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, chooses 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.