

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 839

Short Title: Financial Boards Merged.

(Public)

Sponsors: Representative Tallent.

Referred to: Financial Institutions.

April 12, 1995

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE THE REGULATORY AUTHORITY OVER BANKS,
CREDIT UNIONS, SAVINGS AND LOAN ASSOCIATIONS, AND SAVINGS
BANKS INTO A NEW FINANCIAL INSTITUTIONS REGULATORY BOARD,
AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Effective July 1, 1995, the General Statutes are amended by adding
the following new Chapter to read:

"CHAPTER 54D.

"FINANCIAL INSTITUTIONS REGULATORY BOARD.

"ARTICLE 1.

**"FINANCIAL INSTITUTIONS REGULATORY BOARD AND
DIRECTOR OF FINANCIAL INSTITUTIONS.**

"§ 54D-1-1. Applicability of Chapter.

This Chapter, unless the context otherwise specifies, applies to the regulation and
supervision of financial institutions as defined in G.S. 54D-1-2(3).

"§ 54D-1-2. Definitions.

As used in this Chapter, unless the context clearly requires otherwise:

(1) 'Board' means the Financial Institutions Regulatory Board.

(2) 'Director' means the Director of Financial Institutions.

1 (3) 'Financial institution' means a person, firm, or corporation engaged in
2 the business of receiving, soliciting, or accepting money or its
3 equivalent on deposit, or lending money or its equivalent, and includes
4 any or all of the following:

- 5 a. Banks as defined and regulated under Chapter 53 of the General
6 Statutes;
7 b. Credit Unions, as defined and regulated under Subchapter III of
8 Chapter 54 of the General Statutes;
9 c. Savings and Loan Associations as defined and regulated under
10 Chapter 54B of the General Statutes; or
11 d. Savings Banks as defined and regulated under Chapter 54C of
12 the General Statutes.

13 **"§ 54D-1-3. Appointment of Director of Financial Institutions.**

14 On or before July 1, 1995, and every four years thereafter, the Governor shall appoint
15 a Director of Financial Institutions subject to confirmation by the General Assembly by
16 joint resolution. The name of the Director shall be submitted to the General Assembly on
17 or before February 1 of the year in which the term of the Director's office begins. The
18 term of office for the Director shall be four years. In case of a vacancy in the office of
19 Director of Financial Institutions for any reason prior to the expiration of the Director's
20 term of office, the name of the Director's successor shall be submitted by the Governor to
21 the General Assembly, not later than four weeks after the vacancy arises. If a vacancy
22 arises in the office when the General Assembly is not in session, the Director shall be
23 appointed by the Governor to serve on an interim basis pending confirmation by the
24 General Assembly. The Director shall serve as chief administrator of the Financial
25 Institutions Regulatory Board.

26 **"§ 54D-1-4. Financial Institutions Regulatory Board established; chair, members,**
27 **terms of office; etc.**

28 (a) Membership: Effective July 1, 1995, the Financial Institutions Regulatory
29 Board is created. The Board shall consist of 16 members who shall be appointed by the
30 Governor, subject to confirmation by the General Assembly by joint resolution. Two
31 members shall be appointed from each of the following industries: commercial banking,
32 savings institutions, credit unions, and nonbanking institutions previously regulated by
33 the Commissioner of Banks, provided, one of the members from among the nonbanking
34 institutions previously regulated by the Commissioner of Banks shall be a consumer
35 finance licensee. There shall be eight public members. The eight public members of the
36 Board shall not be employees or directors of any financial institution, nor shall they have
37 any interest in any regulated financial institution other than as a depositor or borrower.
38 Under this section, no person shall be considered to have an interest in a financial
39 institution whose interest in any financial institution does not exceed one-half of one
40 percent (1/2 of 1%) of the capital stock of that financial institution. The public members
41 of the Board shall be selected so as to fully represent the consumer, industrial,
42 manufacturing, professional, business, and farming interests of the State.

1 (b) Chair: The State Treasurer shall be the Chair of the Board and shall have the
2 right to vote in the case of a tie.

3 (c) Terms: Except for the Chair, members shall serve four-year terms. No person
4 shall serve on the Board for more than two complete consecutive terms. Members of the
5 Board shall receive as compensation for their services the same per diem and expenses as
6 is paid to the members of the Advisory Budget Commission. This compensation shall be
7 paid from the fees collected from the examination of financial institutions as provided by
8 law.

9 (d) Meetings: The Financial Institutions Regulatory Board shall meet at such time
10 or times, but not less than once every three months, as the Board shall, by resolution,
11 prescribe, and the Board may be convened in special session at the call of the Governor,
12 or upon the request of the Director of Financial Institutions or the Chair.

13 (e) Financial interest of members: Members of the Board may act on any matter
14 before the Board, except that a member may not vote on an application or other
15 proceeding involving an institution in which the member has a financial interest or with
16 which the member is affiliated. No member of the Board shall divulge or make use of
17 any information coming into the member's possession as a result of the member's service
18 on the Board, and shall not give out any information with reference to any facts coming
19 into the member's possession by reason of the member's services on the Board in
20 connection with the condition of any State financial institution, unless the information is
21 required of the member at any hearing at which the member is duly subpoenaed, or when
22 required by order of a court of competent jurisdiction.

23 (f) Quorum: A quorum shall consist of a majority of the total membership of the
24 Board. A majority vote of the members qualified with respect to a matter under review
25 present at that meeting shall constitute valid action of the Board. The Chair and all
26 disqualified members who are present shall be counted to determine whether a quorum is
27 present at a meeting.

28 (g) Chief administrator: The Director shall act as the chief administrator of the
29 Board, but the Board shall provide, by rules, for hearings before the Board upon any
30 matter or thing which may arise in connection with the laws of this State governing
31 financial institutions upon the request of any person interested therein, and review any
32 action taken or done by the Director.

33 **"§ 54D-1-5. Powers and duties of Board.**

34 (a) The Board is hereby vested with full power and authority to supervise, direct,
35 and review the exercise by the Director of all powers, duties, and functions vested in or
36 exercised by the Director under the laws of this State; any party to a proceeding before
37 the Board may, within 20 days after final order of the Board and by written notice to the
38 Director, appeal to the Superior Court of Wake County for a final determination of any
39 question of law which may be involved. The cause shall be entitled 'State of North
40 Carolina on Relation of the Financial Institutions Regulatory Board against (here insert
41 name of appellant)'. It shall be placed on the civil issue docket of such court and shall
42 have precedence over other civil actions. In the event of an appeal, the Director shall

1 certify the record to the Clerk of Superior Court of Wake County within 15 days
2 thereafter.

3 (b) The Board shall, in accordance with Chapter 150B of the General Statutes,
4 adopt rules necessary to carry out its powers and duties.

5 **"§ 54D-1-6. Powers and duties of Director.**

6 The Director shall have the powers, duties, and functions herein given, and in addition
7 thereto such other powers and rights as may be necessary or incident to the proper
8 discharge of the Director's duties.

9 **"§ 54D-1-7. Deputy director; assistant directors.**

10 (a) The Director shall appoint, with approval of the Governor, and may remove at
11 the Director's discretion, a deputy director, who, in the event of the absence, death,
12 resignation, disability, or disqualification of the Director, or in case the office of Director
13 shall for any reason become vacant, shall have and exercise all the powers and duties
14 vested by law in the Director.

15 Irrespective of the conditions under which the deputy director may exercise the
16 powers and perform the duties of the Director pursuant to the preceding paragraph, the
17 deputy director, in addition thereto, is authorized and empowered at any and all times, at
18 the discretion of the Director, to perform such duties and exercise such powers of the
19 Director in the name of and on behalf of the Director as the Director may direct.

20 (b) The Director shall appoint five assistant directors, one each responsible for
21 regulating commercial banks, credit unions, savings institutions, and consumer industries,
22 and an assistant director for administration. The assistant directors appointed pursuant to
23 this subsection shall not be subject to the State Personnel Act.

24 (c) The Attorney General shall assign Counsel from the Department of Justice to
25 work full time with the Financial Institutions Regulatory Board. The attorneys shall not
26 be subject to the provisions of Chapter 126 of the General Statutes relating to the State
27 Personnel System. The Financial Institutions Regulatory Board shall fully reimburse the
28 Department of Justice for the compensation, secretarial support, equipment, supplies,
29 records, and property to support any attorneys assigned.

30 (d) Nothing in this section shall obligate the General Assembly to appropriate
31 funds to support personnel appointed pursuant to this section.

32 **"§ 54D-1-8. Right to sue and defend in actions involving financial institutions;**
33 **liability to suit.**

34 The Director is empowered to sue and prosecute or defend in any action or proceeding
35 in any courts of this State or any other state and in any court of the United States for the
36 enforcement or protection of any right or pursuit of any remedy necessary or proper in
37 connection with the subjects committed to the Director for administration or in
38 connection with any financial institution or the rights, liabilities, property, or assets
39 thereof, under the Director's supervision; but nothing herein shall be construed to render
40 the Director liable to be sued except as other departments and agencies of the State may
41 be liable under the general law.

42 **"§ 54D-1-9. Director to exercise powers under supervision of Financial Institutions**
43 **Regulatory Board.**

1 All the powers, duties, and functions granted to or imposed upon the Director by law
2 shall be exercised by the Director under the direction and supervision of the Financial
3 Institutions Regulatory Board, and wherever provision is made in any law now in effect
4 authorizing and permitting the Commissioner of Banks or the State Banking Commission
5 to make rules and regulations with respect to any actions or things required to be done
6 under the laws of this State governing banks, such rules shall be made by the Financial
7 Institutions Regulatory Board, and the words 'the Commissioner of Banks' and 'the
8 Banking Commission' used in such statutes authorizing the Commissioner of Banks or
9 the Banking Commission to make rules, shall be construed to mean the Financial
10 Institutions Regulatory Board, and the words 'Financial Institutions Regulatory Board'
11 substituted in such statutes for 'Commissioner of Banks' and 'Banking Commission'.

12 **"§ 54D-1-10. Salary of Director; legal assistance and compensation.**

13 The salary of the Director shall be fixed by the General Assembly in the Current
14 Operations Appropriations Act.

15 **"§ 54D-1-11. Seal of office of Director; certification of documents.**

16 The Director shall have a seal of office bearing the legend 'State of North Carolina –
17 Director of Financial Institutions', with such other appropriate device as the Director may
18 adopt.

19 **"§ 54D-1-12. Official records.**

20 (a) The Director shall keep a record in the Director's office of the Director's
21 official acts, rulings, and transactions which, except as hereinafter provided, shall be open
22 to inspection, examination, and copying by any person.

23 (b) Notwithstanding any laws to the contrary, the following records of the Director
24 shall be confidential and shall not be disclosed or be subject to public inspection:

25 (1) Records compiled during or in connection with an examination, audit,
26 or investigation of any financial institution supervised by the Director
27 which operates or has applied to operate under the provisions of
28 Chapters 53, 54B, or 54C of the General Statutes, or Subchapter III of
29 Chapter 54 of the General Statutes;

30 (2) Records containing information compiled in preparation or anticipation
31 of litigation, examination, audit, or investigation;

32 (3) Records containing the names of any borrowers from a financial
33 institution or revealing the collateral given by any such borrower:
34 Provided, however, that every report of insider transactions made by a
35 financial institution which report is required to be filed with the
36 appropriate State or federal regulatory agency by either State or federal
37 statute, rule, or regulation shall be filed with the Director in a form
38 prescribed by the Director and shall be open to inspection, examination,
39 and copying by any person;

40 (4) Records prepared during or as a result of an examination, audit, or
41 investigation of any financial institution by an agency of the United
42 States, or jointly by such agency and the Director, if such records would
43 be confidential under federal law or regulation;

- 1 (5) Records prepared during or as a result of an examination, audit, or
2 investigation of any financial institution supervised by the Director
3 pursuant to Articles 17,17A, 18, and 18A of Chapter 53 of the General
4 Statutes;
- 5 (6) Records of information and reports submitted by financial institutions to
6 federal regulatory agencies, if such records would be confidential under
7 federal law or regulation;
- 8 (7) Records of complaints from the public received by the Financial
9 Institutions Regulatory Board and concerning financial institutions
10 under its supervision if such complaints would or could result in an
11 investigation;
- 12 (8) Records of examinations and investigations of consumer finance
13 licensees;
- 14 (9) Records of examinations and investigations of licensees under the
15 Money Transmitters Act, Article 16 of Chapter 53 of the General
16 Statutes;
- 17 (10) Records of examinations and investigations of registrants under the
18 Registration Requirements Act for Certain Makers of Mortgages and
19 Deeds of Trust on Residential Real Property, Article 19 of Chapter 53 of
20 the General Statutes;
- 21 (11) Records of applications and investigations of registrants under the
22 Refund Anticipation Loan Act, Article 20 of Chapter 53 of the General
23 Statutes;
- 24 (12) Records of applications and investigations of registrants under the
25 Reverse Mortgage Act, Article 21 of Chapter 53 of the General Statutes;
- 26 (13) Any letters, reports, memoranda, recordings, charts, or other documents
27 which would disclose any information set forth in any of the
28 confidential records referred to in subdivisions (1) through (12) of this
29 subsection.

30 (c) Notwithstanding the provisions of subsection (b) of this section, the Director
31 may, by written agreement with any state or federal regulatory agency, share with that
32 agency any confidential information set out in subsection (b) of this section on the
33 condition that the information shared shall be treated as confidential under the applicable
34 laws and regulations governing the recipient agency.

35 **"§ 54D-1-13. General or special investigations of insolvent financial institutions.**

36 Whenever it may appear to be in the public interest, the Governor may cause a general
37 or special investigation to be made of the affairs of any insolvent financial institutions
38 singly or in related groups, with a view to discovering and establishing the causes of the
39 failure of such financial institutions, and responsibility therefor; and of discovering the
40 dealings with such financial institutions of persons, officers, corporations, or
41 municipalities which may have led to such insolvency or which may have endangered or
42 involved any public funds therein. The Governor may assign counsel who shall
43 prosecute such inquiry before the Director, or a deputy or assistant director appointed by

1 the Director for the purpose; and the Director is hereby empowered to conduct such
2 investigation either in person or through such deputy or assistant appointed by the
3 Director. The inquiry shall be held at the office of the Director in the City of Raleigh or at
4 any other place or places in the State designated by the Director under such rules as the
5 Board may adopt and may be adjourned from time to time as convenience may require.
6 Attendance of witnesses and production of papers may be required by subpoena under the
7 hand of the Director or the deputy director, and on failure of any witness to appear as
8 subpoenaed or his or her failure to produce any books or papers, as called for by the
9 Director or deputy director on subpoena or other order, due notice shall be served, at the
10 instance of the Director or deputy director of not less than three days to appear before a
11 judge of the superior court residing in or holding courts within the district wherein such
12 witness is subpoenaed or notified to appear or produce such records or papers, on a day
13 certain and a place named, when such judge shall hear the matter and is authorized to
14 punish such witness for contempt as the judge may find on such hearing.

15 A summary of such investigation shall be made with the findings and
16 recommendations of the Director thereon, and a copy thereof submitted to the Governor,
17 and when the facts disclose that any person or persons are criminally responsible, a
18 summary shall be sent to the district attorney of the prosecutorial district, as defined in
19 G.S. 7A-60, likely to have jurisdiction of the matter, whose duty it shall be to have the
20 matter presented to the grand jury for its action. The Governor may employ counsel to
21 assist in the prosecution of any person or persons criminally responsible and fix counsel's
22 compensation and the manner of its payment.

23 **"§ 54D-1-14. Clerical help.**

24 The Director may employ sufficient clerical and secretarial help, and other necessary
25 labor to conduct the affairs of the Director's office with economy and efficiency. Persons
26 so employed shall be subject to the State Personnel Act.

27 **"§ 54D-1-15. Offices.**

28 Suitable offices shall be provided for the Director in some State-owned public
29 building in Raleigh.

30 **"§ 54D-1-16. Revenues.**

31 (a) All revenues from fees or assessments lawfully collected by the Director shall
32 be deposited by the Director into an account in the name of the Board and used for the
33 purpose of defraying the costs to carry out the duties and responsibilities of the Director
34 and the Board authorized under this Chapter and under Chapters 53, 54B, 54C, and
35 Subchapter III of Chapter 54 of the General Statutes. Revenues collected pursuant to this
36 subsection shall not revert to the General Fund.

37 (b) All revenues from civil or criminal penalties lawfully collected by the Director
38 or the Board shall be deposited into the General Fund.

39 **"ARTICLE 2.**

40 **"SUPERVISION AND REGULATION.**

41 **"PART 1. BANKS.**

42 **"§ 54D-2-1. Definitions.**

1 Definitions applied to terms defined in Chapter 53 of the General Statutes are
2 incorporated herein and apply to the same terms used in this Part.

3 **"§ 54D-2-2. Director shall have supervision over, etc.**

4 Every bank or corporation transacting the business of banking, or doing a banking
5 business in connection with any other business, under the laws of and within this State,
6 and any individual, partnership, association, or corporation which undertakes or attempts
7 to transact the business of banking, or do a banking business in connection with any other
8 business, shall be under the supervision of the Director of Financial Institutions. It shall
9 be the Director's duty to execute and enforce, through the State bank examiners and such
10 other agents as are now or may hereafter be created or appointed, all laws which are now
11 or may hereafter be enacted relating to banks. For the more complete and thorough
12 enforcement of the provisions of this Part and Chapter 53 of the General Statutes, the
13 Board may adopt such rules not inconsistent with the provisions of this Part and of
14 Chapter 53 of the General Statutes as may, in its opinion, be necessary to carry out the
15 provisions of the laws relating to banks and banking, and as may be further necessary to
16 ensure safe and conservative management of the banks under its supervision, taking into
17 consideration the appropriate interest of the depositors, creditors, stockholders, and the
18 public in their relations with such banks. All banks doing business under the provisions
19 of this Part and Chapter 53 of the General Statutes shall conduct their business in a
20 manner consistent with all laws relating to banks and banking, and all rules and
21 instructions that may be adopted or issued by the Board.

22 **"§ 54D-2-3. Board bound by requirements imposed on Director as to certification of**
23 **new banks, establishment of branches, etc.**

24 Notwithstanding any other provisions of this Part or Chapter 53 of the General
25 Statutes, the Financial Institutions Regulatory Board, in the exercise of its authority to
26 review the action of the Director, shall be bound by the requirements, conditions, and
27 limitations imposed in this Part and in Chapter 53 of the General Statutes on the Director
28 as to the certification of new banks or the establishments of branch banks or limited
29 service facilities.

30 **"§ 54D-2-4. Examination of nonbanking affiliates.**

31 The Director may examine the affiliates of a bank doing business under Chapter 53 of
32 the General Statutes to the extent it is necessary to safeguard the interest of depositors
33 and creditors of the bank and of the general public, and to enforce the provisions of this
34 Part and of Chapter 53 of the General Statutes. The Director may conduct the
35 examination in conjunction with any examination of the bank or affiliate conducted by
36 any other state or federal regulatory authority. For the purpose of this section, the word
37 'affiliate' means any bank holding company of which the bank is a subsidiary and any
38 nonbanking subsidiary of that bank holding company, as 'subsidiary' is defined by section
39 2 of the Federal Bank Holding Company Act of 1956 (12 U.S.C. § 1841(d), as amended).

40 **"§ 54D-2-5. Reports of condition.**

41 Every bank shall make to the Director not less than four reports during each year in
42 the manner and form prescribed by the Board by rule. Each report shall be in a form
43 prescribed by the Director and shall exhibit in detail and under appropriate headings the

1 resources, assets, and liabilities of the bank at the close of business on any past day
2 specified by the Director, and shall be transmitted to the Director within 10 days after the
3 receipt of a request or requisition therefor from the Director. The Director may extend
4 the time for a period not to exceed 30 days for any bank to transmit the reports required
5 under this section whenever, in the Director's judgment, the extension is necessary. A
6 summary of the report for the quarter ending December 31, if required by the Director,
7 shall be published in a newspaper published in the place where the bank is located, or if
8 there is no newspaper in the place, then in the nearest one published thereto in the county
9 in which such bank is established. Proof of such publication shall be furnished the
10 Director in such form as may be prescribed by the Director.

11 **"§ 54D-2-6. Special reports.**

12 The Director may call for special reports whenever in the Director's judgment it is
13 necessary to inform the Director of the condition of any bank, or to obtain a full and
14 complete knowledge of its affairs. The reports shall be in and according to the form
15 prescribed by the Director, and shall be verified in the manner provided in G.S. 54D-2-5,
16 and shall be published as therein provided, if so required by the Director. The Director
17 may extend the time for filing special reports for a period not to exceed 30 days.

18 **"§ 54D-2-7. Penalty for failure to report.**

19 Every bank failing to make and transmit any report which the Director is authorized to
20 require by this Part or Chapter 53 of the General Statutes, and in and according to the
21 form prescribed by the Director, within 10 days after the receipt of a request or
22 requisition therefor, or within the extension of time granted by the Director, or failing to
23 publish the reports as required, shall forthwith be notified by the Director, and if such
24 failure continues for five days after the receipt of the notice, the delinquent bank shall be
25 subject to a penalty of two hundred dollars (\$200.00). The penalty herein provided for
26 shall be recovered in a civil action in any court of competent jurisdiction, and it shall be
27 the duty of the Attorney General to prosecute all such actions.

28 **"§ 54D-2-8. List of shareholders of record to be kept.**

29 Every bank doing business under this Chapter shall at all times keep a correct list of
30 its shareholders of record and whenever called upon by the Director or his duly
31 authorized agent, make available for examination a correct list of all its shareholders of
32 record, the address of each, and the number of shares held by each. Whenever the word
33 'shareholders' is used in this section, the same shall be deemed to include, to the extent
34 available, shareholders of any corporations which own ten percent (10%) or more of the
35 capital stock of any bank doing business under Chapter 53 of the General Statutes or a
36 lesser amount when required by the Director.

37 **"§ 54D-2-9. Official communications of Director.**

38 Each official communication directed by the Director or any State bank examiner, to
39 any bank, or to any officer thereof, relating to an examination or investigation conducted
40 or made by the Director, or containing suggestions or recommendations as to the conduct
41 of the bank shall, if required by the authority submitting same, be submitted by the
42 officer or director receiving it, to the executive committee or board of directors of such
43 bank and duly noted in the minutes of such meeting. The receipt and submission of such

1 notice to the executive committee or board of directors shall be certified to the Director
2 within such time as the Director may require by three members of such committee or
3 board.

4 **"§ 54D-2-10. Board to prescribe books, records, etc.; retention, reproduction, and**
5 **disposition of records.**

6 (a) Whenever in its judgment it may appear to be advisable, the Board may adopt
7 and issue such rules and instructions prescribing the manner of keeping books, accounts,
8 and records of banks as will tend to produce uniformity in the books, accounts, and
9 records of banks of the same class.

10 (b) The following provisions shall be applicable to banks and trust companies
11 operating under Chapter 53 of the General Statutes and amendments thereto, and to
12 national banking associations insofar as this section does not contravene paramount
13 federal law:

14 (1) Each bank shall retain permanently the minute books of meetings of its
15 stockholders and directors, its capital stock ledger, and capital stock
16 certificate ledger or stubs, and all records which the Board shall, in
17 accordance with the terms of this section, require to be retained
18 permanently.

19 (2) All other bank records shall be retained for such periods as the Board
20 shall, in accordance with the terms of this section, prescribe.

21 (3) The Board shall from time to time adopt rules classifying all records
22 kept by banks and prescribing the period for which records of each class
23 shall be retained. Such periods may be permanent or for a lesser term of
24 years. Such rules may from time to time be amended or repealed, but
25 any amendment or repeal shall not affect any action taken prior to such
26 amendment or repeal. Prior to adopting any such rules, the Board shall
27 consider:

28 a. Actions at law and administrative proceedings in which the
29 production of bank records might be necessary or desirable;

30 b. State and federal statutes of limitation applicable to such actions
31 or proceedings;

32 c. The availability of information contained in bank records from
33 other sources; and

34 d. Such other matters as the Board shall deem pertinent in order that
35 its regulation will require banks to retain their records for as short
36 a period as is commensurate with the interest of bank customers
37 and stockholders and of the people of this State in having bank
38 records available.

39 (4) Any bank may cause any or all records kept by it to be recorded, copied,
40 or reproduced by any photographic, photostatic, or miniature
41 photographic or reproduction process of any kind which is capable of
42 conversion into written form within a reasonable time and which
43 correctly, accurately, and permanently copies, reproduces, or forms a

1 medium for copying or reproducing the original record on a film or
2 other durable material.

3 (5) Any such photographic, photostatic, or miniature photographic copy or
4 reproduction of any kind, including electronic or computer-generated
5 data, which is capable of conversion into written form within a
6 reasonable time, shall be deemed to be an original record for all
7 purposes and shall be treated as an original record in all courts and
8 administrative agencies for the purpose of its admissibility in evidence.
9 A facsimile, exemplification, or certified copy of any such photographic
10 copy or reproduction shall, for all purposes, be deemed a facsimile,
11 exemplification, or certified copy of the original record.

12 (6) Any bank may dispose of any record which has been retained for the
13 period prescribed by the Board or in accordance with the terms of this
14 section for retention of records for its class.

15 **"§ 54D-2-11. When reserve below legal requirement.**

16 When the reserve of any bank falls below the amount required by law, it shall not
17 make new loans or discounts, otherwise than by discounting or purchasing bills of
18 exchange, payable at sight or on demand, nor make dividends of its profits until the
19 reserve required by law is restored. The Director shall require any bank whose reserve
20 falls below the amount herein required immediately to make good such reserve. In case
21 the bank fails for 30 days thereafter to make good its reserve, the Director may forthwith
22 take possession of the property and business of such bank until its affairs are adjusted or
23 finally liquidated as provided for in this Chapter.

24 **"§ 54D-2-12. Appraisal of assets of doubtful value.**

25 If any assets of a bank are of a doubtful or disputed value, an appraisal of such assets
26 may be had by the Director, and for the purpose of making such appraisal, the Director
27 shall designate one agent as an appraiser and the bank shall designate an agent as an
28 appraiser and the two so chosen shall designate a third. The appraisers so selected shall
29 make an appraisal of the assets so designated as doubtful or disputed and file a written
30 report of their appraisal with the bank and with the Director. In making such appraisal
31 the appraisers shall determine the actual cash market value of such assets. Such
32 appraisal, when made, shall be accepted as the value of such assets for the purpose of
33 examination or for the purpose of determining the actual cash market value of such
34 assets. The appraisers designated shall not be interested, in any way, either in the bank or
35 as an employee of the Director, and all expenses of such appraisal shall be paid by the
36 bank whose assets are appraised. If any bank required to appoint an appraiser hereunder
37 shall fail for 10 days to appoint an appraiser, the Director may apply to the clerk of the
38 superior court of the county in which the bank is located for the appointment of such an
39 appraiser; and the clerk shall thereupon make the appointment for the bank.

40 **"§ 54D-2-13. Certified copies of records as evidence.**

41 In all civil actions in the courts of this State wherein are involved as evidence or
42 otherwise any of the records of the Director, a certified copy over the signature and under

1 the seal of the Director shall be admissible in evidence to the same effect as if produced
2 in court at trial by the proper custodian of the records.

3 **"§ 54D-2-14. Other powers of the Board.**

4 In addition to all other powers conferred upon and vested in the Board, the Board,
5 with the approval of the Governor, is hereby authorized, empowered, and directed,
6 whenever in its judgment the circumstances warrant:

- 7 (1) To authorize, permit, direct, or require all banking corporations under its
8 supervision, to extend for such period and upon such terms as it deems
9 necessary and expedient, payment of any demand or time deposits.
- 10 (2) To direct, require, or permit, upon such terms as it may deem advisable,
11 the issuance of clearinghouse certificates or other evidences of claims
12 against assets of such banking institutions.
- 13 (3) To authorize and direct the creation, in such banking institutions, of
14 special trust accounts for the receipt of new deposits, which deposits
15 shall be subject to withdrawal on demand without any restriction or
16 limitation and shall be kept separate in cash or on deposit in such
17 banking institutions as it shall designate or invested in such obligations
18 of the United States or the State of North Carolina as it shall designate.
- 19 (4) To adopt for such banking institutions, such regulations as are
20 necessary, in its discretion, to enable such banking institutions to
21 comply fully with the federal regulations prescribed for national or state
22 banks.

23 **"§ 54D-2-15. Board to make rules.**

24 The Board shall make all necessary rules and shall give all necessary instructions with
25 respect to such actions of banking corporations which the Director may authorize, permit,
26 or direct and require to be conducted under the provisions of G.S. 53-77, 54D-2-14, 54D-
27 2-15, and 54D-2-16. It shall be the duty of all such banking corporations and their
28 officers, agents, and employees to comply fully with any and all rules and instructions
29 adopted and issued by the Board with respect to such banking corporations under the
30 terms of G.S. 53-77, 54D-2-14, 54D-2-15, and 54D-2-16; and such orders, rules, and
31 instructions shall have the same force and effect as rules and instructions promulgated
32 under the existing banking laws.

33 **"§ 54D-2-16. Director need not take over banks failing to meet deposit demands.**

34 The Director shall not take possession of any banking corporation under the Director's
35 supervision for failure to meet its deposit liabilities during the period in which such
36 banking corporation is operating under the terms of G.S. 54D-2-14 (1); and the Director
37 is hereby relieved from any and all liability for permitting such banking corporations to
38 continue operations under the terms thereof.

39 **"PART 2. CREDIT UNIONS.**

40 **"§ 54D-2-21. Definitions.**

41 Definitions applied to terms defined in Subchapter III of Chapter 54 of the General
42 Statutes are incorporated herein and apply to the same terms used in this Part.

43 **"§ 54D-2-22. Creation and supervision of Division.**

1 There is established in the Department of Commerce a Credit Union Division which
2 shall be under the general direction and supervision of the Director of Financial
3 Institutions.

4 **"§ 54D-2-23. Duties of Director with respect to credit unions.**

5 The duties of the Director with respect to credit unions shall be as follows:

- 6 (1) To organize and conduct in the Department of Commerce a bureau of
7 information in regard to cooperative associations and rural and
8 industrial credits.
- 9 (2) Upon request, to furnish, without cost, such printed information and
10 blank forms as in the Director's discretion may be necessary for the
11 formation and establishment of any local credit union in the State.
- 12 (3) To maintain an educational campaign in the State looking to the
13 promotion and organization of credit unions. Upon the written request
14 of 12 bona fide residents of any particular locality in this State
15 expressing a desire to form a local credit union at or in such locality, the
16 Director, or the Assistant Director of Credit Unions, shall proceed as
17 promptly as may be convenient to such locality and make an
18 investigation in order that the Director may determine whether or not a
19 local credit union should be established according to the standards set
20 forth and provided in Subchapter III of Chapter 54 of the General
21 Statutes. The Director shall notify the applicants of the Director's
22 decision within 30 days after receipt of the written request. Before
23 refusing the establishment of a credit union, the Director shall afford the
24 applicants an opportunity to be heard therewith in person or by counsel,
25 and at least 60 days prior to the date set for a hearing on any such
26 matter, shall notify in writing the applicants of the date of the hearing
27 and assign therein the grounds for the action contemplated to be taken
28 and as to which inquiry shall be made on the date of such hearing. The
29 determination of the Director shall be subject to judicial review in all
30 respects according to the provisions and procedures set forth in Chapter
31 150B of the General Statutes.
- 32 (4) To examine at least once a year, and more often if deemed necessary by
33 the Director or the Assistant Director, the credit unions formed under
34 Subchapter III of Chapter 54 of the General Statutes. A report of the
35 examination shall be filed with the Department of Commerce, and a
36 copy mailed to the credit union at its proper address.
- 37 (5) The Director shall fix the amount of a blanket surety bond which shall
38 be required of each credit union official, committee member, and
39 employee, irrespective of whether such official, committee member, and
40 employee receives, pays, or has custody of money or other personal
41 property owned by a credit union or in the custody or control of the
42 credit union as collateral or otherwise. The surety on the bond shall be a
43 surety company authorized to do business in North Carolina. Any such

bond or bonds shall be in a form approved by the Director with a view to providing surety coverage to the credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction, or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Director may determine to be reasonably appropriate or as elsewhere required by Subchapter III of Chapter 54 of the General Statutes. Any such bond or bonds shall be in an amount in relation to the money or other personal property involved or in relation to the assets of the credit union as the Board may from time to time prescribe by rule for the purpose of requiring reasonable coverage. The Director may also approve the use of a form of excess coverage bond whereby a credit union may obtain an amount of coverage in excess of the basic surety coverage. No agreement, compromise, or settlement of any claim or claims filed by a credit union with any surety or any surety company for less than the full amount of said claim or claims shall be entered into or made by the board of directors of any credit union unless and until the said claim or claims shall have been submitted to the Director and the Director's advice thereon given or transmitted to the board of directors of the credit union. The following schedule shall be deemed as the minimum fidelity and faithful performance bond requirements only:

<u>Assets</u>	<u>Minimum Coverage</u>
<u>\$ 0,000 to \$ 5,000</u>	<u>\$ 1,000</u>
<u>5,001 to 10,000</u>	<u>2,000</u>
<u>10,001 to 20,000</u>	<u>4,000</u>
<u>20,001 to 30,000</u>	<u>6,000</u>
<u>30,001 to 40,000</u>	<u>8,000</u>
<u>40,001 to 50,000</u>	<u>10,000</u>
<u>50,001 to 75,000</u>	<u>15,000</u>
<u>75,001 to 100,000</u>	<u>20,000</u>
<u>100,001 to 200,000</u>	<u>30,000</u>
<u>200,001 to 300,000</u>	<u>40,000</u>
<u>300,001 to 400,000</u>	<u>50,000</u>
<u>400,001 to 500,000</u>	<u>70,000</u>
<u>500,001 to 750,000</u>	<u>85,000</u>
<u>750,001 to 1,000,000</u>	<u>100,000</u>
<u>1,000,001 to 50,000,000</u>	<u>\$100,000</u>
<u>plus \$50,000 for each million or fraction thereof of assets over \$1,000,000</u>	
<u>\$50,000,001 to \$150,000,000</u>	<u>\$ 2,500,000</u>

1 (b) Moneys collected under this section shall be used to defray expenses incurred
2 by the office of the Director in carrying out its supervisory and auditing functions under
3 this Part and Subchapter III of Chapter 54 of the General Statutes.

4 **"§ 54D-2-26. Reports.**

5 (a) Credit unions organized under Articles 14A through 14L of Chapter 54 of the
6 General Statutes shall, in January and in July of each year, make a report of condition to
7 the Director on forms supplied for that purpose. Additional reports may be required.

8 (b) Any credit union that neglects to make semiannual reports as provided in
9 subsection (a) of this section, or any of the other reports required by the Director at the
10 time fixed by the Director, shall pay a late penalty to the Director of seventy-five dollars
11 (\$75.00) for each day the neglect continues. The Director may revoke the certificate of
12 incorporation and take possession of the assets and business of any credit union failing to
13 pay a penalty imposed under this section after serving notice of at least 15 days upon the
14 credit union of the proposed action. Penalties collected under this section shall be
15 credited as provided under G.S. 54D-1-16(b).

16 **"§ 54D-2-27. Annual examinations required; payment of cost.**

17 The Director shall cause every corporation organized under Subchapter III of Chapter
18 54 of the General Statutes to be examined once a year and whenever the Director deems
19 it necessary. The examiners appointed by the Director shall be given free access to all
20 books, papers, securities, and other sources of information in respect to the corporation;
21 and for the purpose of such examination, the Director shall have power and authority to
22 subpoena and examine personally, or by the Assistant Director or one of the examiners,
23 witnesses on oath and documents, whether such witnesses are members of the
24 corporation or not, and whether such documents are documents of the corporation or not.
25 The Director may designate an independent auditing firm to do the work under the
26 Director's direction and supervision, with the cost to be paid by the credit union involved.

27 **"§ 54D-2-28. Confidential information.**

28 (a) The following records of information of the Credit Union Division, the
29 Director, or the agent(s) of either shall be confidential and shall not be disclosed:

- 30 (1) Information obtained or compiled in preparation of, during, or as a
31 result of an examination, audit, or investigation of any credit union;
- 32 (2) Information reflecting the specific collateral given by a named
33 borrower, or specific withdrawable accounts held by a named member;
- 34 (3) Information obtained, prepared, or compiled during or as a result of an
35 examination, audit, or investigation of any credit union by an agency of
36 the United States, if the records would be confidential under federal law
37 or regulation;
- 38 (4) Information and reports submitted by credit unions to federal regulatory
39 agencies, if the records or information would be confidential under
40 federal law or regulation;
- 41 (5) Information and records regarding complaints from the members
42 received by the Division which concern credit unions when the

1 complaint would or could result in an investigation, except to the
2 management of those credit unions; and

3 (6) Any other letters, reports, memoranda, recordings, charts, or other
4 documents or records which would disclose any information of which
5 disclosure is prohibited in this subsection.

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

8 (c) The information contained in an application for a new credit union shall be
9 deemed to be public information.

10 (d) Nothing in this Part shall prevent the exchange of information relating to credit
11 unions and the business thereof with the representatives of the agencies of this State,
12 other states, or of the United States, or with reserve or insuring agencies for credit unions.
13 Nothing in this Part shall prevent the Director from disclosing pertinent information
14 relating to a credit union and the business thereof with directors, officers, or members of
15 the credit union. The private business and affairs of an individual or company shall not
16 be disclosed by any person employed by the Credit Union Division, or by any person
17 with whom information is exchanged under the authority of this subsection.

18 (e) Any official or employee violating this section shall be liable to any person
19 injured by disclosure of such confidential information for all damages sustained thereby.
20 Penalties provided shall not be exclusive of other penalties.

21 (f) The willful or knowing violation of the provisions of this Part by any employee
22 of the Credit Union Division shall be a misdemeanor.

23 **"§ 54D-2-29. Records.**

24 (a) A credit union shall maintain all books, records, and accounting systems and
25 procedures in accordance with such rules as the Board from time to time prescribes. In
26 prescribing such rules, the Board shall consider the relative size of a credit union and its
27 reasonable capability of compliance.

28 (b) A credit union is not liable for destroying records after the expiration of the
29 record retention time prescribed by the Board.

30 (c) A photostatic or photographic reproduction of any credit union records shall be
31 admissible as evidence of transactions with the credit union.

32 **"§ 54D-2-30. Selection of attorneys to handle loan-closing proceedings.**

33 The Board shall adopt rules relating to selection of attorneys-at-law to handle credit
34 union loan-closing proceedings.

35 **"PART 3. SAVINGS AND LOAN ASSOCIATIONS.**

36 **"§ 54D-2-34. Definitions.**

37 Definitions applied to terms defined in Article 1 of Chapter 54B of the General
38 Statutes are incorporated herein and apply to the same terms used in this Part.

39 **"§ 54D-2-35. Savings Institutions Division.**

40 There is established in the Department of Commerce the Savings Institutions Division
41 which shall be under the direction and general supervision of the Director.

42 **"§ 54D-2-36. Board to adopt rules; reproduction of records.**

1 (a) The Board shall adopt rules and issue instructions as may be necessary for the
2 discharge of the Director's duties and powers as to savings and loan associations for the
3 supervision and regulation of the associations, and for the protection of the public
4 investing in the savings and loan associations.

5 (b) Without limiting the generality of the foregoing paragraph, rules and
6 instructions may be adopted and issued with respect to:

7 (1) Reserve requirements;

8 (2) Stock ownership and dividends;

9 (3) Stock transfers;

10 (4) Incorporators, stockholders, directors, officers, and employees of an
11 association;

12 (5) Bylaws;

13 (6) The structure of the Division;

14 (7) The operation of associations;

15 (8) Withdrawable accounts, bonus plans, and contracts for savings
16 programs;

17 (9) Loans and loan expenses;

18 (10) Investments;

19 (11) Forms and definitions;

20 (12) Types of financial records to be maintained by associations;

21 (13) Retention periods of various financial records;

22 (14) Internal control procedures of associations;

23 (15) Conduct and management of associations;

24 (16) Chartering and branching;

25 (17) Liquidations;

26 (18) Mergers;

27 (19) Conversions;

28 (20) Reports which may be required by the Director;

29 (21) Conflicts of interest;

30 (22) Collection of State savings and loan taxes;

31 (23) Service corporations; and

32 (24) Savings and loan holding companies.

33 (c) Any association may cause any or all records by it to be recorded, copied, or
34 reproduced by any photographic, photostatic, or miniature photographic process which
35 correctly, accurately, permanently copies, reproduces, or forms a medium for copying or
36 reproducing the original record on a film or other durable material.

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

1 (e) The provisions of this section with reference to the retention and disposition of
2 records shall apply to any federal savings and loan association operating in North
3 Carolina unless in conflict with regulations prescribed by its supervisory authority.

4 **"§ 54D-2-37. Examinations by Director; report.**

5 (a) If at any time the Director deems it prudent, it shall be the Director's duty to
6 examine and investigate everything relating to the business of a State association or a
7 savings and loan holding company, and to appoint a suitable and competent person to
8 make such investigation, who shall file with the Director a full report of the person's
9 finding in such case, including in the report any violation of law or any unauthorized or
10 unsafe practices of the association disclosed by the person's examination.

11 (b) The Director shall furnish a copy of the report to the association examined and
12 may, upon request, furnish a copy of or excerpts from the report to the appropriate federal
13 regulatory authorities.

14 (c) No association may willfully delay or willfully obstruct an examination in any
15 fashion. Any person failing to comply with this subsection shall be guilty of a
16 misdemeanor.

17 (d) No person who has possession or control of any books, accounts, or papers of
18 any State association shall refuse to exhibit same to the Director or the Director's agents
19 on demand, or shall knowingly or willingly make any false statement in regard to the
20 same. Any person failing to comply with this subsection shall be guilty of a
21 misdemeanor.

22 **"§ 54D-2-38. Supervision and examination fees.**

23 (a) Every State association, including associations in process of voluntary
24 liquidation, or savings and loan holding company, shall pay into the office of the Director
25 each July a supervisory fee. Examination fees shall be paid promptly upon an
26 association's receipt of the examination billing. The Director, subject to the advice and
27 consent of the Board, shall, on or before June 1 of each year:

28 (1) Determine and fix the scale of supervisory and examination fees to be
29 assessed and collected during the next fiscal year; and

30 (2) Determine and fix the amount of the fee and set the fee collection
31 schedule for the fees to be assessed to and collected from applicants to
32 defray the cost of processing their charter, branch, merger, conversion,
33 location change, savings and loan holding company acquisition, and
34 name change applications.

35 (b) All funds and revenue collected by the Division under the provisions of this
36 section and the provisions of all other sections of Chapter 54B of the General Statutes
37 which authorize the collection of fees and other funds shall be used to defray expenses
38 incurred by the office of the Director in carrying out its supervisory and auditing
39 functions.

40 (c) Notwithstanding any of the provisions of subsections (a) and (b) of this
41 section, whenever the Director under the provisions of G.S. 54D-2-37 appoints a suitable
42 and competent person, other than a person employed by the Director's office, to make an

1 examination and investigation of the business of a State association, all costs and
2 expenses relative to such examination and investigation shall be paid by such association.

3 **"§ 54D-2-39. Prolonged audit, examination, or revaluation; payment of costs.**

4 (a) If, in the opinion of the Director, an examination conducted under the
5 provisions of G.S. 54D-2-37 fails to disclose the complete financial condition of an
6 association, the Director may in order to ascertain its complete financial condition:

7 (1) Make an extended audit or examination of the association or cause such
8 an audit or examination to be made by an independent auditor; or

9 (2) Make an extended revaluation of any of the assets or liabilities of the
10 association or cause an independent appraiser to make such revaluation.

11 (b) The Director shall collect from the association a reasonable sum for actual or
12 necessary expenses of such an audit, examination, or revaluation.

13 **"§ 54D-2-40. Director to have right of access to books and records of association;**
14 **right to issue subpoenas, administer oaths, examine witnesses.**

15 (a) The Director and the Director's agents:

16 (1) Shall have free access to all books and records of an association, or a
17 service corporation thereof, that relate to its business, and the books and
18 records kept by an officer, agent, or employee relating to or upon which
19 any record is kept;

20 (2) May subpoena witnesses and administer oaths or affirmations in the
21 examination of any director, officer, agent, or employee of an
22 association, or a service corporation thereof or of any other person in
23 relation to its affairs, transactions, and conditions;

24 (3) May require the production of records, books, papers, contracts, and
25 other documents; and

26 (4) May order that improper entries be corrected on the books and records
27 of an association.

28 (b) The Director may issue subpoenas duces tecum.

29 (c) If a person fails to comply with a subpoena so issued or a party or witness
30 refuses to testify on any matters, a court of competent jurisdiction, on the application of
31 the Director, shall compel compliance by proceedings for contempt as in the case of
32 disobedience of the requirements of a subpoena issued from such court or a refusal to
33 testify in such court.

34 **"§ 54D-2-41. Test appraisals of collateral for loans; expense paid.**

35 (a) The Director may direct the making of test appraisals of real estate and other
36 collateral securing loans made by associations doing business in this State, employ
37 competent appraisers, or prescribe a list from which competent appraisers may be
38 selected, for the making of such appraisals by the Director, and do any and all other acts
39 incident to the making of such test appraisals.

40 (b) In lieu of causing such appraisals to be made, the Director may accept an
41 appraisal caused to be made by the appropriate federal regulatory authority.

42 (c) The expense and cost of test appraisals made pursuant to this section shall be
43 defrayed by the association subjected to such test appraisals, and each association doing

1 business in this State shall pay all reasonable costs and expenses of such test appraisals
2 when it shall be directed.

3 **"§ 54D-2-42. Relationship of savings and loan associations with the Division.**

4 (a) Except as provided by subsection (b) of this section, a savings and loan
5 association or any director, officer, employee, or representative thereof shall not grant or
6 give to the Director or to any employee of the Director's office, or to their spouses, any
7 loan or gratuity, directly or indirectly.

8 (b) Neither the Director nor any person on the staff of the Division shall:

9 (1) Hold an office or position in any State association or exercise any right
10 to vote on any State association matter by reason of being a member of
11 the association;

12 (2) Be interested, directly or indirectly, in any savings and loan association
13 organized under the laws of this State; or

14 (3) Undertake any indebtedness as a borrower, directly or indirectly, or
15 endorser, surety, or guarantor, or sell or otherwise dispose of any loan or
16 investment to any savings and loan association organized under the laws
17 of this State.

18 (c) Notwithstanding subsection (b) of this section, the Director or any other person
19 employed in or by his office may be a withdrawable account holder and receive earnings
20 on such account.

21 (d) If the Director or other person has any prohibited right or interest in a savings
22 and loan association, either directly or indirectly, at the time of the Director's
23 appointment or the person's employment, the Director or such other person shall dispose
24 of it within 60 days after the date of appointment or employment. If the Director or other
25 such person is indebted as borrower directly or indirectly, or is an endorser, surety, or
26 guarantor on a note, at the time of appointment or employment, the Director or such other
27 person may continue in such capacity until such loan is paid off.

28 (e) If the Director or any employee of the Division has a loan or other note
29 acquired by a State savings bank through the secondary market, the Director or such
30 employee may continue with the debt until such loan or note is paid off.

31 **"§ 54D-2-43. Confidential information.**

32 (a) The following records or information of the Board, the Director, or the agent(s)
33 of either shall be confidential and shall not be disclosed:

34 (1) Information obtained or compiled in preparation of or anticipation of, or
35 during an examination, audit, or investigation of any association;

36 (2) Information reflecting the specific collateral given by a named
37 borrower, the specific amount of stock owned by a named stockholder,
38 or specific withdrawable accounts held by a named member or
39 customer;

40 (3) Information obtained, prepared, or compiled during or as a result of an
41 examination, audit, or investigation of any association by an agency of
42 the United States, if the records would be confidential under federal law
43 or regulation;

1 (4) Information and reports submitted by associations to federal regulatory
2 agencies, if the records or information would be confidential under
3 federal law or regulation;

4 (5) Information and records regarding complaints from the public received
5 by the Division which concern associations when the complaint would
6 or could result in an investigation, except to the management of those
7 associations; and

8 (6) Any other letters, reports, memoranda, recordings, charts, or other
9 documents or records which would disclose any information of which
10 disclosure is prohibited in this subsection.

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

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

16 (d) Nothing in this section shall prevent the exchange of information relating to
17 associations and the business thereof with the representatives of the agencies of this State,
18 other states, or of the United States, or with reserve or insuring agencies for associations.
19 The private business and affairs of an individual or company shall not be disclosed by
20 any person employed by the Savings Institutions Division, any member of the Board, or
21 by any person with whom information is exchanged under the authority of this
22 subsection.

23 (e) Any official or employee violating this section shall be liable to any person
24 injured by disclosure of such confidential information for all damages sustained thereby.
25 Penalties provided shall not be exclusive of other penalties.

26 **"§ 54D-2-44. Annual license fees.**

27 All State associations shall pay an annual license fee set by the Director subject to the
28 advice and consent of the Board. Such license fee shall be used to defray the expenses
29 incurred by the Division in supervising State associations. The Director may license each
30 State association upon receipt of the license fee and filing of an application in such form
31 as the Director may prescribe.

32 **"§ 54D-2-45. Statement; fees.**

33 Every State association shall file in the office of the Director, on or before the first
34 day of February in each year, in such form as the Director shall prescribe, a statement of
35 the business standing and financial condition of such association on the preceding 31st
36 day of December. This statement shall be signed and sworn to by the secretary of the
37 association before a notary public. The statement shall be accompanied by a filing fee set
38 by the Director, subject to the advice and consent of the Board. The filing fees shall be
39 used as provided in G.S. 54D-1-16(a).

40 **"§ 54D-2-46. Statement examined, approved, and published.**

41 It shall be the duty of the Administrator to receive and thoroughly examine each
42 annual statement required by G.S. 54D-2-45, and if made in compliance with the
43 requirements thereof, each State association shall publish an abstract of the same in one

1 of the newspapers of the State, to be selected by the managing officer making the
2 statement, and at the expense of the association.

3 **"§ 54D-2-47. Certain powers granted to State associations.**

4 (a) In addition to the powers granted under this Chapter and Chapter 54B of the
5 General Statutes, any savings and loan association incorporated or operated under the
6 provisions of Chapter 54B of the General Statutes may:

7 (1) Establish off the premises of any principal office or branch a customer
8 communications terminal, point-of-sale terminal, automated teller
9 machine, automated or other direct or remote information-processing
10 device or machine, whether manned or unmanned, through or by means
11 of which funds or information relating to any financial service or
12 transaction rendered to the public is stored and transmitted,
13 instantaneously or otherwise to or from an association terminal or
14 terminals controlled or used by or with other parties; and the
15 establishment and use of such a device or machine shall not be deemed
16 to constitute a branch office and the capital requirements and standards
17 for approval of a branch office as set forth in the statutes and
18 regulations, shall not be applicable to the establishment of any such off-
19 premises terminal, device, or machine; and associations may through
20 mutual consent share on-premises unmanned automated teller machines
21 and cash dispensers. The Board may adopt rules with regard to the
22 application for permission for use, maintenance, and supervision of the
23 terminals, devices, and machines;

24 (2) Subject to such rules as the Board may adopt, a State-chartered
25 association is authorized to issue credit cards, extend credit in
26 connection therewith, and otherwise engage in or participate in credit
27 card operations;

28 (3) Subject to such rules as the Board may adopt, a State-chartered
29 association may act as a trustee, executor, administrator, guardian, or in
30 any other fiduciary capacity permitted for federal savings and loan
31 associations;

32 (4) a. In accordance with rules adopted by the Board, mutual capital
33 certificates may be issued by State-chartered associations and sold
34 directly to subscribers or through underwriters, and such certificates
35 shall constitute part of the general reserve and net worth of the issuing
36 association. The Board, in the rules relating to the issuance and sale of
37 mutual capital certificates, shall provide that such certificates:

38 1. Shall be subordinate to all savings accounts, savings
39 certificates, and debt obligations;

40 2. Shall constitute a claim in liquidation on the general
41 reserves, surplus, and undivided profits of the association
42 remaining after the payment of all savings accounts,
43 savings certificates, and debt obligations;

1 3. Shall be entitled to the payment of dividends; and

2 4. May have a fixed or variable dividend rate.

3 b. The Board shall provide in the rules for charging losses to the
4 mutual capital certificate, reserves, and other net worth accounts.

5 (b) To such extent as the Board may authorize by rule or advice in writing, a State
6 association may issue notes, bonds, debentures, or other obligations or securities.

7 **"§ 54D-2-48. Prohibited practices.**

8 Any person or association who shall engage in any of the following acts or practices
9 shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined or
10 imprisoned, or both, in the discretion of the court:

11 (1) Defamation. – Making, publishing, disseminating, or circulating,
12 directly or indirectly, or aiding, abetting, or encouraging the making,
13 publishing, disseminating, or circulating of any oral, written, or printed
14 statement which is false regarding the financial condition of any
15 association.

16 (2) False information and advertising. – Making, publishing, disseminating,
17 or circulating or causing, directly or indirectly, to be made published,
18 disseminated, circulated, or otherwise placed before the public in any
19 publication, media, notice, pamphlet, letter, poster, or any other way, an
20 advertisement, announcement, or statement containing any assertion,
21 representation, or statement with respect to the savings and loan
22 business or with respect to any person in the conduct of the savings and
23 loan business which is untrue, deceptive, or misleading.

24 **"PART 4. SAVINGS BANKS.**

25 **"§ 54D-2-52. Definitions.**

26 Definitions applied to terms defined in Chapter 54C of the General Statutes are
27 incorporated herein and apply to the same terms used in this part.

28 **"§ 54D-2-53. Supervision.**

29 (a) The Director shall perform the duties and exercise the powers as to savings
30 banks organized or operated under Chapter 54C of the General Statutes, except as
31 otherwise provided herein.

32 (b) The Board may review, approve, disapprove, or modify any action taken by the
33 Director in the exercise of the powers, duties, and functions granted to the Director by
34 this Part and Chapter 54C of the General Statutes.

35 **"§ 54D-2-54. Power of Board to adopt rules and definitions; reproduction of**
36 **records.**

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

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

42 (1) Reserve requirements;

43 (2) Stock ownership and dividends;

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

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

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

33 (e) This section, with reference to the retention and disposition of records, shall
34 apply to any federal savings bank operating in North Carolina unless in conflict with
35 regulations prescribed by its federal regulatory authority.

36 **"§ 54D-2-55. Examinations by Director; report.**

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

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

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

6 (d) No person who possesses or controls any books, accounts, or papers of any
7 State savings bank shall refuse to exhibit same to the Director or the Director's agent on
8 demand, or shall knowingly or willingly make any false statement in regard to the same.
9 A person failing to comply with this subsection is guilty of a misdemeanor.

10 **"§ 54D-2-56. Supervision and examination fees authorized; use of funds collected**
11 **under Part.**

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

17 (1) Determine and fix the scale of supervisory and examination fees to be
18 assessed and collected during the next fiscal year; and

19 (2) Determine and fix the amount of the fee and set the fee collection
20 schedule for the fees to be assessed to and collected from applicants to
21 defray the cost of processing their charter, branch, merger, conversion,
22 holding company acquisition, and name change applications.

23 (b) All funds and revenue collected by the Division under this section and all other
24 sections of this Part that authorize the collection of fees and other funds shall be used to
25 defray expenses incurred by the office of the Director in carrying out its supervisory and
26 auditing functions. Civil penalties collected under this Chapter shall be credited pursuant
27 to G.S. 54D-1-16(b).

28 (c) Notwithstanding subsections (a) and (b) of this section, whenever the Director
29 under G.S. 54D-2-55 appoints a suitable and competent person, other than a person
30 employed by the Director's office, to make an examination and investigation of the
31 business of a state savings bank, the savings bank shall pay all costs and expenses relative
32 to the examination and investigation.

33 **"§ 54D-2-57. Prolonged audit, examination, or revaluation; payment of costs.**

34 (a) If, in the opinion of the Director, an examination conducted under G.S. 54D-2-
35 56 fails to disclose the complete financial condition of a savings bank, the Director may
36 in order to ascertain its complete financial condition:

37 (1) Make an extended audit or examination of the savings bank or cause an
38 audit or examination to be made by an independent auditor; and

39 (2) Make an extended revaluation of any of the assets or liabilities of the
40 savings bank or cause an independent appraiser to make a revaluation.

41 (b) The Director shall collect from the savings bank a reasonable sum for actual or
42 necessary expenses of an audit, examination, or revaluation.

1 **"§ 54D-2-58. Director to have right of access to books and records of the savings**
2 **bank; right to issue subpoenas, administer oaths, examine witnesses.**

3 (a) The Director and the Director's agents:

4 (1) Shall have free access to all books and records of a savings bank, or a
5 service corporation or holding company thereof, that relate to its
6 business, and the books and records kept by an officer, agent, or
7 employee relating to or upon which any record is kept;

8 (2) May subpoena witnesses and administer oaths or affirmations in the
9 examination of any director, officer, agent, or employee of a savings
10 bank, or a service corporation or holding company thereof or of any
11 other person in relation to its affairs, transactions, and conditions;

12 (3) May require the production of records, books, papers, contracts, and
13 other documents; and

14 (4) May order that improper entries be corrected on the books and records
15 of a savings bank.

16 (b) The Director may issue subpoenas duces tecum.

17 (c) If a person fails to comply with a subpoena so issued or a party or witness
18 refuses to testify on any matters, a court of competent jurisdiction, on the application of
19 the Director, shall compel compliance by proceedings for contempt as in the case of
20 disobedience of the requirements of a subpoena issued from the court or a refusal to
21 testify in the court.

22 **"§ 54D-2-59. Test appraisals of collateral for loans; expense paid.**

23 (a) The Director may direct the making of test appraisals of real estate and other
24 collateral securing loans made by savings banks doing business in this State, employ
25 competent appraisers, or prescribe a list from which competent appraisers may be
26 selected, for the making of these appraisals by the Director, and any and all other acts
27 incident to the making of test appraisals.

28 (b) In lieu of causing an appraisal to be made, the Director may accept an appraisal
29 caused to be made by the insurer of accounts.

30 (c) The expense and cost of test appraisals made under this section shall be
31 defrayed by the savings bank subjected to the test appraisals, and each savings bank
32 doing business in this State shall pay all reasonable costs and expenses of the test
33 appraisals when it is directed.

34 **"§ 54D-2-60. Relationship of savings banks with the Division.**

35 (a) Except as provided by subsection (b) of this section, a savings bank or any
36 director, officer, employee, or representative thereof shall not grant or give to the
37 Director or to any employee of the Division or to their spouses, any loan or gratuity,
38 directly or indirectly.

39 (b) Neither the Director nor any employee of the Division shall:

40 (1) Hold an office or position in any State savings bank or exercise any
41 right to vote on any State savings bank matter by reason of being a
42 member of the savings bank;

1 (2) Be interested, directly or indirectly, in any savings bank organized
2 under the laws of this State; or

3 (3) Undertake any indebtedness as a borrower, directly or indirectly, or act
4 as endorser, surety, or guarantor, or sell or otherwise dispose of any loan
5 or investment to any savings bank organized under the laws of this
6 State.

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

9 (d) The Director or any employee of the Division shall dispose of any prohibited
10 right or interest in a savings bank, either directly or indirectly, within 60 days after the
11 date of the Director's or employee's appointment or employment. If the Director or any
12 employee of the Division is indebted as borrower, directly or indirectly, or is an endorser,
13 surety, or guarantor on a note, at the time of appointment or employment, the Director or
14 employee may continue in that capacity until the loan is paid off.

15 (e) If the Director or any employee of the Division has a loan or other note
16 acquired by a State savings bank through the secondary market, the Director or employee
17 may continue with the debt until the loan or note is paid off.

18 **"§ 54D-2-61. Confidential information.**

19 (a) The following records or information of the Board, the Director, or the agent of
20 either shall be confidential and shall not be disclosed:

21 (1) Information obtained or compiled in preparation of or anticipation of, or
22 during an examination, audit, or investigation of any association;

23 (2) Information reflecting the specific collateral given by a named
24 borrower, the specific amount of stock owned by a named stockholder,
25 any stockholder list supplied to the Director under G.S. 54C-22, or
26 specific deposit accounts held by a named member or customer;

27 (3) Information obtained, prepared, or compiled during or as a result of an
28 examination, audit, or investigation of any savings bank by an agency of
29 the United States, if the records would be confidential under federal law
30 or regulation;

31 (4) Information and reports submitted by savings banks to federal
32 regulatory agencies, if the records or information would be confidential
33 under federal law or regulation;

34 (5) Information and records regarding complaints from the public received
35 by the Division that concern savings banks when the complaint would
36 or could result in an investigation, except to the management of those
37 savings banks; and

38 (6) Any other letters, reports, memoranda, recordings, charts, or other
39 documents or records that would disclose any information of which
40 disclosure is prohibited in this subsection.

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

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

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

10 (e) An official or employee of this State violating this section is liable to any
11 person injured by disclosure of the confidential information for all damages sustained
12 thereby. Penalties provided are not exclusive of other penalties.

13 **"§ 54D-2-62. Annual license fees.**

14 A state savings bank shall pay an annual license fee set by the Director, subject to the
15 advice and consent of the Board. The license fee shall be used to defray the expenses
16 incurred by the savings institution division in supervising State savings banks. The
17 Director may license each State savings bank upon receipt of the license fee and filing of
18 an application in the form prescribed by the Director.

19 **"§ 54D-2-63. Statement filed by savings bank; fees.**

20 A State savings bank shall file in the office of the Director, on or before the first day
21 of February in each year, in the form prescribed by the Director, a statement of the
22 business standing and financial condition of the savings bank on the preceding thirty-first
23 day of December, signed and sworn to by the secretary of the savings bank before a
24 notary public. The statement shall be accompanied by a filing fee set by the Director,
25 subject to the advice and consent of the Board. The filing fees shall be used to defray the
26 expenses incurred by the Division in supervising State savings banks.

27 **"§ 54D-2-64. Statement examined, approved, and published.**

28 It is the duty of the Director to receive and thoroughly examine each annual statement
29 required by G.S. 54D-2-63, and if made in compliance with the requirements thereof,
30 each State savings bank shall publish an abstract of the same in one of the newspapers of
31 the State, to be selected by the managing officer making the statement, and at the expense
32 of the savings bank.

33 **"§ 54D-2-65. Prohibited practices.**

34 A person who engages in any of the following acts or practices is guilty of a
35 misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the
36 discretion of the court:

37 (1) Defamation: Making, publishing, disseminating, or circulating, directly
38 or indirectly, or aiding, abetting, or encouraging the making, publishing,
39 disseminating, or circulating of any oral, written, or printed statement
40 that is false regarding the financial condition of any savings bank.

41 (2) False information and advertising: Making, publishing, disseminating,
42 circulating, or otherwise placing before the public in any publication,
43 media, notice, pamphlet, letter, poster, or any other way, an

1 advertisement, announcement, or statement containing any assertion,
2 representation, or statement with respect to the savings bank business or
3 with respect to any person in the conduct of the savings bank business
4 that is untrue, deceptive, or misleading.

- 5 (3) Misleading advertising: Use of a name or designation by a savings bank
6 in advertisements, announcements, or statements concerning the savings
7 bank that does not include the words 'savings bank' and the designation
8 'SSB' in type that is equally prominent with the other terms in the name
9 or designation of the savings bank.

10 **"ARTICLE 3.**

11 **"ENFORCEMENT AND PENALTIES.**

12 **"PART 1. BANKS.**

13 **"§ 54D-3-1. Definitions.**

14 Definitions applied to terms defined in Chapter 53 of the General Statutes are
15 incorporated herein and apply to the same terms used in this Part.

16 **"§ 54D-3-2. Examiner making false report.**

17 If any bank examiner shall knowingly and willfully make any false or fraudulent
18 report of the condition of any bank, which shall have been examined by him, with the
19 intent to aid or abet the officers, owners, or agents of such bank in continuing to operate
20 an insolvent bank, or if any such examiner shall keep or accept any bribe or gratuity
21 given for the purpose of inducing the examiner not to file any report of examination of
22 any bank made by the examiner or shall neglect to make an examination of any bank by
23 reason of having received or accepted any bribe or gratuity, the examiner shall be guilty
24 of a Class H felony.

25 **"§ 54D-3-3. Examiners disclosing confidential information.**

26 If any bank examiner or other employee of the Director of Banks fails to keep secret
27 the facts and information obtained in the course of an examination of a bank, except
28 when the public duty of such examiner or employee requires him to report upon or take
29 official action regarding the affairs of such bank, he shall be guilty of a Class 1
30 misdemeanor. Nothing in this section shall prevent the proper exchange of information
31 with the representatives of the banking departments of other states, with the federal
32 reserve bank or national bank examiners, or other authorities, with the creditors of such
33 bank or others with whom a proper exchange of information is wise or necessary, or with
34 the clearinghouse officials and examiners.

35 **"§ 54D-3-4. Loans or gratuities forbidden.**

36 No State bank, or any officer, director, or employee thereof shall hereafter make any
37 loan or grant any gratuity to the Director, any bank examiner, or assistant bank examiner
38 of the Director of Financial Institutions of North Carolina. Any such officer, director, or
39 employee violating this provision shall be guilty of a misdemeanor and imprisoned not
40 exceeding one year or fined not more than one thousand dollars (\$1,000), or both; and
41 they may be fined a further sum equal to the money so loaned or gratuity given. If the
42 Director, or any bank examiner, or assistant bank examiner of the Director of Financial
43 Institutions of North Carolina shall accept a loan or gratuity from any State bank, or from

1 any officer, director, or employee thereof, he shall be guilty of a Class 1 misdemeanor,
2 and may be fined a further sum equal to the money so loaned or gratuity given.

3 **"§ 54D-3-5. Unlawful use of terms indicating that business is bank or trust**
4 **company.**

5 (a) Definitions. – The following definitions apply in this section:

6 (1) Banking. The business of receiving or soliciting money on deposit.

7 (2) Banking entity. A person, partnership, corporation, or other entity that
8 is engaged in the banking or trust business in North Carolina and is (i)
9 subject to the supervision of the Commissioner of Banks under this
10 Chapter, (ii) subject to supervision by the Administrator of Savings
11 Institutions under Chapter 54B or Chapter 54C, or (iii) a banking or
12 savings institution authorized to transact a banking or trust business in
13 this State under federal law.

14 (3) Nonbanking entity. A person, partnership, corporation, or other entity
15 that is not a banking entity.

16 (b) Restrictions. – No nonbanking entity may use any sign or written or printed
17 paper indicating that it is a bank, savings bank, trust company, or place of banking. No
18 entity may use the word 'bank', 'savings bank', 'banking', 'banker', or 'trust company', or
19 the equivalent or plural of any of these words in connection with any business other than
20 that of banking. This section does not prohibit an individual from acting in a trust
21 capacity.

22 (c) Exceptions. –

23 (1) A nonbanking entity may use any of the terms listed above in its name if
24 the context or remaining words show clearly that the business is not a
25 bank or trust company and is not engaged in the banking or trust
26 business.

27 (2) A nonbanking entity may use any of the terms listed above where the
28 term is the proper name of a principal or former principal in the entity,
29 and the use of the name is made in good faith and not in an effort to
30 deceive the public.

31 (3) A corporation that is a bank holding company as defined in G.S. 53-
32 226(2) or a savings and loan holding company as defined in G.S. 54B-
33 261(d) may use the words 'bank', 'banker', and 'trust company', and the
34 equivalent and plural of these words in its name and may use a name
35 similar to that of any of its subsidiary banks or stock associations.

36 (4) A corporation incorporated before January 1, 1905, may retain the word
37 'trust' in its name, although it does not transact a business that requires
38 examination by the Commissioner of Banks.

39 (d) Penalty. – Violation of this section is a Class 3 misdemeanor, punishable only
40 by a fine of up to five hundred dollars (\$500.00).

41 **"§ 54D-3-6. Willfully and maliciously making derogatory reports.**

42 Any person who shall willfully and maliciously make, circulate, or transmit to another
43 or others any statement, rumor, or suggestion, written, printed, or by word of mouth,

1 which is directly or by inference false and derogatory to the financial condition, or affects
2 the solvency or financial standing of any bank, or who shall counsel, aid, procure, or
3 induce another to state, transmit, or circulate any such statement or rumor shall be guilty
4 of a Class 1 misdemeanor.

5 **"§ 54D-3-7. Misapplication, embezzlement of funds, etc.**

6 Whoever being an officer, employee, agent, or director of a bank, with intent to
7 defraud or injure the bank, or any person or corporation, or to deceive an officer of the
8 bank or an agent appointed to examine the affairs of such bank, embezzles, abstracts, or
9 misapplies any of the money, funds, credit, or property of such bank, whether owned by
10 it or held in trust, or who, with such intent, willfully and fraudulently issues or puts forth
11 a certificate of deposit, draws an order or bill of exchange, makes an acceptance, assigns
12 a note, bond, draft, bill of exchange, mortgage, judgment, decree, or fictitiously borrows
13 or solicits, obtains or receives money for a bank not in good faith, intended to become the
14 property of such bank; or whoever being an officer, employee, agent, or director of a
15 bank, makes or permits the making of a false statement or certificate, as to a deposit, trust
16 fund or contract, or makes or permits to be made a false entry in a book, report,
17 statement, or record of such bank, or conceals or permits to be concealed by any means or
18 manner, the true and correct entries of said bank, or its true and correct transactions, who
19 knowingly loans, or permits to be loaned, the funds or credit of any bank to any insolvent
20 company or corporation, or corporation which has ceased to exist, or which never had
21 any existence, or upon collateral consisting of stocks or bonds of such company or
22 corporation, or who makes or publishes or knowingly permits to be made or published a
23 false report, statement, or certificate as to the true financial condition of such bank, shall
24 be punished as a Class H felon.

25 **"§ 54D-3-8. Making false entries in banking accounts; misrepresenting assets and**
26 **liabilities of banks.**

27 If any person shall willfully and knowingly subscribe to, or make, or cause to be
28 made, any false statement or false entry in the books of any bank, or shall knowingly
29 subscribe to or exhibit false papers, with intent to deceive any person authorized to
30 examine into the affairs of such bank, or shall willfully and knowingly make, state, or
31 publish any false statement of the amount of the assets or liabilities of any bank, that
32 person shall be guilty of a Class H felony.

33 **"§ 54D-3-9. False certification of a check.**

34 Whoever, being an officer, employee, agent, or director of a bank, certifies a check
35 drawn on such bank, and willfully fails to forthwith charge the amount thereof against the
36 account of the drawer thereof, or willfully certifies a check drawn on such bank unless
37 the drawer of such check has on deposit with the bank an amount of money subject to the
38 payment of such check and equivalent to the amount therein specified, shall be guilty of a
39 Class I felony, which may include a fine not more than five thousand dollars (\$5,000).

40 **"§ 54D-3-10. Receiving deposits in insolvent banks.**

41 Any person, being an officer or employee of a bank, who receives, or being an officer
42 thereof, permits an employee to receive money, checks, drafts, or other property as a
43 deposit therein when the person has knowledge that such bank is insolvent, shall be guilty

1 of a Class I felony, which may include a fine not more than five thousand dollars
2 (\$5,000). Provided, that in any indictment hereunder, insolvency shall not be deemed to
3 include insolvency as defined under G.S. 53-1(3)d.

4 **"§ 54D-3-11. Advertising larger amount than that paid in capital stock.**

5 It shall be unlawful for any bank to advertise in a newspaper, letterhead, or any other
6 way, a larger capital stock than has been actually paid in in cash. Any bank violating this
7 section shall be subject to a penalty of five hundred dollars (\$500.00) for each and every
8 offense. The penalty herein provided for shall be recovered by the State in a civil action
9 in any court of competent jurisdiction, and it shall be the duty of the Attorney General to
10 prosecute all such actions.

11 **"§ 54D-3-12. Offenses declared misdemeanors; prosecution; employment of**
12 **counsel; punishment.**

13 Any offense against the banking laws of the State of North Carolina which is not
14 elsewhere specifically declared to be a crime, or for which elsewhere a penalty is not
15 specifically provided, is a Class 1 misdemeanor, and shall be punishable at the discretion
16 of the court. The Director of Financial Institutions is authorized and directed to prosecute
17 all offenses against the banking laws of the State, and to that end is expressly authorized
18 to employ counsel to prosecute in the inferior courts and to aid the district attorney in the
19 superior courts. The Auditor of the State shall, upon the certificate of the Director of
20 Financial Institutions, accompanied by an itemized statement of the account, draw his
21 warrant upon the State Treasurer to compensate the counsel so employed, and the State
22 Treasurer shall pay the same out of the funds in the treasury and not otherwise
23 appropriated.

24 **"§ 54D-3-13. General corporation law to apply.**

25 All provisions of the law relating to private corporations, and particularly those
26 enumerated in the Chapter entitled 'North Carolina Business Corporation Act', not
27 inconsistent with this Chapter or with the business of banking, shall be applicable to
28 banks.

29 **"§ 54D-3-14. Administrative orders; penalties for violation.**

30 (a) In addition to any other powers conferred by this Chapter or Chapter 53 of the
31 General Statutes, the Director shall have the power to:

- 32 (1) Order any bank, trust company, or subsidiary thereof, or any director,
33 officer, or employee to cease and desist violating any provision of this
34 Chapter or any lawful regulation issued thereunder; and
35 (2) Order any bank, trust company, or subsidiary thereof, or any director,
36 officer, or employee to cease and desist from a course of conduct that is
37 unsafe or unsound and which is likely to cause insolvency or dissipation
38 of assets or is likely to jeopardize or otherwise seriously prejudice the
39 interests of a depositor.

40 (b) Consistent with Article 3A of Chapter 150B of the General Statutes, notice and
41 opportunity for hearing shall be provided before any of the foregoing actions shall be
42 undertaken by the Commissioner. Provided, however, in cases involving extraordinary

1 circumstances requiring immediate action, the Director may take such action, but shall
2 promptly afford a subsequent hearing upon application to rescind the action taken.

3 (c) The Director shall have the power to subpoena witnesses, compel their
4 attendance, require the production of evidence, administer oaths, and examine any person
5 under oath in connection with any subject related to a duty imposed or a power vested in
6 the Commissioner.

7 (d) The Director may impose a civil money penalty of not more than one thousand
8 dollars (\$1,000) for each violation by any bank, trust company, or subsidiary thereof, or
9 any director, officer, or employee of an order issued under subdivision (1) of subsection
10 (a) of this section. Provided further, the Commissioner may impose a civil money
11 penalty of not more than five hundred dollars (\$500.00) per day for each day that a bank,
12 trust company, or subsidiary thereof, or any director, officer, or employee violates a cease
13 and desist order issued under subdivision (2) of subsection (a) of this section. All civil
14 money penalties collected under this section shall be deposited in the General Fund.

15 **"§ 54D-3-15. Review by the board; additional penalties.**

16 (a) Administrative orders issued by the Director and civil money penalties
17 imposed for violation of such orders shall be subject to review by the Board which shall
18 have power to amend, modify, or disapprove the same at any regular or special meeting.

19 (b) Notwithstanding any penalty imposed by the Director, the Board may after
20 notice of and opportunity for hearing, impose, enter judgment for, and enforce by
21 appropriate process, a penalty of not more than ten thousand dollars (\$10,000) against
22 any bank, trust company, or subsidiary thereof, or against any of its directors, officers, or
23 employees for violating any lawful orders of the Commission or Commissioner of Banks.
24 All civil money penalties collected under this section shall be deposited in the General
25 Fund.

26 **"PART 2. CREDIT UNIONS.**

27 **"§ 54D-3-16. Removal of directors, officers, committee members, and employees of**
28 **credit unions.**

29 (a) The Director may serve a written notice of the Director's intention to remove
30 from office any officer, director, committee member, or employee of any credit union
31 doing business under Articles 14A through 15 of Chapter 54 of the General Statutes who
32 shall be found to be dishonest, incompetent, or reckless in the management of the affairs
33 of the credit union, or who persistently violates the laws of this State or the lawful orders,
34 instructions, and regulations issued by the Director or the Board.

35 (b) A notice of intention to remove a director, officer, committee member, or
36 employee from office shall contain a statement of the alleged facts constituting the
37 grounds therefor and shall fix a time and place at which a hearing before the Board will
38 be held thereon. Such hearing shall be fixed for a date not earlier than 30 days nor later
39 than 60 days after the date of service of such notice unless an earlier or a later date is set
40 by the Board at the request of such director, officer, committee member, or employee and
41 for good cause shown. Pending this hearing, the Director may remove the alleged
42 violation if the Director finds that it is essential to the continued well-being of the credit
43 union or the public to do so. Unless, such director, officer, committee member, or

1 employee appears at the hearing in person or by a duly authorized representative, such
2 person shall be deemed to have consented to the issuance of an order of such removal. In
3 the event of such consent, or if upon the record made at any such hearing, the Board shall
4 find that any of the grounds specified in such notice has been determined by the greater
5 weight of the evidence, the Board may issue such orders of removal from office as it may
6 deem appropriate. Any such order shall become effective at the expiration of 30 days
7 after service upon such credit union and the director, officer, committee member, or
8 employee (except in the case of an order issued upon consent, which shall become
9 effective at the time specified therein). Such order shall remain effective and enforceable
10 except to the extent that it is stayed, modified, terminated, or set aside by action of the
11 Board or a reviewing court.

12 **"§ 54D-3-17. Revocation of certificate, liquidation of credit unions.**

13 If any corporation shall neglect to make its annual report, as provided in Part 2 of
14 Article 2 of this Chapter, or any other report required by the Director for more than 15
15 days, or shall fail to pay the charges required, including the fines for delay in filing
16 reports, the Director shall give notice to such corporation of the Director's intention to
17 revoke the certificate of approval of the corporation for such neglect or failure, and if
18 such neglect or failure continues for 15 days after such notice, the Director may
19 personally or by an agent appointed by the Director, take possession of the property and
20 business of the corporation and retain possession until such time as the Director may
21 permit it to resume business, or until its affairs be finally liquidated as provided for in
22 G.S. 54-109.93.

23 **"PART 3. SAVINGS BANKS; SAVINGS AND LOAN ASSOCIATIONS.**

24 **"§ 54D-3-18. Cease and desist orders.**

25 (a) If a person, savings and loan association, or savings bank is engaging in, or has
26 engaged in, any unsafe or unsound practice or unfair and discriminatory practice in
27 conducting the business of the association or the savings bank, or of any other law, rule,
28 order, or condition imposed in writing by the Board or the Director, the Director may
29 issue a notice of charges to the person, association, or savings bank. A notice of charges
30 shall specify the acts alleged to sustain a cease and desist order, and state the time and
31 place at which a hearing shall be held. A hearing before the Board on the charges shall
32 be held no earlier than seven days, and no later than 15 days after issuance of the notice.
33 The charged institution is entitled to a further extension of seven days upon filing a
34 request with the Director. The Director may also issue a notice of charges if there are
35 reasonable grounds to believe that a person, association, or savings bank is about to
36 engage in any unsafe or unsound business practice, or any violation of this Part or Part 3
37 or 4 of Article 2 of this Chapter, Chapter 54B or 54C of the General Statutes, or any other
38 law, rule, or order. If, by a preponderance of the evidence, it is shown that any person,
39 association, or savings bank is engaged in, or has been engaged in, or is about to engage
40 in, any unsafe or unsound business practice, or unfair and discriminatory practice or any
41 violation of Part 3 or 4 of Article 2 of this Chapter, Chapter 54B or 54C of the General
42 Statutes, or any other law, rule, or order, a cease and desist order shall be issued. The

1 Board may issue a temporary cease and desist order to be effective for 15 days and which
2 may be extended once for a period of 15 days.

3 (b) If a person, State association, or State savings bank is engaging in, has engaged
4 in, or is about to engage in any unsafe or unsound practice in conducting the association's
5 or savings bank's business, or any violation of Part 3 or 4 of Article 2 of this Chapter,
6 Chapter 54B or 54C of the General Statutes, or of any other law, rule, order, or condition
7 imposed in writing by the Board or the Director, and the Director has determined that
8 immediate corrective action is required, the Director may issue a temporary cease and
9 desist order. A temporary cease and desist order is effective immediately upon issuance
10 for a period of 15 days and may be extended once for a period of 15 days. The order
11 shall state its duration on its face and the words, 'Temporary Cease and Desist Order'. A
12 hearing before the Board shall be held within the time that the order remains effective, at
13 which time a temporary order may be dissolved or made permanent.

14 **"§ 54D-3-19. Civil penalties; State associations and State savings banks.**

15 (a) Except as otherwise provided in Part 3 or 4 of Article 2 of this Chapter, an
16 association or savings bank that is found to have violated Part 3 or 4 may be ordered to
17 pay a civil penalty of up to twenty thousand dollars (\$20,000). An association or savings
18 bank that is found to have violated or failed to comply with any cease and desist order
19 issued under the authority of Part 3 or 4 of Article 2 of this Chapter may be ordered to
20 pay a civil penalty of up to twenty thousand dollars (\$20,000) for each day that the
21 violation or failure to comply continues.

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

26 (c) If the Director determines that, as a result of a violation of Part 3 or 4 of Article
27 2 of this Chapter or of a failure to comply with any cease and desist order issued under
28 the authority of this Part, a situation exists requiring immediate corrective action, the
29 Director may impose the civil penalty in this section on the association or savings bank
30 without a prior hearing, and the penalty is effective as of the date of notice to the
31 association or savings bank. Imposition of the penalty may be directly appealed to the
32 Wake County Superior Court.

33 (d) Nothing in this section shall prevent anyone damaged by a State association or
34 State savings bank from bringing a separate cause of action in a court of competent
35 jurisdiction.

36 **"§ 54D-3-20. Civil penalties; directors, officers, and employees.**

37 (a) A person, whether a director, officer, or employee, who is found to have
38 violated Part 3 or 4 of Article 2 of this Chapter, whether willfully or as a result of gross
39 negligence, gross incompetence, or recklessness, may be ordered to pay a civil penalty of
40 up to five thousand dollars (\$5,000) per violation. A person who is found to have
41 violated or failed to comply with any cease and desist order issued under the authority of
42 Part 3 or 4 of Article 2 of this Chapter, may be ordered to pay a civil penalty of up to five
43 thousand dollars (\$5,000) per violation for each day that the violation or failure to

1 comply continues. All civil penalties, plus interest and cost, that are collected under this
2 subsection shall be deposited into the General Fund of the State treasury.

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

7 (c) Whenever the Director determines that an emergency exists that requires
8 immediate corrective action, the Director, either before or after instituting any other
9 action or proceeding authorized by Part 3 or 4 of Article 2 of this Chapter, or by this
10 Article, may request the Attorney General to institute a civil action in a court of
11 competent jurisdiction, in the name of the State upon the relation of the Director seeking
12 injunctive relief to restrain or enjoin the violation or threatened violation of Part 3 or 4 of
13 this Article and for any other and further relief as the court may deem proper. Instituting
14 an action for injunctive relief shall not relieve any party to the proceedings from any civil
15 or criminal penalty prescribed for violation of Part 3 or 4 of Article 2 of this Chapter.

16 (d) Nothing in this section shall prevent anyone damaged by a director, officer, or
17 employee of a State association or a State savings bank from bringing a separate cause of
18 action in a court of competent jurisdiction.

19 **"§ 54D-3-21. Criminal penalties.**

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

22 (b) In addition to any of the other penalties or remedies provided by Part 3 or 4 of
23 Article 2 of this Chapter, or by this Article, the following are deemed to be misdemeanors
24 and are punishable as provided in Chapter 14 of the General Statutes:

25 (1) The willful or knowing violation of Part 3 or 4 of Article 2 of this
26 Chapter by any employee of the Savings Institution Division.

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

30 (c) In addition to any of the other penalties or remedies provided by Part 3 or 4 of
31 Article 2 of this Chapter, or by this Article, the willful omission, making, or concurrence
32 in making or publishing a written report, exhibit, or entry in a financial statement on the
33 books of the association or savings bank, which contains a material statement known to
34 be false is deemed to be a misdemeanor and is punishable as provided in Chapter 14 of
35 the General Statutes. For purposes of this section, 'material' shall mean 'so substantial
36 and important as to influence a reasonable and prudent businessman or investor'.

37 (d) The Director may enforce this section in a court of competent jurisdiction.

38 **"§ 54D-3-22. Primary jurisdiction.**

39 Whenever an agency of the United States government defers to the Director, or
40 notifies the Director of pending action against a savings association or a savings bank
41 chartered by this State, or fails to exercise its authority over any state or federally
42 chartered savings association or savings bank doing business in this State, the Director
43 may exercise jurisdiction over the savings association or savings bank.

1 **"§ 54D-3-23. Supervisory control.**

2 (a) Whenever the Director determines that a savings association or a savings bank
3 is conducting its business in an unsafe or unsound manner or in any fashion that threatens
4 the financial integrity or sound operation of the association or savings bank, the Director
5 may serve a notice of charges on the association or savings bank, requiring it to show
6 cause why it should not be placed under supervisory control. The notice of charges shall
7 specify the grounds for supervisory control and set the time and place for a hearing. A
8 hearing before the Board shall be held within 15 days after issuance of the notice of
9 charges and shall comply with Article 3A of Chapter 150B of the General Statutes.

10 (b) If, after the hearing provided in subsection (a) of this section, the Board
11 determines that supervisory control of the association or savings bank is necessary to
12 protect the members, customers, stockholders, or creditors of the association or savings
13 bank, or necessary to protect the general public, the Director shall issue an order taking
14 supervisory control of the association or savings bank. An appeal may be filed in the
15 Wake County Superior Court.

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

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

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

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

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

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

- 36 (1) If no appeal is filed within the specific time allowed for the appeal, or
37 (2) After all judicial appeals are exhausted.

38 **"§ 54D-3-24. Removal of directors, officers, and employees of savings associations**
39 **and savings banks.**

40 (a) If, in the Director's opinion, one or more directors, officers, or employees of a
41 savings association or a savings bank has participated in or consented to any violation of
42 Part 3 or 4 of Article 2 of this Chapter, Chapter 54B or 54C of the General Statutes, or
43 any other law, rule, or order, or any unsafe or unsound business practice in the operation

1 of any association or savings bank; or any insider loan not specifically authorized by or
2 under Part 3 or 4 of Article 2 of this Chapter, or Chapter 54B or 54C of the General
3 Statutes; or any repeated violation of or failure to comply with the bylaws of an
4 association or savings bank, the Director may serve a written notice of charges upon the
5 director, officer, and employee in question, and the association or savings bank, stating
6 the Director's intent to remove the director, officer, or employee. The notice shall specify
7 the conduct and place for the hearing before the Board. A hearing shall be held no earlier
8 than 15 days and no later than 30 days after the notice of charges is served, and it shall
9 comply with Article 3A of Chapter 150B of the General Statutes. If, after the hearing,
10 the Board determines that the charges asserted have been proven by a preponderance of
11 the evidence, the Director may issue an order removing the director, officer, or employee
12 in question. The order is effective upon issuance and may include the entire board of
13 directors or all of the officers of the association or savings bank.

14 (b) If it is determined that a director, officer, or employee of an association or
15 savings bank has knowingly participated in or consented to any violation of Part 3 or 4 of
16 Article 2 of this Chapter, Chapter 54B or 54C of the General Statutes, or any other law,
17 rule, or order, or engaged in any unsafe or unsound business practice in the operation of
18 any association or savings bank, or any repeated violation of or failure to comply with the
19 bylaws of an association or savings bank, and that as a result, a situation exists requiring
20 immediate corrective action, the Director may issue an order temporarily removing the
21 person pending a hearing. The order shall state its duration on its face and the words,
22 'Temporary Order of Removal', and is effective upon issuance, for a period of 15 days,
23 and may be extended once for a period of 15 days. A hearing shall be held within 10
24 days of the expiration of a temporary order, or any extension thereof, at which time a
25 temporary order may be dissolved or converted to a permanent order.

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

29 (d) Without the prior written approval of the Director, no director, officer, or
30 employee permanently removed under this section shall be eligible to be elected,
31 reelected, or appointed to any position as a director, officer, or employee of that
32 association or savings bank, nor shall that director, officer, or employee be eligible to be
33 elected to or retain a position as a director, officer, or employee of any other State
34 association or savings bank.

35 **"§ 54D-3-25. Involuntary liquidation of savings associations and savings banks.**

36 (a) The Director, with prior approval of the Board, may take custody of the books,
37 records, and assets of every kind and character of any savings association or savings bank
38 organized and operated under Chapters 54B and 54C of the General Statutes, as
39 applicable, for any of the purposes enumerated in this section, if it reasonably appears
40 from examinations or from reports made to the Director that:

- 41 (1) The directors, officers, or liquidators have neglected, failed, or refused
42 to take action that the Director may deem necessary for the protection of

- 1 the association or savings bank or have impeded or obstructed an
2 examination;
- 3 (2) The net worth of the association or savings bank is impaired to the
4 extent that the realizable value of its assets is insufficient to pay in full
5 its creditors and holders of deposit accounts;
- 6 (3) The business of the association or savings bank is being conducted in a
7 fraudulent, illegal, or unsafe manner, or that the association or savings
8 bank is in an unsafe or unsound condition to transact business; for
9 purposes of this subdivision, any association or savings bank that,
10 except as authorized in writing by the Director, fails to make full
11 payment of any withdrawal when due is in an unsafe or unsound
12 condition to transact business, notwithstanding the certificate of
13 incorporation or the statutes or regulations with respect to payment of
14 withdrawals in the event an association or savings bank does not pay all
15 withdrawals in full;
- 16 (4) The officers, directors, or employees have assumed duties or performed
17 acts in excess of those authorized by statute or regulation or charter, or
18 without supplying the required bond;
- 19 (5) The association or savings bank has experienced a substantial
20 dissipation of assets or earnings due to any violation or violation of
21 statute or regulation, or due to any unsafe or unsound practice or
22 practices;
- 23 (6) The association or savings bank is insolvent, or is in imminent danger of
24 insolvency or has suspended its ordinary business transactions due to
25 insufficient funds; or
- 26 (7) The association or savings bank is unable to continue operations.
- 27 (b) Unless the Director finds that an emergency exists that may result in loss to
28 members, deposit account holders, stockholders, or creditors, and that requires that the
29 Director take custody immediately, the Director shall first give written notice to the
30 directors and officers specifying the conditions criticized and allow a reasonable time in
31 which corrections may be made before a receiver shall be appointed as outlined in
32 subsection (d) of this section.
- 33 (c) The purposes for which the Director may take custody of an association or
34 savings bank include examination or further examination, conservation of its assets,
35 restoration of impaired capital, and the making of any reasonable or equitable adjustment
36 deemed necessary by the Director under any plan of reorganization.
- 37 (d) If the Director, after taking custody of an association or savings bank, finds
38 that one or more of the reasons for having taken custody continue to exist through the
39 period of custody, with little or no likelihood of amelioration of the situation, then the
40 Director shall appoint as receiver or coreceiver any qualified person, firm, or corporation
41 for the purpose of liquidation of the association or savings bank, which receiver shall
42 furnish bond in form, amount, and with surety as the Director may require. The Director
43 may appoint the association's or savings bank's deposit account insurance corporation or

1 its nominee as the receiver, and the insuring corporation shall be permitted to serve
2 without posting bond.

3 (e) In the event the Director appoints a receiver for an association or savings bank,
4 the Director shall mail a certified copy of the appointment order by certified mail to the
5 address of the association or savings bank as it appears on the records of the Division,
6 and to any previous receiver or other legal custodian of the association or savings bank,
7 and to any court or other authority to which the previous receiver or other legal custodian
8 is subject. Notice of the appointment may be published in a newspaper of general
9 circulation in the county where the association or savings bank has its principal office.

10 (f) Whenever a receiver for an association or savings bank is appointed under
11 subsection (d) of this section, the association or savings bank may within 30 days
12 thereafter bring an action in the Superior Court of Wake County for an order requiring
13 the Director to remove the receiver.

14 (g) The duly appointed and qualified receiver shall take possession promptly of the
15 association or savings bank for which the receiver has been so appointed, in accordance
16 with the terms of the appointment, by service of a certified copy of the Director's
17 appointment order upon the association or savings bank at its principal office through the
18 officer or employee who is present and appears to be in charge. Immediately upon taking
19 possession of the association or savings bank, the receiver shall take possession and title
20 to books, records, and assets of every description of the association or savings bank. The
21 receiver, by operation of law and without any conveyance or other instrument, act, or
22 deed, shall succeed to all the rights, titles, powers, and privileges of the association or
23 savings bank, its members or stockholders, holders of deposit accounts, its officers and
24 directors, or any of them; and to the titles to the books, records, and assets of every
25 description of any previous receiver or other legal custodian of the association or savings
26 bank. The members, stockholders, holders of deposit accounts, officers or directors, or
27 any of them, shall not thereafter, except as expressly provided in this section have or
28 exercise any rights, powers, or privileges or act in connection with any assets or property
29 of any nature of the association or savings bank in receivership. The Director, with the
30 approval of the Board, may at any time, direct the receiver to return the association or
31 savings bank to its previous or a newly constituted management. The Director may
32 provide for a meeting or meetings of the members or stockholders for any purpose,
33 including the election of directors or an increase in the number of directors, or both, or
34 the election of an entire new board of directors; and may provide for a meeting or
35 meetings of the directors for any purpose including the filling of vacancies on the board,
36 the removal of officers and the election of new officers, or for any of these purposes.
37 Any meeting of members or stockholders, or of directors, shall be supervised or
38 conducted by a representative of the director.

39 (h) A duly appointed and qualified receiver may:

- 40 (1) Demand, sue for, collect, receive, and take into possession all the goods
41 and chattels, rights and credits, moneys and effects, lands and
42 tenements, books, papers, choses in action, bills, notes, and property of
43 every description of the association or savings bank;

- 1 (2) Foreclose mortgages, deeds of trust, and other liens executed to the
2 association or savings bank to the extent the association or savings bank
3 would have had this right;
- 4 (3) Institute suits for the recovery of any estate, property, damages, or
5 demands existing in favor of the association or savings bank, and shall,
6 upon the receiver's own application, be substituted as party plaintiff in
7 the place of the association or savings bank in any suit or proceeding
8 pending at the time of the receiver's appointment;
- 9 (4) Sell, convey, and assign all the property rights and interests owned by
10 the association or savings bank;
- 11 (5) Appoint agents;
- 12 (6) Examine and investigate papers and persons and pass on claims as
13 provided in the regulations as prescribed by the director;
- 14 (7) Make and carry out agreements with the insuring corporation or with
15 any other financial institution for the payment or assumption of the
16 association's or savings bank's liabilities, in whole or in part, and to sell,
17 convey, transfer, pledge, or assign assets as security or otherwise and to
18 make guarantees in connection therewith; and
- 19 (8) Perform all other acts that might be done by the employees, officers,
20 and directors.

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

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

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

37 (k) A receiver may also be appointed under the authority of G.S. 1-502. No judge
38 or court, however, shall appoint a receiver for any State association or State savings bank
39 unless five days' advance notice of the motion, petition, or application for appointment of
40 a receiver has been given to the association or savings bank and to the Director.

41 (l) Following the appointment of a receiver, the Director may request the Attorney
42 General to institute an action in the name of the Director in the superior court against the
43 association or savings bank for the orderly liquidation and dissolution of the association

1 or savings bank, and for an injunction to restrain the officers, directors, and employees
2 from continuing the operation of the association or savings bank.

3 (m) Claims against a State association or State savings bank in receivership shall
4 have the following order of priority for payment:

5 (1) Costs, expenses, and debts of the association or savings bank incurred
6 on or after the date of the appointment of the receiver, including
7 compensation for the receiver.

8 (2) Claims of holders of special purpose or thrift accounts.

9 (3) Claims of holders of deposit accounts.

10 (4) Claims of general creditors.

11 (5) Claims of stockholders of a stock savings bank.

12 (6) All remaining assets to members and stockholders in an amount
13 proportionate to their holdings as of the date of the appointment of the
14 receiver.

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

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

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

25 (1) The receiver shall file with the Director a detailed report, in a form to be
26 prescribed by the Director, of the receiver's acts and proposed final
27 distribution and dissolution.

28 (2) Upon the Director's approval of the final report of the receiver, the
29 receiver shall provide notice and thereafter shall make the final
30 distribution, in any manner as the Director may direct.

31 (3) When a final distribution has been made except as to any unclaimed
32 funds, the receiver shall deposit the unclaimed funds with the Director
33 and shall deliver to the Director all books and records of the dissolved
34 association or savings bank.

35 (4) Upon completion of the foregoing procedure, and upon the joint petition
36 of the Director and receiver to the superior court, the court may find that
37 the association or savings bank should be dissolved, and following
38 publication of notice of dissolution as the court may direct, the court
39 may enter a decree of final resolution and the association or savings
40 bank shall therefore be dissolved.

41 (5) Upon final dissolution of the association or savings bank in receivership
42 or at any time as the receiver shall be otherwise relieved of duties, the
43 Director shall cause an audit to be conducted, during which the receiver

1 shall be available to assist. The accounts of the receiver shall then be
2 ruled upon by the Director and Board and if approved, the receiver shall
3 thereupon be given a final and complete discharge and release.

4 **"§ 54D-3-26. Judicial review for savings associations and savings banks.**

5 A person, State savings association, or State savings bank against whom a cease and
6 desist order is issued or a fine is imposed may have the order or fine reviewed by a court
7 of competent jurisdiction. Except as otherwise provided, an appeal may be made only
8 within 30 days of the issuance of the order or the imposition of the fine, whichever is
9 later.

10 **"§ 54D-3-27. Indemnity.**

11 No person who is fined or penalized for a violation of any criminal provision of Part 3
12 or 4 of Article 2 of this Chapter shall be reimbursed or indemnified in any fashion by the
13 association or savings bank for the fine or penalty.

14 **"§ 54D-3-28. Cumulative penalties.**

15 All penalties, fines, and remedies provided by Parts 3 and 4 of Article 2 of this
16 Chapter are cumulative.

17 **"§ 54D-3-29. Emergency limitations.**

18 The Director, with the approval of the Governor, may impose a limitation upon the
19 amounts withdrawable or payable from deposit accounts of savings associations and
20 savings banks during any specifically defined period when the limitation is in the public
21 interest and welfare."

22 Sec. 2. Effective July 1, 1995, G.S. 54B-4(b) reads as rewritten:

23 "(b) As used in this Chapter, unless the context otherwise requires, the term:

- 24 (1) 'Administrator' means the ~~Administrator of the Savings Institutions~~
25 ~~Division~~ Director of Financial Institutions.
- 26 (2) 'Aggregate withdrawal value of withdrawable accounts' means the total
27 value of all withdrawable accounts held by an association.
- 28 (3) 'Application' means the completed package of the application to
29 organize a State association, establish a branch office or conversion of
30 structure of a savings and loan association which the ~~Administrator~~
31 Director considers in making his recommendation.
- 32 (3a) 'Affiliate' means a person or corporation that controls, is controlled by,
33 or is under common control with an association.
- 34 (4) 'Associate' when used to indicate a relationship with any person, means
35 (i) any corporation or organization (other than the applicant or a
36 majority-owned subsidiary of the applicant) of which such person is an
37 officer or partner or is, directly or indirectly, the beneficial owner of ten
38 percent (10%) or more of any class of equity securities, (ii) any trust or
39 other estate in which such person has a substantial beneficial interest or
40 as to which such person serves as trustee or in a similar fiduciary
41 capacity, and (iii) any relative or spouse who lives in the same house as
42 that person, or any relative of that person's spouse who lives in the same

- 1 house as that person, or who is a director or officer of the applicant or
2 any of its parents or subsidiaries.
- 3 (5) 'Association' includes a State association or a federal association unless
4 limited by use of the words 'State' or 'federal.'
- 5 (6) 'Borrowers' means those who borrow funds from or in any other way
6 become obligated on a loan to an association.
- 7 (7) 'Branch office' means an office of an association other than its principal
8 office which renders savings and loan services.
- 9 (8) 'Capital stock' means securities which represent ownership of a stock
10 association.
- 11 (9) 'Certificate of approval' means a document signed by the ~~Administrator~~
12 Director informing the North Carolina Secretary of State that the Board
13 has approved the certificate of incorporation of a proposed association.
- 14 (10) Repealed by Session Laws 1985, c. 659, s. 1.
- 15 (11) 'Certificate of incorporation or charter' means the document which
16 represents the corporate existence of a State association.
- 17 (12) 'Certified copy' means a copy of an original document or paper which
18 has been signed by the person or persons who certify such document to
19 be an exact copy of the original.
- 20 (13) 'This Chapter' means Chapter 54B of the North Carolina General
21 Statutes.
- 22 (14) 'Board' means the ~~North Carolina Savings Financial Institutions~~
23 Regulatory Board of the Department of Commerce.
- 24 (15) 'Conflict of interest' means a matter before the board of directors in
25 which one or more of the directors, officers or employees has a direct or
26 indirect financial interest in its outcome.
- 27 (16) 'Conformed copies' means photocopies or carbon copies or other
28 mechanical reproductions of an original document or paper.
- 29 (16a) 'Control' means the power, directly or indirectly, to direct the
30 management or policies of an association or to vote twenty-five percent
31 (25%) or more of any class of voting securities for an association.
- 32 (17) 'Court of competent jurisdiction' means a court in North Carolina which
33 is qualified to hear the case at hand.
- 34 (18) 'Disinterested directors' means those directors who have absolutely no
35 direct or indirect financial interest in the matter before them.
- 36 (19) 'Dividends on stock' means the earnings of an association paid out to
37 holders of capital stock in a stock association.
- 38 (20) 'Dividends on withdrawable accounts' means the consideration paid by
39 an association to a holder of a withdrawable account for the use of his
40 money.
- 41 (21) 'Division' means the Savings Institutions Division of the North Carolina
42 Department of Commerce.

- 1 (22) 'Entrance fee per withdrawable account' means the amount to be paid by
2 each person, firm or corporation when he or it pledges to a proposed
3 mutual association to deposit funds in a withdrawable account.
- 4 (23) 'Examination and investigation' means a supervisory inspection of an
5 association or proposed association which may include inspection of
6 every relevant piece of information including subsidiary or affiliated
7 businesses.
- 8 (24) 'Federal association' means a corporation or association organized and
9 operated under the provisions of federal law and regulation to conduct a
10 savings and loan business.
- 11 (25) 'Financial institution' means a person, firm or corporation engaged in the
12 business of receiving, soliciting or accepting money or its equivalent on
13 deposit and/or lending money or its equivalent.
- 14 (26) Repealed by Session Laws 1985, c. 659, s. 1.
- 15 (27) 'General reserve' means appropriated or restricted funds in the form of
16 cash or investments to be used solely for the purpose of absorbing
17 losses.
- 18 (28) 'Guaranty association' means a mutual deposit guaranty association
19 which is a corporation organized under this Chapter or its predecessor
20 and operated under the provisions of Article 12 of this Chapter.
- 21 (29) 'Immediate family' means one's spouse, father, mother, children,
22 brothers, sisters, and grandchildren; and the father, mother, brothers,
23 and sisters of one's spouse; and the spouse of one's child, brother or
24 sister.
- 25 (30) 'Initial pledges for withdrawable accounts' means those pledges of funds
26 by persons who promise to a proposed mutual association to deposit
27 such amount if and when such proposed association becomes
28 established.
- 29 (31) 'Insurance of withdrawable accounts' means insurance on an
30 association's withdrawable accounts when the beneficiary is the holder
31 of such insured account.
- 32 (32) 'Liquidity fund' means that portion of the assets of an association which
33 is required to be held in readily marketable form.
- 34 (32a) 'Interim association' means an association formed to facilitate the
35 acquisition of one hundred percent (100%) of the voting shares of an
36 existing stock association by a newly-formed association or an existing
37 savings and loan holding company or to facilitate any other transaction
38 the ~~Administrator~~Director may approve.
- 39 (33) 'Members' means withdrawable account holders and borrowers in a state
40 mutual association.
- 41 (34) 'Minimum amount of consideration' means the amount of money a stock
42 association shall be required to have received on the sale of its stock,
43 before it shall commence business.

- 1 (35) 'Minimum amount on deposit in withdrawable accounts' means the
2 amount of money which a mutual association must have on hand prior
3 to its commencement of business.
- 4 (36) 'Mutual association' means all mutual savings and loan associations
5 owned by members of the association, and organized under the
6 provisions of this Chapter or its predecessor for the primary purpose of
7 promoting thrift and home financing.
- 8 (37) 'Net withdrawal value of withdrawable accounts' means the aggregate of
9 the withdrawal value of an association's withdrawable accounts less the
10 amount of any pledged withdrawable account which serves as security
11 for a loan.
- 12 (38) 'Net worth' means an association's total assets less total liabilities.
- 13 (39) 'Original incorporators' means the organizers of a state association
14 responsible for the business of a proposed association from the filing of
15 the application to the Board's final decision on such application.
- 16 (40) 'Plan of conversion' means a detailed outline of the procedure of the
17 conversion of an association from one to another regulatory authority or
18 from one to another form of ownership.
- 19 (41) 'Principal office' means the office which houses the headquarters of an
20 association.
- 21 (42) 'Proposed association' means an entity in organizational procedures
22 prior to the Board's final decision on its charter application.
- 23 (43) 'Registered agent' means the person named in the certificate of
24 incorporation upon whom service of legal process shall be deemed
25 binding upon the association.
- 26 (44) 'Rules and regulations' means those regulatory procedures and
27 guidelines issued by the adopted Administrator and approved by the Board.
- 28 (44a) Repealed by Session Laws 1991, c. 680, s. 2, effective October 1, 1991.
- 29 (45) 'Service corporation' means a corporation operating under the provision
30 of Article 8 of this Chapter which engages in activities determined by
31 the ~~Administrator~~ Board by rules and regulations to be incidental to the
32 conduct of a savings and loan business as provided in this Chapter or
33 activities which further or facilitate the corporate purposes of an
34 association, or which furnishes services to an association or subsidiaries
35 of an association, the voting stock of which is owned directly or
36 indirectly by one or more associations.
- 37 (46) 'Specific reserve account' means an account held by an association as a
38 loss reserve for coverage on specific loans and investments.
- 39 (47) 'This State' means the State of North Carolina.
- 40 (48) 'State association' means a corporation or association organized under
41 this Chapter or its predecessor and operated under the provisions of this
42 Chapter to conduct the savings and loan business; or a corporation
43 organized under the provisions of the predecessors to this Chapter and

1 operated under the provisions of this Chapter; or a corporation
2 organized under the provisions of federal law and so converted as to be
3 operated under the provisions of this Chapter.

4 (49) 'Stock association' means any corporation or company owned by holders
5 of capital stock and organized under the provisions of this Chapter for
6 the primary purpose of promoting thrift and home financing.

7 (50) 'Subscriptions' means the promise to purchase capital stock in a stock
8 association and payment of a portion of the selling price.

9 (51) 'Total assets' means the aggregate amount of assets of any and every
10 kind held by an association.

11 (52) 'Voluntary dissolution' means the dissolution and liquidation of an
12 association initiated by its ownership.

13 (53) 'Withdrawable accounts' means accounts in which a customer or
14 member places funds with an association which may be withdrawn by
15 the account holder.

16 (54) Repealed by Session Laws 1989, c. 76, s. 1, effective April 26, 1989."

17 Sec. 3. Effective July 1, 1995, G.S. 54C-4(b)(1) reads as rewritten:

18 "(1) ~~Administrator. – The Administrator of the Savings Institution Division.~~
19 Director of Financial Institutions."

20 Sec. 4. Effective July 1, 1995, G.S. 54C-4(b) is amended by adding a new
21 subdivision to read:

22 "(4a) Board. – The Financial Institutions Regulatory Board."

23 Sec. 5. Effective July 1, 1995, G.S. 54C-4(b)(8) is repealed.

24 Sec. 6. Effective July 1, 1995, G.S. 143B-431(a) reads as rewritten:

25 "(a) The functions of the Department of Commerce, except as otherwise expressly
26 provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall
27 include:

28 (1) All of the executive functions of the State in relation to economic
29 development including by way of enumeration and not of limitation, the
30 expansion and recruitment of environmentally sound industry, labor
31 force development, the promotion of and assistance in the orderly
32 development of North Carolina counties and communities, the
33 promotion and growth of the travel and tourism industries, the
34 development of our State's ports, energy resource management and
35 energy policy development;

36 (2) All functions, powers, duties and obligations heretofore vested in an
37 agency enumerated in Article 15 of Chapter 143A, to wit:

38 a. The State Board of Alcoholic Control,

39 b. The North Carolina Utilities Board,

40 c. The Employment Security Board,

41 d. The North Carolina Industrial Board,

- 1 e. ~~State Banking Commission and the Commissioner of Banks,~~
 2 Financial Institutions Regulatory Board and the Director of
 3 Financial Institutions,
 4 f. Savings and Loan Association Division,
 5 ~~g. The State Savings Institutions Commission,~~
 6 ~~h. Credit Union Commission,~~
 7 i. The North Carolina Milk Board,
 8 j. The North Carolina Mutual Burial Association Board,
 9 k. The North Carolina Rural Electrification Authority,
 10 l. The North Carolina State Ports Authority, all of which
 11 enumerated agencies are hereby expressly transferred by a Type
 12 II transfer, as defined by G.S. 143A-6, to this recreated and
 13 Reconstituted Department of Commerce; ~~and, and~~
 14 (3) All other functions, powers, duties and obligations as are conferred by
 15 this Chapter, delegated or assigned by the Governor and conferred by
 16 the Constitution and laws of this State. Any agency transferred to the
 17 Department of Commerce by a Type II transfer, as defined by G.S.
 18 143A-6, shall have the authority to employ, direct and supervise
 19 professional and technical personnel, and such agencies shall not be
 20 accountable to the Secretary of Commerce in their exercise of quasi-
 21 judicial powers authorized by statute, notwithstanding any other
 22 provisions of this Chapter, provided that the authority of the North
 23 Carolina State Ports Authority to employ, direct and supervise personnel
 24 shall be as provided in Part 10 of this Article."
 25 Sec. 7. Effective July 1, 1995, G.S. 143B-433(a) reads as rewritten:
 26 "(a) (1) The North Carolina Alcoholic Beverage Control Board,
 27 (2) The North Carolina Utilities Board,
 28 (3) The Employment Security Board,
 29 (4) The North Carolina Industrial Board,
 30 (5) ~~State Banking Commission,~~ Financial Institutions Regulatory Board,
 31 (6) Savings and Loan Association Division,
 32 ~~(7) The State Savings Institutions Commission,~~
 33 ~~(8) Credit Union Commission,~~
 34 (9) The North Carolina Milk Board,
 35 (10) The North Carolina Mutual Burial Association Board,
 36 (11) North Carolina Cemetery Board,
 37 (12) The North Carolina Rural Electrification Authority,
 38 (13) Repealed by Session Laws 1985, c. 757, s. 179(d),
 39 (14) North Carolina Science and Technology Research Center,
 40 (15) The North Carolina State Ports Authority,
 41 (16) North Carolina National Park, Parkway and Forests Development
 42 Council,
 43 (17) Economic Development Board,

- 1 (18) Labor Force Development Council,
2 (19) Energy Policy Council,
3 (20) Energy Division,
4 (21) Navigation and Pilotage Boards established by Chapter 76 of the
5 General Statutes,
6 (22) The North Carolina Technological Development Authority."

7 Sec. 8. Effective July 1, 1995, the following are repealed: (i) Articles 8 and 10
8 of Chapter 53 of the General Statutes; (ii) Articles 14B and 14M of Chapter 54 of the
9 General Statutes; (iii) Article 4 of Chapter 54B of the General Statutes; (iv) Articles 4
10 and 5 of Chapter 54C of the General Statutes; and (v) Part 4 of Article 10 of Chapter
11 143B of the General Statutes.

12 Sec. 9. (a) The phrase "commissioner of banks" is deleted and replaced by the
13 phrase "Director of Financial Institutions" wherever it occurs in the General Statutes.

14 (b) The phrase "State Banking Commission" is deleted and replaced by the phrase
15 "Financial Institutions Regulatory Board" wherever it occurs in the General Statutes.

16 Sec. 10. The Revisor of Statutes is authorized to correct any reference or
17 citation in the General Statutes to any portion of the General Statutes which is recodified,
18 subdivided, or amended by this act by deleting incorrect references and substituting
19 correct references.

20 Sec. 11. This act becomes effective July 1, 1995.