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.