

## **Chapter 54C.**

### **Savings Banks.**

#### Article 1.

#### General Provisions.

##### **§ 54C-1. Title.**

This Chapter shall be known and may be cited as "Savings Banks." (1991, c. 680, s. 1.)

##### **§ 54C-2. Purpose.**

The purposes of this Chapter are:

- (1) To provide for the safe and sound conduct of the business of savings banks, the conservation of their assets, and the maintenance of public confidence in savings banks.
- (2) To provide for the protection of the interests of customers and members.
- (3) To provide the opportunity for savings banks to remain competitive with each other and with other depository institutions existing under other laws of this and other states and the United States.
- (4) To provide for an increase in the savings base of the State and local control of the means of finance and accumulation of capital.
- (5) To provide the opportunity for the management of savings banks to exercise prudent business judgment in conducting the affairs of savings banks to the extent compatible with the purposes recited in this section.
- (6) To provide adequate rulemaking power and administrative discretion so that the regulation and supervision of savings banks are readily responsive to changes in local economic conditions and depository institution practices. (1991, c. 680, s. 1.)

##### **§ 54C-3. Applicability of Chapter.**

This Chapter, unless the context otherwise specifies, shall apply to all State savings banks. (1991, c. 680, s. 1.)

##### **§ 54C-4. Definitions and application of terms.**

(a) Except with respect to this Chapter and Chapter 54B, the term "savings and loan association" when used in the General Statutes shall include savings banks chartered under this Chapter.

- (b) Unless the context otherwise requires, the following definitions apply in this Chapter:
- (1) Repealed by Session Laws 2001-193, s. 7, effective July 1, 2001.
  - (2) Affiliate. – Any person or corporation that controls, is controlled by, or is under common control with a savings institution.
  - (3) Associate. – Any person's relationship with (i) any corporation or organization, other than the applicant or a majority-owned subsidiary of the applicant, of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities, (ii) any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity, and (iii) any relative or spouse who lives in the same house as that

person, or any relative of that person's spouse who lives in the same house as that person, or who is a director or officer of the applicant or any of its parents or subsidiaries.

- (4) Association. – A savings and loan association as defined by G.S. 54B-4(b)(5).
- (5) Branch office. – An office of a savings bank, other than its principal office, that renders savings institution services.
- (6) Capital stock. – Securities that represent ownership of a stock savings bank.
- (7) Certificate of incorporation or charter. – The document that represents the corporate existence of a State savings bank.
- (8) Commission. – The State Banking Commission.
- (8a) Commissioner. – The Commissioner of Banks authorized pursuant to Article 2 of Chapter 53C of the General Statutes.
- (9) Conflict of interest. – A matter before the board of directors in which one or more of the directors, officers, or employees has a direct or indirect financial interest in its outcome.
- (10) Control. – The power, directly or indirectly, to direct the management or policies of a savings bank or to vote twenty-five percent (25%) or more of any class of voting securities for a savings bank.
- (11) Depository institution. – A person, firm, or corporation engaged in the business of receiving, soliciting, or accepting money or its equivalent on deposit, or of lending money or its equivalent, or of both.
- (12) Disinterested directors. – Those directors who have absolutely no direct or indirect financial interest in the matter before them.
- (13) Dividends on stock. – The earnings of a savings bank paid out to holders of capital stock in a stock savings bank.
- (14) Division. – The Savings Institutions Division.
- (15) Examination and investigation. – A supervisory inspection of a savings bank or proposed savings bank that may include inspection of every relevant piece of information including subsidiary or affiliated businesses.
- (16) Immediate family. – One's spouse, father, mother, children, brothers, sisters, and grandchildren; and the father, mother, brothers, and sisters of one's spouse; and the spouse of one's child, brother, or sister.
- (17) Insurance of deposit accounts. – Insurance on a savings bank's deposit accounts when the beneficiary is the holder of the insured account.
- (18) Loan production office. – An office of a savings bank other than the principal or branch offices whose activities are limited to the generation of loans.
- (19) Members. – Deposit account holders and borrowers in a State mutual savings bank.
- (20) Mutual savings bank. – A savings bank owned by members of the savings bank and organized under this Chapter.
- (21) Net worth. – A savings bank's total assets less total liabilities as defined by generally accepted accounting principles plus unallocated, general loan loss reserves.
- (22) Original incorporators. – One or more natural persons who are the organizers of a State savings bank responsible for the business of a proposed savings bank

- from the filing of the application to the Commission's final decision on the application.
- (23) Plan of conversion. – A detailed outline of the procedure of the conversion of a savings institution from one to another regulatory authority, from one to another form of ownership, or from one to another charter.
  - (24) Principal office. – The office that houses the headquarters of a savings bank.
  - (25) Proposed savings bank. – An entity in organizational procedures before the Commission's final decision on its charter application.
  - (26) Registered agent. – The person named in the certificate of incorporation upon whom service of legal process is deemed binding upon the savings bank.
  - (27) Savings bank. – A State savings bank or a federal savings bank, unless limited by use of the words "State" or "federal".
  - (28) Savings institution. – Either an association or a savings bank.
  - (29) Service corporation. – A corporation operating under Article 7 of this Chapter that engages in activities determined by the rules of the Administrator to be incidental to the conduct of a depository institution business as provided in this Chapter, or engages in activities that further or facilitate the corporate purposes of a savings bank, or furnishes services to a savings bank or subsidiaries of a savings bank, the voting stock of which is owned directly or indirectly by one or more savings institutions.
  - (30) State savings bank. – A depository institution organized and operated under this Chapter; or a corporation organized under federal law and so converted as to be operated under this Chapter.
  - (31) Stock savings bank. – A savings bank owned by holders of capital stock and organized under this Chapter.
  - (32) Voluntary dissolution. – The dissolution and liquidation of a savings bank initiated by its ownership. (1991, c. 680, s. 1; 1991 (Reg. Sess., 1992), c. 829, s. 4; 2001-193, ss. 7, 8, 17; 2012-56, s. 42.)

**§ 54C-5. Reserved for future codification purposes.**

Article 2.

Incorporation and Organization.

**§ 54C-6. Hearings.**

Any hearing required to be held by this Chapter shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes. (1991, c. 680, s. 1.)

**§ 54C-7. Application of Chapter on business corporations.**

All law relating to private corporations, and particularly the North Carolina Business Corporation Act, Chapter 55 of the General Statutes, that is not inconsistent with this Chapter or with the proper business of depository institutions is applicable to all State savings banks. (1991, c. 680, s. 1.)

**§ 54C-8. Scope and prohibitions; existing charters; injunctions.**

(a) Nothing in this Chapter shall be construed to invalidate any charter that was valid before the enactment of this Chapter. Any savings banks so chartered on October 1, 1991, may

continue operation in accordance with the Chapter under which it was chartered. However, after October 1, 1991, no depository institution may be qualified as a savings bank except in accordance with this Chapter.

(b) Except as provided in subsection (a) of this section, no person, corporation, company, or savings bank, except one incorporated and licensed in accordance with this Chapter or federal law to operate a savings bank, shall operate as a savings bank. Unless so authorized as a State or federal savings bank and engaged in transacting a depository institution business, no person, corporation, company, or savings bank domiciled and doing business in this State shall:

- (1) Use in its name the term "savings bank" or words of similar import or connotation that lead the public reasonably to believe that the business so conducted is that of a savings bank; or
- (2) Use any sign, or circulate or use any letterhead, billhead, circular, or paper whatsoever, or advertise or communicate in any manner that would lead the public reasonably to believe that it is conducting the business of a savings bank.

(c) Upon application by the Commissioner of Banks or by any savings bank, a court of competent jurisdiction may issue an injunction to restrain any person or entity from violating or from continuing to violate subsection (b) of this section. (1991, c. 680, s. 1; 1997-241, s. 1; 2001-193, s. 16.)

#### **§ 54C-9. Application to organize a savings bank.**

(a) The original incorporators, a majority of whom shall be domiciled in this State, may organize and establish a savings bank in order to promote the purposes of this Chapter, subject to approval as provided in this Chapter. The original incorporators shall file with the Commissioner of Banks a preliminary application to organize a State savings bank in the form to be prescribed by the Commissioner of Banks, together with the proper nonrefundable application fee.

(b) The Commissioner of Banks shall receive the application to organize a State savings bank not less than 60 days before the scheduled consideration of the application by the Commission. The application shall contain the following:

- (1) The original of the certificate of incorporation, which shall be signed by the original incorporators, or a majority of them, and shall be properly acknowledged by a person duly authorized by this State to take proof or acknowledgment of deeds; and two conformed copies;
- (2) The names and addresses of the incorporators; and the names and addresses of the initial members of the board of directors;
- (3) Statements of the anticipated receipts, expenditures, earnings, and financial condition of the savings bank for its first three years of operation, or any longer period as the Commissioner of Banks may require;
- (4) A showing satisfactory to the Commission that:
  - a. The public convenience and advantage will be served by the establishment of the proposed savings bank;
  - b. There is a reasonable demand and necessity in the community that will be served by the establishment of the proposed savings bank;
  - c. The proposed savings bank will have a reasonable probability of sustaining profitable and beneficial operations within a reasonable time in the community in which the proposed savings bank intends to locate;

- d. The proposed savings bank, if established, will promote healthy and effective competition in the community in the delivery to the public of savings institution services;
  - (5) The proposed bylaws; and
  - (6) Statements, exhibits, maps, and other data that may be prescribed or requested by the Commissioner of Banks, which data shall be sufficiently detailed and comprehensive so as to enable the Commissioner of Banks to pass upon the criteria set forth in this Article.
- (c) The application shall be signed by the original incorporators, or a majority of them, and shall be properly acknowledged by a person duly authorized by this State to take proof and acknowledgment of deeds. (1991, c. 680, s. 1; 1991 (Reg. Sess., 1992), c. 829, s. 5; 2001-193, s. 16.)

**§ 54C-10. Certificate of incorporation.**

- (a) The certificate of incorporation of a proposed mutual savings bank shall set forth the following:
- (1) The name of the savings bank, which shall not so closely resemble the name of an existing depository institution doing business under the laws of this State as to be likely to mislead the public.
  - (2) The county and city or town where its principal office is to be located in this State; and the name of its registered agent and the address of its registered office, including county and city or town, and street and number.
  - (3) The period of duration, which may be perpetual. When the certificate of incorporation fails to state the period of duration, it is considered perpetual.
  - (4) The purposes for which the savings bank is organized that are limited to purposes permitted under the laws of this State for savings banks.
  - (5) The amount of the entrance fee per deposit account based upon the amount pledged.
  - (6) The minimum amount on deposit in deposit accounts before it shall commence business.
  - (7) Any provision not inconsistent with this Chapter and the proper operation of a savings bank, which the incorporators shall set forth in the certificate of incorporation for the regulation of the internal affairs of the savings bank.
  - (8) The number of directors, which shall not be less than seven, constituting the initial board of directors, which may be classified in the certificate of incorporation, and the name and address of each person who is to serve as a director until the first meeting of members, or until a successor is elected and qualified.
  - (9) The names and addresses of the incorporators.
- (b) The certificate of incorporation of a proposed stock savings bank shall set forth the following:
- (1) The name of the savings bank, which shall not so closely resemble the name of an existing depository institution doing business under the laws of this State as to be likely to mislead the public.

- (2) The county and city or town where its principal office is to be located in this State; and the name of its registered agent and the address of its registered office, including county and city or town, and street and number.
- (3) The period of duration, which may be perpetual. When the certificate of incorporation fails to state the period of duration, it is considered perpetual.
- (4) The purposes for which the savings bank is organized, which shall be limited to purposes permitted under the laws of this State for savings banks.
- (5) With respect to the shares of stock which the savings bank shall have authority to issue:
  - a. If the stock is to have a par value, the number of the shares of stock and the par value of each.
  - b. If the stock is to be without par value, the number of the shares of stock.
  - c. If the stock is to be of both kinds mentioned in sub-subdivisions a. and b. of this subdivision, particulars in accordance with those sub-subdivisions.
  - d. If the stock is to be divided into classes, or into series within a class of preferred or special shares of stock, the certificate of incorporation shall also set forth a designation of each class, with a designation of each series within a class, and a statement of the preferences, limitations, and relative rights of the stock of each class or series.
- (6) The minimum amount of consideration to be received for its shares of stock before it shall commence business.
- (7) A statement as to whether stockholders have preemptive rights to acquire additional or treasury shares of the savings bank.
- (8) Any provision not inconsistent with this Chapter or the proper operation of a savings bank, which the incorporators shall set forth in the certificate of incorporation for the regulation of the internal affairs of the savings bank.
- (9) The number of directors, which shall not be less than seven, constituting the initial board of directors, which may be classified in accordance with the certificate of incorporation, and the name and address of each person who is to serve as a director until the first meeting of the stockholders, or until a successor is elected and qualified.
- (10) The names and addresses of the incorporators. (1991, c. 680, s. 1.)

**§ 54C-11. Commissioner of Banks to consider application.**

Upon receipt of an application to organize and establish a savings bank, the Commissioner of Banks shall examine or cause to be examined all the relevant facts connected with the formation of the proposed savings bank. If it appears to the Commissioner of Banks that the proposed savings bank has complied with all the requirements set forth in this Chapter and the rules for the formation of a savings bank and is otherwise lawfully entitled to be organized and established as a savings bank, the Commissioner of Banks shall present the application to the Commission for its consideration. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-12. Criteria to be met before the Commissioner of Banks may recommend approval of an application.**

(a) The Commissioner of Banks may recommend approval of an application to form a mutual savings bank only when all of the following criteria are met:

- (1) The proposed savings bank has an operational expense fund, from which to pay organizational and incorporation expenses, in an amount determined by the Commissioner of Banks to be sufficient for the safe and proper operation of the savings bank, but in no event less than seventy-five thousand dollars (\$75,000). The moneys remaining in the expense fund shall be held by the savings bank for at least one year from its date of licensing. No portion of the fund shall be released to an incorporator or director who contributed to it, nor to any other contributor, nor to any other person, and no dividends shall be accrued or paid on the funds without the prior approval of the Commissioner of Banks.
- (2) The proposed savings bank has pledges for deposit accounts in an amount to be determined by the Commissioner of Banks to be sufficient for the safe and proper operation of the savings bank, but in no event less than four million dollars (\$4,000,000).
- (3) All entrance fees for deposit accounts of the proposed savings bank have been made with legal tender of the United States.
- (4) The name of the proposed savings bank will not mislead the public and is not the same as an existing depository institution or so similar to the name of an existing depository institution as to mislead the public.
- (5) The character, general fitness, and responsibility of the incorporators and the initial board of directors of the proposed savings bank, a majority of whom shall be residents of North Carolina, will command the confidence of the community in which the proposed savings bank intends to locate.
- (6) There is reasonable demand and necessity in the community that will be served by the establishment of the proposed savings bank.
- (7) The public convenience and advantage will be served by the establishment of the proposed savings bank.
- (8) The proposed savings bank will have a reasonable probability of sustaining profitable and beneficial operations in the community.
- (9) The proposed savings bank, if established, will promote healthy and effective competition in the community in the delivery to the public of savings institution services.

(b) The Commissioner of Banks may recommend approval of an application to form a stock savings bank only when all of the following criteria are met:

- (1) The proposed savings bank has prepared a plan to solicit subscriptions for capital stock in an amount determined by the Commissioner of Banks to be sufficient for the safe and proper operation of the savings bank, but in no event less than three million dollars (\$3,000,000).
- (2) The name of the proposed savings bank will not mislead the public and is not the same as an existing depository institution or so similar to the name of an existing depository institution as to mislead the public; and contains the wording "corporation," "incorporated," "limited," "company," or an abbreviation of one of these words or other words sufficient to distinguish stock savings banks from mutual savings banks.

- (3) The character, general fitness, and responsibility of the incorporators, initial board of directors, and initial stockholders of the proposed savings bank will command the confidence of the community in which the proposed savings bank intends to locate.
- (4) All subscriptions for capital stock of the proposed savings bank have been purchased with legal tender of the United States.
- (5) There is a reasonable demand and necessity in the community that will be served by the establishment of the proposed savings bank.
- (6) The public convenience and advantage will be served by the establishment of the proposed savings bank.
- (7) The proposed savings bank will have a reasonable probability of sustaining profitable and beneficial operations in the community.
- (8) The proposed savings bank, if established, will promote healthy and effective competition in the community in the delivery to the public of savings institution services.

(c) The minimum amount of pledges for deposit accounts or subscriptions for capital stock may be adjusted if the Commissioner of Banks determines that a greater requirement is necessary or that a smaller requirement will provide a sufficient capital base. The Commissioner of Banks' findings and recommendations to the Commission shall be based upon due consideration of (i) the population of the proposed trade area, (ii) the total deposits of the depository institutions operating in the proposed trade area, (iii) the economic conditions of and projections for the proposed trade area, (iv) the business experience and reputation of the proposed management, (v) the business experience and reputation of the proposed incorporators and directors, and (vi) the projected deposit growth, capitalization, and profitability of the proposed savings bank. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-13. Commission to review findings and recommendations of Commissioner of Banks.**

(a) If the Commissioner of Banks does not have the completed application within 120 days of the filing of the preliminary application, the application shall be returned to the applicants.

(b) When the Commissioner of Banks has completed the examination and investigation of the facts relevant to the establishment of the proposed savings bank, the Commissioner of Banks shall present the findings and recommendations to the Commission at a public hearing. The Commission shall approve or reject an application within 180 days of the submission of the preliminary application.

(c) Not less than 45 days before the public hearing held for the consideration of the application to establish a savings bank, the incorporators shall cause to be published a notice in a newspaper of general circulation in the area to be served by the proposed savings bank. The notice shall contain:

- (1) A statement that the application has been filed with the Commissioner of Banks;
- (2) The name of the community where the principal office of the proposed savings bank intends to locate;
- (3) A statement that a public hearing shall be held to consider the application; and
- (4) A statement that any interested or affected party may file a written statement either favoring or protesting the creation of the proposed savings bank. The



statement shall be filed with the Commissioner of Banks within 30 days of the date of publication.

(d) The Commission, at the public hearing, shall consider the findings and recommendations of the Commissioner of Banks and shall hear oral testimony that the Commissioner of Banks may wish to give or be called upon to give, and shall also receive information and hear testimony from the original incorporators of the proposed savings bank and from any and all other interested or affected parties. The Commission shall hear only testimony and receive only information that is relevant to the consideration of the application and the operation of the proposed savings bank. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-14. Grounds for approval or denial of application.**

(a) After consideration of the findings, recommendations, and any oral testimony of the Commissioner of Banks, and the consideration of any other information and evidence, either written or oral, as has come before it at the public hearing, the Commission shall approve or disapprove the application within 30 days after the public hearing. The Commission shall approve the application if it finds that the certificate of incorporation is in compliance with G.S. 54C-10 and that there is compliance with all the criteria set out in G.S. 54C-12, the remainder of this Chapter, rules, and the General Statutes.

(b) If the Commission approves the application, the Commissioner of Banks shall notify the Secretary of State with a certificate of approval, accompanied by the original of the certificate of incorporation and the two conformed copies.

(c) Upon receipt of the certificate of approval, the original of the certificate of incorporation, and the two conformed copies and upon the payment by the newly chartered savings bank of the appropriate organization tax and fees, the Secretary of State shall file the certificate of incorporation in accordance with G.S. 55-1-20. The Secretary of State shall certify, under official seal, the two conformed copies of the certificate of incorporation, one of which shall be forwarded immediately to the original incorporators or their representatives, the other of which shall be forwarded to the office of the Commissioner of Banks for filing. Upon the recordation of the certificate of incorporation by the Secretary of State, the savings bank is a body politic and corporate under the name stated in the certificate, and may begin the savings bank business when duly licensed by the Commissioner of Banks.

(d) The certificate of incorporation, or a copy, duly certified by the Secretary of State, by the register of deeds of the county where the savings bank is located, or by the Commissioner of Banks, under their respective seals, is evidence in all courts and places, and is, in all judicial proceedings, deemed prima facie evidence of the complete organization and incorporation of the savings bank purporting thereby to have been established.

(e) After approval of the application, the Commissioner of Banks shall supervise and monitor the organization process. The Commissioner of Banks shall ensure that sufficient pledges for deposit accounts or subscriptions for capital stock as well as insurance of deposit accounts have been secured by the organizers. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-15. Final decision.**

The Commission shall present the Commissioner of Banks with a final decision that is in accordance with Chapter 150B of the General Statutes. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-16. Appeal.**

The final decision of the Commission may be appealed in accordance with Chapter 150B of the General Statutes. (1991, c. 680, s. 1.)

**§ 54C-17. Insurance of accounts required.**

A State savings bank shall obtain and maintain insurance on all members' and customers' deposit accounts from an insurance corporation created by an act of Congress. Before the licensing of a savings bank, a certificate of incorporation duly recorded under G.S. 54C-14(c), is deemed to be sufficient certification to the insuring corporation that the savings bank is a legal corporate entity. The insurance shall be obtained within the time limit prescribed in G.S. 54C-19. Subject to the rules of the Commissioner of Banks, a State savings bank may obtain or participate in efforts to obtain insurance of deposits that is in excess of the amount eligible for federal insurance of accounts. This insurance is known as "excess insurance". (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-18.** Repealed by Session Laws 1999-179, s. 2.

**§ 54C-19. Time allowed to commence business.**

A newly chartered savings bank shall commence business within one year after the date upon which its corporate existence began. A savings bank that does not commence business within this time, shall forfeit its corporate existence, unless the Commissioner of Banks, before the expiration of the one year period, approves an extension of the time within which the association may commence business, upon a written request stating the reasons for the request. Upon forfeiture, the certificate of incorporation shall expire, and any and all action taken in connection with the incorporation and chartering of the savings bank, with the exception of fees paid to the Division, shall become null and void. The Commissioner of Banks shall determine if a savings bank has failed to commence business within one year, without extension as provided in this section, and shall notify the Secretary of State and the register of deeds in the county in which the savings bank is located that the certificate of incorporation has expired. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-20. Licensing.**

A newly chartered savings bank is entitled to a license to operate upon payment to the Division of the appropriate license fee as prescribed by the Commissioner of Banks, when it shows to the satisfaction of the Commissioner of Banks evidence of capable, efficient, and equitable management, that the organization of the savings bank has been conducted lawfully and is complete, and when it passes a final inspection by the Commissioner of Banks or the Commissioner of Banks' representative preceding the opening of its doors for business. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-21. Amendments to certificate of incorporation.**

(a) An amendment to the certificate of incorporation of a State savings bank shall be made at any annual or special meeting of the savings bank, held in accordance with G.S. 54C-106 and G.S. 54C-107, by a majority of votes or shares cast by members or stockholders present in person or by proxy at the meeting. Any amendment shall be certified by the appropriate corporate official, submitted to the Commissioner of Banks for approval or rejection, and if approved, then certified by the Commissioner of Banks and recorded as provided in G.S. 54C-14 for certificates of incorporation.

(b) Notwithstanding subsection (a) of this section, a State savings bank may change its registered office or its registered agent, or both, in accordance with G.S. 55D-31. The savings bank shall file a copy of the statement or certificate certified by the Secretary of State in the office of the Commissioner of Banks. (1991, c. 680, s. 1; 2001-193, s. 16; 2001-358, s. 47(h); 2001-387, s. 173; 2001-413, s. 6.)

**§ 54C-22. List of stockholders to be maintained.**

A stock savings bank organized and operated under this Chapter shall, at all times, keep a current list of the names of all its stockholders. Whenever called upon by the Commissioner of Banks, a stock savings bank shall file in the office of the Commissioner of Banks a correct list of all its stockholders, the resident address of each, the number of shares of stock held by each, and the dates of issue. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-23. Branch offices.**

(a) A State savings bank may apply to the Commissioner of Banks for permission to establish a branch office. The application shall be in the form prescribed by the Commissioner of Banks and shall be accompanied by the proper branch application fee. The Commissioner of Banks shall approve or deny branch applications within 120 days of filing.

(b) The Commissioner of Banks shall approve a branch application when all of the following criteria are met:

- (1) The applicant has gross assets of at least ten million dollars (\$10,000,000).
- (2) The applicant has evidenced financial responsibility.
- (3) The applicant has a net worth equal to or exceeding the amount required by the insurer of deposit accounts.
- (4) The applicant has an acceptable internal control system that includes certain basic internal control requirements essential to the protection of assets and the promotion of operational efficiency regardless of the size of the applicant.

(c) Upon receipt of a branch application, the Commissioner of Banks shall examine or cause to be examined all the relevant facts connected with the establishment of the proposed branch office. If it appears to the satisfaction of the Commissioner of Banks that the applicant has complied with all the requirements set forth in this section and the regulations for the establishment of a branch office and that the savings bank is otherwise lawfully entitled to establish the branch office, then the Commissioner of Banks shall approve the branch application.

(d) Not more than 10 days following the filing of the branch application with the Commissioner of Banks, the applicant shall cause a notice to be published in a newspaper of general circulation in the area to be served by the proposed branch office. The notice shall contain:

- (1) A statement that the branch application has been filed with the Commissioner of Banks;
- (2) The proposed address of the branch office, including city or town and street; and
- (3) A statement that any interested or affected party may file a written statement with the Commissioner of Banks, within 30 days of the date of the publication of the notice, protesting the establishment of the proposed branch office and requesting a hearing before the Commissioner of Banks on the application.

(e) Any interested or affected party may file a written statement with the Commissioner of Banks within 30 days of the date of initial publication of the branch application notice, protesting the establishment of the proposed branch office and requesting a hearing before the Commissioner

of Banks on the application. If a hearing is held on the branch application, the Commissioner of Banks shall receive information and hear testimony only from the applicant and from any interested or affected party that is relevant to the branch application and the operation of the proposed branch office. The Commissioner of Banks shall issue the final decision on the branch application within 30 days following the hearing. The final decision shall be in accordance with Chapter 150B of the General Statutes.

(f) If a hearing is not held on the branch application, the Commissioner of Banks shall issue the final decision within 120 days of the filing of the application. The final decision shall be in accordance with Chapter 150B of the General Statutes.

(g) A party to a branch application may appeal the final decision of the Commissioner of Banks to the Commission at any time after the final decision, but not later than 30 days after a written copy of the final decision is served upon the party and the party's attorney of record by personal service or by certified mail. Failure to file an appeal within the time stated shall operate as a waiver of the right of the party to review by the Commission and by a court of competent jurisdiction in accordance with Chapter 150B of the General Statutes, relating to judicial review. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-24. Request to change location of a branch or principal office.**

The board of directors of a State savings bank may change the location of a branch office or the principal office of the savings bank with the prior written approval of the Commissioner of Banks. The Commissioner of Banks may request, and the savings bank shall provide, any information that the Commissioner of Banks determines is necessary to evaluate the request. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-25. Approval revoked; branch office.**

The Commission may, for good cause and after a hearing, order the closing of a branch office. The order shall be made in writing to the savings bank and shall fix a reasonable time after which the savings bank shall close the branch office. (1991, c. 680, s. 1.)

#### **§ 54C-26. Branch offices closed.**

The Board of a State savings bank may discontinue the operation of a branch office upon giving at least 90 days prior written notice to the Commissioner of Banks and depositors, the notice to include the date upon which the branch office shall be closed. (1991, c. 680, s. 1; 1991 (Reg. Sess., 1992), c. 829, s. 6; 2001-193, s. 16.)

#### **§ 54C-27. Loan production office.**

A State savings bank may open or close a loan production office with the prior written approval of the Commissioner of Banks. The Commissioner of Banks may request, and the savings bank shall provide, any information that the Commissioner of Banks determines is necessary to evaluate the request. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-28. Reserved for future codification purposes.**

#### **§ 54C-29. Reserved for future codification purposes.**

Article 3.

## Corporate Changes.

### **§ 54C-30. Conversion to savings bank.**

(a) An association or State or national bank, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to convert to a State savings bank and for certification of appropriate amendments to its certificate of incorporation to effect the change. Upon receipt of an application to convert to a State savings bank, the Commissioner of Banks shall examine all facts connected with the conversion. The depository institution applying for permission to convert shall pay all the expenses and cost of the examination.

(b) The converting depository institution shall submit a plan of conversion as a part of the application to the Commissioner of Banks. The Commissioner of Banks may approve it with or without amendment. If the Commissioner of Banks approves the plan, then the plan shall be submitted to the members or stockholders as provided in subsection (c) of this section. If the Commissioner of Banks refuses to approve the plan, the objections shall be stated in writing and the converting depository institution shall be given an opportunity to amend the plan to obviate the objections or to appeal the Commissioner of Banks' decision to the Commission.

(c) After lawful notice to the members or stockholders of the converting depository institution and full and fair disclosure, the substance of the plan shall be approved by a majority of the votes or shares present, in person or by proxy. Following the vote of the members or stockholders, the results of the vote certified by an appropriate officer of the converting depository institution shall be filed with the Commissioner of Banks. The Commissioner of Banks shall then either approve or disapprove the requested conversion to a State savings bank. After approval of the conversion, the Commissioner of Banks shall supervise and monitor the conversion process and shall ensure that the conversion is conducted lawfully and under the approved plan of conversion. (1991, c. 680, s. 1; 1991 (Reg. Sess., 1992), c. 829, s. 7; 2001-193, s. 16.)

### **§ 54C-31. Conversion from State to federal charter.**

A State savings bank, stock or mutual, organized and operated under this Chapter, may convert to a federal charter in accordance with the laws and regulations of the United States and with the same force and effect as though originally incorporated under these laws. The procedure to effect this conversion is as follows:

- (1) The savings bank shall submit a plan of conversion to the Commissioner of Banks, who may approve the plan, with or without amendment, or refuse to approve the plan. If the Commissioner of Banks approves the plan, then the plan shall be submitted to the members or stockholders as provided in the subdivision (2) of this section. If the Commissioner of Banks refuses to approve the plan, the objections shall be stated in writing and the converting savings bank shall be given an opportunity to amend the plan to obviate the objections or to appeal the Commissioner of Banks' decision to the Commission.
- (2) A meeting of the members or stockholders shall be held upon not less than 15 days' notice to each member or stockholder. Notice of the meeting may be mailed to each member or stockholder, postage prepaid, to the last known address, or the board of directors may cause notice of the meeting to be published, once a week for two weeks preceding the meeting, in a newspaper of general circulation in the county where the savings bank has its principal office. It is regarded as sufficient notice of the purpose of the meeting if the notice contains substantially the following statement: "The purpose of this meeting is

to consider the conversion of this State chartered savings bank to a federal charter, under the laws of the United States." An appropriate officer of the savings bank shall make proof by affidavit at the meeting of due service of the notice or call for the meeting.

- (3) At the meeting of the members or stockholders of the savings bank, the members or stockholders may, by affirmative vote of a majority of votes or shares present, in person or by proxy, resolve to convert the savings bank to a federal charter. A copy of the minutes of the meeting of the members or stockholders certified by an appropriate officer of the savings bank shall be filed in the office of the Commissioner of Banks. The certified copy when so filed is prima facie evidence of the holding and the action of the meeting.
- (4) Within a reasonable time after the receipt of a certified copy of the minutes, the Commissioner of Banks shall either approve or disapprove the proceedings of the meeting for compliance with the procedure set forth in this section. If the Commissioner of Banks approves the proceedings, the Commissioner of Banks shall issue a certificate of approval of the conversion. The savings bank shall record the certificate in the office of the Secretary of State. If the Commissioner of Banks disapproves the proceedings, the Commissioner of Banks shall provide a written explanation of the disapproval and notify the savings bank of the disapproval. The savings bank may appeal a disapproval to the Commission.
- (5) The savings bank shall file an application, in the manner prescribed or authorized by the laws and regulations of the United States, to consummate the conversion to a federal charter. A copy of the charter or authorization issued to the savings bank by the appropriate federal regulatory authority shall be filed with the Commissioner of Banks. Upon filing with the Commissioner of Banks, the savings bank shall cease to be a State savings bank and shall be a federal depository institution.
- (6) Whenever any savings bank converts to a federal charter it shall cease to be a savings bank under the laws of this State, except that its corporate existence is deemed to be extended for the purpose of prosecuting or defending suits by or against it and of enabling it to close its business affairs as a State savings bank and to dispose of and convey its property. At the time when the conversion becomes effective all the property of the State savings bank including all its rights, title, and interest in and to all property of whatever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the federal depository institution, which shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the savings bank; and the federal depository institution as of the effective time of the conversion shall succeed to all the rights, obligations, and relations of the State savings bank. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-32. Simultaneous charter and ownership conversion.**

(a) In the event of a State charter to federal charter conversion, when the form of ownership will also simultaneously be changed from stock to mutual, or from mutual to stock, the conversion shall proceed initially as if it involves only a charter conversion, under G.S. 54C-31. After the savings bank becomes a federal depository institution, then the federal regulatory authority shall govern the continuing conversion of the form of ownership of the newly converted depository institution.

(b) In the event of a federal charter to State charter conversion, when the form of ownership will also simultaneously be changed from stock to mutual or from mutual to stock, the conversion shall proceed initially as if it involves only a charter conversion under G.S. 54C-30. After the federal depository institution becomes a State savings bank, G.S. 54C-33 or G.S. 54C-34 shall govern the continuing conversion of the form of ownership of the newly converted savings bank.

(c) This section shall not apply to any simultaneous charter and ownership conversion accomplished in conjunction with a merger under G.S. 54C-39. (1991, c. 680, s. 1.)

### **§ 54C-33. Conversion of mutual to stock savings bank.**

(a) A mutual savings bank may convert from mutual to the stock form of ownership as provided in this section.

(b) A mutual savings bank may apply to the Commissioner of Banks for permission to convert to a stock savings bank and for certification of appropriate amendments to the savings bank's certificate of incorporation. Upon receipt of an application to convert from mutual to stock form the Commissioner of Banks shall examine all facts connected with the requested conversion. The savings bank applying for permission to convert shall pay all expenses and cost of the examination, monitoring, and supervision.

(c) The savings bank shall submit a plan of conversion as a part of the application to the Commissioner of Banks. The Commissioner of Banks may approve it with or without amendment, if it appears that:

- (1) After conversion the savings bank will be in sound financial condition and will be soundly managed;
- (2) The conversion will not impair the capital of the savings bank nor adversely affect the savings bank's operations;
- (3) The conversion will be fair and equitable to the members of the savings bank and no person whether member, employee, or otherwise, will receive any inequitable gain or advantage by reason of the conversion;
- (4) The savings bank services provided to the public by the savings bank will not be adversely affected by the conversion;
- (5) The substance of the plan has been approved by a vote of two-thirds of the board of directors of the savings bank;
- (6) All shares of stock issued in connection with the conversion are offered first to the members of the savings bank; except that any one or more tax qualified employee stock benefit plans may first purchase in the aggregate not more than ten percent (10%) of the total offering of shares;
- (7) All stock shall be offered to members of the savings bank and others in prescribed amounts and otherwise under a formula and procedure that is fair and equitable and will be fairly disclosed to all interested persons; and
- (8) The plan provides a statement as to whether stockholders shall have preemptive rights to acquire additional or treasury shares of the savings bank.

If the Commissioner of Banks approves the plan, then the plan shall be submitted to the members as provided in subsection (d) of this section. If the Commissioner of Banks refuses to approve the plan, the Commissioner of Banks shall state the objections in writing and give the converting savings bank an opportunity to amend the plan to obviate the objections or to appeal the Commissioner of Banks' decision to the Commission.

(d) After lawful notice to the members of the savings bank and full and fair disclosure, the substance of the plan shall be approved by a majority of the total votes that members of the savings bank are eligible and entitled to cast. The vote by the members may be in person or by proxy. Following the vote of the members, the results of the vote certified by an appropriate officer of the savings bank shall be filed with the Commissioner of Banks. The Commissioner of Banks shall then either approve or disapprove the requested conversion. After approval of the conversion, the Commissioner of Banks shall supervise and monitor the conversion process and shall ensure that the conversion is conducted lawfully and under the savings bank's approved plan of conversion.

(e) Any rules that the Commissioner of Banks may adopt to govern conversions shall equal or exceed the requirements for conversion, if any, imposed by the federal insurer of deposit accounts. (1991, c. 680, s. 1; 1991 (Reg. Sess., 1992), c. 829, s. 8; 2001-193, s. 16.)

#### **§ 54C-34. Conversion of stock savings bank to mutual savings bank.**

A stock savings bank organized and operating under this Chapter may, subject to the approval of the Commissioner of Banks, convert to a mutual savings bank under this section. Any rules that the Commissioner of Banks may adopt governing the conversion of stock savings banks to mutual savings banks shall include requirements that:

- (1) The conversion neither impair the capital of the converting savings bank nor adversely affect its operations;
- (2) The conversion shall be fair and equitable to all stockholders of the converting savings bank;
- (3) The public shall not be adversely affected by the conversion;
- (4) Conversion of a savings bank shall be accomplished only under a plan approved by the Commissioner of Banks. The plan shall have been approved by an affirmative vote of two-thirds of the members of the board of directors of the converting savings bank, after a full and fair disclosure to the stockholders, by an affirmative vote of a majority of the total votes that stockholders of the savings bank are eligible and entitled to cast; and
- (5) The plan of conversion provides that:
  - a. Deposit accounts be issued in connection with the conversion to the stockholders of the converting savings bank;
  - b. A uniform date be fixed for the determination of the stockholders to whom, and the amount to each stockholder of which, deposit accounts shall be made available; and
  - c. Deposit accounts so made available to stockholders be based upon a fair and equitable formula approved by the Commissioner of Banks and fully and fairly disclosed to the stockholders of the converting savings bank. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-35. Merger of like savings banks.**



Any two or more mutual savings banks or any two or more stock savings banks organized and operating, may merge or consolidate into a single savings bank. The procedure to effect the merger is as follows:

- (1) The directors, or a majority of them, of the savings banks that desire to merge may, at separate meetings, enter into a written agreement of merger signed by them and under the corporate seals of the respective savings banks specifying each savings bank to be merged and the savings bank that is to receive into itself the merging savings bank or banks, and prescribing the terms and conditions of the merger and the mode of carrying it into effect. The merger agreement may provide other provisions with respect to the merger as appear necessary or desirable, or as the Commissioner of Banks may require.
- (2) The merger agreement together with copies of the minutes of the meetings of the respective boards of directors verified by the secretaries of the respective savings banks shall be submitted to the Commissioner of Banks, who shall cause a careful investigation and examination to be made of the affairs of the savings banks proposing to merge, including a determination of their respective assets and liabilities. Each savings bank that is investigated and examined shall pay the cost and expense for the examination. If, as a result of the investigation, the Commissioner of Banks concludes that the members or stockholders of each of the savings banks proposing to merge will be benefited by the merger, the Commissioner of Banks shall, in writing, approve the merger. If the Commissioner of Banks deems that the proposed merger will not be in the interest of all members or stockholders of the savings banks so merging, the Commissioner of Banks shall, in writing, disapprove the merger. If the Commissioner of Banks approves the merger agreement, then it shall be submitted, within 45 days after notice to the savings banks of the approval, to the members or stockholders of each savings bank, as provided in subdivision (3) of this section. The savings bank may appeal the disapproval of the merger to the Commission.
- (3) A special meeting of the members or stockholders of each of the savings banks shall be held separately upon notice of not less than 20 days to members or stockholders of each savings bank. The notice of meeting shall specify the time, place, and purpose of such meeting. Notice shall be given to members of each mutual savings bank in accordance with the methods specified in its charter and bylaws and by one or more of the following methods: (i) personal service or (ii) postage prepaid mail to the last address of each member appearing upon the records of the savings bank. Provided; however, with respect to a merger of two mutual savings banks, as an alternative to the methods of notice specified above, the mutual savings bank which is to be the surviving savings bank of the proposed merger may provide the notice of meeting by publication of notice at least once a week for four consecutive weeks in one or more newspapers in general circulation in the county or counties in which the savings bank has its principal and any branch offices. Notice shall be given to stockholders of each stock-owned savings bank in accordance with the method specified for a meeting of stockholders in its charter and bylaws. The secretary or other officer

of each savings bank shall make proof by certification at such meeting of the due service of the notice or call for said meeting.

- (4) At separate meetings of the members or stockholders of the respective savings banks, the members or stockholders may adopt, by an affirmative vote of a majority of the votes or shares present, in person or by proxy, a resolution to merge into a single savings bank upon the terms of the merger agreement as shall have been agreed upon by the directors of the respective savings banks and as approved by the Commissioner of Banks. Upon the adoption of the resolution, a copy of the minutes of the proceedings of the meetings of the members or stockholders of the respective savings banks, certified by an appropriate officer of the merging savings banks, shall be filed in the office of the Commissioner of Banks. Within 15 days after the receipt of a certified copy of the minutes of the meetings, the Commissioner of Banks shall either approve or disapprove the proceedings for compliance with this section. If the Commissioner of Banks approves the proceedings, the Commissioner of Banks shall issue a certificate of approval of the merger. The certificate shall be filed and recorded in the office of the Secretary of State. When the certificate is so filed, the merger agreement shall take effect according to its terms and is binding upon all the members or stockholders of the savings banks merging, and it is deemed to be the act of merger of the constituent savings banks under the laws of this State, and the certificate or certified copy thereof is evidence of the agreement and act of merger of the savings banks and the observance and performance of all acts and conditions necessary to have been observed and performed precedent to the merger. Within 60 days after its receipt from the Secretary of State, the certified copy of the certificate shall be filed with the register of deeds of the county or counties in which the respective savings banks so merged have recorded their original certificates of incorporation. Failure to so file shall subject the savings bank to only a penalty of one hundred dollars (\$100.00) to be collected by the Secretary of State. If the Commissioner of Banks disapproves the proceedings, the Commissioner of Banks shall issue a written statement of the reasons for the disapproval and notify the savings banks to that effect. The savings banks may appeal the disapproval to the Commission.
- (5) Upon the merger of any savings bank, as above provided, into another:
  - a. Its corporate existence is merged into that of the receiving savings bank; and all its right, title, interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of any conceivable value or benefit then existing belonging or pertaining to it, or which would inure to it under an unmerged existence, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the receiving savings bank, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held, or enjoyed by the savings banks so merged; and the receiving savings bank shall absorb fully and completely the savings bank or banks so merged.

- b. Its rights, liabilities, obligations, and relations to any person shall remain unchanged and the savings bank into which it has been merged shall, by the merger, succeed to all the relations, obligations, and liabilities as though it had itself assumed or incurred the same. No obligation or liability of a member, customer, or stockholder in a savings bank that is a party to the merger shall be affected by the merger, but obligations and liabilities shall continue as they existed before the merger, unless otherwise provided in the merger agreement.
  - c. A pending action or other judicial proceeding to which a savings bank that is so merged is a party, is not deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order, or decree in the same manner as if the merger had not been made; or the receiving savings bank may be substituted as a party to the action or proceeding, and any judgment, order, or decree may be rendered for or against it that might have been rendered for or against the other savings bank if the merger had not occurred.
- (6) Notwithstanding any other provision of this section, the Commissioner of Banks may waive any or all of the foregoing requirements upon finding that waiver would be in the best interest of the members or stockholders of the merging savings banks. (1991, c. 680, s. 1; 1995, c. 479, s. 5; 2001-193, s. 16.)

**§ 54C-36. Simultaneous conversion/merger.**

(a) The Commissioner of Banks shall not approve any application for the conversion of a savings bank from mutual to stock form and its simultaneous (i) merger into a stock-owned savings institution or bank or (ii) acquisition by an operating financial institution holding company except as authorized in subsection (b) of this section. As used in this section, "simultaneous conversion/merger" shall mean a transaction in which the members of a mutual savings bank proposing to convert to stock form are offered the opportunity to purchase (i) stock in the savings institution or bank into which it will be merged or (ii) stock in the holding company by which it will be acquired.

(b) The Commissioner of Banks shall approve a plan of simultaneous conversion/merger only if:

- (1) The transaction is proposed to address supervisory concerns of the Commissioner of Banks as to the safety and soundness of the mutual savings bank; or
- (2) The mutual savings bank:
  - a. Operates in a local market area in which long-term trends make reasonable growth, continued profitability, and safe and sound operation appear unlikely;
  - b. Furnishes evidence concerning its asset size, capital to assets ratio, and other factors, which may include a cost/benefit analysis, satisfactory to the Commissioner of Banks that a simultaneous conversion/merger is more likely than remaining independent, merging with a mutual institution, converting to stock ownership, or other alternatives available to the savings bank to result in deposit, credit, and other

financial services being provided within the local community safely and soundly on a long-term basis; and

- c. Furnishes evidence satisfactory to the Commissioner of Banks that no director, officer, or other person associated with the parties to the proposed transaction will receive benefits as a result of the simultaneous conversion/merger which in the aggregate exceed those permitted under the federal regulations governing similar transactions.

(c) The Commissioner of Banks may adopt rules to govern simultaneous conversion/mergers, which rules shall contain restrictions or limitations which equal or exceed the limitations or restrictions contained in the rules of federal regulatory agencies governing similar transactions. No plan of a simultaneous conversion/merger shall be approved by the Commissioner of Banks unless it includes notification by first class mail to the members of the savings bank to be acquired explaining the plan including economic benefits or incentives to be received by officers and directors of the association, if any. Shares of stock in the acquiring entity purchased at a discount or otherwise by members of the savings bank as part of the simultaneous conversion/merger shall be without limitation on subsequent sales by such members: provided, however, rules adopted by the Commissioner of Banks may place limitations of the sale of such stock purchased by officers and directors of the savings bank. (1991, c. 680, s. 1; 1995, c. 479, s. 6; 2001-193, s. 16.)

#### **§ 54C-37. Merger of mutual and stock savings banks.**

Any two or more savings banks, when one or more is mutually owned and one or more is stock owned, may merge to form either a mutual or stock savings bank in separate conversion-merger proceedings or in simultaneous conversion-merger proceedings. (1991, c. 680, s. 1.)

#### **§ 54C-38. Simultaneous merger and conversion.**

Any combination of associations and State savings banks may merge to form either an association or a State savings bank. (1991, c. 680, s. 1.)

#### **§ 54C-39. Merger of federal charters with State savings banks.**

Any two or more depository institutions, when one or more is a State savings bank and one or more is a federal depository institution operating in North Carolina, may merge under either a State savings bank charter or a federal charter. (1991, c. 680, s. 1.)

#### **§ 54C-40. Merger of savings banks with banks and associations.**

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

(b) The State savings bank shall submit a plan of merger as a part of the application to the Commissioner of Banks. The Commissioner of Banks may recommend approval of the plan of merger with or without amendment.

If the Commissioner of Banks approves the plan, then the plan shall be submitted to the stockholders or members as provided in subsection (c) of this section. If the Commissioner of Banks refuses to approve the plan, the Commissioner of Banks shall state the objections in writing and give the merging savings bank an opportunity to amend the plan to obviate the objections or to appeal the Commissioner of Banks' decision to the Commission.

(c) After lawful notice to the stockholders or members of the savings bank and full and fair disclosure, the substance of the plan shall be approved by a majority of the total votes that stockholders or members of the savings bank are eligible and entitled to cast. The vote by the stockholders or members may be in person or by proxy. Following the vote of the stockholders or members, the results of the vote certified by an appropriate officer of the savings bank shall be filed with the Commissioner of Banks. The Commissioner of Banks shall then either approve or disapprove the requested merger.

(d) A merger between a mutual savings bank and a mutual savings and loan association shall be conducted in accordance with the provisions of G.S. 54C-35. (1991, c. 680, s. 1; 1995, c. 479, s. 7; 2001-193, s. 16; 2012-56, s. 43.)

#### **§ 54C-41. Voluntary dissolution by directors.**

A State savings bank may be voluntarily dissolved by a majority vote of the board of directors when substantially all of the assets have been sold for the purpose of terminating the business of the savings bank or as provided in G.S. 55-14-01 and when a certificate of dissolution is recorded in the manner required by this Chapter for the recording of certificates of incorporation. (1991, c. 680, s. 1.)

#### **§ 54C-42. Voluntary dissolution by stockholders or members.**

At any annual or special meeting called for the purpose of dissolution, a savings bank may, by an affirmative vote, in person or by proxy, of at least two-thirds of the total number of shares or votes that all members or stockholders of the association are entitled to cast, resolve to dissolve and liquidate the savings bank and adopt a plan of voluntary dissolution. Upon adoption of the resolution and plan of voluntary dissolution, the members or stockholders shall proceed to elect not more than three liquidators who shall post bond as required by the Commissioner of Banks. The liquidators shall have full power to execute the plan; and the procedure thereafter shall be as follows:

- (1) A copy of the resolution, certified by an appropriate officer of the savings bank, together with the minutes of the meeting of members or stockholders, the plan of liquidation, and an itemized statement of the savings bank's assets and liabilities, sworn to by a majority of its board of directors, shall be filed with the Commissioner of Banks. The minutes of the meeting of members or stockholders shall be certified by an appropriate officer of the association, and shall set forth the notice given, the time of mailing thereof, the vote on the resolution, the total number of shares or votes that all members of the savings bank were entitled to cast thereon, and the names of the liquidators elected.
- (2) If the Commissioner of Banks finds that the proceedings are in accordance with this Chapter, and that the plan of liquidation is not unfair to any person affected, the Commissioner of Banks shall attach a certificate of approval to the plan and shall forward one copy to the liquidators and one copy to the savings bank's federal deposit account insurance corporation. Once the Commissioner of Banks has approved the resolution and the plan of liquidation, it shall thereafter be unlawful for the savings bank to accept any additional deposit accounts or additions to deposit accounts or make any additional loans, but all its income and receipts in excess of actual expenses of liquidation of the savings bank shall be applied to the discharge of its liabilities.

- (3) The liquidating savings bank shall pay a reasonable compensation, subject to the approval of the Commissioner of Banks, to the appointed liquidator.
- (4) The plan becomes effective upon the recording of the Commissioner of Banks' certificate of approval in the manner required by this Chapter for the recording of the certificate of incorporation.
- (5) The liquidation of the savings bank is subject to the supervision and examination of the Commissioner of Banks. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-43. Reports of voluntary dissolution.**

Upon completion of liquidation, the liquidator shall file with the Commissioner of Banks a final report and accounting of the liquidation. The Commissioner of Banks' approval of the report shall operate as a complete and final discharge of the liquidator, the board of directors, and each member or stockholder in connection with the liquidation of the savings bank. Upon approval of the report, the Commissioner of Banks shall issue a certificate of dissolution of the savings bank and shall record same in the manner required by this Chapter for the recording of certificates of incorporation. The dissolution is effective upon the recording of the certificates of incorporation. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-44. Stock dividends.**

No dividend on stock shall be paid unless the savings bank has the prior written approval of the Commissioner of Banks, except as provided in any rules that the Commissioner of Banks may adopt. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-45. Supervisory mergers, consolidations, conversions, and combination mergers and conversions.**

Notwithstanding any other provision of this Chapter, in order to protect the public, including members, depositors, and stockholders of a State savings bank, the Commissioner of Banks, upon making a finding that a State savings bank is unable to operate in a safe and sound manner, may authorize or require a short form merger, consolidation, conversion, or combination merger and conversion of the State savings bank, or any other transaction, as to which the finding is made. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-46. Interim savings banks.**

(a) Article 2 of this Chapter shall not apply to applications for permission to organize an interim State savings bank so long as the application is approved by the Commissioner of Banks.

(b) Preliminary approval of an application for permission to organize an interim State savings bank is conditional upon the Commissioner of Banks' approval of an application to merge the interim savings bank and an existing stock savings bank or on the Commissioner of Banks' approval of any other transaction. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-47. Conversion to bank.**

(a) A State savings bank, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to convert to a bank, as defined under G.S. 53C-1-4(4), or to a national bank or other form of depository institution and for certification of appropriate amendments to its certificate of incorporation to effect the change. Upon receipt of an application to so convert, the Commissioner of Banks shall examine all facts connected with the conversion,

including receipt of approval of the converting institution's plan of conversion by other federal or state regulatory agencies having jurisdiction over the institution upon completion of its conversion. The depository institution applying for permission to convert shall pay all the expenses and costs of examination.

(b) The converting depository institution shall submit a plan of conversion as a part of the application to the Commissioner of Banks. The Commissioner of Banks may approve it with or without amendment. If the Commissioner of Banks approves the plan, then the plan shall be submitted to the members or stockholders as provided in subsection (c) of this section. If the Commissioner of Banks refuses to approve the plan, the Commissioner of Banks' objections shall be stated in writing and the converting depository institution shall be given an opportunity to amend its plan to obviate the objections or to appeal the Commissioner of Banks' decision to the Commission.

(c) After lawful notice to the members or stockholders of the converting depository institution and full and fair disclosure, the substance of the plan shall be approved by the members or the shareholders at a duly called and properly convened meeting of the members or shareholders. Following the meeting of the members or shareholders, the results of the vote certified by an appropriate officer of the converting depository institution shall be filed with the Commissioner of Banks. The Commissioner of Banks shall then either approve or disapprove the requested conversion to a bank, national bank, or other form of depository institution. After approval of the conversion, the Commissioner of Banks shall supervise and monitor the conversion process and shall ensure that the conversion is conducted lawfully and under the approved plan of conversion. (1993, c. 163, s. 6; 2001-193, s. 16; 2012-56, s. 44.)

**§§ 54C-48 through 54C-51. Reserved for future codification purposes.**

Article 4.

Supervision.

**§ 54C-52. Supervision.**

(a) The Commissioner of Banks shall perform the duties and exercise the powers as to savings banks organized or operated under this Chapter, except as otherwise provided herein.

(b) The Commission may review, approve, disapprove, or modify any action taken by the Commissioner of Banks in the exercise of the powers, duties, and functions granted to the Commissioner of Banks by this Chapter. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-53. Power of Commissioner of Banks to adopt rules and definitions; reproduction of records.**

(a) The Commissioner of Banks shall adopt rules, definitions, and forms as may be necessary for the supervision and regulation of savings banks and for the protection of the public investing in savings banks.

(b) Without limiting the generality of subsection (a) of this section, the Commissioner of Banks may adopt rules, definitions, and forms with respect to the following:

- (1) Reserve requirements;
- (2) Stock ownership and dividends;
- (3) Stock transfers;
- (4) Original incorporators, stockholders, directors, officers, and employees of a savings bank;

- (5) Bylaws;
- (6) The operation of savings banks;
- (7) Deposit accounts, bonus plans, and contracts for savings programs;
- (8) Loans and loan expenses;
- (9) Investments and resource management;
- (10) Forms of proxies, holders of proxies, and proxy solicitations;
- (11) Types of financial records to be maintained by savings banks;
- (12) Retention periods of various financial records;
- (13) Internal control procedures of savings banks;
- (14) Conduct and management of savings banks;
- (15) Chartering and branching;
- (16) Liquidations, dissolutions, and receiverships;
- (17) Mergers, consolidations, conversions, and combination mergers and conversions;
- (18) Interim savings banks;
- (19) Reports that may be required by the Commissioner of Banks;
- (20) Conflicts of interest;
- (21) Service corporations; and
- (22) Subsidiary savings banks and holding companies, including the rights of members, levels of investment in the subsidiaries, and stock sales.

(c) A savings bank may cause any or all of its records to be recorded, copied, or reproduced by any photographic, photostatic, or miniature photographic process that correctly, accurately, permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a film or other durable material.

(d) A photographic, photostatic, or miniature photographic copy or reproduction is deemed to be an original record in all courts and administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any photographic copy or reproduction is deemed to be a facsimile, exemplification, or certified copy of the original record for all purposes.

(e) This section, with reference to the retention and disposition of records, shall apply to any federal savings bank operating in North Carolina unless in conflict with regulations prescribed by its federal regulatory authority. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-54. Examinations by Commissioner of Banks; report.**

(a) It is the Commissioner of Banks' duty, if at any time the Commissioner of Banks deems it prudent, to examine and investigate everything relating to the business of a State savings bank or a holding company thereof, and to appoint a suitable and competent person to make the investigation. The investigator shall file with the Commissioner of Banks a full report of the findings in the case, including any violation of law or any unauthorized or unsafe practices of the savings bank disclosed by the examination.

(b) The Commissioner of Banks shall furnish a copy of the report to the savings bank examined and may, upon request, furnish a copy of, or excerpts from, the report to the insurer of accounts.

(c) No savings bank may willfully delay or willfully obstruct an examination in any fashion. A person failing to comply with this subsection is guilty of a Class 1 misdemeanor.



(d) No person who possesses or controls any books, accounts, or papers of any State savings bank shall refuse to exhibit same to the Commissioner of Banks or the Commissioner of Banks' agent on demand, or shall knowingly or willingly make any false statement in regard to the same. A person failing to comply with this subsection is guilty of a Class 1 misdemeanor. (1991, c. 680, s. 1; 1993, c. 539, ss. 435, 436; 1994, Ex. Sess., c. 24, s. 14(c); 2001-193, s. 16.)

**§ 54C-55. Supervision and examination fees authorized; use of funds collected under Chapter.**

(a) Every State savings bank, including savings banks in process of voluntary liquidation, or a holding company thereof, shall pay into the office of the Commissioner of Banks each July a supervisory fee. Examination fees shall be paid promptly upon an association's receipt of the examination billing. The Commissioner of Banks, subject to the advice and consent of the Commission, shall, on or before June 1 of each year:

- (1) Determine and fix the scale of supervisory and examination fees to be assessed and collected during the next fiscal year; and
- (2) Determine and fix the amount of the fee and set the fee collection schedule for the fees to be assessed to and collected from applicants to defray the cost of processing their charter, branch, merger, conversion, holding company acquisition, and name change applications.

(b) All funds and revenue collected by the Division under this section and all other sections of this Chapter that authorize the collection of fees and other funds shall be deposited with the State Treasurer and expended under the terms of the Executive Budget Act, solely to defray expenses incurred by the office of the Commissioner of Banks in carrying out its supervisory and auditing functions.

(c) Notwithstanding subsections (a) and (b) of this section, whenever the Commissioner of Banks under G.S. 54C-54 appoints a suitable and competent person, other than a person employed by the Commissioner of Banks' office, to make an examination and investigation of the business of a State savings bank, the savings bank shall pay all costs and expenses relative to the examination and investigation. (1991, c. 680, s. 1; 1998-215, s. 38(b); 2001-193, s. 16.)

**§ 54C-56. Prolonged audit, examination, or revaluation; payment of costs.**

(a) If, in the opinion of the Commissioner of Banks, an examination conducted under G.S. 54C-55 fails to disclose the complete financial condition of a savings bank, the Commissioner of Banks may in order to ascertain its complete financial condition:

- (1) Make an extended audit or examination of the savings bank or cause an audit or examination to be made by an independent auditor; and
- (2) Make an extended revaluation of any of the assets or liabilities of the savings bank or cause an independent appraiser to make a revaluation.

(b) The Commissioner of Banks shall collect from the savings bank a reasonable sum for actual or necessary expenses of an audit, examination, or revaluation. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-57. Commissioner of Banks to have right of access to books and records of the savings bank; right to issue subpoenas, administer oaths, examine witnesses.**

(a) The Commissioner of Banks and the Commissioner of Banks' agents:

- (1) Shall have free access to all books and records of a savings bank, or a service corporation or holding company thereof, that relate to its business, and the books and records kept by an officer, agent, or employee relating to or upon which any record is kept;
  - (2) May subpoena witnesses and administer oaths or affirmations in the examination of any director, officer, agent, or employee of a savings bank, or a service corporation or holding company thereof or of any other person in relation to its affairs, transactions, and conditions;
  - (3) May require the production of records, books, papers, contracts, and other documents; and
  - (4) May order that improper entries be corrected on the books and records of a savings bank.
- (b) The Commissioner of Banks may issue subpoenas duces tecum.
- (c) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, a court of competent jurisdiction, on the application of the Commissioner of Banks, shall compel compliance by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-58. Test appraisals of collateral for loans; expense paid.**

- (a) The Commissioner of Banks may direct the making of test appraisals of real estate and other collateral securing loans made by savings banks doing business in this State, employ competent appraisers, or prescribe a list from which competent appraisers may be selected, for the making of these appraisals by the Commissioner of Banks, and any and all other acts incident to the making of test appraisals.
- (b) In lieu of causing an appraisal to be made, the Commissioner of Banks may accept an appraisal caused to be made by the insurer of accounts.
- (c) The expense and cost of test appraisals made under this section shall be defrayed by the savings bank subjected to the test appraisals, and each savings bank doing business in this State shall pay all reasonable costs and expenses of the test appraisals when it is directed. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-59. Relationship of savings banks with the Savings Institutions Division.**

- (a) Except as provided by subsection (b) of this section, a savings bank or any director, officer, employee, or representative thereof shall not grant or give to any employee of the Savings Institutions Division or to their spouses, any loan or gratuity, directly or indirectly.
- (b) No employee of the Savings Institutions Division shall:
- (1) Hold an office or position in any State savings bank or exercise any right to vote on any State savings bank matter by reason of being a member of the savings bank;
  - (2) Be interested, directly or indirectly, in any savings bank organized under the laws of this State; or
  - (3) Undertake any indebtedness as a borrower, directly or indirectly, or act as endorser, surety, or guarantor, or sell or otherwise dispose of any loan or investment to any savings bank organized under the laws of this State.

(c) Notwithstanding subsection (b) of this section, any employee of the Savings Institutions Division may be a deposit account holder and receive earnings on a deposit account.

(d) Any employee of the Savings Institutions Division shall dispose of any right or interest in a savings bank, held either directly or indirectly, that is prohibited under subsection (b) of this section, within 60 days after the date of the employee's appointment or employment. If any employee of the Division is indebted as borrower, directly or indirectly, or is an endorser, surety, or guarantor on a note, at the time of appointment or employment, the employee may continue in that capacity until the loan is paid off.

(e) If any employee of the Savings Institutions Division has a loan or other note acquired by a State savings bank through the secondary market, the employee may continue with the debt until the loan or note is paid off. (1991, c. 680, s. 1; 2001-193, s. 9.)

**§ 54C-60. Confidential information.**

(a) The following records or information of the Commission, the Commissioner of Banks, or the agent of either shall be confidential and shall not be disclosed:

- (1) Information obtained or compiled in preparation of or anticipation of, or during an examination, audit, or investigation of any association;
- (2) Information reflecting the specific collateral given by a named borrower, the specific amount of stock owned by a named stockholder, any stockholder list supplied to the Commissioner of Banks under G.S. 54C-22, or specific deposit accounts held by a named member or customer;
- (3) Information obtained, prepared, or compiled during or as a result of an examination, audit, or investigation of any savings bank by an agency of the United States, if the records would be confidential under federal law or regulation;
- (4) Information and reports submitted by savings banks to federal regulatory agencies, if the records or information would be confidential under federal law or regulation;
- (5) Information and records regarding complaints from the public received by the Division that concern savings banks when the complaint would or could result in an investigation, except to the management of those savings banks; and
- (6) Any other letters, reports, memoranda, recordings, charts or other documents or records that would disclose any information of which disclosure is prohibited in this subsection.

(b) A court of competent jurisdiction may order the disclosure of specific information.

(c) The information contained in an application is deemed to be public information. Disclosure shall not extend to the financial statement of the incorporators nor to any further information deemed by the Commissioner of Banks to be confidential.

(d) Nothing in this section shall prevent the exchange of information relating to savings banks and the business thereof with the representatives of the agencies of this State, other states, or of the United States, or with reserve or insuring agencies for savings banks. The private business and affairs of an individual or company shall not be disclosed by any person employed by the Division, any member of the Commission, or by any person with whom information is exchanged under the authority of this subsection.

(e) An official or employee of this State violating this section is liable to any person injured by disclosure of the confidential information for all damages sustained thereby. Penalties provided are not exclusive of other penalties. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-60.1. Confidential records.**

(a) As used in this section:

(1) "Compliance review committee" means:

- a. An audit, loan review, or compliance committee appointed by the board of directors of a savings bank or any other person to the extent the person acts at the direction of or reports to a compliance review committee; and
- b. Whose functions are to audit, evaluate, report, or determine compliance with any of the following:
  1. Loan underwriting standards;
  2. Asset quality;
  3. Financial reporting to federal or State regulatory agencies;
  4. Adherence to the savings bank's investment, lending, accounting, ethical, and financial standards; or
  5. Compliance with federal or State statutory requirements.

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

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

(4) "Person" means an individual, group of individuals, board, committee, partnership, firm, association, corporation, or other entity.

(b) Savings banks chartered under the laws of North Carolina or of the United States shall maintain complete records of compliance review documents, and the documents shall be available for examination by any federal or State savings bank regulatory agency having supervisory jurisdiction. Notwithstanding Chapter 132 of the General Statutes, compliance review documents in the custody of a savings bank or regulatory agency are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action against a savings bank, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence. (1995, c. 408, s. 3.)

**§ 54C-61. Annual license fees.**

A state savings bank shall pay an annual license fee set by the Commissioner of Banks, subject to the advice and consent of the Commission. The license fee shall be used to defray the expenses incurred by the Division in supervising State savings banks. The Commissioner of Banks may license each State savings bank upon receipt of the license fee and filing of an application in the form prescribed by the Commissioner of Banks. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-62. Statement filed by savings bank; fees and examination.**

A State savings bank shall file in the Office of the Commissioner of Banks, on or before the first day of February in each year, in the form prescribed by the Commissioner of Banks, a statement of the business standing and financial condition of the savings bank on the preceding 31st day of December, signed and sworn to by the secretary or other officer duly authorized by the board of directors of the savings bank before a notary public. The statement shall be accompanied by a filing fee set by the Commissioner of Banks, subject to the advice and consent of the Commission. The filing fees shall be used to defray the expenses incurred by the Division in supervising State savings banks. The Commissioner of Banks shall receive and thoroughly examine each annual statement. (1991, c. 680, s. 1; 1993, c. 163, s. 3; 2001-193, s. 16; 2019-173, s. 1(a).)

**§ 54C-63.** Repealed by Session Laws 2019-173, s. 1(b), effective July 26, 2019.

**§ 54C-64. Prohibited practices.**

A person who engages in any of the following acts or practices is guilty of a Class 1 misdemeanor:

- (1) Defamation: Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral, written, or printed statement that is false regarding the financial condition of any savings bank.
- (2) False information and advertising: Making, publishing, disseminating, circulating, or otherwise placing before the public in any publication, media, notice, pamphlet, letter, poster, or any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the savings bank business or with respect to any person in the conduct of the savings bank business that is untrue, deceptive, or misleading.
- (3) Repealed by Session Laws 1997-241, s. 2. (1991, c. 680, s. 1; 1993, c. 539, s. 437; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 767, s. 22; 1997-241, s. 2.)

**§§ 54C-65 through 54C-75. Reserved for future codification purposes.**

Article 5.

Enforcement.

**§ 54C-76. Cease and desist orders.**

(a) If a person or savings bank is engaging in, or has engaged in, any unsafe or unsound practice or unfair and discriminatory practice in conducting the savings bank's business, or of any other law, rule, order, or condition imposed in writing by the Commissioner of Banks, the Commissioner of Banks may issue a notice of charges to the person or association. A notice of charges shall specify the acts alleged to sustain a cease and desist order, and state the time and place at which a hearing shall be held. A hearing before the Commission on the charges shall be held no earlier than seven days, and no later than 15 days after issuance of the notice. The charged institution is entitled to a further extension of seven days upon filing a request with the Commissioner of Banks. The Commissioner of Banks may also issue a notice of charges if there are reasonable grounds to believe that a person or savings bank is about to engage in any unsafe or

unsound business practice, or any violation of this Chapter, or any other law, rule, or order. If, by a preponderance of the evidence, it is shown that any person or savings bank is engaged in, or has been engaged in, or is about to engage in, any unsafe or unsound business practice, or unfair and discriminatory practice or any violation of this Chapter, or any other law, rule, or order, a cease and desist order shall be issued. The Commission may issue a temporary cease and desist order to be effective for 15 days and which may be extended once for a period of 15 days.

(b) If a person or State savings bank is engaging in, has engaged in, or is about to engage in any unsafe or unsound practice in conducting the savings bank's business, or any violation of this Chapter or of any other law, rule, order, or condition imposed in writing by the Commissioner of Banks, and the Commissioner of Banks has determined that immediate corrective action is required, the Commissioner of Banks may issue a temporary cease and desist order. A temporary cease and desist order is effective immediately upon issuance for a period of 15 days, and may be extended once for a period of 15 days. The order shall state its duration on its face and the words, "Temporary Cease and Desist Order." A hearing before the Commission shall be held within the time that the order remains effective, at which time a temporary order may be dissolved or made permanent. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-77. Civil penalties; State savings banks.**

(a) Except as otherwise provided in this Article, a savings bank that is found to have violated this Article may be ordered to pay a civil penalty of up to twenty thousand dollars (\$20,000). A savings bank that is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article may be ordered to pay a civil penalty of up to twenty thousand dollars (\$20,000) for each day that the violation or failure to comply continues.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) To enforce this section, the Commissioner of Banks may assess the penalty, appear in a court of competent jurisdiction, and move the court to order payment of the penalty. Before the assessment of the penalty, the Commissioner of Banks shall hold a hearing, which shall comply with Article 3A of Chapter 150B of the General Statutes.

(c) If the Commissioner of Banks determines that, as a result of a violation of this Article or of a failure to comply with any cease and desist order issued under the authority of this Article, a situation exists requiring immediate corrective action, the Commissioner of Banks may impose the civil penalty in this section on the savings bank without a prior hearing, and the penalty is effective as of the date of notice to the association. Imposition of the penalty may be directly appealed to the Wake County Superior Court.

(d) Nothing in this section shall prevent anyone damaged by a State savings bank from bringing a separate cause of action in a court of competent jurisdiction. (1991, c. 680, s. 1; 1998-215, s. 38(a); 2001-193, s. 16.)

#### **§ 54C-78. Civil penalties; directors, officers, and employees.**

(a) A person, whether a director, officer, or employee, who is found to have violated this Article, whether willfully or as a result of gross negligence, gross incompetency, or recklessness, may be ordered to pay a civil penalty of up to five thousand dollars (\$5,000) per violation. A person who is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article, may be ordered to pay a civil penalty of up to five thousand dollars (\$5,000) per violation for each day that the violation or failure to comply continues. The clear

proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) To enforce this section, the Commissioner of Banks may assess the penalty, appear in a court of competent jurisdiction, and move the court to order payment of the penalty. Before the assessment of the penalty, the Commissioner of Banks shall hold a hearing, which shall comply with Article 3A of Chapter 150B of the General Statutes.

(c) Whenever the Commissioner of Banks determines that an emergency exists that requires immediate corrective action, the Commissioner of Banks, either before or after instituting any other action or proceeding authorized by this Article, may request the Attorney General to institute a civil action in a court of competent jurisdiction, in the name of the State upon the relation of the Commissioner of Banks seeking injunctive relief to restrain or enjoin the violation or threatened violation of this Article and for any other and further relief as the court may deem proper. Instituting an action for injunctive relief shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violation of this Article.

(d) Nothing in this section shall prevent anyone damaged by a director, officer, or employee of a State savings bank from bringing a separate cause of action in a court of competent jurisdiction. (1991, c. 680, s. 1; 1991 (Reg. Sess., 1992), c. 829, s. 10; 1998-215, s. 39; 2001-193, s. 16.)

#### **§ 54C-79. Criminal penalties.**

(a) This section shall in no event extend to persons who are found to have acted only with gross negligence, simple negligence, recklessness, or incompetence.

(b) In addition to any of the other penalties or remedies provided by this Article, the following are deemed to be Class 1 misdemeanors:

(1) The willful or knowing violation of this Article by any employee of the Division.

(2) The willful or knowing violation of a cease and desist order that has become final in that no further administrative or judicial appeal is available.

(c) In addition to any of the other penalties or remedies provided by this Article, the willful omission, making, or concurrence in making or publishing a written report, exhibit, or entry in a financial statement on the books of the association, which contains a material statement known to be false is deemed to be a Class 1 misdemeanor. For purposes of this section, "material" shall mean "so substantial and important as to influence a reasonable and prudent businessman or investor."

(d) The Commissioner of Banks may enforce this section in a court of competent jurisdiction. (1991, c. 680, s. 1; 1993, c. 539, s. 438; 1994, Ex. Sess., c. 24, s. 14(c); 2001-193, s. 16.)

#### **§ 54C-80. Primary jurisdiction.**

Whenever an agency of the United States government defers to the Commissioner of Banks, or notifies the Commissioner of Banks of pending action against a savings bank chartered by this State, or fails to exercise its authority over any State or federally chartered savings bank doing business in this State, the Commissioner of Banks may exercise jurisdiction over the savings bank. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-81. Supervisory control.**

(a) Whenever the Commissioner of Banks determines that a savings bank is conducting its business in an unsafe or unsound manner or in any fashion that threatens the financial integrity or

sound operation of the savings bank, the Commissioner of Banks may serve a notice of charges on the savings bank, requiring it to show cause why it should not be placed under supervisory control. The notice of charges shall specify the grounds for supervisory control, and set the time and place for a hearing. A hearing before the Commission shall be held within 15 days after issuance of the notice of charges, and shall comply with Article 3A of Chapter 150B of the General Statutes.

(b) If, after the hearing provided in subsection (a) of this section, the Commission determines that supervisory control of the savings bank is necessary to protect the savings bank's members, customers, stockholders, or creditors, or the general public, the Commissioner of Banks shall issue an order taking supervisory control of the savings bank. An appeal may be filed in the Wake County Superior Court.

(c) If the order taking supervisory control becomes final, the Commissioner of Banks may appoint an agent to supervise and monitor the operations of the savings bank during the period of supervisory control. During the period of supervisory control, the savings bank shall act in accordance with any instructions and directions as may be given by the Commissioner of Banks, directly or through a supervisory agent, and shall not act or fail to act except when to do so would violate an outstanding cease and desist order.

(d) Within 180 days of the date the order taking supervisory control becomes final, the Commissioner of Banks shall issue an order approving a plan for the termination of supervisory control. The plan may provide for:

- (1) The issuance by the savings bank of capital stock;
- (2) The appointment of one or more officers, one or more directors, or one or more officers and directors;
- (3) The reorganization, merger, or consolidation of the savings bank; and
- (4) The dissolution and liquidation of the savings bank.

The order approving the plan shall not take effect for 30 days during which time period an appeal may be filed in the Wake County Superior Court.

(e) The costs incident to this proceeding shall be paid by the savings bank, provided the costs are found to be reasonable.

(f) For the purposes of this section, an order is deemed final if:

- (1) No appeal is filed within the specific time allowed for the appeal, or
- (2) After all judicial appeals are exhausted. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-82. Removal of directors, officers, and employees.**

(a) If, in the Commissioner of Banks' opinion, one or more directors, officers, or employees of a savings bank has participated in or consented to any violation of this Chapter, or any other law, rule, or order, or any unsafe or unsound business practice in the operation of any savings bank; or any insider loan not specifically authorized by or under this Chapter; or any repeated violation of or failure to comply with any savings bank's bylaws, the Commissioner of Banks may serve a written notice of charges upon the director, officer, and employee in question, and the savings bank, stating the Commissioner of Banks' intent to remove the director, officer, or employee. The notice shall specify the conduct and place for the hearing before the Commission to be held. A hearing shall be held no earlier than 15 days and no later than 30 days after the notice of charges is served, and it shall comply with Article 3A of Chapter 150B of the General Statutes. If, after the hearing, the Commission determines that the charges asserted have been proven by a preponderance of the evidence, the Commissioner of Banks may issue an order removing the



director, officer, or employee in question. The order is effective upon issuance and may include the entire board of directors or all of the officers of the savings bank.

(b) If it is determined that a director, officer, or employee of a savings bank has knowingly participated in or consented to any violation of this Chapter, or any other law, rule, or order, or engaged in any unsafe or unsound business practice in the operation of any savings bank, or any repeated violation of or failure to comply with any savings bank's bylaws, and that as a result, a situation exists requiring immediate corrective action, the Commissioner of Banks may issue an order temporarily removing the person pending a hearing. The order shall state its duration on its face and the words, "Temporary Order of Removal," and is effective upon issuance, for a period of 15 days, and may be extended once for a period of 15 days. A hearing shall be held within 10 days of the expiration of a temporary order, or any extension thereof, at which time a temporary order may be dissolved or converted to a permanent order.

(c) Any removal under subsections (a) or (b) of this section is effective in all respects as if the removal had been made by the board of directors and the members or the stockholders of the savings bank in question.

(d) Without the prior written approval of the Commissioner of Banks, no director, officer, or employee permanently removed under this section shall be eligible to be elected, reelected, or appointed to any position as a director, officer, or employee of that savings bank, nor shall that director, officer, or employee be eligible to be elected to or retain a position as a director, officer, or employee of any other State savings bank. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-83. Involuntary liquidation.**

(a) The Commissioner of Banks, with prior approval of the Commission, may take custody of the books, records, and assets of every kind and character of any savings bank organized and operated under this Chapter for any of the purposes enumerated in this section, if it reasonably appears from examinations or from reports made to the Commissioner of Banks that:

- (1) The directors, officers, or liquidators have neglected, failed, or refused to take action that the Commissioner of Banks may deem necessary for the protection of the savings bank or have impeded or obstructed an examination;
- (2) The net worth of the savings bank is impaired to the extent that the realizable value of its assets is insufficient to pay in full its creditors and holders of deposit accounts;
- (3) The business of the savings bank is being conducted in a fraudulent, illegal, or unsafe manner, or that the savings bank is in an unsafe or unsound condition to transact business; for purposes of this subdivision, any savings bank that, except as authorized in writing by the Commissioner of Banks, fails to make full payment of any withdrawal when due is in an unsafe or unsound condition to transact business, notwithstanding the certificate of incorporation or the statutes or regulations with respect to payment of withdrawals in event a savings bank does not pay all withdrawals in full;
- (4) The officers, directors, or employees have assumed duties or performed acts in excess of those authorized by statute or regulation or charter, or without supplying the required bond;
- (5) The savings bank has experienced a substantial dissipation of assets or earnings due to any violation or violation of statute or regulation, or due to any unsafe or unsound practice or practices;

- (6) The savings bank is insolvent, or is in imminent danger of insolvency or has suspended its ordinary business transactions due to insufficient funds; or
- (7) The savings bank is unable to continue operations.
- (b) Unless the Commissioner of Banks finds that an emergency exists that may result in loss to members, deposit account holders, stockholders, or creditors, and that requires that the Commissioner of Banks take custody immediately, the Commissioner of Banks shall first give written notice to the directors and officers specifying the conditions criticized and allowing a reasonable time in which corrections may be made before a receiver shall be appointed as outlined in subsection (d) of this section.
- (c) The purposes for which the Commissioner of Banks may take custody of a savings bank include examination or further examination, conservation of its assets, restoration of impaired capital, and the making of any reasonable or equitable adjustment deemed necessary by the Commissioner of Banks under any plan of reorganization.
- (d) If the Commissioner of Banks, after taking custody of a savings bank, finds that one or more of the reasons for having taken custody continue to exist through the period of custody, with little or no likelihood of amelioration of the situation, then the Commissioner of Banks shall appoint as receiver or coreceiver any qualified person, firm, or corporation for the purpose of liquidation of the savings bank, which receiver shall furnish bond in form, amount, and with surety as the Commissioner of Banks may require. The Commissioner of Banks may appoint the association's deposit account insurance corporation or its nominee as the receiver, and the insuring corporation shall be permitted to serve without posting bond.
- (e) In the event the Commissioner of Banks appoints a receiver for a savings bank, the Commissioner of Banks shall mail a certified copy of the appointment order by certified mail to the address of the savings bank as it appears on the records of the Division, and to any previous receiver or other legal custodian of the savings bank, and to any court or other authority to which the previous receiver or other legal custodian is subject. Notice of the appointment may be published in a newspaper of general circulation in the county where the savings bank has its principal office.
- (f) Whenever a receiver for a savings bank is appointed under subsection (d) of this section, the savings bank may within 30 days thereafter bring an action in the Superior Court of Wake County, for an order requiring the Commissioner of Banks to remove the receiver.
- (g) The duly appointed and qualified receiver shall take possession promptly of the savings bank for which the receiver has been so appointed, in accordance with the terms of the appointment, by service of a certified copy of the Commissioner of Banks' appointment order upon the savings bank at its principal office through the officer or employee who is present and appears to be in charge. Immediately upon taking possession of the savings bank, the receiver shall take possession and title to books, records, and assets of every description of the savings bank. The receiver, by operation of law and without any conveyance or other instrument, act or deed, shall succeed to all the rights, titles, powers, and privileges of the savings bank, its members or stockholders, holders of deposit accounts, its officers and directors or any of them; and to the titles to the books, records, and assets of every description of any previous receiver or other legal custodian of the savings bank. The members, stockholders, holders of deposit accounts, officers or directors, or any of them, shall not thereafter, except as expressly provided in this section have or exercise any rights, powers or privileges or act in connection with any assets or property of any nature of the savings bank in receivership. The Commissioner of Banks, with the approval of the Commission, may at any time, direct the receiver to return the savings bank to its previous or a

newly constituted management. The Commissioner of Banks may provide for a meeting or meetings of the members or stockholders for any purpose, including the election of directors or an increase in the number of directors, or both, or the election of an entire new board of directors; and may provide for a meeting or meetings of the directors for any purpose including the filling of vacancies on the board, the removal of officers and the election of new officers, or for any of these purposes. Any meeting of members or stockholders, or of directors, shall be supervised or conducted by a representative of the Commissioner of Banks.

(h) A duly appointed and qualified receiver may:

- (1) Demand, sue for, collect, receive and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description of the savings bank;
- (2) Foreclose mortgages, deeds of trust, and other liens executed to the savings bank to the extent the savings bank would have had this right;
- (3) Institute suits for the recovery of any estate, property, damages, or demands existing in favor of the savings bank, and shall, upon the receiver's own application, be substituted as party plaintiff in the place of the savings bank in any suit or proceeding pending at the time of the receiver's appointment;
- (4) Sell, convey, and assign all the property rights and interests owned by the savings bank;
- (5) Appoint agents;
- (6) Examine and investigate papers and persons, and pass on claims as provided in the regulations as prescribed by the Commissioner of Banks;
- (7) Make and carry out agreements with the insuring corporation or with any other financial institution for the payment or assumption of the savings bank's liabilities, in whole or in part, and to sell, convey, transfer, pledge, or assign assets as security or otherwise and to make guarantees in connection therewith; and
- (8) Perform all other acts that might be done by the employees, officers, and directors.

These powers shall be continued in effect until liquidation and dissolution or until return of the savings bank to its prior or newly constituted management.

(i) A receiver may, at any time during the receivership and before final liquidation, be removed and a replacement appointed by the Commissioner of Banks.

(j) The Commissioner of Banks may determine that the liquidation proceedings should be discontinued. The Commissioner of Banks shall then remove the receiver and restore all the rights, powers, and privileges of its members and stockholders, customers, employees, officers, and directors, or restore these rights, powers, and privileges to its members, stockholders, and customers, and grant these rights, powers, and privileges to a newly constituted management, all as of the time of the restoration of the savings bank to its management unless another time for the restoration is specified by the Commissioner of Banks. The return of a savings bank to its management or to a newly constituted management from the possession of a receiver shall, by operation of law and without any conveyance or other instrument, act or deed, vest in the savings bank the title to all property held by the receiver in the capacity as receiver for the savings bank.

(k) A receiver may also be appointed under the authority of G.S. 1-502. No judge or court, however, shall appoint a receiver for any State savings bank unless five days' advance notice of the

motion, petition, or application for appointment of a receiver has been given to the savings bank and to the Commissioner of Banks.

(l) Following the appointment of a receiver, the Commissioner of Banks may request the Attorney General to institute an action in the name of the Commissioner of Banks in the superior court against the savings bank for the orderly liquidation and dissolution of the association, and for an injunction to restrain the officers, directors, and employees from continuing the operation of the savings bank.

(m) Claims against the State association in receivership shall have the following order of priority for payment:

- (1) Costs, expenses, and debts of the savings bank incurred on or after the date of the appointment of the receiver, including compensation for the receiver.
- (2) Claims of holders of special purpose or thrift accounts.
- (3) Claims of holders of deposit accounts.
- (4) Claims of general creditors.
- (5) Claims of stockholders of a stock savings bank.
- (6) All remaining assets to members and stockholders in an amount proportionate to their holdings as of the date of the appointment of the receiver.

(n) All claims of each class described within subsection (m) of this section shall be paid in full so long as sufficient assets remain. Members of the class for which the receiver cannot make payment in full because assets will be depleted during payment to that class shall be paid an amount proportionate to their total claims.

(o) The Commissioner of Banks may direct the payment of claims for which no provision is made in this section, and may direct the payment of claims within a class.

(p) When all assets of the savings bank have been fully liquidated, and all claims and expenses have been paid or settled, and the receiver has recommended a final distribution, the dissolution of the savings bank in receivership shall be accomplished in the following manner:

- (1) The receiver shall file with the Commissioner of Banks a detailed report, in a form to be prescribed by the Commissioner of Banks, of the receiver's acts and proposed final distribution, and dissolution.
- (2) Upon the Commissioner of Banks' approval of the final report of the receiver, the receiver shall provide notice and thereafter shall make the final distribution, in any manner as the Commissioner of Banks may direct.
- (3) When a final distribution has been made except as to any unclaimed funds, the receiver shall deposit the unclaimed funds with the Commissioner of Banks and shall deliver to the Commissioner of Banks all books and records of the dissolved association.
- (4) Upon completion of the foregoing procedure, and upon the joint petition of the Commissioner of Banks and receiver to the superior court, the court may find that the savings bank should be dissolved, and following publication of notice of dissolution as the court may direct, the court may enter a decree of final resolution and the savings bank shall therefore be dissolved.
- (5) Upon final dissolution of the savings bank in receivership or at any time as the receiver shall be otherwise relieved of duties, the Commissioner of Banks shall cause an audit to be conducted, during which the receiver shall be available to assist. The accounts of the receiver shall then be ruled upon by the Commissioner of Banks and Commission and if approved, the receiver shall

thereupon be given a final and complete discharge and release. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-84. Judicial review.**

A person or State savings bank against whom a cease and desist order is issued or a fine is imposed may have the order or fine reviewed by a court of competent jurisdiction. Except as otherwise provided, an appeal may be made only within 30 days of the issuance of the order or the imposition of the fine, whichever is later. (1991, c. 680, s. 1.)

**§ 54C-85. Indemnity.**

No person who is fined or penalized for a violation of any criminal provision of this Article shall be reimbursed or indemnified in any fashion by the savings bank for the fine or penalty. (1991, c. 680, s. 1.)

**§ 54C-86. Cumulative penalties.**

All penalties, fines, and remedies provided by this Article are cumulative. (1991, c. 680, s. 1.)

**§ 54C-87. Emergency limitations.**

The Commissioner of Banks, with the approval of the Governor, may impose a limitation upon the amounts withdrawable or payable from deposit accounts of savings banks during any specifically defined period when the limitation is in the public interest and welfare. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§§ 54C-88 through 54C-99. Reserved for future codification purposes.**

Article 6.

Corporate Administration.

**§ 54C-100. Membership of a mutual association.**

The membership of a mutual State savings bank shall consist of:

- (1) Those who hold deposit accounts in a savings bank, and
- (2) Those who borrow funds and those who become obligated on a loan from the savings bank, for as long as the loan remains unpaid and the borrower remains liable to the savings bank for the payment of the loan.

A person, as a matter of right or in a trust or other fiduciary capacity, or any partnership, association, corporation, political subdivision, or public or governmental unit or entity may become a member of a mutual savings bank. Members shall be possessed of voting rights and any other rights as are provided by a savings bank's certificate of incorporation and bylaws as approved by the Commissioner of Banks. Members are the owners of a mutual savings bank. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-101. Directors.**

(a) The directors of a mutual savings bank shall be elected by the members at an annual meeting, held under G.S. 54C-106, for any terms as the bylaws of the savings bank may provide. Director's terms may be classified in the certificate of incorporation. Voting for directors by deposit account holders shall be weighted according to the total amount of deposit accounts held by the members, subject to any maximum number of votes per member which a savings bank may

choose to prescribe in its bylaws. Voting rights for borrowers shall be fully prescribed in a detailed manner in the bylaws of the savings bank.

(b) The directors of a stock savings bank shall be elected by the stockholders at an annual meeting, held under G.S. 54C-106, for any terms as the bylaws of the savings bank may provide. Director's terms may be classified in the certificate of incorporation.

(c) A director of a State savings bank shall have a significant ownership interest in the State savings bank.

(d) A State savings bank shall have no less than five directors. (1991, c. 680, s. 1.)

#### **§ 54C-102. Bylaws.**

The bylaws and any amendments shall be certified by the appropriate corporate official and submitted to the Commissioner of Banks for approval before they may become effective. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-103. Duties and liabilities of officers and directors to their associations.**

Officers and directors of a State savings bank shall act in a fiduciary capacity towards the savings bank and its members or stockholders. They shall discharge duties of their respective positions in good faith, and with that diligence and care which ordinarily prudent persons would exercise under similar circumstances in like positions. (1991, c. 680, s. 1.)

#### **§ 54C-104. Conflicts of interest.**

Each director, officer, and employee of a State savings bank has a fundamental duty to avoid placing himself in a position which creates, or which leads to or could lead to a conflict of interest or appearance of a conflict of interest having adverse effects on the interests of members, customers, or stockholders of the savings bank, soundness of the savings bank, and the purposes of this Chapter. (1991, c. 680, s. 1.)

#### **§ 54C-105. Voting rights.**

Voting rights in the affairs of a State savings bank may be exercised by members and stockholders by voting either in person or by proxy. (1991, c. 680, s. 1.)

#### **§ 54C-106. Annual meetings notice required.**

(a) A savings bank shall hold an annual meeting of its members or stockholders. The annual meeting shall be held at a time and place as shall be provided in the bylaws or determined by the board of directors.

(b) The board of directors of a mutual savings bank shall cause to be published once a week for two weeks preceding such meeting, in a newspaper of general circulation in the county where such savings bank has its principal office, a notice of the meeting, signed by the savings bank's secretary, and stating the time and place where it is to be held. In addition to the foregoing notice, a savings bank shall disseminate additional notice of any annual meeting by notice made available to all members entering the premises of any office or branch of the savings bank in the regular course of business by posting therein, in full view of the public and its members, one or more conspicuous signs or placards announcing the pending meeting, the time, date and place of the meeting and the availability of additional information. Printed matter shall be freely available to the members containing any information as may be prescribed in rules issued by the Commissioner of Banks.

The additional notice shall be given at any time within the period of 60 days before and 14 days before the meeting and shall continue through the time of the meeting.

(c) The board of directors of a stock savings bank shall cause a written or printed notice, signed by the savings bank's secretary and stating the time and place of the annual meeting, to be delivered not less than 10 days nor more than 50 days before the date of the meeting, either personally or by mail to each stockholder of record entitled to vote at the meeting. If mailed, the notice is deemed to be delivered when deposited in the United States postal service addressed to the stockholder at the address as it appears on the records of the corporation, with postage thereon prepaid. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-107. Special meetings; notice required.**

(a) Special meetings of members or stockholders of a savings bank may be called by the president or the board of directors or by any other officers or persons as may be provided for in the charter or bylaws of the savings bank.

(b) Notice of any special meeting of members or stockholders shall be given in the same manner as provided for annual meetings under G.S. 54C-106. (1991, c. 680, s. 1.)

#### **§ 54C-108. Quorum.**

Unless otherwise provided in the savings bank's charter or bylaws, 50 holders of deposit accounts in a mutual savings bank or 50 stockholders or a majority of shares eligible to vote in a stock savings bank, present in person or represented by proxy, shall constitute a quorum at any annual or special meeting. (1991, c. 680, s. 1.)

#### **§ 54C-109. Bonding.**

(a) A savings bank shall maintain a blanket indemnity bond of at least a minimum amount as prescribed by the Commissioner of Banks.

(b) A savings bank that employs collection agents, who for any reason are not covered by the bond required in this section, shall provide for the bonding of each agent in an amount equal to at least twice the average monthly collections of the agent. The agents shall be required to make settlement with the association at least once monthly. No coverage by bond will be required of any agent that is a bank or an association insured by the Federal Deposit Insurance Corporation. The amount and form of the bonds and the sufficiency of the surety thereon shall be approved by the board of directors and the Commissioner of Banks before it is valid. A bond shall provide that its cancellation, either by the surety or by the insured, shall not become effective unless and until 30 days' notice in writing shall have been given to the Commissioner of Banks. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§§ 54C-110 through 54C-120. Reserved for future codification purposes.**

### Article 7.

#### Loans and Investments.

#### **§ 54C-121. Loans.**

(a) A savings bank may loan funds as follows:

- (1) On the security of deposit accounts, but no loan shall exceed the withdrawal value of the pledged deposit account.
- (2) On the security of real property:

- a. Of a value, determined in accordance with this Chapter and any appraisal rules as the Commissioner of Banks may adopt sufficient to provide good and ample security for the loan;
  - b. With a fee simple title or a leasehold title of no less duration than 10 years beyond the maturity of the loan;
  - c. With the title established by any evidence of title as is consistent with sound lending practices; and
  - d. With the security interest in such real estate evidenced by an appropriate written instrument and the loan evidenced by a note, bond, or similar written instrument. A loan on the security of the whole of the beneficial interest in a land trust satisfies the requirements of this sub-subdivision if the title to the land is held by a corporate trustee and if the real estate held in the land trust meets the other requirements of this subdivision.
- (3) For the purpose of repair, improvement, rehabilitation, furnishing, or equipment of real estate.
  - (4) For the purpose of financing or refinancing an existing ownership interest, in certificates of stock, certificates of beneficial interest, or other evidence of an ownership interest in, and a proprietary lease from, a corporation, trust or partnership formed for the purpose of the cooperative ownership of real estate, secured by the assignment or transfer of the certificates or other evidence of ownership of the borrower.
  - (5) For the purchase of loans that, at the time of purchase, the savings bank could make in accordance with this Chapter.
  - (6) For the purchase of installment contracts for the sale of real estate, and title thereto that is subject to the contract, but in each instance only if the savings bank, at the time of purchase, could make a mortgage loan of the same amount and for the same length of time on the security of the real estate.
  - (7) For the purchase of loans guaranteed or insured, wholly or in part, by the United States or any of its instrumentalities.
  - (8) For secured or unsecured financing for business, corporate, personal, family, or household purposes, or for secured or unsecured loans for agricultural or commercial purposes, subject to any rules as the Commissioner of Banks may adopt.
  - (9) For the purpose of mobile home financing.
  - (10) For loans secured by no more than ninety percent (90%) of the cash surrender value of any life insurance policy.
  - (11) For loans on any collateral that would be a legal investment if made by the savings bank under this Chapter.

(b) Notwithstanding any provision of this Chapter to the contrary, a savings bank may make any loan that the savings bank could make if it were incorporated and operating as a federal association or as a State or national bank. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-122. Lending procedures.**

(a) The board of directors shall establish procedures by which loans are to be considered, approved, and made by the savings bank.



(b) All actions on loan applications to the savings bank shall be reported to the board of directors at its next meeting.

(c) Subject to any rules as the Commissioner of Banks deems appropriate, a savings bank may lend funds on any collateral deemed sufficient by the board of directors to properly secure loans. Loans made solely upon security of collateral consisting of stock or equity securities that are not listed on a national stock exchange or regularly quoted and offered for trade on an over-the-counter market are considered loans without security.

(d) A savings bank may lend funds without requiring security. No unsecured loan shall exceed the maximum amount authorized by rules of the Commissioner of Banks.

(e) A savings bank may make insured or guaranteed loans in accordance with G.S. 53C-5-3.

(f) A savings bank may invest any funds on hand in the purchase of loans of a type that the savings bank could make in accordance with this Chapter.

(g) A savings bank may invest in a participating interest in loans of a type that the savings bank could make in accordance with this Chapter.

(h) A savings bank may sell any loan, including any participating interest in a loan. (1991, c. 680, s. 1; 2001-193, s. 16; 2012-56, s. 45.)

#### **§ 54C-123. Prohibited security.**

No savings bank may accept its own capital stock or its own mutual capital certificates as security for any loan made by the savings bank. (1991, c. 680, s. 1.)

#### **§ 54C-124. Loans conditioned on certain transactions prohibited.**

(a) No savings bank or service corporation thereof shall require, as a condition of making a loan, that the borrower contract with any specific person or organization for particular services.

(b) A savings bank or service corporation thereof shall notify borrowers before the loan commitment of their right to select the attorney or law firm rendering legal services in connection with the loan, and the person or organization rendering insurance services in connection with the loan. These persons or organizations shall be approved by the savings bank's board of directors, under any rules as the Commissioner of Banks may prescribe.

(c) A savings bank or service corporation thereof may require borrowers to reimburse the savings bank for legal services rendered to it by its own attorney only when the fee is limited to legal services required by the making of the loan. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-125. Loan expenses and fees.**

(a) Subject to Chapter 24 of the General Statutes, a savings bank may require borrowers to pay all reasonable expenses incurred by the savings bank in connection with making, closing, disbursing, extending, adjusting, or renewing loans. The charges may be collected by the savings bank from the borrower and paid to any persons, including any director, officer, or employee of the savings bank who may render services in connection with the loan, or the charges may be paid directly by the borrower.

(b) A savings bank may require a borrower to pay a reasonable charge for late payments made during the course of repayment of a loan. Subject to G.S. 24-10.1, the payments may be levied only upon the terms and conditions that are fixed by the savings bank's board of directors and agreed to by the borrower in the loan contract.

(c) Nothing in this Article shall be construed to modify Chapter 24 of the General Statutes, or other applicable law, or to allow fees, charges, or interest beyond that permitted by Chapter 24 of the General Statutes or other applicable law. (1991, c. 680, s. 1.)

**§ 54C-126. Methods of loan repayment.**

Subject to any rules as the Commissioner of Banks may prescribe, a savings bank shall agree in writing with borrowers as to the method or plan by which an indebtedness shall be repaid. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-127. Insider loans.**

The Commissioner of Banks may adopt rules no less stringent than the requirements of the appropriate federal regulatory authority to govern the making of loans to officers and directors, and their associates, and companies or other business entities controlled by them. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-128. Rulemaking power of Commissioner of Banks.**

Any rule that the Commissioner of Banks may adopt in respect to loans permitted to be made by State savings banks as may be reasonably necessary to assure that the loans are in keeping with sound lending practices and to promote the purposes of this Chapter shall not prohibit a savings bank from making any loan that is a permitted loan for federal savings banks under federal regulatory authority. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-129. Nonconforming loans and investments.**

Unless otherwise provided, every loan or other investment made in violation of this Chapter is due and payable according to its terms and the obligation thereof is not impaired; provided, that the violation consists only of the lending of an excessive sum on authorized security or of investing in an unauthorized investment. (1991, c. 680, s. 1.)

**§ 54C-130. Limitation on loans to one borrower.**

(a) The total loans and extensions of credit, both direct and indirect, by a savings bank to any person, other than a municipal corporation for money borrowed, outstanding at one time and not fully secured, as determined in a manner consistent with subsection (b) of this section, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed fifteen percent (15%) of the net worth of the savings bank. The total liabilities of a firm shall include the liabilities of the members of the firm.

(b) The total loans and extensions of credit, both direct and indirect, by a savings bank to any person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed ten percent (10%) of the net worth of the savings bank. This limitation shall be separate from and in addition to the limitation contained in subsection (a) of this section.

(c) For purposes of this section, the term "person" is deemed to include an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed in this subsection. Loans or extensions of credit to one person include loans made to other persons when the proceeds

of the loans or extensions of credit are to be used for the direct benefit of the first person or when the persons are engaged in a common enterprise.

(d) The limitations of this section shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same, made by any federal reserve bank or by the United States or any instrumentality of the United States, including any corporation wholly owned directly or indirectly by the United States.

(e) The limitations of this section shall not apply to loans or obligations made for the following:

- (1) For any purpose otherwise permitted by this Chapter, not to exceed five hundred thousand dollars (\$500,000);
- (2) To develop domestic residential housing units, not to exceed the lesser of thirty million dollars (\$30,000,000) or thirty percent (30%) of the savings bank's net worth if the purchase price of each single family dwelling unit which is financed under this provision does not exceed five hundred thousand dollars (\$500,000) and the loans or obligations made under this provision do not, in the aggregate, exceed one hundred fifty percent (150%) of the savings bank's net worth; or
- (3) Loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted in good faith, not to exceed fifty percent (50%) of the savings bank's net worth. (1991, c. 680, s. 1.)

**§ 54C-131. Investment in banking premises.**

A savings bank may invest in real property and equipment and in leasehold improvements to rented facilities necessary for the conduct of its business and in real property to be held for its future use. A savings bank may invest in office buildings and appurtenances for the purpose of the transaction of the savings bank's business. This investment may not be made without the prior written approval of the Commissioner of Banks if the total amount of these investments exceeds fifty percent (50%) of the savings bank's net worth. Facilities, furniture, and fixtures leased for the purpose set forth in this section are not included in this limitation. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-132. United States obligations.**

A savings bank may invest in any obligation issued and fully guaranteed in principal and interest by the United States government or any instrumentality of the United States. (1991, c. 680, s. 1.)

**§ 54C-133. North Carolina obligations.**

A savings bank may invest in any obligation issued and fully guaranteed in principal and interest by the State or any instrumentality of the State. (1991, c. 680, s. 1.)

**§ 54C-134. Federal Home Loan Bank obligations.**

A savings bank may invest in the stock of the Federal Home Loan Bank of which the association is a member, and in bonds or other evidences of indebtedness or obligation of any Federal Home Loan Bank. (1991, c. 680, s. 1.)

**§ 54C-135. Deposits in depository institutions.**

A savings bank may invest in certificates of deposit, time-insured deposits, savings accounts, demand deposits, or withdrawable accounts of any banks, associations, or savings banks as are approved by the board of directors of the savings bank. (1991, c. 680, s. 1.)

**§ 54C-136. Federal government-sponsored enterprise obligations.**

A savings bank may invest in stock or other evidences of indebtedness or obligations of Fannie Mae, the Federal Home Loan Mortgage Corporation, or any other federal government sponsored enterprise, or any successor thereto. (1991, c. 680, s. 1; 2001-487, s. 14(e).)

**§ 54C-137. Municipal and county obligations.**

A savings bank may invest in bonds or other evidences of indebtedness that are direct general obligations of any county, city, town, village, school district, sanitation, or park district, or other political subdivision or municipal corporation of this State; or in bonds or other evidences of indebtedness that are payable from revenues or earnings specifically pledged therefor, which are issued by a county or a political subdivision or municipal corporation of a county in this State. (1991, c. 680, s. 1.)

**§ 54C-138. Stock in education agency.**

A savings bank may invest in stock or obligations of any corporation doing business in this State, or of any agency of this State or of the United States, where the principal business of the corporation or agency is to make loans for the financing of a college or university education, or education at an industrial education center, technical institute, or community college. (1991, c. 680, s. 1.)

**§ 54C-139. Industrial development corporation stock.**

A savings bank may invest in stock or other evidence of indebtedness or obligations of business or industrial development corporations chartered by this State or by the United States. (1991, c. 680, s. 1.)

**§ 54C-140. Urban renewal investment corporation stock.**

A savings bank may invest in stock or other evidence of indebtedness or obligations of an urban renewal investment corporation chartered under the laws of this State or of the United States. (1991, c. 680, s. 1.)

**§ 54C-141. Limitations on investment in stocks and securities.**

(a) No savings bank shall make an investment in the capital stock of any other State or federal depository institution that represents more than five percent (5%) of the capital stock of that depository institution.

(b) No savings bank shall invest in stock of other than investment grade. No savings bank shall invest in the aggregate more than fifty percent (50%) of its net worth in the stocks of other corporations, firms, partnerships, or companies, unless the stock is purchased to protect the savings bank from loss. Of this amount, no more than two and one-half percent (2 1/2%) of the savings bank's net worth may be invested in the stock or securities of any one issuer. This limitation shall not apply to stock or ownership interests in corporations, firms, partnerships, or companies that are subsidiaries of the savings bank. The term "invest" is deemed to include operating a business entity acquired by the savings bank, provided, however, that no savings bank shall make any investment resulting in operations that are not closely related to the savings bank business without the prior

written approval of the Commissioner of Banks. Any stocks owned or hereafter acquired in excess of the limitations imposed in this section shall be disposed of at public or private sale within six months after the date of acquiring the same, and if not so disposed of they shall be charged to the profit and loss account, and no longer carried on the books as an asset. The limit of time in which the stocks are disposed of or charged off the books of the savings bank may be extended by the Commissioner of Banks if the Commissioner of Banks determines it is in the best interest of the savings bank that the extension be granted.

(c) This limitation shall not apply with respect to obligations of the government of the United States or its agencies, or to other obligations guaranteed by the United States, North Carolina, or any other state, or of a city, town, township, county, school district, or other political subdivision of this State. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-142. Suspension of investment and loan limitation.**

The board of directors of any savings bank may, by resolution duly passed at a meeting of the board, request the Commissioner of Banks to suspend temporarily the limitations on loans and investments as they may apply to any particular loan or investment in excess of the limitations of G.S. 54C-130 and G.S. 54C-141 that the savings bank desires to make. Upon receipt of a duly certified copy of the resolution, the Commissioner of Banks may suspend the limitations on loans and investments insofar as they would apply to the loan or investment that the savings bank desires to make, as long as every loan or investment is amply secured and is for a period not longer than 36 months. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-143. Commercial lending.**

A savings bank may lend and invest in commercial loans in an aggregate amount that either (i) does not exceed fifteen percent (15%) of its total assets; or (ii) equals a percentage of its total assets greater than fifteen percent (15%), if approved by the Commissioner of Banks upon written request of the savings bank. In considering a request for an increased limit, the Commissioner of Banks shall take into consideration the commercial lending expertise of the management and the overall risk profile of the savings bank making the request. For the purposes of this section, "commercial loan" means a loan for business, commercial, corporate, or agricultural purposes. (1991, c. 680, s. 1; 1999-179, s. 3; 2001-193, s. 16.)

#### **§ 54C-144. Service corporations.**

(a) A savings bank or group of savings banks or associations may establish service corporations under Chapter 55 of the General Statutes, provided that the Commissioner of Banks receives copies of the proposed articles of incorporation and bylaws for approval, before filing them with the Secretary of State. A savings bank may also invest in the capital stock, obligations, or other securities of existing service corporations.

(b) No savings bank may make any investment in service corporations if its aggregate investment would exceed ten percent (10%) of its total assets.

(c) A service corporation is subject to audit and examination by the Commissioner of Banks, and the service corporation shall pay the cost of examination.

(d) The permitted activities of a service corporation shall be described in the rules adopted by the Commissioner of Banks.

(e) The location of the principal and branch offices of a service corporation shall be approved by the Commissioner of Banks. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-145. Parity in loans or investments.**

Subject to any limitations and restrictions as the Commissioner of Banks may prescribe through rules, a savings bank may make any loan or investment, or engage in any activity, which may be permitted under State law for banks or under the laws of the United States for federal associations or national banks whose principal offices are located within this State. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-146. Certain powers granted to State savings banks.**

(a) In addition to the powers granted under this Chapter, but subject to any rules that the Commissioner of Banks may prescribe, a savings bank incorporated or operated under this Chapter may:

- (1) Establish off the premises of any principal office or branch a customer communications terminal, point of sale terminal, automated teller machine, automated or other direct or remote information processing device or machine, whether manned or unmanned, through or by means of which funds or information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise to or from a savings bank terminal or terminals controlled or used by or with other parties. The establishment and use of a device or machine is not deemed to constitute a branch office, and the capital requirements and standards for approval of a branch office as set forth in the statutes and regulations are not applicable to the establishment of any off-premises terminal, device or machine. Savings banks may, through mutual consent, share on-premises, unmanned, automated teller machines and cash dispensers.
- (2) Issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations.
- (3) Act as a trustee, executor, administrator, guardian, or in any other fiduciary capacity.
- (4) Become a member of a clearing house association and pledge assets required for its qualification.
- (5) a. Mutual capital certificates may be issued by State-chartered savings banks and sold directly to subscribers or through underwriters, and the certificates shall constitute part of the general reserve and net worth of the issuing savings bank. The Commissioner of Banks, in the rules relating to the issuance and sale of mutual capital certificates, shall provide that the certificates:
  1. Are subordinate to all savings accounts, savings certificates, and debt obligations;
  2. Constitute a claim in liquidation on the general reserves, surplus and undivided profits of the savings bank remaining after the payment of all savings accounts, savings certificates, and debt obligations;
  3. Are entitled to the payment of dividends; and
  4. May have a fixed or variable dividend rate.

b. The Commissioner of Banks shall provide in the rules for charging losses to the mutual capital, reserves, and other net worth accounts.

(b) To the extent that the Commissioner of Banks may authorize by rules, a savings bank may issue notes, bonds, debentures, or other obligations or securities. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§§ 54C-147 through 54C-160. Reserved for future codification purposes.**

Article 8.

Operations.

**§ 54C-161. Generally accepted accounting principles.**

A savings bank shall maintain its books and records in accordance with generally accepted accounting principles. (1991, c. 680, s. 1.)

**§ 54C-162. Liquidity.**

A savings bank shall maintain cash and readily marketable investments in an amount that may be established in the rules of the Commissioner of Banks, but the requirement shall not be less than ten percent (10%) of the assets of the savings bank. Upon receipt of a duly certified copy of the resolution by the board of directors of any savings bank requesting a temporary suspension, the Commissioner of Banks may suspend the liquidity requirement for a period not longer than six months. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-163. Net worth requirement.**

A savings bank shall maintain net worth in an amount that may be established in the rules of the Commissioner of Banks, but the requirement shall not be less than five percent (5%) of the assets of the savings bank. Upon receipt of a duly certified copy of a resolution by the board of directors of any savings bank requesting a temporary suspension, the Commissioner of Banks may suspend the net worth requirement for a period not longer than six months. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-164. Deposit accounts.**

(a) A savings bank may raise capital through the solicitation of deposits from any person, natural or corporate, except as restricted or limited by law, or by any rules that the Commissioner of Banks may prescribe.

(b) A savings bank may receive deposits of funds upon any terms as the contract of deposit shall provide subject to withdrawals or to be paid upon checks of the depositor. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-165. Joint accounts.**

(a) Any two or more persons may open or hold a withdrawable account or accounts. The withdrawable account and any balance of the account is held by them as joint tenants, with or without right of survivorship, as the contract shall provide. The account may also be held under G.S. 41-2.1 and have incidents set forth in that section, but if the account is held under G.S. 41-2.1, the contract shall set forth that fact as well. Unless the persons establishing the account have agreed with the savings bank that withdrawals require more than one signature, payment by the savings bank to, or on the order of, any persons holding an account authorized by this section is a total

discharge of the savings bank's obligation as to the amount so paid. Funds in a joint account established with the right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds are subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established under that section. Payment by the savings bank of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the savings bank for the funds so paid, but the personal representative's authority to collect the funds from the surviving joint tenant or tenants is not terminated. A pledge of a joint account by any one or more of the joint tenants, unless otherwise specifically agreed between the savings bank and all joint tenants in writing, shall be a valid pledge and transfer of the account or of the amount so pledged, shall be binding upon all joint tenants, shall not operate to sever or terminate the joint ownership of all or any part of the account, and shall survive the death of any joint tenant.

Persons establishing an account under this section shall sign a statement showing their election of the right of survivorship in the account, and containing language set forth in a conspicuous manner and substantially similar to the following:

"SAVINGS BANK (or name of institution) JOINT ACCOUNT  
WITH RIGHT OF SURVIVORSHIP  
G.S. 54C-165

We understand that by establishing a joint account under G.S. 54C-165 that:

1. The savings bank (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless we have agreed with the savings bank that withdrawals require more than one signature; and
2. Upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

We DO elect to create the right of survivorship in this account.

\_\_\_\_\_  
"

(a) This section is not deemed exclusive. Deposit accounts not conforming to this section are governed by other applicable law as appropriate.

(b) This section does not repeal or modify any law relating to estate taxes. This section regulates and protects the savings bank in its relationships with the joint owners of deposit accounts.

(c) No addition to the account nor any withdrawal or payment shall affect the nature of the account as a joint account or affect the right of any tenant to terminate the account. (1991, c. 680, s. 1; 1998-69, s. 18; 2014-61, s. 3.)

**§ 54C-166:** Repealed by Session Laws 2011-236, s. 3, effective October 1, 2011.

**§ 54C-166.1. Payable on Death (POD) accounts.**

(a) If any natural person or natural persons establishing a deposit account shall execute a written agreement with the savings bank containing a statement that it is executed pursuant to the provisions of this section and providing for the account to be held in the name of the natural person



or natural persons as owner or owners for one or more beneficiaries, the account and any balance thereof shall be held as a Payable on Death account. The account shall have the following incidents:

- (1) Any owner during the owner's lifetime may change any designated beneficiary by a written direction to the savings bank.
- (2) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 54C-165.
- (3) Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the owner's personal order.
- (4) If the beneficiary or beneficiaries are natural persons, there may be one or more beneficiaries and the following shall apply:
  - a. If only one beneficiary is living and of legal age at the death of the last surviving owner, the beneficiary shall be the owner of the account, and payment by the savings bank to such owner shall be a total discharge of the savings bank's obligation as to the amount paid. If two or more beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 54C-165, and payment by the savings bank to the owners or any of the owners shall be a total discharge of the savings bank's obligation as to the amount paid.
  - b. If only one beneficiary is living and that beneficiary is not of legal age at the death of the last surviving owner, the savings bank shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the savings bank shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.
- (5) If the beneficiary is an entity other than a natural person, there shall be only one beneficiary.
- (6) If one or more owners survive the last surviving beneficiary who was a natural person, or if a beneficiary who is an entity other than a natural person should cease to exist before the death of the owner, the account shall become an individual account of the owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual account in a case of a single owner or a joint account with right of survivorship, as provided in G.S. 54C-165, in the case of multiple owners.

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

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

"SAVINGS BANK (or name of institution)  
PAYABLE ON DEATH ACCOUNT  
G.S. 54C-166.1

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 54C-166.1 that:

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

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

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

(d) This section does not repeal or modify any provisions of laws relating to estate taxes. (1991, c. 680, s. 1; 1998-69, s. 19; 2001-267, s. 4; 2001-487, s. 61(b); 2011-236, s. 3; 2012-168, s. 4; 2012-194, s. 63.)

#### **§ 54C-167. Personal agency accounts.**

(a) A person may open a personal agency account by written contract containing a statement that it is executed under this section. A personal agency account may be a checking account, savings account, time deposit, or any other type of withdrawable account or certificate.

The written contract shall name an agent who shall have authority to act on behalf of the depositor in regard to the account as set out in this subsection. The agent shall have the authority to:

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

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

"SAVINGS BANK (or name of institution)  
PERSONAL AGENCY ACCOUNT  
G.S. 54C-167

I understand that, by establishing a personal agency account under G.S. 54C-167, the agent named in the account may:

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

I also understand that upon my death the money remaining in the account will be controlled by my will or inherited by my heirs.

"

(b) An account created under this section grants no ownership right or interest in the agent. Upon the death of the principal there is no right of survivorship to the account and the authority set out in subsection (a) of this section terminates.

(c) The written contract referred to in subsection (a) of this section shall provide that the principal may elect to extend the authority of the agent to act on behalf of the principal in regard to the account notwithstanding the subsequent incapacity or mental incompetence of the principal. If the principal so elects to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the agent may continue to exercise the authority, without the requirement of bond or of accounting to any court, until the agent receives actual knowledge that the authority has been terminated by a duly qualified guardian of the estate of the incapacitated or incompetent principal, or by the duly appointed attorney-in-fact for the incapacitated or incompetent principal, acting under a durable power of attorney, as defined in G.S. 32A-8 [see now G.S. 32C-1-102], which grants to the attorney-in-fact that authority in regard to the account which is granted to the agent by the written contract executed under this section, at which time the agent shall account to the guardian or attorney-in-fact for all actions of the agent in regard to the account during the incapacity or incompetence of the principal. If the principal does not so elect to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the authority of the agent terminates.

(d) When an account under this section has been established, all or part of the account or any interest or dividend thereon may be paid by the savings bank on a check made, signed, or executed by the agent. In the absence of actual knowledge that the principal has died or that the agency created by the account has been terminated, the payment is a valid and sufficient discharge to the savings bank for payment so made. (1991, c. 680, s. 1.)

**§ 54C-168. Collection of processing fee for returned checks.**

Notwithstanding any other law, a savings bank may charge and collect a processing fee for checks on which payment has been refused by the payor depository institution. A savings bank may also collect a processing fee for checks drawn on that savings bank with respect to an account with insufficient funds. (1991, c. 680, s. 1.)

**§ 54C-169. Right of setoff on deposit accounts.**

(a) A savings bank shall have a right of setoff, without further agreement or pledge, upon all deposit accounts owned by any member or customer to whom or upon whose behalf the savings bank has made an unsecured advance of money by loan. Upon default in the repayment or satisfaction thereof, the savings bank may cancel on its books all or any part of the deposit accounts owned by the member or customer, and apply the value of the accounts in payment of the obligation.

(b) A savings bank that exercises the right of setoff provided in this section shall first give 30 days' notice to the member or customer that the right will be exercised. The accounts may be held or frozen, with no withdrawals permitted, during the 30-day notice period. The accounts may not be canceled and the value of the accounts may not be applied to pay the obligation until the 30-day period has expired without the member or customer having cured the default on the obligation. The amount of any member's or customer's interest in a joint account or other account held in the names of more than one person is subject to the right of setoff provided in this section.

(c) This section is not exclusive, but shall be in addition to contract, common law, and other rights of setoff. Any other rights are not governed in any fashion by this section. (1991, c. 680, s. 1.)

**§ 54C-170. Minors as deposit account holders.**

(a) A savings bank may issue a deposit account to a minor as the sole and absolute owner, or as a joint owner, and receive payments, pay withdrawals, accept pledges and act in any other manner with respect to the account on the order of the minor with like effect as if the minor were of full age and legal capacity. Any payment to a minor is a discharge of the savings bank to the extent thereof. The account shall be held for the exclusive right and benefit of the minor, and any joint owners, free from the control of all persons, except creditors.

(b) A savings bank may lease a safe deposit box to a minor and, with respect to the lease, may deal with the minor in all regards as if the minor were of full age and legal capacity. A minor entering a lease agreement with a savings bank under this subsection is bound by the terms of the agreement to the same extent as if the minor were of full age and legal capacity. (1991, c. 680, s. 1; 1991 (Reg. Sess., 1992), c. 829, s. 11.)

**§ 54C-171. Deposit accounts as deposit of securities.**

Notwithstanding any restrictions or limitations contained in any law of this State, the deposit accounts of any State savings bank may be accepted by any agency, department, or official of this State in any case wherein the agency, department, or official acting in its official capacity requires that securities be deposited with the agency, department, or official. (1991, c. 680, s. 1.)

**§ 54C-172. New account books.**

A new account book or certificate or other evidence of ownership of a deposit account may be issued in the name of the holder of record at any time, when requested by the holder or the holder's legal representative, upon proof satisfactory to the savings bank that the original account book or

certificate has been lost or destroyed. The new account book or certificate shall expressly state that it is issued in lieu of the one lost or destroyed and that the savings bank shall in no way be liable thereafter on account of the original book or certificate. The savings bank may, in its bylaws, require indemnification against any loss that might result from the issuance of the new account book or certified certificate. (1991, c. 680, s. 1.)

**§ 54C-173. Transfer of deposit accounts.**

The owner of a deposit account may transfer the owner's rights therein absolutely or conditionally to any other person eligible to hold the same, but the transfer may be made on the books of the savings bank only upon presentation of evidence of transfer satisfactory to the savings bank, and accompanied by the proper application for transfer by the transferor and transferee, who shall accept the account subject to the terms and conditions of the account contract, the bylaws of the savings bank, the certificate of incorporation of the savings bank, and all rules of the Commissioner of Banks. Notwithstanding the effectiveness of a transfer between the parties, the savings bank may treat the holder of record of a deposit account as the owner of the deposit account for all purposes, including payment and voting, in the case of a mutual savings bank, until the savings bank records the transfer and assignment. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-174. Authority of power of attorney.**

A savings bank may continue to recognize the authority of an individual holding a power of attorney in writing to manage or to make withdrawals, either in whole or in part, from the deposit account of a customer or member until the savings bank receives written or actual notice of death or of adjudication of incompetency of the member or revocation of the authority of the individual holding the power of attorney. Payment by the savings bank to an individual holding a power of attorney before receipt of the notice is a total discharge of the savings bank's obligation as to the amount so paid. (1991, c. 680, s. 1.)

**§ 54C-175. Days and hours of operation.**

A savings bank may operate on such days and during such hours, and may observe such holidays, as the savings bank's board of directors shall designate. (1991, c. 680, s. 1; 1995 (Reg. Sess., 1996), c. 556, s. 4.)

**§ 54C-176. Power to borrow money.**

A savings bank, in its certificate of incorporation or in its bylaws, may authorize the board of directors to borrow money, and the board of directors may, by resolution adopted by a vote of at least two-thirds of the entire board duly recorded in the minutes, authorize the officers of the savings bank to borrow money for the savings bank on any terms and conditions as the board may deem proper. (1991, c. 680, s. 1.)

**§ 54C-177. Authority to join federal reserve bank.**

A State savings bank may subscribe to the capital stock and become a member of a federal reserve bank. A savings bank shall continue to be subject to the supervision and examination required by the laws of this State, except that the Federal Reserve Board shall have the right, if it deems necessary, to make examinations; and the Commissioner of Banks may disclose to the Federal Reserve Board, or to the examiners duly appointed by it, all information in reference to the

affairs of a savings bank that has become, or desires to become, a member of a federal reserve bank. (1991, c. 680, s. 1; 2001-193, s. 16.)

**§ 54C-178. Regional reciprocal acquisitions.**

State savings banks and holding companies thereof shall have the same powers to acquire and be acquired as State associations and their savings and loan holding companies under Article 3A of Chapter 54B of the General Statutes. For this purpose, the term "association" as used in Article 3A of Chapter 54B of the General Statutes shall include a State savings bank chartered under this Chapter, and the term "savings and loan holding company" shall include holding companies of State savings banks chartered under this Chapter. (1991, c. 680, s. 1.)

**§ 54C-179. Forced retirement of deposit accounts.**

(a) A savings bank may, at any time that funds are on hand and available for this purpose, force the retirement of and redeem all or any portion of its deposit accounts that have not been pledged as security for loans. A savings bank may not redeem any fixed term deposit accounts that have not matured. The board of directors of the savings bank shall determine the number of and total amount of the deposit accounts to be retired.

(b) A savings bank shall give at least 30 days' notice by certified mail to the last address of each holder of an affected deposit account. The redemption price of deposit accounts so retired is the full withdrawal value of the account, as determined on the last interest date, plus all interest on deposit accounts credited or paid as of the effective retirement date. Interest continues to accrue and be paid or credited by the savings bank to the deposit accounts to be retired through the effective retirement date.

(c) Interest on the deposit accounts called for forced retirement ceases to accrue after the effective retirement date, if the required notice has been given properly, and if on the retirement date the funds necessary for payment have been set aside so as to be available. All rights with respect to those deposit accounts terminate after the effective retirement date, except for the right of the holder of the retired deposit account to receive the full redemption price.

(d) A savings bank shall not redeem deposit accounts by forced retirement whenever it has on file applications for withdrawal or maturities that have not yet been acted upon and paid. (1991 (Reg. Sess., 1992), c. 829, s. 12.)

**§ 54C-180. Savings promotion raffles.**

A savings bank may offer a savings promotion raffle in which the sole consideration required for a chance of winning designated prizes is the deposit of a minimum specified amount of money in a savings account or other savings program offered by the savings bank. A savings bank shall maintain records sufficient to facilitate an audit of the savings promotion raffle, shall conduct the savings promotion raffle in a safe and sound manner, and shall fully disclose the terms and conditions of the promotion to account holders and prospective account holders of the savings bank. (2019-173, s. 2(d).)

Article 9.

Holding Companies.

**§ 54C-195. Holding companies.**

(a) Notwithstanding any other law, a stock savings bank may, simultaneously with its incorporation or conversion to a stock savings bank, provide for its ownership by a holding company. In the case of a conversion, members of the converting savings bank shall have the right to purchase capital stock of the holding company in lieu of capital stock of the converted savings bank in accordance with G.S. 54C-33(c)(6).

(b) Notwithstanding any other law, a stock savings bank may reorganize its ownership, to provide for ownership by a holding company, upon adoption of a plan of reorganization by a favorable vote of not less than two-thirds of the members of the board of directors of the savings bank and approval of the plan of reorganization by the holders of not less than a majority of the issued and outstanding shares of stock of the savings bank. The plan of reorganization shall provide that (i) the resulting ownership is vested in a North Carolina corporation, (ii) all stockholders of the stock savings bank have the right to exchange shares, (iii) the exchange of stock is not subject to State or federal income taxation, (iv) stockholders not wishing to exchange shares are entitled to appraisal rights as provided under Article 13 of Chapter 55 of the General Statutes, and (v) the plan of reorganization is fair and equitable to all stockholders.

(c) Notwithstanding any other law, a mutual savings bank may reorganize its ownership to provide for ownership by a holding company upon adoption of a plan of reorganization by favorable vote of not less than two-thirds of the members of the board of directors of the savings bank and approval of the plan of reorganization by a majority of the voting members of the savings bank. The plan of reorganization shall provide that (i) the resulting ownership is vested in a North Carolina corporation, (ii) the resulting ownership of one or more subsidiary savings banks is evidenced by stock shares, (iii) the substantial portion of the assets and all of the insured deposits and part or all of the other liabilities are transferred to one or more subsidiary savings banks, (iv) the reorganization is not subject to State or federal income taxation, and (v) the plan of reorganization is fair and equitable to all members of the savings bank.

(d) A holding company may invest in any investment authorized by its board of directors, except as limited by regulations adopted by the Commissioner of Banks under this Article.

(e) An entity that controls a stock savings bank, or acquires control of a stock savings bank, is a holding company. (1991, c. 680, s. 1; 2001-193, s. 16; 2011-347, s. 4.)

#### **§ 54C-196. Supervision of holding companies.**

Holding companies are under the supervision of the Commissioner of Banks. The Commissioner of Banks shall exercise all powers and responsibilities with respect to holding companies which the Commissioner of Banks exercises with respect to savings banks. (1991, c. 680, s. 1; 2001-193, s. 16.)

#### **§ 54C-197. Reserved for future codification purposes.**

#### **§ 54C-198. Reserved for future codification purposes.**

Article 10.

Savings Bank Interstate Branches.

**§ 54C-199. Title.**

This Article shall be known and may be cited as the North Carolina Savings Bank Interstate Branch Act. (1993, c. 191, s. 3.)

**§ 54C-200. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the following definitions apply:

- (1) Repealed by Session Laws 2004-203, s. 35(b), effective August 17, 2004.
- (2) "Branch" means a full service office of a savings bank through which it renders a savings bank service other than its principal office. A savings bank may engage in any authorized function or service through an authorized branch office.
- (3) "Commission" means the State Banking Commission.
- (4) "Home state" means (i) as to a state-chartered savings bank, the state which granted the savings bank its charter, and (ii) as to a federal savings bank, the state in which the savings bank has its principal office.
- (5) "Out-of-state" savings bank means a savings bank granted a charter by any state other than this State and whose principal office is not located in this State.
- (6) "Savings bank" means a state savings bank or a federal savings bank, unless limited by use of the words "State" or "federal".
- (7) "State savings bank" means a depository institution chartered under the laws of this State.
- (8) "Supervisor" means the state savings bank supervisor or equivalent state official having primary regulatory authority over an out-of-state savings bank. (1993, c. 191, s. 3; 2001-193, ss. 16, 17; 2004-203, s. 35(b).)

**§ 54C-201. Establishment of branches by out-of-state savings banks.**

Any out-of-state savings bank that meets the requirements of this Article may establish a branch within North Carolina either by (i) de novo entry; (ii) the purchase of an existing branch; (iii) the purchase of all or substantially all of the assets of a State savings bank located in North Carolina; or (iv) merger or consolidation. (1993, c. 191, s. 3.)

**§ 54C-202. Application requirements.**

(a) Any out-of-state savings bank desiring to establish a branch office under this Article shall file with the Commissioner of Banks a written application meeting the following requirements:

- (1) The out-of-state savings bank shall agree to comply with all the applicable rules and regulations, and informational filing requirements contained in the laws and rules of this State that would apply to a State savings bank engaging in an equivalent form of transaction. Additionally, the Commissioner of Banks shall apply the same standards of approval to the application of the out-of-state savings bank as would apply to an application by a State savings bank for an equivalent form of transaction.



- (2) The out-of-state savings bank shall provide the Commissioner of Banks, in the manner prescribed by the Commissioner of Banks, with such additional information as the Commissioner of Banks deems necessary, to fully evaluate the application.
  - (3) The out-of-state savings bank shall pay an application fee established by the Commissioner of Banks pursuant to G.S. 54C-9.
  - (4) The out-of-state savings bank shall not commence operations of the branch office until it has received the written approval of the Commissioner of Banks.
- (b) The Commissioner of Banks shall act on the application within 90 days of receipt of the completed application. (1993, c. 191, s. 3; 2001-193, s. 16.)

**§ 54C-203. Conditions for approval.**

No application by an out-of-state savings bank received under this Article may be finally approved by the Commissioner of Banks unless:

- (1) The Commissioner of Banks has received in writing approval of the proposed transaction from the supervisor of the out-of-state savings bank;
- (2) The supervisor of the out-of-state savings bank agrees in writing to share with the Commissioner of Banks examination reports prepared by the supervisor and any other information deemed necessary by the Commissioner of Banks regarding the out-of-state savings bank;
- (3) The out-of-state savings bank agrees in writing to make available to the Commissioner of Banks all information that may be required to effectively examine the savings bank;
- (4) The out-of-state savings bank agrees in writing that so long as it maintains a branch in North Carolina, it will meet the conditions set forth in this Article and comply with all applicable North Carolina laws and any rules issued thereunder, as well as any orders or directives issued to the savings bank by the Commissioner of Banks;
- (5) The home state of the out-of-state savings bank permits savings banks chartered under the laws of this State to establish branches within its border; and
- (6) The out-of-state savings bank designates and files with the Office of the Secretary of State a document appointing an agent in this State to receive service of judicial process. (1993, c. 191, s. 3; 2001-193, s. 16.)

**§ 54C-204. Special conditions.**

(a) The Commissioner of Banks may require an out-of-state savings bank to designate one of its branches in North Carolina as a "headquarters branch" and may, by rule, require that reports, books, and records required of savings banks doing business under this Article be available at the designated headquarters branch.

(b) Once an out-of-state savings bank has established at least one branch in North Carolina pursuant to this Article, subsequent applications to establish additional branches shall be considered on the same basis as an application of a State savings bank to establish an additional branch pursuant to G.S. 54C-23.

(c) If an out-of-state savings bank establishes a branch or branches by merger with or purchase from a savings bank located in this State, and the out-of-state savings bank and the savings bank located in this State are both owned by the same holding company, any conditions,

limitations, or restrictions placed on the holding company, pursuant to Article 9 of this Chapter, shall continue to apply to both the acquiring out-of-state savings bank and its holding company. (1993, c. 191, s. 3; 2001-193, s. 16.)

**§ 54C-205. Powers.**

An out-of-state savings bank that establishes a branch in North Carolina may engage in all the activities authorized by North Carolina law for a State savings bank except to the extent that such activities have been expressly prohibited by the state supervisor of the out-of-state savings bank or the laws of the out-of-state savings bank's home state. (1993, c. 191, s. 3.)

**§ 54C-206. Establishment of out-of-state branches by State savings banks.**

With the prior consent of the Commissioner of Banks, any savings bank chartered under the laws of North Carolina may establish a branch in any other state in accordance with the laws of such other state. (1993, c. 191, s. 3; 2001-193, s. 16.)

**§ 54C-207. Regulatory and supervisory oversight.**

(a) The Commissioner of Banks may enter into such agreements as necessary regarding the scope, timing, coordination, and frequency of examinations and other supervisory matters, including the sharing of information gathered in such examinations, with other supervisors and federal savings bank regulators. This authority applies to both out-of-state savings banks and their holding companies.

(b) The Commissioner of Banks may require periodic reports on the financial condition of any out-of-state savings bank or its holding company that maintains a branch within North Carolina and may from time to time require from any such out-of-state savings banks other reports under oath in such scope and detail as the Commissioner of Banks may reasonably determine to be necessary for the purpose of assuring continuing compliance with the provisions of this Article.

(c) The Commissioner of Banks may, if necessary, conduct full-scope, on-site examinations of any branch established pursuant to this Article.

(d) Out-of-state savings banks shall be assessed and required to pay supervisory and examination fees in accordance with G.S. 54C-55 and the rules issued thereunder. (1993, c. 191, s. 3; 2001-193, s. 16.)

**§ 54C-208. Enforcement.**

(a) Any enforcement authority available to the Commissioner of Banks for use against a State savings bank may, subject to the provisions of Chapter 150B of the General Statutes, be used against a branch established under this Article and against the out-of-state savings bank or its parent holding company establishing such branch.

(b) The Commissioner of Banks may suspend or revoke the authority of an out-of-state savings bank to establish or maintain a branch in North Carolina upon a finding of fact or condition or circumstance that is grounds for denial of an application to establish and maintain a branch under this Article.

(c) The Commissioner of Banks may enforce the provisions of this Article through an action in any court of North Carolina or any other state or any court of the United States as provided in G.S. 54C-76, 54C-77, 54C-78, and 54C-79 for the purpose of obtaining an appropriate remedy for violation of any provisions of this Article.

(d) The Commissioner of Banks may enter into joint actions with other supervisors or federal savings banking regulators, or both, having concurrent jurisdiction over any out-of-state savings bank that has a branch in North Carolina or over any State savings bank that has a branch in another state, or may take such action independently to carry out the Commissioner of Banks' responsibilities under this Article and assure compliance with the provisions of this Article and the applicable savings banking laws of this State. (1993, c. 191, s. 3; 2001-193, s. 16.)

**§ 54C-209. Branch closings.**

An out-of-state savings bank that is subject to an order or written agreement revoking its authority to establish or maintain a branch in North Carolina and any State savings bank that is subject to an order or written agreement revoking its authority to establish or maintain a branch in another state shall wind up the business of that branch in an orderly manner that protects the depositors, customers, and creditors of the branch, and that complies with all North Carolina laws and all other applicable laws regarding the closing of the branch. (1993, c. 191, s. 3.)

**§ 54C-210. Rules.**

The Commission may adopt rules as necessary to carry out the provisions of this Article. (1993, c. 191, s. 3.)

**§ 54C-211. Appeal of Commissioner of Banks' decision.**

Any aggrieved party in a proceeding under this Article may, within 30 days after final decision of the Commissioner of Banks, appeal such decision to the Commission. The Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner of Banks' decision. Failure of the Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the Commission approving the decision of the Commissioner of Banks. Notwithstanding any other provision of law, any aggrieved party to a decision of the Commission shall be entitled to an appeal pursuant to G.S. 54C-16. (1993, c. 191, s. 3; 2001-193, s. 16.)

**§ 54C-212. Severability.**

If any provision of this Article or the application of such provision to any persons or circumstances is found invalid, the remainder of this Article and its application to persons or circumstances other than those as to which it is held invalid, shall not be affected. (1993, c. 191, s. 3.)