claims, and has other assets of the State trust  
13 company, the Commissioner shall, unless the State trust company is granted permission  
14 to resume business in accordance with G.S. 53-381, call a meeting of the shareholders  
15 of the State trust company by giving notice thereof by publication once a week for four  
16 consecutive weeks in a newspaper published in the county, or if no newspaper is  
17 published in the county, then in a newspaper having general circulation in the county,  
18 and by mailing a copy of the notice to each shareholder's address as it appears on the  
19 books of the State trust company. Affidavit of the mailing of the notice herein required  
20 and of the newspaper as to the publication shall be conclusive evidence of notice  
21 hereunder. At the meeting, any shareholders may be represented by proxy and the  
22 shareholders shall elect, by a majority vote of the shares present, an agent or agents who  
23 shall be authorized to receive from the Commissioner all the remaining assets of the  
24 State trust company. The shareholders also may specify the means of resolving disputes  
25 between multiple agents and appointing successors to the agent or agents. The  
26 Commissioner shall cause to be transferred and delivered to the agent, or agents, all the  
27 remaining assets of the State trust company. The Commissioner shall thereupon cause to  
28 be filed in the office of the clerk of the superior court of the county in which the action  
29 is pending a full and complete report of all transactions showing the assets of the State  
30 trust company so transferred together with the name of the agent or agents giving  
31 receipt for the assets; and the filing of the report shall act as a full and complete  
32 discharge of the Commissioner from all further liabilities to the shareholders of the  
33 State trust company by reason of the liquidation of the State trust company. The agent  
34 shall convert the assets coming into the agent's hands into cash, except as otherwise  
35 provided by the court upon motion in the cause made by a shareholder of the State trust  
36 company, and shall make distribution to the shareholders of the State trust company as  
37 herein provided. The agent shall file semiannually a report of all transactions with the  
38 superior court of the county in which the State trust company is located, and with the  
39 Commissioner, and shall be allowed for the services such fees, not in excess of five  
40 percent (5%) of receipts and disbursements, as may be fixed by the court. In case of  
41 death, removal, or refusal to act of any agent or agents elected by the shareholders, the  
42 Commissioner or any interested person may seek an order from the resident or presiding

1 judge in the county in which the action is pending appointing a successor to the agent or  
2 agents as determined by the shareholders or, if no method was set forth by the  
3 shareholders, as determined by the court to be in the best interests of the shareholders.  
4 The court in its discretion may either appoint a successor or order the call of a further  
5 meeting of shareholders for the election of a successor and make any orders that are  
6 appropriate.

7 **"§ 53-394. Annual report of the Commissioner; items included; reports of**  
8 **condition of State trust companies.**

9 (a) The Commissioner shall file, as a part of an annual report to the Governor, a  
10 list of the names of any State trust companies of which possession was taken and  
11 liquidated in the preceding year, the sum of unclaimed assets with respect to each State  
12 trust company, and all depositories of all sums coming into the hands of the  
13 Commissioner under the provisions of this Part.

14 (b) The Commissioner shall, from time to time, compile and make available for  
15 public inspection reports showing the condition of State trust companies.

16 **"§ 53-395. Compensation of the Commissioner's office.**

17 The office of the Commissioner, for services rendered in connection with the duties  
18 described in this Subpart, shall be entitled to actual expenses incurred in connection  
19 with the liquidation of each State trust company, including a reasonable sum for the  
20 time of the examiners and other agents of the Commissioner. The Commissioner may  
21 adopt rules or orders for fixing these expenses.

22 **"§ 53-396. Exclusive method of liquidation.**

23 No State trust company shall be liquidated other than as provided in this Part.

24 **"§ 53-397. Disposition of books and records.**

25 All fiduciary records relating to the administration of particular accounts shall be  
26 turned over to the successors in charge of administration of the accounts. All other  
27 books, papers, and records of a State trust company that has been finally liquidated shall  
28 be deposited by the receiver in the office of the clerk of the superior court of the county  
29 in which the action is pending, or in any other place as in the clerk's judgment, after  
30 consultation with the Commissioner, will provide for the proper safekeeping and  
31 protection of those books, papers, and records. Such books, papers, and records shall be  
32 held subject to the orders of the clerk of the superior court of the county in which the  
33 action is pending, including orders necessary for preserving the confidentiality of any  
34 information relating to accounts contained in those books, papers, and records.

35 **"§ 53-398. Destruction of books and records.**

36 (a) After the expiration of five years from the date of filing, in the office of the  
37 clerk of the superior court of the county in which the action is pending, of a final order  
38 approving the liquidation of a State trust company and the delivery to the clerk or into  
39 the clerk's custody of books, papers, records of the State trust company, the books,  
40 papers, and records may be destroyed by the clerk of the superior court of the county in  
41 which the action is pending.

1 (b) After five years from the filing by the Commissioner of a final report of  
2 liquidation of any insolvent State trust company, the Commissioner, by and with the  
3 consent of the Commission, may destroy the records of any State trust company held in  
4 the office of the Commissioner in connection with the liquidation of the State trust  
5 company. However, in connection with any unpaid dividends, the Commissioner shall  
6 preserve the records or other evidence of indebtedness of the State trust company with  
7 reference to the unpaid dividends until the dividends have been paid.

8 (c) Nothing in this section shall be construed to authorize the destruction by the  
9 clerk of superior court of any county or by the Commissioner of any of the formal  
10 records of liquidation or the records made in the office of the Commissioner with  
11 reference to the liquidation.

12 **"§ 53-399. Petition for new trustee.**

13 Any person interested in any account, either as trustee, beneficiary, client, or  
14 otherwise, may petition the clerk of superior court of the county in which court  
15 accountings are filed or, if there is no such county, the county in which the account is  
16 being administered, for a new trustee or other successor to a State trust company in all  
17 cases in which use of the procedures set forth in this Part are employed. The petition  
18 and the order appointing a new trustee or other successor may relate to any number of  
19 accounts administered by the State trust company. Except as specified in this section,  
20 the procedure shall be as provided in Chapter 36A of the General Statutes for the  
21 appointment of successor trustees.

22 **"§ 53-400. Report to the Secretary of State.**

23 The Commissioner shall, on or before the first day of each year, file with the  
24 Secretary of State a report showing any State trust companies under liquidation in this  
25 State and the names of any auditors or attorneys employed in connection with the  
26 liquidation of these State trust companies, together with the amounts paid or contracted  
27 to be paid to each of the auditors or attorneys. If any attorney has been employed on a  
28 fee contingent upon recovery, the report shall set forth the material terms of the fee  
29 arrangements.

30 "Subpart C. Conservatorship.

31 **"§ 53-401. Provisions for conservator; duties and powers.**

32 Whenever the Commissioner deems it necessary in order to conserve the assets of a  
33 State trust company for the benefit of clients or creditors, the Commissioner may  
34 appoint a conservator for the State trust company and require of the conservator a bond  
35 with any surety the Commissioner deems necessary and proper in an amount deemed  
36 sufficient by the Commissioner. The conservator, under the direction of the  
37 Commissioner, shall take possession of the fiduciary records and other books, records,  
38 and assets of every description of the State trust company placed under conservatorship  
39 and take actions necessary to conserve those assets pending further disposition of its  
40 business as provided by law. Except as provided in G.S. 53-405, the conservator shall  
41 have all rights, powers, and privileges, subject to the approval of the Commissioner,  
42 now possessed by or given to the Commissioner under the provisions of Subpart B and

1 Subpart D of this Part. All expenses of the conservator shall be paid out of the assets of  
2 the State trust company under conservatorship and shall be a lien thereon which shall be  
3 prior to any other lien provided by law. The compensation of the conservator shall be  
4 determined by the Commissioner and shall be based on the time and experience of the  
5 conservator and the complexity of the conservatorship. Compensation of the  
6 conservator shall not be subject to the requirements of Article 3 of Chapter 143 of the  
7 General Statutes.

8 **"§ 53-402. Examination.**

9 The Commissioner shall examine the affairs of a State trust company placed under  
10 conservatorship in the manner deemed necessary by the Commissioner to oversee the  
11 conservatorship.

12 **"§ 53-403. Termination of conservatorship.**

13 If the Commissioner is satisfied that the conservatorship may be terminated with  
14 safety to the clients, creditors, and shareholders of the State trust company, and to the  
15 public, the Commissioner may terminate the conservatorship of a State trust company  
16 and permit the company to resume the transaction of its business, subject to such terms,  
17 conditions, restrictions, and limitations as the Commissioner prescribes.

18 **"§ 53-404. Rights and liabilities of conservator.**

19 A conservator appointed pursuant to the provisions of this Subpart is subject to the  
20 provisions of G.S. 53-331 and to the penalties prescribed by G.S. 53-129 and G.S.  
21 53-355.

22 **"§ 53-405. Naming of conservator not liquidation.**

23 No power conferred in this Subpart upon the Commissioner, when exercised, shall  
24 be deemed as an act of possession for the purposes of liquidation; and whenever the  
25 Commissioner shall, with reference to any State trust company for which a conservator  
26 is appointed, deem that liquidation is necessary, the Commissioner shall exercise the  
27 powers for the purposes of liquidation as provided in Subpart B of Part 5 of this Article.

28 "Subpart D. Sale of Assets; Issuance of Preferred Stock  
29 by Jeopardized State Trust Company.

30 **"§ 53-406. Sale of assets by board of jeopardized State trust company.**

31 (a) With the Commissioner's approval, the board of directors of a jeopardized  
32 State trust company, acting without shareholder approval and notwithstanding any other  
33 provision of this Article or any other law, or any of the provisions of the articles of  
34 incorporation or bylaws of the State trust company, may cause the State trust company  
35 to sell to one or more buyers all or substantially all of its assets, including the right to  
36 control and act as fiduciary for accounts established with the trust company, if the  
37 Commissioner finds:

- 38 (1) The interests of the State trust company's clients, creditors, and  
39 shareholders are jeopardized by the continued operation of the State  
40 trust company; and  
41 (2) The sale is in the best interests of the State trust company's clients and  
42 creditors.

1       **(b) Sales under the provisions of this section shall include assumptions and**  
2 **promises by one or more buyers to pay or otherwise discharge, except as provided in**  
3 **G.S. 53-407:**

4           **(1) All of the State trust company's liabilities to clients and creditors;**

5           **(2) All of the State trust company's liabilities for salaries of the State trust**  
6 **company's employees incurred before the date of the sale;**

7           **(3) Expenses incurred by the Commissioner arising out of the supervision**  
8 **or sale of the State trust company; and**

9           **(4) Taxes owed and fees and assessments due the Commissioner's office.**

10       **(c) This section does not limit the power of a State trust company to buy and sell**  
11 **assets in the ordinary course of business.**

12       **(d) This section does not affect the Commissioner's right to take action under**  
13 **another law or sale under other provisions of this Article.**

14 **"§ 53-407. Authority to act as disbursing agent.**

15       **If a purchasing trust institution acts under a written agency contract that (i) is**  
16 **approved by the Commissioner; (ii) specifically names each creditor and the amount to**  
17 **be paid each; and (iii) limits the agency to the purely ministerial act of paying creditors**  
18 **the amounts due them as determined by the selling institution and does not involve**  
19 **discretionary duties or authority other than the identification of the creditors named,**  
20 **then the purchasing trust institution:**

21           **(1) May rely on the contract of agency and the instructions included in it;**  
22 **and**

23           **(2) Is not responsible for:**

24           **a. Any error made by the selling institution in determining its**  
25 **liabilities, the creditors to whom the liabilities are due, or the**  
26 **amounts due the creditors; or**

27           **b. Any preference that results from the payments made under the**  
28 **contract of agency and the instructions included in it.**

29 **"§ 53-408. Payment to creditors.**

30       **Payment to a creditor of the selling institution of the amount to be paid under the**  
31 **terms of a contract of agency described in G.S. 53-407 may be made by the purchasing**  
32 **trust company by (i) opening an agency account in the name of the creditor;**  
33 **(ii) crediting the account with the amount to be paid the creditor under the terms of the**  
34 **agency contract; and (iii) mailing or personally delivering a duplicate ticket evidencing**  
35 **the credit to the creditor at the creditor's address shown in the records of the selling**  
36 **institution.**

37 **"§ 53-409. Issuance of preferred shares by jeopardized trust company.**

38       **Notwithstanding any other provisions of this Article or any other laws, and**  
39 **notwithstanding any of the provisions of its articles of incorporation or bylaws, any**  
40 **jeopardized State trust company may, with the approval of the Commissioner, and by**  
41 **vote of shareholders owning a majority of the shares of such State trust company, upon**  
42 **not less than two days' notice given by registered mail pursuant to action taken at a**

1 meeting of its board of directors (which may be held upon not less than one day's  
2 notice) issue shares of preferred stock in such amount, with such voting rights, with  
3 such preferences, at such dividend rate, and with such other rights and limitations as  
4 shall be approved by the Commissioner. A copy of the minutes of such directors' and  
5 shareholders' meetings, certified by the proper officer and under the corporate seal of  
6 the State trust company, and accompanied by the written approval of the Commissioner,  
7 shall be immediately filed in the office of the Secretary of State, and when so filed, shall  
8 be deemed and treated as an amendment to the articles of incorporation of such State  
9 trust company. For purposes of this section, a State trust company shall be considered  
10 jeopardized when it is critical that the State trust company obtain additional equity  
11 capital to avoid, or to cease to be in, a hazardous condition, and other means of raising  
12 additional equity capital do not appear to be feasible. No issue of preferred shares shall  
13 be valid until the amount of all shares so issued shall have been paid for in full in cash,  
14 except as may otherwise be specifically approved by the Commissioner. The provisions  
15 of this section do not limit the authority of a State trust company to issue shares as  
16 provided under other applicable law.

17 "Part 6. Authority, Hearings, Enforcement, and Severability.

18 **"§ 53-410. Commissioner to act under authority of the Commission.**

19 All the powers, duties, and functions granted to or imposed upon the Commissioner  
20 by law shall be exercised under the direction and supervision of the Commission.  
21 Wherever provision is made in this Article authorizing and permitting the  
22 Commissioner to make rules, the words 'the Commissioner' shall be construed to mean  
23 the Commission.

24 **"§ 53-411. Rules.**

25 The Commission may adopt rules in accordance with Chapter 150B of the General  
26 Statutes to carry out the provisions of this Article relating to authorized trust institutions  
27 and to ensure safe and conservative management of authorized trust institutions under  
28 its supervision, taking into consideration the appropriate interests of the clients,  
29 creditors, shareholders, and the public in their relations with the authorized trust  
30 institutions.

31 **"§ 53-412. Commissioner hearings; appeals.**

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

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

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

40 (d) Except as expressly provided otherwise by this Chapter, an order of the  
41 Commissioner may be appealed to the Commission for review. The Commission may  
42 affirm, modify, or reverse a decision of the Commissioner.

1       (e) Appeals from the Commission shall be to the Wake County Superior Court  
2 and shall proceed as provided in G.S. 53-92.

3 **"§ 53-413. Civil enforcement.**

4       The Commissioner may bring any appropriate civil action against any person the  
5 Commissioner believes has committed or is about to commit a violation of this Article  
6 or a rule, order, or declaratory ruling of the Commissioner pertaining to this Article.

7 **"§ 53-414. Cancellation of charter.**

8       Whenever a merger, share exchange, sale of assets, liquidation, or other transaction  
9 occurs by which a State trust company ceases to exist or ceases to be eligible for a  
10 charter, the Commissioner shall cancel the State trust company's charter, revoke its  
11 license, and provide notice of the revocation in the manner provided in G.S. 53-163.  
12 The filing, in the office of the Secretary of State, of a certified copy of the cancellation  
13 under seal of the Commissioner shall authorize the cancellation of the charter of the  
14 State trust company, subject, however, to its continued existence, as provided by this  
15 Article and the general law relative to corporations, for the purpose of winding up and  
16 liquidating its business and affairs.

17 **"§ 53-415. Severability.**

18       If any provision of this Article, or its application, is found by any court of competent  
19 jurisdiction in the United States to be invalid as to any trust institution or other person or  
20 circumstance, or to be superseded by federal law, the provision shall be deemed  
21 modified only to the extent and only in the particular circumstances necessary to render  
22 the provision valid, and the remaining provisions of this Article shall not be affected  
23 and shall continue to apply to any trust institution or other person or circumstance."

24       **SECTION 2.** G.S. 53-2 reads as rewritten:

25 **"§ 53-2. How incorporated.**

26       Any number of persons, not less than five, who may be desirous of forming a  
27 company and engaging in the business of establishing, maintaining, and operating banks  
28 of discount and deposit to be known as commercial banks, ~~or operating banks engaged~~  
29 ~~in doing a trust and fiduciary business,~~ shall be incorporated in the manner following  
30 and in no other way; that is to say, such persons shall, by a certificate of incorporation  
31 under their hands and seals set forth:

- 32       (1) The name of the corporation; no name shall be used already in use by  
33 another existing corporation organized under the laws of this State or  
34 of the Congress, or so nearly similar thereto as to lead to uncertainty or  
35 confusion.
- 36       (2) The location of its principal office in this State.
- 37       (3) ~~The nature of its business, whether that of a commercial bank, trust~~  
38 ~~company, or a combination of both such classes of business.~~ Whether it  
39 will do trust business as well as the business of a commercial bank.
- 40       (4) The amount of its authorized common capital stock, the number of  
41 shares into which it is divided, the par value of each share; and the  
42 amount of common capital stock with which it will commence

1 business. The amount of capital required to charter a bank shall be  
2 determined as herein set forth by the Commissioner of Banks who  
3 shall give due consideration to (i) the population of the proposed  
4 bank's trade area, (ii) the total deposits of those depository financial  
5 institutions already operating in the proposed bank's trade area, (iii) the  
6 economic conditions and outlook within the proposed bank's trade  
7 area, (iv) the business experience and reputation of the proposed  
8 bank's management, (v) the business experience and reputation of the  
9 proposed bank's incorporators and proposed directors, (vi) the type and  
10 nature of business activities proposed to be engaged in, and (vii) the  
11 proposed bank's projected deposit growth and profitability. Except as  
12 otherwise provided, the amount of common capital stock required to  
13 charter a bank shall not be less than two million dollars (\$2,000,000);  
14 provided, however, such amount of capital may be increased or  
15 decreased in the discretion of the Commissioner of Banks who, after  
16 considering the above enumerated criteria, determines that a greater  
17 capital requirement is necessary or that a smaller capital requirement  
18 will provide a sufficient capital base. In addition to the required  
19 capital, every bank shall have a paid in surplus of at least fifty percent  
20 (50%) of its common capital stock. The capital and paid in surplus  
21 required to charter a bank shall be exclusive of any organizational  
22 expenses. This subdivision shall not apply to banks organized and  
23 doing business prior to its adoption or amendment; provided, however,  
24 the Banking Commission is hereby authorized and directed to adopt  
25 rules ~~and regulations~~ to keep any original required minimum capital  
26 funds intact to the end that they remain in and with the bank as a  
27 protection for depositors.

28 (5) The names and post-office addresses of subscribers for stock, and the  
29 number of shares subscribed by each; the aggregate of such  
30 subscriptions shall be the amount of the capital with which the  
31 company will commence business.

32 (6) Period, if any, limited for the duration of the company."

33 **SECTION 3.** Article 14 of Chapter 53 reads as rewritten:

34 "Article 14.

35 "Banks Acting in a Fiduciary Capacity.

36 "**§ 53-159. Bank may act as fiduciary.**

37 Any bank licensed by the Commissioner of Banks, where such powers or privileges  
38 are granted it in its charter, may be guardian, trustee, assignee, receiver, executor or  
39 administrator or act in another fiduciary capacity in this State without giving any bond;  
40 and the clerks of the superior courts, or other officers charged with the duty or clothed  
41 with the power of making such appointments, are authorized to appoint such bank to  
42 any such office.



1 **"§ 53-159.1. Power of fiduciary or custodian to deposit securities in a clearing**  
2 **corporation.**

3 Notwithstanding any other provision of law, any fiduciary holding securities in its  
4 fiduciary capacity, any bank or trust company holding securities in a fiduciary capacity  
5 or as a custodian or agent is authorized to deposit or arrange for the deposit of such  
6 securities in a clearing corporation as defined in G.S. 25-8-102. When such securities  
7 are so deposited, certificates representing securities of the same class of the same issuer  
8 may be merged and held in bulk in the name of the nominee of such clearing  
9 corporation with any other such securities deposited in such clearing corporation by any  
10 person regardless of the ownership of such securities, and certificates of small  
11 denomination may be merged into one or more certificates of larger denomination. The  
12 records of such fiduciary and the records of such bank or trust company acting as a  
13 fiduciary or as a custodian or managing agent shall at all times show the name of the  
14 party for whose account the securities are so deposited. Title to such securities may be  
15 transferred by bookkeeping entry on the books of such clearing corporation without  
16 physical delivery of certificates representing such securities. A bank or trust company  
17 so depositing securities pursuant to this section shall be subject to such rules ~~and~~  
18 ~~regulations~~ as, in the case of State-chartered institutions, the State Banking Commission  
19 and, in the case of national banking associations, the Comptroller of the Currency may  
20 from time to time issue. A bank or trust company acting as custodian or agent for a  
21 fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the  
22 securities so deposited by such bank or trust company in such clearing corporation for  
23 the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial  
24 proceeding for the settlement of such fiduciary's account or on demand by the attorney  
25 for such party, certify in writing to such party the securities deposited by such fiduciary  
26 in such clearing corporation for its account as such fiduciary. This section shall apply to  
27 any fiduciary holding securities in its fiduciary capacity, and to any bank or trust  
28 company holding securities as a fiduciary or as a custodian or managing agent acting on  
29 May 15, 1973, or who thereafter may act regardless of the date of the agreement,  
30 instrument or court order by which it is appointed and regardless of whether or not such  
31 fiduciary, custodian or agent owns capital stock of such clearing corporation. The  
32 fiduciary shall personally be liable for any loss to the trust resulting from an act of such  
33 nominee in connection with such securities so deposited.

34 **"§ 53-160. License to do business.**

35 Before any such bank or trust company is authorized to act in any fiduciary capacity  
36 without bond, it must be licensed by the Commissioner of Banks of the State. For such  
37 license the licensee shall pay to the State Banking Commission an annual license fee of  
38 two hundred dollars (\$200.00), which shall be remitted to the State Treasurer for the use  
39 of the Commissioner of Banks in the supervision of banks and trust companies acting in  
40 a fiduciary capacity, insofar as it may be necessary, and the surplus, if any, shall remain  
41 in the State treasury for the use of the general fund of the State: Provided, however, that  
42 a national bank which has been granted trust powers by the Comptroller of the Currency

1 or his duly authorized agent shall be annually licensed as required in this section and  
2 shall be granted a certificate of solvency which will meet the provisions of G.S. 53-162  
3 without examination by the Commissioner of Banks as required in G.S. 53-161.

4 **"§ 53-161. Examination as to solvency.**

5 The Commissioner of Banks shall examine into the solvency of such bank, and shall,  
6 if he deem it necessary, at the expense of the bank, make or cause to be made an  
7 examination at its home office of its assets and liabilities. Examinations of trust  
8 institutions other than banks shall be as provided in Article 24 of this Chapter.

9 **"§ 53-162. Certificate of solvency.**

10 After any ~~such~~ bank has been licensed by the Commissioner of Banks, a certificate  
11 issued by the Commissioner of Banks, showing the bank to be solvent to an amount not  
12 less than one hundred thousand dollars (\$100,000), shall authorize such bank to act in a  
13 fiduciary capacity without bond. There shall be no charge for the seal of this certificate.

14 **"§ 53-163. Clerk of superior court notified of license and revocation.**

15 The Commissioner of Banks, upon granting license to any such ~~bank,~~ bank or trust  
16 company, shall immediately notify the clerk of the superior court of each county in the  
17 State that ~~such~~ the bank or trust company has been licensed under this Article, and,  
18 whenever the Commissioner of Banks is satisfied that any bank or trust company  
19 licensed by ~~him~~ the Commissioner has become insolvent, or is in imminent danger of  
20 insolvency, ~~he~~ the Commissioner shall revoke the license granted to ~~such~~ that bank and  
21 notify the clerk of the superior court of each county in the State of the revocation. After  
22 such notification, the right of any such bank or trust company to act in a fiduciary  
23 capacity shall cease."

24 **SECTION 4.** G.S. 55-15-05(a) reads as rewritten:

25 "(a) A certificate of authority authorizes the foreign corporation to which it is  
26 issued to transact business in this State subject, however, to the right of the State to  
27 revoke the certificate as provided in this Chapter. A foreign ~~corporation, however, is not~~  
28 ~~eligible or entitled to~~ corporation may qualify in this State as executor, administrator, or  
29 guardian, or as trustee under the will of any person domiciled in this State at the time of  
30 ~~his death, that person's death only in accordance with applicable provisions of Article 24~~  
31 of Chapter 53. except that a foreign corporation chartered under the banking laws of  
32 Georgia, South Carolina, Tennessee or Virginia or as a national banking association in  
33 any said states may act as testamentary trustee, or executor in this State if:

- 34 (1) ~~It has a bona fide capital of at least two hundred and fifty thousand~~  
35 ~~dollars (\$250,000) actually paid in;~~  
36 (2) ~~It is authorized to act in such fiduciary capacity in the state in which it~~  
37 ~~is incorporated or if such foreign corporation be a national banking~~  
38 ~~association in the state in which it has its principal place of business;~~  
39 ~~and~~  
40 (3) ~~Any bank or other corporation organized under the laws of this State~~  
41 ~~or a national banking association having its principal place of business~~  
42 ~~in this State is permitted by law to act in such fiduciary capacity in the~~

1 state in which such foreign corporation seeking to act in this State is  
2 organized or in which it has its principal place of business if it is a  
3 national banking association without further showing or qualification  
4 other than that it is authorized to act in such fiduciary capacity in this  
5 State and upon compliance with the laws of such other state, if any,  
6 concerning service of process on nonresident fiduciaries.

7 ~~Unless assets of the estate are to be removed from within the State of North Carolina,  
8 such foreign corporations seeking to act as testamentary trustee, or executor in this  
9 State, upon qualifying to act in such fiduciary capacity, shall not be required by law to  
10 give bond except as required of a resident corporate fiduciary in like circumstances. No  
11 officer, employee or agent of any such foreign corporation shall be eligible or entitled to  
12 serve as testamentary trustee, or executor in this State whether such officer, employee,  
13 or agent is a resident or nonresident of this State if such officer, employee or agent is  
14 acting as testamentary trustee or executor on behalf of any such foreign corporation  
15 except when such foreign corporation itself shall be eligible to so serve.~~

16 A foreign corporation qualifying as testamentary trustee or executor under the  
17 provisions of this section shall appoint a process agent and file such appointment with  
18 the court as required by G.S. 28A-4-2(4)."

19 **SECTION 5.** G.S. 53-25 reads as rewritten:

20 "**§ 53-25. Trust terminated on insolvency of trustee bank.**

21 Whenever any bank ~~or trust company~~ created under the laws of this State, which has  
22 heretofore been, or shall hereafter be, appointed trustee in any indenture, deed of trust or  
23 other instrument of like character, executed to secure the payment of any bonds, notes  
24 or other evidences of indebtedness, has been or shall be by reason of insolvency, or for  
25 any other cause provided by law, taken over for liquidation by the Commissioner of  
26 Banks of this State or by any other legally constituted authority, the powers and duties  
27 of such bank ~~or trust company~~ as trustee in any such instrument shall, upon the entry of  
28 an order of the clerk of the superior court appointing a successor trustee, upon a petition  
29 as hereinafter provided, immediately cease and determine."

30 **SECTION 6.** G.S. 53-1 reads as rewritten:

31 "**§ 53-1. 'Bank,' 'surplus,' 'undivided profits,' and other words defined.**

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

- 34 (1) Bank. – The term "bank" shall be construed to mean any corporation,  
35 other than savings and loan associations, savings banks, industrial  
36 banks, and credit unions, receiving, soliciting or accepting money or  
37 its equivalent on deposit as a business.
- 38 (1a) Branch. – The term "branch" means an office of any bank in which  
39 deposits are received, monies are paid, and loans are made. Any of the  
40 functions or services authorized to be engaged in by a bank may be  
41 carried out in a branch.

- 1 (2) Demand Deposits. – The term "demand deposits" means all deposits,  
2 the payment of which can be legally required within 30 days.
- 3 (3) Insolvency. – The term "insolvency" means:  
4 a. When a bank cannot meet its deposit liabilities as they become  
5 due in the regular course of business;  
6 b. When the actual cash market value of its assets is insufficient to  
7 pay its liabilities to depositors and other creditors;  
8 c. When its reserve shall fall under the amount required by this  
9 Chapter, and it shall fail to make good such reserve within 30  
10 days after being required to do so by the Commissioner of  
11 Banks; or  
12 d. Whenever the undivided profits and surplus shall be inadequate  
13 to cover losses of the bank, whereby an impairment of the  
14 capital stock is created.
- 15 (3a) Limited Service Facility. – The term "limited service facility" means  
16 an office of a bank in which deposits are received, monies are paid, or  
17 other duties and functions of a teller are performed. Loan applications  
18 shall be taken in a limited service facility but notes may not be  
19 executed nor loan proceeds disbursed in a limited service facility.
- 20 (4) Net Earnings. – The term "net earnings" means the excess of the gross  
21 earnings of any bank over the expenses and losses chargeable against  
22 such earnings during any dividend period.
- 23 (5) Practical Banker. – The term "practical banker" means an officer or  
24 employee of a bank actively engaged in performing duties in managing  
25 or supervising or assisting in managing or supervising the conducting  
26 of a banking business, including any such banker who is in a retired  
27 status from such duties.
- 28 (6) Surplus. – The term "surplus" means a fund created pursuant to the  
29 provisions of this Chapter by a bank from payments by stockholders or  
30 from its net earnings or undivided profits which, to the amount  
31 specified and by any additions thereto set apart and designated as such,  
32 is not available for the payment of dividends, and cannot be used for  
33 the payment of expenses or losses so long as such bank has undivided  
34 profits.
- 35 (7) Time Deposits. – The term "time deposits" means all deposits, the  
36 payment of which cannot be legally required within 30 days.
- 37 (8) Undivided Profits. – The term "undivided profits" means the credit  
38 balance of the profit and loss account of any bank.
- 39 (9) Unimpaired Capital Fund. – The term "unimpaired capital fund"  
40 means the total of the amount of unimpaired common stock, preferred  
41 stock, surplus, undivided profits, reserve for contingencies and other  
42 capital reserves (excluding accrued dividends on preferred stock and

1 limited life preferred stock), mandatory convertible instruments,  
2 allowance for possible loan losses, and the amount of capital  
3 debentures or notes, convertible or otherwise, having an average  
4 original maturity of at least seven years, which have been specifically  
5 designated as part of the bank's unimpaired capital fund by resolution  
6 duly adopted by the board of directors of the bank; provided, that upon  
7 payment of such capital debentures or notes or upon accumulation of  
8 funds in a sinking fund for amortization of such debentures or notes,  
9 unimpaired capital fund shall be reduced by the amount of such  
10 payment or accumulation. The terms and conditions of any issue of or  
11 prepayment of capital debentures or notes must have the prior written  
12 approval of the Commissioner of Banks affirming that in his opinion  
13 such issue or prepayment is in the best interest of the depositors,  
14 creditors and stockholders of the bank."

15 **SECTION 7.** Trust companies organized under Article 1 of Chapter 53 of  
16 the General Statutes shall hereafter be governed by this Article and may take such steps  
17 as may be necessary or appropriate to conform to the provisions hereof. The  
18 Commissioner shall allow a period of up to one year for this transition.

19 **SECTION 8.** G.S. 53-80 reads as rewritten:

20 **"§ 53-80. Qualifications of directors.**

21 Every director of a bank doing business under this Chapter shall be the owner and  
22 holder of shares of stock in the bank representing not less than one thousand dollars  
23 (\$1,000) book value as of the last business day of the calendar year immediately prior to  
24 the election of such director. For the purpose of this section, book value shall consist of  
25 common capital stock, unimpaired surplus, undivided profits, and reserves for  
26 contingencies if any such reserves are segregations of capital. Where directors are  
27 appointed during the interval between stockholders' meetings pursuant to the provisions  
28 of G.S. 53-67, such directors shall hold the required qualifying shares as of the time of  
29 their appointment. Notwithstanding the proviso at the end of this section, where the  
30 bank is a wholly owned subsidiary, the required qualifying shares shall be shares in the  
31 parent corporation, whether or not the bank was doing business before February 18,  
32 1921. And every such director shall hold the shares in the director's own name  
33 unpledged and unencumbered in any way. Provided, however, shares of the bank or  
34 parent corporation stock held in an individual retirement account or other retirement  
35 account of a bank director, over which the director has investment authority, shall be  
36 considered qualifying shares for the purpose of this section. The office of any director at  
37 any time violating any of the provisions of this section shall immediately become  
38 vacant, and the remaining directors shall declare that director's office vacant and  
39 proceed to fill such vacancy forthwith. Not less than one-half of the directors of every  
40 bank doing business under this Chapter shall be residents of the State of North Carolina  
41 Carolina or any state in which the bank has a branch: Provided, that as to banks doing  
42 business before February 18, 1921, the requirements as to amount of stock owned by a

1 director shall not apply unless the Commissioner of Banks shall rule that the director is  
2 not bona fide discharging the director's duties."

3           **SECTION 9.** This act becomes effective July 1, 2001, and applies to acts or  
4 omissions occurring and agreements or contracts entered into on or after that date.