

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 1270*

Short Title: Nondepository/Family Trust Company.

(Public)

Sponsors: Senators Warren; Albertson, Carpenter, Carter, Clodfelter, Cooper, Dalton, Dannelly, Forrester, Garrou, Garwood, Hagan, Horton, Hoyle, Kerr, Kinnaird, Lucas, Martin of Guilford, Odom, Phillips, Purcell, Rand, Reeves, Robinson, Rucho, Soles, Weinstein, and Wellons.

Referred to: Commerce.

May 17, 2000

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE THE CHARTERING OF INDEPENDENT TRUST
COMPANIES AND TO PERMIT BANKS AND TRUST COMPANIES TO
CONDUCT A TRUST BUSINESS ON AN INTERSTATE BASIS, AS
RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes of North Carolina are amended by adding a new Article 23 of Chapter 53 to read as follows:

"ARTICLE 23.

"TRUST COMPANIES AND INTERSTATE TRUST.

"PART 1. DEFINITIONS.

"§ 53-290. Definitions.

(a) Unless otherwise provided, the following definitions apply in this Article:

(1) 'Account' means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee,

1 receiver, registrar, or agent, but excluding a relationship in which the
2 trust company acts solely in an advisory capacity.

3 (2) 'Act as a fiduciary' or 'acting as a fiduciary' means to:

4 a. Accept or execute trusts, including to (i) act as trustee under a
5 written agreement; (ii) receive money or other property in its
6 capacity as trustee for investment in real or personal property;
7 (iii) act as trustee and perform the fiduciary duties committed or
8 transferred to it by order of a court of competent jurisdiction; (iv)
9 act as trustee of the estate of a deceased person; or (v) act as
10 trustee for a minor or incapacitated person;

11 b. Administer in any other fiduciary capacity real or tangible
12 personal property; or

13 c. Act pursuant to order of a court of competent jurisdiction as
14 executor or administrator of the estate of a deceased person or as
15 a guardian or conservator for a minor or incapacitated person.

16 (3) 'Administer' means with respect to real or tangible personal property as
17 an agent or in another representative capacity, to possess, purchase, sell,
18 lease or insure, safekeep, or otherwise manage the property.

19 (4) 'Affiliate' means a company that directly or indirectly controls, is
20 controlled by, or is under common control with a trust institution or
21 other company.

22 (5) 'Bank' is as defined in 12 U.S.C. § 1813(h); provided that the term 'bank'
23 shall not include any 'foreign bank' as defined in 12 U.S.C. § 3101(7),
24 except for any foreign bank organized under the laws of a territory of
25 the United States, Puerto Rico, Guam, American Samoa, or the Virgin
26 Islands, the deposits of which are insured by the Federal Deposit
27 Insurance Corporation.

28 (6) 'Bank supervisory agency' means:

29 a. Any agency of another state with primary responsibility for
30 chartering and supervising a trust institution; and

31 b. The Office of the Comptroller of the Currency, the Federal
32 Deposit Insurance Corporation, the Board of Governors of the
33 Federal Reserve System, the Office of Thrift Supervision, and
34 any successor to these agencies.

35 (7) 'Branch' is as defined in G.S. 53-1(1a) with respect to a depository
36 institution.

37 (8) 'Capital' means the sum of the par value of all issued and outstanding
38 shares of a state trust company.

39 (9) 'Charter' means a charter, license, or other authority issued by the
40 Commissioner or a bank supervisory agency authorizing a trust
41 institution to act as a fiduciary in its home state.

42 (10) 'Client' means a person to whom a trust institution owes a duty or
43 obligation under a trust or other account administered by the trust

- 1 institution or as an advisor or agent, regardless of whether the trust
2 institution owes a fiduciary duty to the person. The term includes the
3 noncontingent beneficiaries of an account.
- 4 (11) 'Commission' means the North Carolina State Banking Commission.
5 (12) 'Commissioner' means the Commissioner of Banks for the State of
6 North Carolina.
- 7 (13) 'Company' includes a bank, trust company, corporation, partnership,
8 association, business trust, or another trust.
- 9 (14) 'Conservator' means the Commissioner or an agent of the Commissioner
10 exercising the powers and duties set forth in this Article.
- 11 (15) 'Control' means:
- 12 a. The ownership of or ability or power to vote, directly, acting
13 through one or more other persons, or otherwise indirectly, more
14 than twenty-five percent (25%) of the outstanding shares of a
15 class of voting securities of a state trust company or other
16 company;
- 17 b. The ability to control the election of a majority of the board of a
18 state trust company or other company;
- 19 c. The power to exercise, directly or indirectly, a controlling
20 influence over the management or policies of the state trust
21 company or other company as determined by the Commissioner
22 after notice and an opportunity for hearing; or
- 23 d. The conditioning of the transfer of more than twenty-five percent
24 (25%) of the outstanding shares of a class of voting securities of
25 a state trust company or other company on the transfer of more
26 than twenty-five percent (25%) of the outstanding shares of a
27 class of voting securities of another state trust company or other
28 company.
- 29 (16) 'Depository institution' means any company chartered to act as a
30 fiduciary and included for any purpose within any of the definitions of
31 'insured depository institution' as set forth in 12 U.S.C. § 1813(c)(2) and
32 (3).
- 33 (17) 'Equity capital' means the amount by which the total assets of a state
34 trust company exceed the total liabilities of the state trust company.
- 35 (18) 'Equity security' means:
- 36 a. Stock, other than adjustable rate preferred stock and money
37 market (auction rate) preferred stock;
- 38 b. A certificate of interest or participation in a profit-sharing
39 agreement, collateral-trust certificate, preorganization certificate
40 or subscription, transferable share, investment contract, voting-
41 trust certificate;

- 1 c. A security immediately convertible at the option of the holder
2 without payment of significant additional consideration into a
3 security described by this subdivision;
- 4 d. A security carrying a warrant or right to subscribe to or purchase
5 a security described by this subdivision; and
- 6 e. A certificate of interest or participation in, temporary or interim
7 certificate for, or receipt for a security described by this
8 subdivision that evidences an existing or contingent equity
9 ownership interest.
- 10 (19) 'Fiduciary record' means a matter written, transcribed, recorded,
11 received, or otherwise in the possession or control of a trust company,
12 whether in physical or electromagnetic form, that is necessary to
13 preserve information concerning an act or event relevant to an account
14 or a client of a trust company.
- 15 (20) 'Foreign bank' means a foreign bank, as defined in section 1(b)(7) of the
16 International Banking Act of 1978, chartered to act as a fiduciary in a
17 state other than this State.
- 18 (21) 'Hazardous condition' means with respect to a trust company:
- 19 a. A refusal by the trust company to permit examination of its
20 books, papers, accounts, records, or affairs by the Commissioner;
- 21 b. Violation by a trust company of a condition of its chartering or
22 an agreement entered into between the trust company and the
23 Commissioner; or
- 24 c. A circumstance or condition in which an unreasonable risk of
25 loss is threatened to clients or creditors of a trust company,
26 excluding risk of loss to a client that arises as a result of the
27 client's decisions or actions, but including a circumstance or
28 condition in which a trust company:
- 29 1. Is unable or lacks the means to meet its current obligations
30 as they come due in the regular and ordinary course of
31 business, even though the book or fair market value of its
32 assets may exceed its liabilities;
- 33 2. Has equity capital less than the amount of restricted
34 capital the trust company is required to maintain under
35 G.S. 53-329, or the adequacy of its equity capital is
36 threatened, as determined under regulatory accounting
37 principles;
- 38 3. Has concentrated an excessive or unreasonable portion of
39 its assets in a particular type or character of investment;
- 40 4. Violates or refuses to comply with this Article, another
41 statute or regulation applicable to trust companies, or any
42 final and enforceable order of the Commissioner;

- 1 5. Is in a condition that renders the continuation of a
2 particular business practice hazardous to its clients and
3 creditors; or
- 4 6. Conducts business in an unsafe or unsound manner, which
5 includes, but is not limited to, conducting business with:
- 6 I. Inexperienced or inattentive management;
7 II. Potentially dangerous operating practices;
8 III. Infrequent or inadequate audits;
9 IV. Administration of assets that is notably deficient in
10 relation to the volume and character or
11 responsibility for asset holdings;
12 V. Failure to adhere to sound administrative practices;
13 VI. Frequent occurrences of violations of laws,
14 regulations, or terms of the governing instruments;
15 or
16 VII. Engaging in self-dealing or evidencing potential or
17 actual conflicts of interest.
- 18 (22) 'Home state' means (i) with respect to a federally chartered trust
19 institution and a foreign bank, the state in which the institution
20 maintains its principal office and (ii) with respect to any other trust
21 institution, the state which chartered the institution.
- 22 (23) 'Home state regulator' means the bank supervisory agency with primary
23 responsibility for chartering and supervising an out-of-state trust
24 institution.
- 25 (24) 'Host state' means a state, other than the home state of a trust institution,
26 or a foreign country in which the trust institution maintains or seeks to
27 acquire or establish an office.
- 28 (25) 'Insider' means:
- 29 a. Each director, officer, and principal shareholder of the trust
30 company;
- 31 b. Any company controlled by a director, officer, or principal
32 shareholder of the trust company; or
- 33 c. Any person who participates or has authority to participate, other
34 than in the capacity of a director, in major policy-making
35 functions of the state trust company, whether or not the person
36 has an official title or the officer is serving without salary or
37 compensation.
- 38 (26) 'Insolvent' means a circumstance or condition in which a state trust
39 company:
- 40 a. Is unable or lacks the means to meet its current obligations as
41 they come due in the regular and ordinary course of business,
42 even if the value of its assets exceeds its liabilities;

- 1 b. Has capital less than five hundred thousand dollars (\$500,000),
2 as determined under regulatory accounting principles;
3 c. Sells or attempts to sell substantially all of its assets or merges or
4 attempts to merge substantially all of its assets or business with
5 another entity other than as hereinafter provided by this Article;
6 or
7 d. Attempts to dissolve or liquidate other than as hereinafter
8 provided.
9 (27) 'Investment security' means a marketable obligation evidencing
10 indebtedness of a person in the form of a bond, note, debenture, or other
11 debt instrument not otherwise classified as a loan or extension of credit.
12 (28) 'License' means the authority granted by the Commissioner pursuant to
13 this Article to establish, acquire, or maintain a trust office.
14 (29) 'Loans and extensions of credit' means direct or indirect advances of
15 funds by a state trust company to a person that are conditioned on the
16 obligation of the person to repay the funds or that are repayable from
17 specific property pledged by or on behalf of the person.
18 (30) 'New trust office' means a trust office located in a host state which (i) is
19 originally established by the trust institution as a trust office and (ii)
20 does not become a trust office of the trust institution as a result of:
21 a. The acquisition of another trust institution or trust office of
22 another trust institution; or
23 b. A merger, consolidation, or conversion involving any trust
24 institution or trust office.
25 (31) 'Office' means, with respect to a trust institution, the principal office, a
26 trust office, or a representative trust office, but not a branch.
27 (32) 'Officer' means the presiding officer of the board, the principal
28 executive officer, or another officer appointed by the board of a state
29 trust company or other company, or a person or group of persons acting
30 in a comparable capacity for the state trust company or other company.
31 (33) 'Operating subsidiary' means a company for which a state trust company
32 has the ownership, ability, or power to vote, directly, acting through one
33 or more other persons, or otherwise indirectly, more than fifty percent
34 (50%) of the outstanding shares of each class of voting securities or its
35 equivalent of the company.
36 (34) 'Out-of-state bank' means a bank chartered to act as a fiduciary in any
37 state or states other than this State.
38 (35) 'Out-of-state trust company' means either a trust company that is not a
39 state trust company or a savings institution whose principal office is not
40 located in this State.
41 (36) 'Out-of-state trust institution' means a trust institution that is not a state
42 trust institution.
43 (37) 'Person' means an individual, a company, or any other legal entity.

- 1 (38) 'Principal office' means, with respect to:
2 a. A state trust company, a location registered with the
3 Commissioner as the state trust company's home office at which:
4 1. The state trust company does business;
5 2. The state trust company keeps its corporate books and a
6 set of its material records, including material fiduciary
7 records; and
8 3. At least one executive officer of the state trust company
9 maintains an office; or
10 b. A trust institution other than a state trust company, its principal
11 place of business in the United States.
12 (39) 'Principal shareholder' means a person who owns or has the ability or
13 power to vote, directly, acting through one or more other persons, or
14 otherwise indirectly, ten percent (10%) or more of the outstanding
15 shares of any class of voting securities of a state trust company or other
16 company.
17 (40) 'Private trust company' means a state trust company that is organized to
18 engage in business for one or more family members and does not
19 transact business with the general public as defined in G.S. 53-373.
20 (41) 'Registration' means the process by which a trust institution has been
21 authorized by the Commissioner to acquire, establish, or maintain a
22 representative trust office in this State.
23 (42) 'Representative trust office' means an office at which a trust institution
24 has been authorized by the Commissioner to engage in a trust business
25 other than acting as a fiduciary.
26 (43) 'Savings institution' means a depository institution that is neither a bank
27 nor a foreign bank.
28 (44) 'Shareholder' means an owner of a share in a state trust company.
29 (45) 'Shares' means the units into which the proprietary interests of a state
30 trust company are divided or subdivided by means of classes, series,
31 relative rights, or preferences.
32 (46) 'State' means any state of the United States, the District of Columbia,
33 any territory of the United States, Puerto Rico, Guam, American Samoa,
34 the Trust Territory of the Pacific Islands, the Virgin Islands, and the
35 Northern Mariana Islands.
36 (47) 'State bank' means (i) a bank chartered to act as a fiduciary by this State
37 or (ii) a foreign bank as defined in section 1(b)(7) of the International
38 Banking Act of 1978 chartered to act as a fiduciary in this State.
39 (48) 'State trust company' means a corporation organized or reorganized
40 under this Article, including a trust company previously organized
41 under other provisions of Chapter 53 of the North Carolina General
42 Statutes.

- 1 (49) 'State trust institution' means a trust institution having its principal
2 office in this State.
- 3 (50) 'Subsidiary' means a company that is controlled by another person. The
4 term includes a subsidiary of a subsidiary.
- 5 (51) 'Surplus' means the amount by which the assets of a state trust company
6 exceed its liabilities, capital, and undivided profits.
- 7 (52) 'Trust business' means the holding out by a person to the public by
8 advertising, solicitation, or other means that the person is available to
9 perform any service of a fiduciary in this or another state, including:
- 10 a. Acting as a fiduciary, or
- 11 b. To the extent not acting as a fiduciary, any of the following: (i)
12 receiving for safekeeping personal property of every description;
13 (ii) acting as assignee, bailee, conservator, custodian, escrow
14 agent, registrar, receiver, or transfer agent; or (iii) acting as
15 financial advisor, investment advisor or manager, agent, or
16 attorney-in-fact in any agreed upon capacity.
- 17 (53) 'Trust company' means a state trust company or any other company
18 chartered to act as a fiduciary that is neither a depository institution nor
19 a foreign bank.
- 20 (54) 'Trust deposits' means the client funds held by a state trust company and
21 authorized to be deposited with itself pending investment, distribution,
22 or payment of debts on behalf of the client, depository institution,
23 foreign bank, State bank, or trust company.
- 24 (55) 'Trust institution' means a depository trust institution, foreign bank,
25 State bank, or trust company.
- 26 (56) 'Trust office' means an office, other than the principal office, at which a
27 trust institution is licensed by the Commissioner to act as a fiduciary.
- 28 (57) 'Unauthorized trust activity' means (i) a company, other than one
29 identified in G.S. 53-293(a)(1)-(8), acting as a fiduciary within this
30 State, (ii) a company engaging in a trust business in this State at any
31 office of the company that is not its principal office, if it is a state trust
32 institution, or that is not a trust office or a representative trust office of
33 the company, or (iii) an out-of-state trust institution engaging in a trust
34 business in this State at any time an order issued by the Commissioner
35 pursuant to G.S. 53-312(b) is in effect.
- 36 (58) 'Undivided profits' means the part of equity capital of a state trust
37 company equal to the balance of its net profits, income, gains, and
38 losses since the date of its formation, minus subsequent distributions to
39 shareholders and transfers to surplus or capital under share dividends or
40 appropriate board resolutions. The term includes amounts allocated to
41 undivided profits as a result of a merger.
- 42 (59) 'Voting security' means a share or other evidence of proprietary interest
43 in a state trust company or other company that has as an attribute the

1 right to vote or participate in the election of the board of the state trust
2 company or other company, regardless of whether the right is limited to
3 the election of fewer than all of the board members. The term includes
4 a security that is convertible or exchangeable into a voting security.

5 (b) These definitions shall be liberally construed to accomplish the purposes of
6 this Article. The State Banking Commission may adopt other definitions by rule to
7 accomplish the purposes of this Article.

8 **"PART 2. MULTISTATE TRUST INSTITUTIONS ACT.**

9 **"SUBPART A. GENERAL.**

10 **"§ 53-291. Title and purposes.**

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

12 (b) It is the express intent of this Part to permit banks and other depository
13 institutions, foreign banks, and trust companies to engage in the trust business on a
14 multistate and international basis to the extent consistent with the safety and soundness of
15 the trust institutions engaged in a trust business in this State and the protection of
16 consumers, clients, and other customers of the trust institutions.

17 **"§ 53-292. Regulations.**

18 The Commission may adopt rules in accordance with Chapter 150B of the General
19 Statutes to implement the provisions of this Part.

20 **"SUBPART B. COMPANIES AUTHORIZED TO ACT AS A FIDUCIARY.**

21 **"§ 53-293. Companies authorized to act as a fiduciary.**

22 (a) No company shall act as a fiduciary in this State except:

23 (1) A state trust company;

24 (2) A State bank;

25 (3) A savings institution organized under the laws of this State and
26 authorized to act as a fiduciary pursuant to Chapter 54B or Chapter 54C
27 of the North Carolina General Statutes;

28 (4) A national bank having its principal office in this State and authorized
29 by the Comptroller of the Currency to act as a fiduciary pursuant to 12
30 U.S.C. § 92a;

31 (5) A federally chartered savings institution having its principal office in
32 this State and authorized by its federal chartering authority to act as a
33 fiduciary;

34 (6) An out-of-state bank with a branch in this State established or
35 maintained pursuant to Article 17B of this Chapter of the North
36 Carolina General Statutes or a trust office licensed by the Commissioner
37 pursuant to this Part;

38 (7) An out-of-state trust company with a trust office licensed by the
39 Commissioner pursuant to this Part; or

40 (8) A foreign bank with a trust office licensed by the Commissioner
41 pursuant to this Part.

42 (b) In addition to the authority granted pursuant to subsection (a) of this section, an
43 out-of-state trust institution may act as a fiduciary in this State provided that the home

1 state of the out-of-state trust institution permits a trust institution organized under the
2 laws of this State, or having its principal office in this State, to act as a fiduciary in the
3 home state of the out-of-state trust institution under no greater restrictions than are
4 imposed by this Article.

5 (c) No company shall engage in an unauthorized trust activity.

6 **"§ 53-294. Activities not requiring a charter, license, or registration.**

7 Notwithstanding any other provision of this Article, a company does not engage in the
8 trust business or in any other business in a manner requiring a charter, license, or
9 registration under this Article or in an unauthorized trust activity by:

- 10 (1) Acting in a manner authorized by law and in the scope of authority as an
11 agent of a trust institution with respect to an activity which is not an
12 unauthorized trust activity;
- 13 (2) Rendering a service customarily performed as an attorney or law firm in
14 a manner approved and authorized by the North Carolina State Bar;
- 15 (3) Acting as trustee under a deed of trust delivered only as security for the
16 payment of money or for the performance of another act;
- 17 (4) Receiving and distributing rents and proceeds of sale as a licensed real
18 estate broker on behalf of a principal in a manner authorized by the
19 North Carolina Real Estate Commission;
- 20 (5) Engaging in a securities transaction or providing an investment advisory
21 service as a licensed and registered broker-dealer, investment advisor, or
22 registered representative thereof, provided the activity is regulated by
23 the Secretary of State or the United States Securities and Exchange
24 Commission;
- 25 (6) Engaging in the sale and administration of an insurance product by an
26 insurance company or agent licensed by the Department of Insurance to
27 the extent that the activity is regulated by the Department of Insurance;
- 28 (7) Engaging in the lawful sale of prepaid funeral benefits under a license
29 issued by the North Carolina Board of Mortuary Science pursuant to
30 Article 13D of Chapter 90 of the General Statutes or engaging in the
31 lawful business of a perpetual care cemetery corporation pursuant to
32 Chapter 65 of the General Statutes;
- 33 (8) Acting as trustee under a voting trust as provided by the North Carolina
34 Business Corporation Act;
- 35 (9) Acting as trustee by a public, private, or independent institution of
36 higher education or a university system, including its affiliated
37 foundations or corporations, with respect to endowment funds or other
38 funds owned, controlled, provided to, or otherwise made available to the
39 institution with respect to its educational or research purposes;
- 40 (10) Engaging in other activities expressly excluded from the Article by rule
41 of the Commission;

1 (11) Rendering services customarily performed by a certified public
2 accountant in a manner authorized by the North Carolina State Board of
3 Certified Public Accountant Examiners; or

4 (12) Provided the company is a trust institution and is not barred by order of
5 the Commissioner from engaging in a trust business in this State
6 pursuant to G.S. 53-312(b): (i) marketing or soliciting in this State
7 through the mail, telephone, any electronic means, or in person with
8 respect to acting or proposing to act as fiduciary outside of this State;
9 (ii) delivering money or other intangible assets and receiving money or
10 other intangible assets from a client or other person in this State; or (iii)
11 accepting or executing outside of this State a trust of any client or
12 otherwise acting as a fiduciary outside of this State for any client.

13 **"§ 53-295. Trust business of state trust institution.**

14 (a) A state trust institution may act as a fiduciary or otherwise engage in a trust
15 business in this or any other state or foreign country, subject to complying with
16 applicable laws of the other state or foreign country, at an office established and
17 maintained pursuant to this Part, at a branch, or at any location other than an office or
18 branch.

19 (b) In addition, a state trust institution may conduct any activities at any office
20 outside this State that are permissible for a trust institution chartered by the host state
21 where the office is located, except to the extent the activities are expressly prohibited by
22 the laws of this State or by any regulation or order of the Commissioner applicable to the
23 state trust institution; provided, however, that the Commissioner may waive any
24 prohibition if the Commissioner determines, by order or rule, that the involvement of out-
25 of-state offices of state trust institutions in particular activities would not threaten the
26 safety or soundness of the institutions.

27 **"§ 53-296. Trust business of out-of-state trust institution.**

28 An out-of-state trust institution that establishes or maintains one or more offices in
29 this State under this Part may conduct any activity that a state trust company is authorized
30 to conduct under the laws of this State.

31 **"§ 53-297. Name of trust institution.**

32 A state trust company or out-of-state trust institution may register or reserve any name
33 with the Secretary of State in connection with establishing a principal office, trust office,
34 or representative trust office in this State pursuant to this Article, except that the
35 Commissioner may determine that a name proposed to be registered is potentially
36 misleading to the public and require the registrant to select a name that is not potentially
37 misleading.

38 **"SUBPART C. STATE TRUST INSTITUTION OFFICES.**

39 **"§ 53-298. Trust business.**

40 (a) A state trust company or a state bank may:

41 (1) Perform any act as a fiduciary;

42 (2) Engage in any trust business; and

1 (3) Exercise any incidental power that is reasonably necessary to enable it
2 to fully exercise, according to commonly accepted fiduciary customs
3 and usages, a power conferred in this Article.

4 (b) In addition to the authority granted under subsection (a) of this section, a state
5 trust company may exercise any other power authorized by G.S. 53-323.

6 **"§ 53-299. Branches and offices of state trust institutions.**

7 (a) A state trust institution may act as a fiduciary and engage in a trust business at
8 a branch and at each trust office as permitted by this Part.

9 (b) A state trust institution may not act as a fiduciary but may otherwise engage in
10 a trust business at a representative trust office as permitted by this Part.

11 (c) A state bank or state trust company may engage in a trust business in an out-of-
12 state office to the same extent permitted for trust institutions located in the host state in
13 which the out-of-state office is located except where the activity is prohibited by the laws
14 of this State or any regulation or order issued by the Commissioner.

15 **"§ 53-300. State trust company principal office.**

16 (a) Each state trust company is required to have and maintain continuously a
17 principal office in this State.

18 (b) Each executive officer at the principal office is an agent of the state trust
19 company for service of process.

20 (c) A state trust company may change its principal office to any location within
21 this State by filing a written notice with the Commissioner setting forth the name of the
22 state trust company, the street address of its principal office before the change, the street
23 address to which the principal office is to be changed, and a copy of the resolution
24 adopted by the board authorizing the change.

25 (d) The change of principal office shall take effect on the thirty-first day following
26 the date the Commissioner receives the notice pursuant to subsection (c) of this section,
27 unless (i) the Commissioner establishes an earlier or later date, or (ii) prior to the thirty-
28 first day, the Commissioner notifies the state trust company that it must establish to the
29 satisfaction of the Commissioner that the relocation is consistent with the original
30 determination made under G.S. 53-325(b) for the establishment of a state trust company
31 at that location, in which event the change of principal office shall take effect when
32 approved by the Commissioner.

33 **"§ 53-301. Trust office; representative trust office.**

34 (a) A state trust institution may establish or acquire and maintain trust offices or
35 representative trust offices anywhere in this State. A state trust institution desiring to
36 establish or acquire and maintain an office shall file a written notice with the
37 Commissioner setting forth the name of the state trust institution, the location of the
38 proposed additional office and whether the additional office will be a trust office or a
39 representative trust office, shall furnish a copy of the resolution adopted by the board
40 authorizing the additional office, and shall pay the filing fee, if any, set by rule.

41 (b) The trust institution may commence business at the additional office on the
42 thirty-first day after the date the Commissioner receives the notice, unless the
43 Commissioner specifies an earlier or later date.

1 (c) The 30-day period of review may be extended by the Commissioner on a
2 determination that the written notice raises issues that require additional information or
3 additional time for analysis. If the period of review is extended, the state trust institution
4 may establish the additional office only on prior written approval by the Commissioner.

5 (d) The Commissioner may deny approval of the additional office if the
6 Commissioner finds that the trust institution lacks sufficient financial resources to
7 undertake the proposed expansion without adversely affecting its safety or soundness or
8 that the proposed office would be contrary to the public interest.

9 **"§ 53-302. Out-of-state offices.**

10 (a) A state bank, a state trust company, or a savings institution chartered under the
11 laws of this State may establish and maintain a new trust office or a representative trust
12 office or acquire and maintain an office in a state other than this State. The trust
13 institution desiring to establish or acquire and maintain an office in another state under
14 this section shall file a notice on a form adopted by the Commissioner that sets forth the
15 name of the trust institution, the location of the proposed office, whether the office will
16 be a trust office or a representative trust office, and whether the laws of the jurisdiction
17 where the office will be located permit the office to be maintained by the trust institution,
18 shall furnish a copy of the resolution adopted by the board authorizing the out-of-state
19 office, and shall pay the filing fee, if any, set by rule.

20 (b) The state bank, state trust institution, or savings institution may commence
21 business at the additional office on the thirty-first day following the date the
22 Commissioner receives the notice, unless the Commissioner specifies an earlier or later
23 date.

24 (c) The 30-day period of review may be extended by the Commissioner on a
25 determination that the written notice raises issues that require additional information or
26 additional time for analysis. If the period of review is extended, the trust institution may
27 establish the additional office only on prior written approval by the Commissioner.

28 (d) The Commissioner may deny approval of the additional office if the
29 Commissioner finds that the trust institution lacks sufficient financial resources to
30 undertake the proposed expansion without adversely affecting its safety or soundness or
31 that the proposed office would be contrary to the public interest. In acting on the notice,
32 the Commissioner shall consider the views of the appropriate bank supervisory agency.

33 **"SUBPART D. OUT-OF-STATE TRUST INSTITUTION TRUST OFFICE.**

34 **"§ 53-303. Trust business at a branch or trust office.**

35 Except as provided by G.S. 53-293(b), an out-of-state trust institution may act as a
36 fiduciary in this State or engage in a trust business at an office in this State only if it
37 maintains (i) a trust office in this State as permitted by this Part or (ii) a branch in this
38 State.

39 **"§ 53-304. Establishing an interstate trust office.**

40 An out-of-state trust institution that does not operate a trust office in this State and
41 that meets the requirements of this Part may establish and maintain a new trust office in
42 this State; provided that an out-of-state trust institution may not establish a new trust
43 office in this State unless a similar institution chartered under the laws of this State to act

1 as a fiduciary, is permitted to establish a new trust office that may engage in activities
2 substantially similar to those permitted to trust offices of out-of-state trust institutions
3 under G.S. 53-303, in the state where the out-of-state trust institution has its principal
4 office.

5 **"§ 53-305. Acquiring an interstate trust office.**

6 An out-of-state trust institution that does not operate a trust office in this State and
7 that meets the requirements of this Part may acquire and maintain a trust office in this
8 State; provided that no out-of-state trust institution may maintain a trust office in this
9 State unless a similar institution chartered under the laws of this State to act as a fiduciary
10 is permitted to acquire and maintain a trust office through an acquisition of a trust office
11 in the state where the out-of-state trust institution has its principal office and may engage
12 in activities substantially similar to those permitted to trust offices of out-of-state trust
13 institutions under G.S. 53-303, in the state where the out-of-state trust institution has its
14 principal office.

15 **"§ 53-306. Requirement of notice.**

16 An out-of-state trust institution desiring to establish and maintain a new trust office or
17 acquire and maintain a trust office in this State pursuant to this Subpart, shall provide, or
18 cause its home state regulator to provide, written notice of the proposed transaction to the
19 Commissioner on or after the date on which the out-of-state trust institution applies to the
20 home state regulator for approval to establish and maintain or acquire the trust office. The
21 filing of the notice shall be preceded or accompanied by a copy of the resolution adopted
22 by the board authorizing the additional office and any fee set by rule.

23 **"§ 53-307. Conditions for approval.**

24 (a) No trust office of an out-of-state trust institution may be acquired or
25 established in this State under this Subpart unless:

- 26 (1) The out-of-state trust institution has confirmed in writing to the
27 Commissioner that for as long as it maintains a trust office in this State
28 it will comply with all applicable laws of this State;
29 (2) The institution has provided satisfactory evidence to the Commissioner
30 of compliance with (i) any applicable requirements of Article 15 of
31 Chapter 55 of the General Statutes; and (ii) the applicable requirements
32 of its home state regulator for acquiring or establishing and maintaining
33 the office; and
34 (3) The Commissioner, acting within 60 days after receiving notice under
35 G.S. 53-306, has certified to the home state regulator that the
36 requirements of this Subpart have been met and the notice has been
37 approved or, if applicable, that any conditions imposed by the
38 Commissioner pursuant to subsection (b) of this section have been
39 satisfied.

40 (b) The out-of-state trust institution may commence business at the trust office on
41 the sixty-first day following the date the Commissioner receives the notice, unless the
42 Commissioner specifies an earlier or later date. With respect to an out-of-state trust
43 institution that is not a depository institution and for which the Commissioner has

1 conditioned approval on the satisfaction by the institution of any requirement applicable
2 to a state trust company pursuant to G.S. 53-325(b) or G.S. 53-329, the institution shall
3 comply and provide evidence to the Commissioner of compliance before the institution
4 may commence business.

5 (c) The 60-day period of review may be extended by the Commissioner on a
6 determination that the written notice raises issues that require additional information or
7 additional time for analysis. If the period of review is extended, the out-of-state trust
8 institution may establish the office only on prior written approval by the Commissioner.

9 (d) The Commissioner may deny approval of the office if the Commissioner finds
10 that the institution lacks sufficient financial resources to undertake the proposed
11 expansion without adversely affecting its safety or soundness or that the proposed office
12 is contrary to the public interest. In acting on the notice, the Commissioner shall consider
13 the views of the appropriate bank supervisory agency.

14 **"§ 53-308. Additional trust offices.**

15 An out-of-state trust institution that maintains a trust office in this State under this
16 Part may establish or acquire additional trust offices or representative trust offices in this
17 State to the same extent that a state trust institution may establish or acquire additional
18 offices in this State pursuant to the procedures for establishing or acquiring offices set
19 forth in G.S. 53-301.

20 **"§ 53-309. Representative trust office business.**

21 (a) An out-of-state trust institution may not act as a fiduciary, but may otherwise
22 engage in a trust business, at a representative trust office as permitted by this Subpart.

23 (b) Subject to the requirements contained in this Subpart, an out-of-state trust
24 institution may establish and maintain representative trust offices anywhere in this State.

25 **"§ 53-310. Registration of representative trust office.**

26 (a) An out-of-state trust institution may establish or acquire and maintain a
27 representative trust office in this State. An out-of-state trust institution not maintaining a
28 trust office in this State and desiring to establish or acquire and maintain a representative
29 trust office shall file a notice on a form adopted by the Commissioner. The notice shall
30 set forth the name of the out-of-state trust institution, the location of the proposed office
31 shall include satisfactory evidence that the entity is a trust institution and shall include a
32 copy of the resolution adopted by the board authorizing the representative trust office.
33 The out-of-state trust institution shall pay the filing fee, if any, set by rule.

34 (b) The out-of-state trust institution may commence business at the representative
35 trust office on the thirty-first day following the date the Commissioner receives the
36 notice, unless the Commissioner specifies an earlier or later date.

37 (c) The 30-day period of review may be extended by the Commissioner on a
38 determination that the written notice raises issues that require additional information or
39 additional time for analysis. If the period of review is extended, the out-of-state trust
40 institution may establish the representative trust office only on prior written approval by
41 the Commissioner.

42 (d) The Commissioner may deny approval of the representative trust office if the
43 Commissioner finds that the out-of-state trust institution lacks sufficient financial

1 resources to undertake the proposed expansion without adversely affecting its safety or
2 soundness or that the proposed office would be contrary to the public interest. In acting
3 on the notice, the Commissioner shall consider the views of the appropriate bank
4 supervisory agency.

5 **"§ 53-311. Examinations; periodic reports; cooperative agreements; assessment of**
6 **fees.**

7 (a) To the extent consistent with subsection (c) of this section, the Commissioner
8 may examine any office established and maintained in this State pursuant to this Part by
9 an out-of-state trust institution to determine whether the office is being operated in
10 compliance with the laws of this State and in accordance with safe and sound practices.
11 The pertinent provisions of G.S. 53-117 and G.S. 53-118 apply to these examinations.

12 (b) The Commissioner may require periodic reports regarding any out-of-state
13 trust institution that has established and maintained an office in this State pursuant to this
14 Part. The required reports shall be provided by the trust institution or by the home state
15 regulator. Any reporting requirements shall be (i) consistent with the reporting
16 requirements applicable to state trust companies and (ii) appropriate for the purpose of
17 enabling the Commissioner to carry out the Commissioner's responsibilities under this
18 Article.

19 (c) The Commissioner may enter into cooperative, coordinating, and information-
20 sharing agreements with any other bank supervisory agencies or any organization
21 affiliated with or representing one or more bank supervisory agencies with respect to the
22 periodic examination or other supervision of any office in this State of an out-of-state
23 trust institution, or any office of a state trust institution in any host state, and the
24 Commissioner may accept a party's report of examination and report of investigation in
25 lieu of conducting a separate examination or investigation.

26 (d) The Commissioner may enter into contracts with any bank supervisory agency
27 that has concurrent jurisdiction over a state trust institution or an out-of-state trust
28 institution maintaining an office in this State to engage the services of the agency's
29 examiners at a reasonable rate of compensation or to provide the services of the
30 Commissioner's examiners to the agency at a reasonable rate of compensation. Article 3
31 of Chapter 143 of the General Statutes does not apply to contracts authorized by this
32 subsection.

33 (e) The Commissioner may enter into joint examination or joint enforcement
34 actions with other bank supervisory agencies having concurrent jurisdiction over any
35 office established and maintained in this State by an out-of-state trust institution or any
36 office established and maintained by a state trust institution in any host state; provided,
37 that the Commissioner may at any time take actions independently if the Commissioner
38 considers the actions to be necessary or appropriate to carry out the Commissioner's
39 responsibilities under this Article or to ensure compliance with the laws of this State. In
40 the case of an out-of-state trust institution, the Commissioner shall recognize the
41 exclusive authority of the home state regulator over corporate governance matters and the
42 primary responsibility of the home state regulator with respect to safety and soundness
43 matters.

1 (f) Each out-of-state trust institution that maintains one or more offices in this
2 State may be assessed and, if assessed, shall pay supervisory and examination fees in
3 accordance with rules adopted by the State Banking Commission. The fees may be shared
4 with other bank supervisory agencies or any organization affiliated with or representing
5 one or more bank supervisory agencies in accordance with agreements between the
6 parties and the Commissioner.

7 **"§ 53-312. Enforcement.**

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

10 (1) That an office maintained by an out-of-state trust institution in this State
11 is being operated in violation of any provision of the laws of this State
12 or in an unsafe and unsound manner; or

13 (2) That a company is engaged in an unauthorized trust activity.

14 In either event, the Commissioner may take any enforcement actions the Commissioner
15 would be authorized to take if the office or the company were a state trust company,
16 including issuing an order temporarily or permanently prohibiting the company from
17 engaging in a trust business in this State.

18 (b) Consistent with Article 3A of Chapter 150B of the General Statutes, after
19 notice and opportunity for hearing, the Commissioner may determine by order that an
20 out-of-state trust institution engaging in or proposing to engage in a trust business in this
21 State does not meet the requirements for establishing a representative trust office in this
22 State pursuant to G.S. 53-310. The order shall be effective on the date of issuance or any
23 other date the Commissioner determines.

24 (c) In cases involving extraordinary circumstances requiring immediate action, the
25 Commissioner may take any action permitted by subsection (a) or (b) of this section,
26 without notice or opportunity for hearing, but shall promptly afford a subsequent hearing
27 upon an application to rescind the action taken. The Commissioner shall promptly give
28 notice to the home state regulator of each enforcement action taken against an out-of-
29 state trust institution and, to the extent practicable, shall consult and cooperate with the
30 home state regulator in pursuing and resolving the enforcement action.

31 **"§ 53-313. Notice of subsequent merger, closing, etc.**

32 Each out-of-state trust institution that maintains an office in this State pursuant to this
33 Part, or the home state regulator of the trust institution, shall give at least 30 days' prior
34 written notice (or, in the case of an emergency transaction, such shorter notice as is
35 consistent with applicable State or federal law) to the Commissioner of (i) any merger,
36 consolidation, or other transaction that would cause a change of control with respect to an
37 out-of-state trust institution or any bank holding company that controls the trust
38 institution, with the result that an application would be required to be filed pursuant to the
39 federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. § 1817(j), or the
40 Federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841, et seq., or
41 any successor statutes thereto; (ii) any transfer of all or substantially all of the trust
42 accounts or trust assets of the out-of-state trust institution to another person; or (iii) the
43 closing or disposition of any office in this State.

"PART 3. STATE TRUST INSTITUTION CHARTER MODERNIZATION ACT.**"SUBPART A. TRUST AND FIDUCIARIES.****"§ 53-314. Title and purposes.**

(a) This Part may be cited as the State Trust Institution Charter Modernization Act.

(b) The express purposes of this Part are to:

(1) Provide for the chartering of trust companies and to permit trust companies to act as fiduciaries and otherwise engage in the trust business in this State; provided, they are adequately capitalized, competently managed by persons of integrity, and supervised by the Commissioner of Banks, all in order to ensure that the trust companies are operated in compliance with law, in a safe and sound manner and in a manner that protects their clients and customers and other consumers in this State; and

(2) Improve service and reduce costs for trust institution clients and customers and other consumers in this State by modernizing State laws to permit the delegation by trust institutions of fiduciary functions but not fiduciary responsibility, to authorize clients to designate any trust institution to act for them and to choose an appropriate state's law to govern fiduciary instruments and investments, and to protect consumers from excessive fees or undisclosed conflicts of interest of trust institutions and their affiliates.

"§ 53-315. Designation of trustee.

Any person residing in this State may designate any trust institution to act as a fiduciary on behalf of the person.

"§ 53-316. Choice of law governing trusts.

Any trust institution that maintains a trust office or representative trust office in this State and its affected clients may designate either (i) this State, (ii) a state where affected clients reside, or (iii) the state where the trust institution has its principal office, as the state whose laws shall govern any written agreement between the trust institution and its client or any instrument under which the trust institution acts for a client.

"§ 53-317. Choice of law governing fiduciary investments.

Any trust institution that maintains a trust office or representative trust office in this State and its affected clients may designate either (i) this State, (ii) a state where affected clients reside, or (iii) the state where the trust institution has its principal office, as the state whose laws shall govern with respect to the fiduciary investment standards applicable to any written agreement between the trust institution or its client and any other instrument under which the trust institution acts for a client.

"§ 53-318. Delegation and fiduciary responsibility.

(a) Any person acting as a trustee or as any other fiduciary under the laws of this State may delegate any investment, management, or administrative function if the person exercises reasonable care, judgment, and caution in:

- 1 (1) Selecting the delegate, taking into account the delegate's financial
2 standing and reputation;
- 3 (2) Establishing the scope and other terms of any delegation; and
- 4 (3) Reviewing periodically the delegate's actions in order to monitor overall
5 performance and compliance with the scope and other terms of the
6 delegation.

7 (b) Notwithstanding any delegation permitted by subsection (a) of this section, any
8 person acting as a trustee or in any other fiduciary capacity under the laws of this State
9 shall retain responsibility for the due performance of any delegated fiduciary function.

10 **"§ 53-319. Affiliates.**

11 (a) Any person acting as a trustee or in any other fiduciary capacity may hire and
12 compensate, as a delegate, an affiliate of the person if:

- 13 (1) Authorized by a trust or fiduciary instrument;
- 14 (2) Authorized by court order;
- 15 (3) Authorized in writing by each affected client; or
- 16 (4) The standards of G.S. 53-318 are satisfied.

17 (b) Fees paid to an affiliate shall be competitive with fees charged by nonaffiliates
18 that provide substantially similar services.

19 **"§ 53-320. Fee determination.**

20 Unless set by a court of competent jurisdiction, the compensation arrangement
21 between a client and any person acting as a trustee or as any other fiduciary pursuant to
22 this Article shall be in writing, as agreed to between the parties and shall be fully
23 disclosed to the client.

24 **"§ 53-321. Disclosure of potential conflicts of interest.**

25 (a) Any company, proposing to act as a trustee or in any other fiduciary capacity
26 pursuant to a written agreement to be entered into with a prospective client that has any
27 potential or actual conflict of interest that may reasonably be expected to have an impact
28 on the independence or judgment of the trustee or fiduciary, shall deliver a disclosure
29 statement to the prospective client (i) not less than 48 hours prior to entering into any
30 written or oral trust or fiduciary agreement with the client or prospective client, or (ii) at
31 the time of entering into any agreement if the client has a right to terminate the agreement
32 without penalty within three or more business days after entering into the agreement.

33 (b) The disclosure statement shall contain appropriate information concerning the
34 actual or potential conflict of interest. If the trustee or other fiduciary proposes to
35 delegate any fiduciary function to an affiliate, the nature of the affiliation and whether the
36 trustee or other fiduciary may directly benefit from the delegation shall be disclosed in
37 the disclosure statement.

38 **"§ 53-322. Purchase of assets of another trust institution.**

39 (a) Subject to the provisions of this section, a trust institution may purchase assets
40 of a state trust company or trust-related assets of another trust institution, including the
41 right to control accounts established with the trust institution. Except as otherwise
42 expressly provided by this or another statute, the purchase of all or part of the assets of
43 the trust institution does not make the purchasing trust institution responsible for any

1 liability or obligation of the selling trust institution that the purchasing trust institution
2 does not expressly assume. Except as otherwise provided by this Subpart, this Subpart
3 does not govern or prohibit the purchase by a state trust institution of all or part of the
4 assets of a corporation or other entity that is not a trust institution.

5 (b) If the acquiring institution is a state bank, a state trust company, an out-of-state
6 trust institution, or a savings institution chartered under the laws of this State and
7 maintains neither a branch nor a trust office in this State, an application in the form
8 required by the Commissioner shall be filed with the Commissioner for any acquisition of
9 all or substantially all of (i) the assets of a state trust company, or (ii) the trust assets of
10 another trust institution. The Commissioner shall investigate the condition of the
11 purchaser and seller and may require the submission of additional information as
12 considered necessary to make an informed decision. The Commissioner shall approve the
13 purchase if:

14 (1) The acquiring trust institution will be solvent and have sufficient
15 capitalization for its business and location;

16 (2) The acquiring trust institution has complied with all applicable statutes
17 and rules including, without limitation, any applicable requirements of
18 this Article;

19 (3) All fiduciary obligations and liabilities of the parties have been properly
20 discharged or otherwise assumed by the acquiring trust institution;

21 (4) All conditions imposed by the Commissioner have been satisfied or
22 otherwise resolved; and

23 (5) All fees and costs have been paid.

24 (c) A purchase requiring an application pursuant to subsection (b) of this section is
25 effective on the date of approval, unless the purchase agreement provides for, and the
26 Commissioner consents to, a different effective date.

27 (d) The acquiring trust institution shall succeed by operation of law to all of the
28 rights, privileges, and obligations of the selling trust institution under each account
29 included in the assets acquired.

30 (e) The application required by subsection (b) shall be accompanied by fee set by
31 the State Banking Commission by rule.

32 **"SUBPART B. STATE TRUST COMPANY.**

33 **"§ 53-323. Organization and powers of a state trust company.**

34 (a) Subject to the other provisions of this Part, one or more persons may organize
35 and charter a state trust company. A state trust company may perform any act as a
36 fiduciary or engage in any trust business within or without this State.

37 (b) Subject to G.S. 53-330, a state trust company may exercise the powers of a
38 business corporation organized under the laws of this State reasonably necessary or
39 helpful to enable exercise of its specific powers under this Part.

40 (c) A state trust company may contribute to community funds, or to charitable,
41 philanthropic, or benevolent instrumentalities conducive to public welfare, any amounts
42 that its board considers appropriate and in the interests of the state trust company.

1 (d) Subject to G.S. 53-344, a state trust company may deposit trust funds with
2 itself or an affiliate.

3 **"§ 53-324. Articles of incorporation of a state trust company.**

4 The articles of incorporation of a state trust company shall be signed and
5 acknowledged by each organizer and shall contain:

- 6 (1) The name of the state trust company;
- 7 (2) The period of its duration, which may be perpetual;
- 8 (3) The powers of the state trust company, which may be stated as:
 - 9 a. All powers granted to a state trust company in this State; or
 - 10 b. A list of the specific powers that the state trust company chooses
11 and is authorized to exercise;
- 12 (4) The aggregate number of shares that the state trust company will be
13 authorized to issue, the number of classes of shares, which may be one
14 or more, the number of shares of each class if more than one class, and a
15 statement of the par value of the shares of each class;
- 16 (5) If the shares are to be divided into classes, the designation of each class
17 and statement of the preferences, limitations, and relative rights of the
18 shares of each class;
- 19 (6) Any provision limiting or denying to shareholders the preemptive right
20 to acquire additional or treasury shares of the state trust company;
- 21 (7) Any provision granting the right of shareholders to cumulative voting in
22 the election of directors or managers;
- 23 (8) The aggregate amount of consideration to be received for all shares
24 initially issued by the state trust company, and a statement that all
25 authorized shares have been subscribed and that all subscriptions
26 received provide for the consideration to be fully paid in cash before
27 issuance of the charter;
- 28 (9) Any provision consistent with law that the organizers elect to set forth
29 in the articles of incorporation for the regulation of the internal affairs of
30 the state trust company or that is otherwise required by this Part to be
31 set forth in the articles of incorporation;
- 32 (10) The street address of the state trust company's principal office required
33 to be maintained under G.S. 53-300; and
- 34 (11) The number of directors constituting the initial board, which may not be
35 fewer than five or more than 25, and the names and street addresses of
36 the persons who are to serve as directors until the first annual meeting of
37 shareholders or until successor directors have been elected and
38 qualified.

39 **"§ 53-325. Application for a state trust company charter.**

40 (a) An application for a state trust company charter shall be made under oath and
41 in the form required by the Commissioner and shall be supported by information, data,
42 records, and opinions of counsel that the Commissioner requires. The application shall
43 be accompanied by the fee set by the State Banking Commission by rule.

1 (b) The Commissioner shall grant a state trust company charter only on proof that
2 one or more viable markets exist within or outside of this State that may be served in a
3 profitable manner by the establishment of the proposed state trust company. In making
4 such a determination, the Commissioner shall examine the business plan, which shall be
5 submitted as part of the application for a state trust company charter, and shall consider:

6 (1) The market or markets to be served;

7 (2) Whether the proposed organizational and capital structure and amount
8 of initial capitalization is adequate for the proposed business and
9 location;

10 (3) Whether the anticipated volume and nature of business indicates a
11 reasonable probability of success and profitability based on the market
12 sought to be served;

13 (4) Whether the proposed officers and directors, as a group, have sufficient
14 fiduciary experience, ability, standing, competence, trustworthiness, and
15 integrity to justify a belief that the proposed state trust company will
16 operate in compliance with law and that success of the proposed state
17 trust company is probable;

18 (5) Whether each principal shareholder has sufficient experience, ability,
19 standing, competence, trustworthiness, and integrity to justify a belief
20 that the proposed state trust company will be free from improper or
21 unlawful influence or interference with respect to the state trust
22 company's operation in compliance with law; and

23 (6) Whether the organizers are acting in good faith.

24 (c) The failure of an applicant to furnish required information, data, opinions of
25 counsel, other material, or the required fee shall be considered an abandonment of the
26 application.

27 **"§ 53-326. Notice and investigation of charter application; written reports.**

28 (a) The Commissioner shall notify the organizers when the application is complete
29 and accepted for filing and all required fees have been paid. Promptly after this
30 notification, the organizers shall publish notice of the application and solicit comments in
31 the form specified by the Commissioner at locations reasonably necessary to solicit the
32 views of potentially affected persons specified by the Commissioner by rule.

33 (b) At the expense of the organizers, the Commissioner shall investigate the
34 application and inquire into the identity and character of each proposed director, officer,
35 and principal shareholder. The Commissioner shall prepare a written report of the
36 investigation, and any person may request a copy of the nonconfidential portions of the
37 application and written report as provided by Chapter 132 of the General Statutes. Rules
38 adopted under this Chapter may specify the confidential or nonconfidential character of
39 information obtained by the Commission under this section. Except as provided in rules
40 regarding confidential information, the financial statement of a proposed officer or
41 director is confidential and not subject to public disclosure.

42 **"§ 53-327. Decision on charter application and hearing.**

1 (a) Any person may file a protest to an application. The manner and time in which
2 the protest may be filed shall be adopted by rule.

3 (b) Not later than the thirtieth day following the last date the notice was published
4 under G.S. 53-326(b), the Commissioner shall determine whether the application meets
5 the requirements of G.S. 53-325, based on the application and investigation, and shall
6 enter an order approving the application, or shall set a hearing pursuant to Article 3A of
7 Chapter 150B of the General Statutes.

8 (c) Based on the record of any hearing set pursuant to subsection (b) of this
9 section, the Commissioner shall determine whether all of the necessary conditions set
10 forth in G.S. 53-325 have been established and shall enter an order granting or denying
11 the charter. The Commissioner may make approval of any application conditional and
12 shall include any conditions in the order granting the charter.

13 (d) Any order entered by the Commissioner with respect to a charter application
14 shall be subject to review by the State Banking Commission for entry of a final agency
15 decision.

16 **"§ 53-328. Issuance of charter.**

17 (a) A state trust company may not engage in the trust business until it receives its
18 charter approved by the Commissioner. The Commissioner may not approve the charter
19 until the state trust company has:

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

23 (2) Elected or qualified the initial officers and directors named in the
24 application for charter or other officers and directors approved by the
25 Commissioner; and

26 (3) Complied with all other requirements of this Article relative to the
27 organization of a state trust company.

28 (b) If a state trust company does not open and engage in the trust business within
29 six months after the date it receives its charter or conditional approval of application for
30 charter, or within a further period as extended by the Commissioner, the Commissioner
31 shall revoke the charter or cancel the conditional approval of application for charter
32 without judicial action.

33 **"§ 53-329. Required capital.**

34 (a) The Commissioner may not approve a charter to a state trust company having
35 required equity capital of less than three million dollars (\$3,000,000), except as provided
36 in subsection (b) of this section.

37 (b) The Commissioner may require additional equity capital for a proposed or
38 existing state trust company if the Commissioner finds the condition and operation of the
39 existing state trust company or the proposed scope or type of operation of a proposed
40 state trust company requires additional equity capital consistent with the safety and
41 soundness of the state trust company. The Commissioner may, in the exercise of
42 discretion consistent with protecting safety and soundness, reduce the amount of
43 minimum equity capital required for a proposed or existing state trust company, if the

1 Commissioner finds the condition and operation of an existing state trust company or the
2 proposed scope or type of operation of a proposed state trust company permits reduced
3 equity capital consistent with the safety and soundness of the state trust company. The
4 safety and soundness factors to be considered by the Commissioner in the exercise of the
5 Commissioner's discretion include:

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

20 (c) The proposed effective date of an order requiring an existing state trust
21 company to increase its equity capital shall be stated in the order as of or after the twenty-
22 first day following the date the proposed order is mailed or delivered. Unless the state
23 trust company requests a hearing before the Commissioner in writing before the effective
24 date of the proposed order, the order becomes effective and is final and nonappealable.
25 This subsection does not prohibit an application to reduce equity capital requirements of
26 a proposed or an existing state trust company under subsection (b) of this section.

27 (d) Subject to subsection (b) of this section, a state trust company to which the
28 Commissioner issues a charter shall at all times maintain capital in at least the amount
29 required under subsection (a) of this section, plus any additional amount or less any
30 reduction the Commissioner directs under subsection (b) of this section.

31 **"§ 53-330. Application of laws relating to general business corporations.**

32 (a) The North Carolina Business Corporation Act, as codified in Chapter 55 of the
33 General Statutes, applies to a trust company to the extent not inconsistent with this
34 Article or the proper business of a trust company, except that, unless expressly authorized
35 by this Article or a rule adopted by the State Banking Commission, a trust company may
36 not take an action authorized by the North Carolina Business Corporation Act regarding
37 its corporate status, capital structure, or a matter of corporate governance, of the type for
38 which the North Carolina Business Corporation Act would require a filing with the
39 Secretary of State, without first obtaining the approval of the Commissioner.

40 (b) The State Banking Commission may adopt rules to limit or refine the
41 applicability of subsection (a) of this section to a trust company or to alter or supplement
42 the procedures and requirements of the North Carolina Business Corporation Act
43 applicable to an action taken under this Article.

1 **"§ 53-331. Amendment of state trust company articles of incorporation.**

2 (a) A state trust company that has been granted a charter under G.S. 53-328 or a
3 predecessor statute may amend or restate its articles of incorporation for any lawful
4 purpose, including the creation of authorized but unissued shares in one or more classes
5 or series.

6 (b) An amendment authorizing the issuance of shares in series shall contain:

7 (1) The designation of each series and any variations in the preferences,
8 limitations, and relative rights among series to the extent that the
9 preferences, limitations, and relative rights are to be established in the
10 articles of incorporation; and

11 (2) A statement of any authority to be vested in the board to establish series
12 and determine the preferences, limitations, and relative rights of each
13 series.

14 (c) Amendment or restatement of the articles of incorporation of a state trust
15 company and approval of the board and shareholders shall be made or obtained in
16 accordance with provisions of Chapter 55 of the General Statutes for the amendment or
17 restatement of articles of incorporation except as otherwise provided by this Article or
18 rules adopted by the State Banking Commission. Unless the submission presents novel
19 or unusual questions, the Commissioner shall approve or reject the amendment or
20 restatement not later than 10 days after the date the Commissioner considers the
21 submission informationally complete. The Commissioner may require the submission of
22 additional information as considered necessary to an informed decision to approve or
23 reject any amendment or restatement of articles of incorporation under this section.

24 **"§ 53-332. Establishing a series of shares.**

25 (a) If the articles of incorporation expressly give the board authority to establish
26 series and determine the preferences, limitations, and relative rights of each series of
27 shares, the board may do so only in compliance with this section and any rules adopted
28 by the State Banking Commission.

29 (b) A series of shares may be established in the manner provided by the provisions
30 of Chapter 55 of the General Statutes, but the shares of the series may not be issued and
31 sold except upon compliance with this section. Unless the submission presents novel or
32 unusual questions, the Commissioner shall approve or reject the series not later than 10
33 days after the date the Commissioner considers the submission informationally complete.
34 The Commissioner may require the submission of additional information as considered
35 necessary to an informed decision.

36 **"§ 53-333. Change in outstanding capital and surplus.**

37 (a) A state trust company may not reduce or increase its outstanding capital
38 through dividend, redemption, issuance of shares, or otherwise, without the prior
39 approval of the Commissioner, except as permitted by this section or rules adopted by the
40 State Banking Commission.

41 (b) Unless otherwise restricted by rules, prior approval is not required for an
42 increase in capital accomplished through:

43 (1) Issuance of shares of common stock for cash;

1 (2) Declaration and payment of pro rata share dividends as defined in
2 Chapter 55 of the General Statutes.

3 (c) Prior approval is not required for a decrease in surplus caused by incurred
4 losses in excess of undivided profits.

5 **"§ 53-334. Capital notes or debentures.**

6 (a) With the prior written approval of the Commissioner, any state trust company
7 may, at any time, through action of its board, and without requiring action of its
8 shareholders, issue and sell its capital notes or debentures which may be subordinate to
9 other claims, including the claims of other creditors or classes of creditors or the
10 shareholders.

11 (b) Capital notes or debentures may be convertible into shares of any class or
12 series. The issuance and sale of convertible capital notes or debentures are subject to
13 satisfaction of preemptive rights, if any, to the extent provided by law.

14 (c) Without the prior written approval of the Commissioner, interest due or
15 principal repayable on outstanding capital notes or debentures may not be paid by a state
16 trust company when the state trust company is in hazardous condition or insolvent, as
17 determined by the Commissioner, or to the extent that payment will cause the state trust
18 company to be in hazardous condition or insolvent.

19 (d) The amount of any outstanding capital notes or debentures that meet the
20 requirements of this section and that are subordinated to unsecured creditors of the state
21 trust company may be included in equity capital of the state trust company for purposes
22 of determining hazardous condition or insolvency, and for any other purposes provided
23 by rules adopted under this Article.

24 **"SUBPART C. INVESTMENTS AND LOANS.**

25 **"§ 53-335. Investment in state trust company facilities.**

26 (a) For the purposes of this Part, 'state trust company facility' means real estate,
27 including an improvement, owned, or leased to the extent the lease or the leasehold
28 improvements are capitalized, by a state trust company for the purpose of:

29 (1) Providing space for state trust company employees to perform their
30 duties and space for parking by state trust company employees and
31 customers;

32 (2) Conducting trust business, including meeting the reasonable needs and
33 convenience of the state trust company's customers, computer
34 operations, document and other item processing, maintenance, and
35 record retention, and storage;

36 (3) Holding, improving, and occupying as an incident to future expansion
37 of the state trust company's facilities; or

38 (4) Conducting another activity authorized by rules adopted by the State
39 Banking Commission.

40 (b) Without the prior written approval of the Commissioner, a state trust company
41 may not directly or indirectly invest an amount in excess of its capital in state trust
42 company facilities, furniture, fixtures, and equipment. Except as otherwise provided by

1 rules adopted by the State Banking Commission, in computing this limitation a state trust
2 company shall include:

- 3 (1) Its direct investment in state trust company facilities;
4 (2) Any investment in equity or investment securities of a company holding
5 title to a facility used by the state trust company for the purposes
6 specified by subsection (a) of this section;
7 (3) Any loan made by the state trust company to or on the security of equity
8 or investment securities issued by a company holding title to a facility
9 used by the state trust company; and
10 (4) Any indebtedness incurred on state trust company facilities by a
11 company:
12 a. That holds title to the facility;
13 b. That is an affiliate of the state trust company; and
14 c. In which the state trust company is invested in the manner
15 described by subdivision (2) or (3) of this subsection.

16 Except as otherwise provided by rules adopted by the State Banking Commission, in
17 computing the limitation, a state trust company may exclude an amount included under
18 subdivisions (2) through (4) of this subsection to the extent any lease of a facility
19 from the company holding title to the facility is capitalized on the books of the state trust
20 company.

21 (c) Real estate acquired under subdivision (3) of subsection (a) of this section and
22 not improved and occupied by the state trust company ceases to be a state trust company
23 facility on the third anniversary of the date of its acquisition, unless the Commissioner on
24 application grants written approval to further delay in the improvement and occupation of
25 the property by the state trust company.

26 (d) A state trust company shall comply with generally accepted accounting
27 principles, consistently applied, in accounting for its investment in and depreciation of
28 state trust company facilities, furniture, fixtures, and equipment.

29 **"§ 53-336. Other real estate.**

30 (a) A state trust company may not acquire real estate except:

- 31 (1) As permitted by G.S. 53-335 or as otherwise provided by this Part,
32 including rules adopted by the State Banking Commission;
33 (2) If necessary to avoid or minimize a loss on a loan or investment
34 previously made in good faith; or
35 (3) With the prior written approval of the Commissioner.

36 (b) To the extent reasonably necessary to avoid or minimize loss on real estate
37 acquired as permitted by subsection (a) of this section, a state trust company may
38 exchange real estate for other real estate or personal property, invest additional funds in
39 or improve real estate acquired under this subsection or subsection (a) of this section, or
40 acquire additional real estate.

41 (c) A state trust company shall dispose of any real estate subject to subdivisions
42 (1) and (2) of subsection (a) of this section not later than:

- 43 (1) The fifth anniversary of the date:

- 1 a. It was acquired, except as otherwise provided by rules adopted
2 by the State Banking Commission;
3 b. It ceases to be used as a state trust company facility; or
4 (2) The third anniversary of the date it ceases to be a state trust company
5 facility as provided by G.S. 53-335.
6 (d) The Commissioner on application may grant one or more extensions of time
7 for disposing of real estate if the Commissioner determines that:
8 (1) The state trust company has made a good faith effort to dispose of the
9 real estate; or
10 (2) Disposal of the real estate would be detrimental to the state trust
11 company.

12 **"§ 53-337. Securities.**

13 (a) A state trust company may invest its corporate funds in any type or character of
14 equity or investment securities subject to the limitations provided by this section.

15 (b) Unless the Commissioner approves maintenance of a lesser amount in writing,
16 a state trust company shall invest and maintain an amount equal to at least forty percent
17 (40%) of the state trust company's capital under G.S. 53-329 in unencumbered cash, cash
18 equivalents, and readily marketable securities.

19 (c) Subject to subsection (d) of this section, the total investment in equity and
20 investment securities of any one issuer, obligor, or maker, held by the state trust company
21 for its own account, may not exceed an amount equal to fifteen percent (15%) of the state
22 trust company's capital. The Commissioner may authorize investments in excess of this
23 limitation on written application if the Commissioner concludes that:

- 24 (1) The excess investment is not prohibited by other applicable law; and
25 (2) The safety and soundness of the requesting state trust company is not
26 adversely affected.

27 (d) Notwithstanding subsection (c) of this section, a state trust company may
28 purchase for its own account, without limitation, and subject only to the exercise of
29 prudent judgment:

- 30 (1) Bonds and other legally created general obligations of a state, an
31 agency, or political subdivision of a state, the United States, or an
32 agency or instrumentality of the United States;
33 (2) An investment security that this State, an agency or political subdivision
34 of this State, the United States, or an agency or instrumentality of the
35 United States has unconditionally agreed to purchase, insure, or
36 guarantee;
37 (3) Securities that are offered and sold under 15 U.S.C. § 77d(5);
38 (4) Mortgage-related securities as defined in 15 U.S.C. § 78c(a), except that
39 notwithstanding section 347 of the Riegle Community Development and
40 Regulatory Improvement Act of 1994, a note or obligation that is
41 secured by a first lien on one or more parcels of real estate on which is
42 located one or more commercial structures is subject to the limitations
43 of subsection (c) of this section;

1 (5) Investment securities issued or guaranteed by the Federal Home Loan
2 Mortgage Corporation, the Federal National Mortgage Association, the
3 Government National Mortgage Association, the Federal Agricultural
4 Mortgage Association, or the Federal Farm Credit Banks Funding
5 Corporation;

6 (6) Investment securities issued or guaranteed by the North American
7 Development Bank; or

8 (7) Securities issued by a Federal Home Loan Bank.

9 (e) Notwithstanding 15 U.S.C. § 77r-1(c), subsection (c) of this section applies to
10 investments in small business-related securities as defined by 15 U.S.C. § 78c(a).

11 (f) The State Banking Commission may adopt rules to establish limits,
12 requirements, or exemptions other than those specified by this section for particular
13 classes or categories of investment, or limit or expand investment authority for state trust
14 companies for particular classes or categories of securities or other property.

15 **"§ 53-338. Transactions in state trust company shares.**

16 (a) A state trust company may acquire its own shares if:

17 (1) The amount of its undivided profits is sufficient to fully absorb the
18 acquisition of the shares under regulatory accounting principles; or

19 (2) The state trust company obtains the prior written approval of the
20 Commissioner.

21 (b) A state trust company may acquire a lien upon its own shares if:

22 (1) The aggregate amount of indebtedness so secured is less than the
23 amount of the state trust company's undivided profits; or

24 (2) The state trust company obtains the prior written approval of the
25 Commissioner.

26 (c) Except with the prior written approval of the Commissioner:

27 (1) The state trust company may not hold its own shares as treasury stock
28 for more than two years; and

29 (2) A lien acquired under this section may not by its original terms extend
30 for more than two years.

31 **"§ 53-339. Subsidiaries.**

32 (a) Except as otherwise provided by this Article or rules adopted by the State
33 Banking Commission, a state trust company may acquire or establish a subsidiary to
34 conduct any activity that may be conducted lawfully through the form of organization
35 chosen for the subsidiary.

36 (b) A state trust company may not invest more than an amount equal to fifteen
37 percent (15%) of its capital in a single subsidiary and may not invest an amount in excess
38 of its capital in all subsidiaries. The amount of a state trust company's investment in a
39 subsidiary is the total amount of the state trust company's investment in equity or
40 investment securities issued by its subsidiary and any loans and extensions of credit from
41 the state trust company to its subsidiary. The Commissioner may authorize investments in
42 excess of these limitations on written application if the Commissioner concludes that:

43 (1) The excess investment is not prohibited by other applicable law; and

1 (2) The safety and soundness of the requesting state trust company is not
2 adversely affected.

3 (c) A state trust company that intends to acquire, establish, or perform new
4 activities through a subsidiary shall submit a letter to the Commissioner describing in
5 detail the proposed activities of the subsidiary.

6 (d) The state trust company may acquire or establish a subsidiary or begin
7 performing new activities in an existing subsidiary 30 days following the date the
8 Commissioner receives the state trust company's letter, unless the Commissioner
9 specifies an earlier or later date. The Commissioner may extend the 30-day period of
10 review on a determination that the state trust company's letter raises issues that require
11 additional information or additional time for analysis. If the period of review is extended,
12 the state trust company may acquire or establish the subsidiary, or perform new activities
13 in an existing subsidiary, only on prior written approval of the Commissioner.

14 (e) A subsidiary of a state trust company is subject to regulation by the
15 Commissioner to the extent provided by this Article or rules adopted by the State
16 Banking Commission. In the absence of limiting rules, the Commissioner may regulate a
17 subsidiary as if it were a state trust company.

18 **"§ 53-340. Mutual funds.**

19 (a) A state trust company may invest for its own account in equity securities of an
20 investment company registered under the Investment Company Act of 1940 (15 U.S.C. §
21 80a-1, et seq.) and the Securities Act of 1933 (15 U.S.C. § 77a, et seq.) if the portfolio of
22 the investment company consists wholly of investments in which the state trust company
23 could invest directly for its own account.

24 (b) If the portfolio of an investment company described in subsection (a) of this
25 section consists wholly of investments in which the state trust company could invest
26 directly without limitation under G.S. 53-337(d), the state trust company may invest in
27 the investment company without limitation.

28 (c) If the portfolio of an investment company described in subsection (a) of this
29 section contains any investment that is subject to the limits of G.S. 53-337(c), the state
30 trust company may invest in the investment company not more than an amount equal to
31 fifteen percent (15%) of the state trust company's capital. This provision does not apply
32 to a money market fund.

33 (d) In evaluating investment limits under this Part, a state trust company may not
34 be required to combine:

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

39 (2) The state trust company's own direct investment in the securities of an
40 issuer with the state trust company's pro rata share of the securities of
41 that issuer held by each investment company in which the state trust
42 company has invested under this section.

43 **"§ 53-341. Engaging in commerce prohibited.**

1 Except as otherwise provided by this Part, or rules adopted by the State Banking
2 Commission, a state trust company may not invest its funds in trade or commerce by
3 buying, selling, or otherwise dealing in goods or by owning or operating a business not
4 part of the state trust business, except as necessary to fulfill a fiduciary obligation to a
5 client.

6 **"§ 53-342. Lending limits.**

7 Subject to rules adopted by the State Banking Commission for the short-term
8 extensions of credit to trust or other account relationships, a state trust company shall not
9 engage in a loan business.

10 **"§ 53-343. Lease financing transactions.**

11 A state trust company may not engage in leasing financing transactions, however this
12 section shall not prohibit a state trust company from leasing property or equipment to
13 conduct its authorized business.

14 **"§ 53-344. Trust deposits.**

15 (a) A state trust company may deposit trust funds with itself as an investment if
16 authorized by the seller or the beneficiary provided:

17 (1) It maintains as security for the deposits a separate fund of securities,
18 legal for trust investments, under control of a federal reserve bank or a
19 clearing corporation, as defined by either this State or elsewhere;

20 (2) The total market value of the security is at all times at least equal to the
21 amount of the deposit;

22 (3) The separate fund is designated as such; and

23 (4) The separate fund is maintained under the control of another trust
24 institution, bank, or government agency.

25 (b) A state trust company may make periodic withdrawals from or additions to the
26 securities fund required by subsection (a) of this section as long as the required value is
27 maintained. Income from the securities in the fund belongs to the state trust company.

28 (c) Security for a deposit under this section is not required for a deposit under
29 subsection (a) of this section to the extent the deposit is insured by the Federal Deposit
30 Insurance Corporation or its successor.

31 **"§ 53-345. Common investment funds.**

32 (a) A state trust company may establish common trust funds to provide investment
33 to itself as a fiduciary.

34 (b) The State Banking Commission may adopt rules to administer and carry out
35 this section, including rules regarding investment and participation limitations, disclosure
36 of fees, audit requirements, investment authority for particular classes or categories of
37 securities or other property, advertising, exemptions, and other requirements that may be
38 necessary to carry out this section.

39 **"§ 53-346. Borrowing limit.**

40 Except with the prior written approval of the Commissioner, a state trust company
41 may not have liabilities outstanding exceeding an amount equal to five times its capital.

42 **"§ 53-347. Pledge of assets.**

1 A state trust company may not pledge or create a lien on any of its assets, except to
2 secure the repayment of money borrowed or as specifically authorized or required by
3 G.S. 53-344, or by rules adopted by the State Banking Commission. An act, deed,
4 conveyance, pledge, or contract in violation of this section is void.

5 **"SUBPART D. OWNERSHIP; GOVERNANCE; MERGERS.**

6 **"§ 53-348. Acquisition of control.**

7 (a) Except as expressly otherwise permitted, a person may not, without the prior
8 written approval of the Commissioner, directly or indirectly acquire control of a state
9 trust company through a change in a legal or beneficial interest in voting securities of a
10 state trust company or a corporation or other entity owning voting securities of a state
11 trust company.

12 (b) This Part does not prohibit a person from negotiating to acquire, but not
13 acquiring, control of a state trust company or a person from controlling a state trust
14 company.

15 (c) This section does not apply to:

16 (1) The acquisition of securities in connection with the exercise of a
17 security interest or otherwise in full or partial satisfaction of a debt
18 previously contracted for in good faith if the acquiring person files
19 written notice of acquisition with the Commissioner before the person
20 votes the securities acquired.

21 (2) The acquisition of voting securities in any class or series by a
22 controlling person who has previously complied with and received
23 approval under this Article or who was identified as a controlling person
24 in a prior application filed with and approved by the Commissioner.

25 (3) An acquisition or transfer by operation of law, will, or intestate
26 succession if the acquiring person files written notice of acquisition with
27 the Commissioner before the person votes the securities acquired.

28 (4) A transaction exempted by the Commissioner by rule or order because
29 (i) the transaction is not within the purposes of this Article, or (ii)
30 regulation of the transaction is not necessary or appropriate to achieve
31 the objectives of this Article.

32 **"§ 53-349. Application regarding acquisition of control.**

33 (a) The proposed transferee seeking approval to acquire control of a state trust
34 company or a person that controls a state trust company shall file with the Commissioner:

35 (1) An application in the form adopted by the Commissioner;

36 (2) The filing fee required by statute or rule; and

37 (3) All information required by rule or that the Commissioner requires in a
38 particular application as necessary to make an informed decision to
39 approve or reject the proposed acquisition.

40 (b) If the proposed transferee includes any group of individuals or entities acting in
41 concert, the information required by the Commissioner may be required of each member
42 of the group.

1 (c) Personal financial information obtained by the Commissioner under this
2 section is confidential and may not be disclosed by the Commissioner or any employee of
3 the Commissioner's office.

4 (d) If the proposed transferee is not a North Carolina resident, a North Carolina
5 corporation, or an out-of-state corporation qualified to do business in this State, a written
6 consent to service of process will be required of a resident of this State in any action or
7 suit arising out of or connected with the proposed acquisition.

8 (e) The proposed transferee shall publish notice of the application, its date of
9 filing, and the identity of each participant, in the form specified by the Commissioner, in
10 a newspaper of general circulation in the county where the state trust company's home
11 office is located, promptly after the Commissioner accepts the application as complete.
12 Publication of notice of an application filed in contemplation of a public tender offer
13 subject to the requirements of 15 U.S.C. § 78n(d)(1) may be deferred for not more than
14 34 days after the date the application is filed if:

15 (1) The proposed transferee requests confidential treatment and represents
16 that a public announcement of the tender offer and the filing of
17 appropriate forms with the Securities and Exchange Commission or the
18 appropriate federal banking agency, as applicable, will occur within the
19 period of deferral; and

20 (2) The Commissioner determines that the public interest will not be
21 harmed by the requested confidential treatment.

22 (f) The Commissioner may waive the requirement that a notice be published or
23 permit delayed publication on a determination that waiver or delay is in the public
24 interest.

25 **"§ 53-350. Hearing and decision on acquisition of control.**

26 (a) Not later than the sixtieth day following the date the notice is published, the
27 Commissioner shall approve the application or set the application for hearing. If the
28 Commissioner sets a hearing, the Commissioner shall conduct the hearing pursuant to
29 Chapter 150B of the General Statutes.

30 (b) Based on the record, the Commissioner may issue an order denying an
31 application if:

32 (1) The acquisition would substantially lessen competition, be in restraint of
33 trade, result in a monopoly, or be in furtherance of a combination or
34 conspiracy to monopolize or attempt to monopolize the trust industry in
35 any part of this State, unless:

36 a. The anticompétitive effects of the proposed acquisition are
37 clearly outweighed in the public interest by the probable effect of
38 acquisition in meeting the convenience and needs of the
39 community to be served; and

40 b. The proposed acquisition is not in violation of the law of this
41 State or the United States;

- 1 (2) The financial condition of the proposed transferee, or any member of a
2 group composing the proposed transferee, might jeopardize the financial
3 stability of the state trust company being acquired;
- 4 (3) Plans or proposals to operate, liquidate, or sell the state trust company
5 or its assets are not in the best interest of the state trust company;
- 6 (4) The experience, ability, standing, competence, trustworthiness, and
7 integrity of the proposed transferee, or any member of a group
8 comprising the proposed transferee, are insufficient to justify a belief
9 that the state trust company will be free from improper or unlawful
10 influence or interference with respect to the state trust company's
11 operation in compliance with law;
- 12 (5) The state trust company will not be solvent, have adequate
13 capitalization, or be in compliance with the laws of this State after the
14 acquisition;
- 15 (6) The proposed transferee has failed to furnish all information pertinent to
16 the application reasonably required by the Commissioner; or
- 17 (7) The proposed transferee is not acting in good faith.

18 (c) If an application filed under this section is approved by the Commissioner, the
19 transaction may be consummated. Any written commitment from the proposed transferee
20 offered to and accepted by the Commissioner as a condition for approval of the
21 application is enforceable against the state trust company and the transferee and is
22 considered for all purposes an agreement under this Article.

23 **"§ 53-351. Appeal.**

24 Any order entered by the Commissioner with respect to an application for acquisition
25 or control of a state trust company shall be subject to review by the State Banking
26 Commission for entry of a final agency decision.

27 **"§ 53-352. Objection to other transfer.**

28 Nothing in this Article shall be construed to prevent the Commissioner from
29 investigating, commenting on, or seeking to enjoin or set aside a transfer of voting
30 securities that evidence a direct or indirect interest in a state trust company, regardless of
31 whether the transfer is included within this Article, if the Commissioner considers the
32 transfer to be against the public interest.

33 **"§ 53-353. Criminal penalties.**

34 A person who knowingly fails or refuses to file the application required by G.S. 53-
35 349 shall be guilty of a Class 1 misdemeanor.

36 **"§ 53-354. Voting securities held by state trust company.**

37 (a) Voting securities of a state trust company held by it in a fiduciary capacity
38 under a will or trust, whether registered in its own name or in the name of its nominee,
39 may not be voted in the election of directors or on a matter affecting the compensation of
40 directors, officers, or employees of the state trust company in that capacity, unless:

- 41 (1) Under the terms of the will or trust, the manner in which the voting
42 securities are to be voted may be determined by a donor or beneficiary

1 of the will or trust, and the donor or beneficiary actually makes the
2 determination in the matter at issue;

3 (2) The terms of the will or trust expressly direct the manner in which the
4 securities shall be voted to the extent that no discretion is vested in the
5 state trust company as fiduciary; or

6 (3) The securities are voted solely by a cofiduciary that is not an affiliate of
7 the state trust company, as if the cofiduciary were the sole fiduciary.

8 (b) Voting securities of a state trust company that cannot be voted under this
9 section are considered to be authorized but unissued for purposes of determining the
10 procedures for and results of the affected vote.

11 **"§ 53-355. Bylaws.**

12 Each state trust company shall adopt bylaws and may amend its bylaws from time to
13 time for the purposes of and in accordance with the procedures set forth in Chapter 55 of
14 the General Statutes.

15 **"§ 53-356. Board of directors.**

16 (a) The board of a state trust company shall consist of not fewer than five or more
17 than 25 directors, the majority of whom shall be residents of this State. The principal
18 executive officer of the state trust company shall be a member of the board. The
19 principal executive officer acting in the capacity of a board member is the board's
20 presiding officer unless the board elects a different presiding officer to perform the duties
21 as designated by the board.

22 (b) Unless the Commissioner consents otherwise in writing, a person may not
23 serve as director of a state trust company if:

24 (1) The state trust company incurs an unreimbursed loss attributable to a
25 charged-off obligation of or holds a judgment against the person or an
26 entity that was controlled by the person at the time of funding and at the
27 time of default on the loan that gave rise to the judgment or charged-off
28 obligation;

29 (2) The person has been convicted of a felony; or

30 (3) The person has violated a provision of Chapter 36A of the General
31 Statutes, relating to loan of trust funds and purchase or sale of trust
32 property by the trustee, and the violation has not been corrected.

33 (c) If a state trust company does not elect directors before the sixty-first day
34 following the date of its regular annual meeting, the Commissioner may appoint a
35 conservator under G.S. 53-421 to operate the state trust company and elect directors, as
36 appropriate. If the conservator is unable to locate or elect persons willing and able to
37 serve as directors, the Commissioner may close the state trust company for liquidation.

38 (d) A vacancy on the board that reduces the number of directors to fewer than five
39 shall be filled not later than the thirtieth day following the date the vacancy occurs. After
40 30 days following the date the vacancy occurs, the Commissioner may appoint a
41 conservator under G.S. 53-421 to operate the state trust company and elect a board of not
42 fewer than five persons to resolve the vacancy. If the conservator is unable to locate or

1 elect five persons willing and able to serve as directors, the Commissioner may close the
2 state trust company for liquidation.

3 (e) Before each term to which a person is elected to serve as a director of a state
4 trust company, the person shall submit an affidavit for filing in the minutes of the state
5 trust company stating that the person, to the extent applicable:

- 6 (1) Accepts the position and is not disqualified from serving in the position;
7 (2) Will not violate or knowingly permit an officer, director, or employee of
8 the state trust company to violate any law applicable to the conduct of
9 business of the state trust company; and
10 (3) Will diligently perform the duties of the position.

11 (f) An advisory director is not considered a director if the director:

- 12 (1) Is not elected by the shareholders of the state trust company;
13 (2) Does not vote on matters before the board or a committee of the board
14 and is not counted for purposes of determining a quorum of the board or
15 committee; and
16 (3) Provides solely general policy advice to the board.

17 **"§ 53-357. Required board meetings.**

18 The board of a state trust company shall hold at least one regular meeting each
19 quarter. At each regular meeting the board shall review and approve the minutes of the
20 prior meeting and review the operations, activities, and financial condition of the state
21 trust company. The board may designate committees from among its members to
22 perform these duties and approve or disapprove the committees' reports at each regular
23 meeting. All actions of the board shall be recorded in its minutes.

24 **"§ 53-358. Officers.**

25 (a) The board shall annually appoint the officers of the state trust company, who
26 shall serve at the pleasure of the board. The state trust company shall have a principal
27 executive officer primarily responsible for the execution of board policies and operation
28 of the state trust company, and an officer responsible for the maintenance and storage of
29 all corporate books and records of the state trust company, and for required attestation of
30 signatures. These positions may not be held by the same person. The board may appoint
31 other officers of the state trust company as the board considers necessary.

32 (b) Unless expressly authorized by a resolution of the board recorded in its
33 minutes, an officer or employee may not create or dispose of a state trust company asset
34 or create or incur a liability on behalf of the state trust company.

35 **"§ 53-359. Certain criminal offenses.**

36 (a) An officer, director, employee, or shareholder of a state trust company
37 commits an offense if the person knowingly:

- 38 (1) Conceals information or a fact, or removes, destroys, or conceals a book
39 or record of the state trust company for the purpose of concealing
40 information or a fact from the Commissioner or an agent of the
41 Commissioner; or

1 (2) For the purpose of concealing, removes or destroys any book or record
2 of the state trust company that is material to a pending or anticipated
3 legal or administrative proceeding.

4 (b) An officer, director, or employee of a state trust company commits an offense
5 if the person knowingly makes a false entry in the books or records or in any report or
6 statement of the state trust company.

7 (c) An offense under this section shall be a Class H felony.

8 **"§ 53-360. Transactions with management and affiliates.**

9 (a) Without the prior approval of a disinterested majority of the board recorded in
10 the minutes or, if a disinterested majority cannot be obtained, the prior written approval
11 of the Commissioner, a state trust company may not directly or indirectly:

12 (1) Sell or lease an asset of the state trust company to an officer, director, or
13 principal shareholder of the state trust company or an affiliate of the
14 state trust company;

15 (2) Purchase or lease an asset in which an officer, director, or principal
16 shareholder of the state trust company or an affiliate of the state trust
17 company has an interest; or

18 (3) Subject to G.S. 53-342 extend credit to an officer, director, or principal
19 shareholder of the state trust company or an affiliate of the state trust
20 company.

21 (b) Notwithstanding subsection (a) of this section, a lease transaction described in
22 subdivision (2) of subsection (a) of this section involving real property may not be
23 consummated, renewed, or extended without the prior written approval of the
24 Commissioner. For purposes of this subsection only, an affiliate of the state trust
25 company does not include a subsidiary of the state trust company.

26 (c) Subject to G.S. 53-342, a state trust company may not directly or indirectly
27 extend credit to an employee, officer, director, or principal shareholder of the state trust
28 company or an affiliate of the state trust company, unless:

29 (1) The extension of credit:

30 a. Is made on substantially the same terms, including interest rates
31 and collateral, as those prevailing at the time for comparable
32 transactions by the state trust company with persons who are not
33 employees, officers, directors, or principal shareholders or
34 affiliates of the state trust company; and

35 b. Does not involve more than the normal risk of repayment or
36 present other unfavorable features; and

37 (2) The state trust company follows credit underwriting procedures that are
38 not less stringent than those applicable to comparable transactions by
39 the state trust company with persons who are not employees, officers,
40 directors, or principal shareholders or affiliates of the state trust
41 company.

42 (d) An officer or director of the state trust company who knowingly participates in
43 or permits a violation of this section shall be guilty of a Class H felony.

1 (e) The State Banking Commission may adopt rules to administer and carry out
2 this section, including rules to establish limits, requirements, or exemptions other than
3 those specified by this section for particular categories of transactions.

4 **"§ 53-361. Fiduciary responsibility.**

5 The board of a state trust company is responsible for the proper exercise of fiduciary
6 powers by the state trust company and each matter pertinent to the exercise of fiduciary
7 powers, including:

- 8 (1) The determination of policies;
9 (2) The investment and disposition of property held in a fiduciary capacity;
10 and
11 (3) The direction and review of the actions of each officer, employee, and
12 committee used by the state trust company in the exercise of its
13 fiduciary powers.

14 **"§ 53-362. Record keeping.**

15 A state trust company shall keep its fiduciary records separate and distinct from other
16 records of the state trust company. The fiduciary records shall contain all material
17 information relative to each account as appropriate under the circumstances.

18 **"§ 53-363. Bonding requirements.**

19 (a) The board of a state trust company shall require protection and indemnity for
20 clients in reasonable amounts established by rules adopted under this Article, against
21 dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses, with
22 corporate insurance or surety companies:

- 23 (1) Authorized to do business in this State; or
24 (2) Acceptable to the Commissioner and otherwise lawfully permitted to
25 issue the coverage against those losses in this State.

26 (b) Except as otherwise provided by rule, coverage required under subsection (a)
27 of this section shall include each director, officer, and employee of the state trust
28 company without regard to whether the person receives salary or other compensation.

29 **"§ 53-364. Reports of apparent crime.**

30 A trust company that is the victim of a robbery, has a shortage of corporate or
31 fiduciary funds in excess of five thousand dollars (\$5,000), or is the victim of an apparent
32 or suspected misapplication of its corporate or fiduciary funds or property in any amount
33 by a director, officer, or employee shall report the robbery, shortage, or apparent or
34 suspected misapplication to the Commissioner within 48 hours after the time it is
35 discovered. The initial report may be oral if the report is promptly confirmed in writing.
36 The trust company or a director, officer, employee, or agent is not subject to liability for
37 defamation or any other charge resulting from information supplied in the report.

38 **"§ 53-365. Merger authority.**

39 (a) With the prior written approval of the Commissioner, a state trust company
40 may merge or consolidate with another trust company or corporate entity.

41 (b) Implementation of the plan of merger by the parties and approval of the board
42 or shareholders shall be made or obtained as provided by Chapter 55 of the General
43 Statutes.

1 **"§ 53-366. Merger application.**

2 (a) A copy of the original articles of merger and an application in the form
3 required by the Commissioner shall be filed with the Commissioner. The Commissioner
4 shall investigate the condition of the merging parties and may require the submission of
5 additional information as considered necessary for an informed decision.

6 (b) The Commissioner may approve the merger if:

7 (1) Each resulting state trust company will be solvent and have adequate
8 capitalization for its business and location;

9 (2) Each resulting state trust company has in all respects complied with the
10 statutes and rules relative to the organization of a state trust company;

11 (3) All fiduciary obligations and liabilities of each state trust company that
12 is a party to the merger have been discharged properly or otherwise
13 have been assumed or retained by a state trust company or other
14 fiduciary lawfully;

15 (4) Each surviving, new, or acquiring party that is not authorized to engage
16 in the trust business will not engage in the trust business and has in all
17 respects complied with the laws of this State; and

18 (5) All conditions imposed by the Commissioner have been satisfied or
19 otherwise resolved.

20 **"§ 53-367. Notice and investigation of merger; decision; hearing and appeal.**

21 (a) The Commissioner shall notify the parties to the transaction when the
22 application is complete and accepted for filing and all required fees have been paid.
23 Promptly following this notification, the parties shall publish notice of the proposed
24 merger and solicit comments in the form specified by the Commissioner to solicit the
25 views of potentially affected persons specified by the Commissioner by rule.

26 (b) At the expense of the parties to a merger, the Commissioner shall investigate
27 the proposed transaction, including the character of the proposed directors, officers, and
28 principal shareholders. The Commissioner shall prepare a report of the investigation, and
29 any person may request a copy of the nonconfidential portions of the report as provided
30 by Chapter 132 of the General Statutes. Rules adopted may specify the confidential and
31 nonconfidential character of information obtained by the Commissioner under this
32 section. Except as provided by rules regarding confidential information, the financial
33 statements of officers and directors are confidential and shall not be disclosed to the
34 public.

35 (c) Any person may file a protest to a merger application. The manner and time in
36 which protest may be filed shall be adopted by the Commission by rule.

37 (d) Not later than the thirtieth day following the last date notification is published
38 pursuant to subsection (a) of this section, the Commissioner shall determine whether the
39 application meets the requirements of G.S. 53-365, based on the application and
40 investigation, and shall enter an order approving the merger or shall set a hearing
41 pursuant to Article 3A of Chapter 150B of the General Statutes.

1 (e) Any order entered by the Commissioner with respect to an application for
2 merger shall be subject to review by the State Banking Commission for entry of a final
3 agency decision.

4 **"§ 53-368. Rights of dissenters to mergers.**

5 A shareholder may dissent from the merger to the extent and by following the
6 procedure provided by Chapter 55 of the General Statutes.

7 **"§ 53-369. Authority to act as disbursing agent.**

8 The purchasing trust institution may hold the purchase price and any additional funds
9 delivered to it by the selling institution in trust for the selling institution and may act as
10 agent of the selling institution in disbursing those funds in trust by paying the creditors of
11 the selling institution. If the purchasing trust institution acts under a written agency
12 contract that (i) is approved by the Commissioner; (ii) specifically names each
13 creditor and the amount to be paid each; and (iii) limits the agency to the purely
14 ministerial act of paying creditors the amounts due them as determined by the selling
15 institution and does not involve discretionary duties or authority other than the
16 identification of the creditors named, then the purchasing trust institution:

17 (1) May rely on the contract of agency and the instructions included in it;
18 and

19 (2) Is not responsible for:

20 a. Any error made by the selling institution in determining its
21 liabilities, and creditors to whom the liabilities are due, or the
22 amounts due the creditors; or

23 b. Any preference that results from the payments made under the
24 contract of agency and the instructions included in it.

25 **"§ 53-370. Liquidation of selling state trust company.**

26 If the selling trust institution is at any time after the sale of assets voluntarily or
27 involuntarily closed for liquidation by a State or federal regulatory agency, the
28 purchasing trust company shall pay to the receiver of the selling institution the balance of
29 the funds held by it in trust for the selling institution and not yet paid to the creditors of
30 the selling institution. Without further action, the purchasing trust institution is
31 discharged of all responsibilities to the selling institution, its receiver, or its creditors or
32 shareholders.

33 **"§ 53-371. Payment to creditors.**

34 Payment to a creditor of the selling institution of the amount to be paid the person
35 under the terms of the contract of agency may be made by the purchasing trust company
36 by (i) opening an agency account in the name of the creditor, (ii) crediting the
37 account with the amount to be paid the creditor under the terms of the agency contract,
38 and (iii) mailing or personally delivering a duplicate ticket evidencing the credit to the
39 creditor at the person's address shown in the records of the selling institution. The
40 relationship between the purchasing trust institution and the creditor is that of agent to
41 creditor only to the extent of the credit reflected by the ticket.

42 **"§ 53-372. Sale of assets.**

1 (a) The board of a state trust company, with the Commissioner's approval, may
2 cause a state trust company to sell all or substantially all of its assets, including the right
3 to control accounts established with the trust company, without shareholder approval if
4 the Commissioner finds:

5 (1) The interests of the state trust company's clients and creditors are
6 jeopardized because of insolvency or imminent insolvency of the state
7 trust company; and

8 (2) The sale is in the best interest of the state trust company's clients and
9 creditors.

10 (b) A sale under this section shall include an assumption and promise by the buyer
11 to pay or otherwise discharge:

12 (1) All of the state trust company's liabilities to clients and depositors;

13 (2) All of the state trust company's liabilities for salaries of the state trust
14 company's employees incurred before the date of the sale;

15 (3) Obligations incurred by the Commissioner arising out of the supervision
16 or sale of the state trust company; and

17 (4) Fees and assessments due the Commissioner's office.

18 (c) This section does not limit the incidental power of a state trust company to buy
19 and sell assets in the ordinary course of business.

20 (d) This section does not affect the Commissioner's right to take action under
21 another law. The sale by a trust company of all or substantially all of its assets with
22 shareholder approval is considered a voluntary dissolution and liquidation and is
23 governed by Subpart A of Part 5 of this Article.

24 **"SUBPART E. PRIVATE TRUST COMPANIES.**

25 **"§ 53-373. Private Trust Companies.**

26 (a) The following definitions apply in this section:

27 (1) 'Family member' means any individual who is related within the fourth
28 degree of affinity or consanguinity to an individual or individuals who
29 control a private trust company or which is controlled by one or more
30 trusts or charitable organizations established by such individual or
31 individuals.

32 (2) 'Transact business with the general public' means any sales, solicitation,
33 arrangement, agreements, or transactions to provide trust or other
34 business services, whether or not for a fee, commission, or any other
35 type of remuneration, with any client that is not a family member or a
36 sole proprietorship, partnership, joint venture, association, trust, estate,
37 business trust, or other company that is not one hundred percent (100%)
38 owned by one or more family members.

39 (b) All individuals who control a private trust company or establish trusts or
40 charitable organizations controlling such private trust company must be related within the
41 second degree of affinity or consanguinity.

42 (c) A private trust company engaging in the trust business in this State shall
43 comply with each and every provision of this Article applicable to a trust company unless

1 expressly exempted therefrom in writing by the Commissioner pursuant to this section,
2 by rule adopted by the State Banking Commission or under a predecessor statute.

3 (d) A private trust company or proposed private trust company may request in
4 writing that it be exempted from specified provisions of sections G.S. 53-307(b), 53-
5 324(11), 53-325(b), 53-326(a) and (b), 53-329(a), 53-336, 53-337(b), (c) and (d), 53-
6 341, and 53-342. The Commissioner may grant the exemption in whole or in part if the
7 Commissioner finds that the private trust company does not and will not transact business
8 with the general public.

9 (e) At the expense of the private trust company, the Commissioner may examine
10 or investigate the private trust company in connection with an application for exemption.
11 Unless the application presents novel or unusual questions, the Commissioner shall
12 approve the application for exemption or set the application for hearing not later than the
13 sixty-first day after the date the Commissioner considers the application complete and
14 accepted for filing. The Commissioner may require the submission of additional
15 information as considered necessary to an informed decision.

16 (f) Any exemption granted under this section may be made subject to conditions
17 or limitations imposed by the Commissioner consistent with this Part.

18 (g) The State Banking Commission may adopt rules defining other circumstances
19 that do not constitute transaction of business with the public, specifying the provisions of
20 this Act that are subject to an exemption request, and establishing procedures and
21 requirements for obtaining, maintaining, or revoking exempt status.

22 **"§ 53-374. Requirements to apply for and maintain status as a private trust**
23 **company.**

24 (a) Application. –

25 (1) A private trust company requesting an exemption from the provisions of
26 this Article pursuant to G.S. 53-373 shall file an application with the
27 Commissioner containing the following:

28 a. A nonrefundable application fee as set by rules.

29 b. A detailed statement under oath showing the private trust
30 company's assets and liabilities as of the end of the month
31 previous to the filing of the application.

32 c. A statement under oath of the reason for requesting the
33 exemption.

34 d. A statement under oath that the private trust company is not
35 currently transacting business with the public and that the
36 company will not conduct business with the public without the
37 prior written permission of the Commissioner.

38 e. The current street mailing address and telephone number of the
39 physical location in this State at which the private trust company
40 will maintain its books and records, together with a statement
41 under oath that the address given is true and correct and is not a
42 U.S. Postal Service post office box or a private mailbox, postal
43 box, or mail drop.

- 1 f. Listing of the specific provisions of the Act for which the request
2 for exemption is made.
- 3 (2) The Commissioner shall not approve a private trust company exemption
4 unless the application is completed as required in paragraph (1) of this
5 section.
- 6 (b) Requirements. – To maintain status as an exempt private trust company under
7 this Article, the private trust company shall comply with the following:
- 8 (1) Transact no business with the public.
- 9 (2) File an annual certification that it is maintaining the conditions and
10 limitations of its exempt status. This annual certification shall be filed
11 on a form provided by the Commissioner and be accompanied by a fee
12 determined by the State Banking Commissioner by rule. The annual
13 certification shall be filed on or before December 31 of each year. No
14 annual certification shall be valid unless it bears an acknowledgment
15 stamped by the Commissioner. The Commissioner shall have 30 days
16 from the date of receipt to return a copy of the acknowledged annual
17 certification to the private trust company. The burden shall be on the
18 exempt private trust company to notify the Commissioner of any failure
19 to return an acknowledged copy of any annual certification within the
20 30-day period. The Commissioner may examine or investigate the
21 private state trust company periodically as necessary to verify the
22 certification.
- 23 (3) Comply with the principal office provisions of G.S. 53-300 of this
24 Article and with the address and telephone requirements of subsection
25 (a)(1)e. of this section.
- 26 (c) Change of Control. – Control of an exempt private trust company may not be
27 transferred or sold with exempt status. In any change of control, the acquiring control
28 person must comply with the provisions of this Article and the exempt status of the
29 private trust company shall automatically terminate upon the effective date of the
30 transfer. A separate application for exempt status must be filed if the acquiring person
31 wishes to obtain or continue an exemption pursuant to this section.
- 32 (d) Authority to Revoke. – The Commissioner shall have authority to revoke the
33 exempt status of a private trust company in the following circumstances:
- 34 (1) The exempt private trust company makes a false statement under oath
35 on any document required to be filed by the Article or by any rule
36 promulgated by the State Banking Commission.
- 37 (2) The exempt private trust company fails to submit to an examination as
38 required by G.S. 53-377.
- 39 (3) The exempt private trust company withholds requested information
40 from the Commissioner.
- 41 (4) The exempt private trust company violates any provision of this section
42 applicable to exempt private trust companies.

1 (e) Notification of Revocation of Exemption. – If the Commissioner determines
2 from examination or other credible evidence that an exempt private trust company has
3 violated any of the requirements of this section, the Commissioner may by personal
4 delivery or registered or certified mail, return receipt requested, notify the exempt private
5 trust company in writing that the private trust company's exempt status has been revoked.
6 The notification must state grounds for the revocation with reasonable certainty. The
7 notice must state its effective date, which may not be before the fifth day after the date
8 the notification is mailed or delivered. The revocation takes effect for the private trust
9 company if the private trust company does not request a hearing in writing before the
10 effective date. After taking effect the revocation is final and nonappealable as to that
11 private trust company, and the private trust company shall be subject to all of the
12 requirements and provisions of the Article applicable to nonexempt state trust companies.

13 (f) Compliance Period. – A private trust company shall have five calendar days
14 after the revocation is effective to comply with the provisions of this Article from which
15 it was formerly exempt. If, however, the Commissioner determines, at the time of
16 revocation, that the private trust company has been engaging in or attempting to engage
17 in acts intended or designed to deceive or defraud the public, the Commissioner may
18 shorten or eliminate, in the Commissioner's sole discretion, the five calendar days
19 compliance period.

20 (g) Remedies for Failure to Comply. – If the private trust company does not
21 comply with all of the provisions of this Article, including such capitalization
22 requirements as have been determined by the Commissioner as necessary to assure the
23 safety and soundness of the private trust company, within the prescribed time period, the
24 Commissioner may:

25 (1) Institute any action or remedy prescribed by this Article or any
26 applicable rule or regulation, or

27 (2) Refer the private trust company to the Attorney General for institution
28 of a quo warranto proceeding to revoke the charter.

29 (h) Private Trust Company Under Prior Law. – A private trust company that
30 currently has a valid exemption under a predecessor statute is considered exempt under
31 this Article.

32 **"§ 53-375. Conversion to public trust company.**

33 (a) A private trust company may terminate its status as a private trust company
34 and commence transacting business with the general public. A private trust company
35 desiring to commence transacting business with the general public shall file a notice on a
36 form prescribed by the Commissioner, which shall set forth the name of the private trust
37 company and an acknowledgment that any exemption granted or otherwise applicable to
38 the private trust company pursuant to G.S. 53-373 hereof shall cease to apply on the
39 effective date of such notice, furnish a copy of the resolution adopted by the board
40 authorizing the private trust company to commence transacting business with the general
41 public, and pay the filing fee, if any, prescribed by the Commissioner.

1 (b) The private trust company may commence transacting business with the
2 general public on the thirty-first day after the date the Commissioner receives the notice,
3 unless the Commissioner specifies an earlier or later date.

4 (c) The 30-day period of review may be extended by the Commissioner on
5 determination that the written notice raises issues that require additional information or
6 additional time for analysis. If the period for review is extended, the notificant may
7 commence transacting business with the public only on prior written approval by the
8 Commissioner.

9 (d) The Commissioner may deny approval of the notice of the private trust
10 company to commence transacting business with the general public if the Commissioner
11 finds that it lacks sufficient financial resources to undertake the proposed expansion
12 without adversely affecting its safety or soundness or that the proposed transacting of
13 business of the general public would be contrary to the public interest or if the
14 Commissioner determines that it will not within a reasonable period be in compliance
15 with any provision of this Article from which it had been previously exempted pursuant
16 to G.S. 53-373.

17 **"PART 4. ENFORCEMENT ACTIONS.**

18 **"SUBPART A. SUPERVISION AND EXAMINATION.**

19 **"§ 53-376. Authorized trust institution.**

20 For the purposes of this Part, the term 'authorized trust institution' shall mean any state
21 trust company, trust office, or representative trust office.

22 **"§ 53-377. Commissioner shall have supervision over authorized trust institutions** 23 **and shall examine.**

24 Every authorized trust institution shall be under the supervision of the Commissioner.
25 The Commissioner shall have the authority to periodically examine, and shall execute
26 and enforce through examiners and any other agents as are now or may hereafter be
27 created or appointed, all laws that are now or may be enacted relating to authorized trust
28 institutions. For the more complete and thorough enforcement of the provisions of this
29 Article, the State Banking Commission may adopt any rules not inconsistent with the
30 provisions of this Article, to carry out the provisions of the laws relating to authorized
31 trust institutions and to insure safe and conservative management of an authorized trust
32 institution under its supervision, taking into consideration the appropriate interest of the
33 creditors, stockholders, and the public in their relations with the authorized trust
34 institutions. All authorized trust institutions doing business under the provisions of this
35 Article shall conduct their business in a manner consistent with all laws relating to
36 authorized trust institutions and all rules and instructions that may be adopted or issued
37 by the State Banking Commission.

38 **"§ 53-378. Assessment of state trust companies.**

39 (a) For the cost of examinations and other services, each state trust company shall
40 pay into the Office of the Commissioner of Banks, within 10 days after notice, an annual
41 assessment of six thousand dollars (\$6,000) plus one dollar (\$1.00) per one hundred
42 thousand dollars (\$100,000) of trust assets, exclusive of real estate carried as such. The

1 amount of trust assets shall be determined as of the close of business on December 31
2 each year.

3 (b) If an application for merger or acquisition and control occasions an
4 examination or if the Commissioner determines that the financial condition or manner of
5 operation of a state trust company warrants further examination or an increased level of
6 supervision, a state trust company may be subject to additional assessment not to exceed
7 an amount determined in accordance with the schedule set forth in subsection (a) of this
8 section.

9 (c) The State Banking Commission may adopt by rule the amount to be collected
10 for processing any application or petition or other proceeding required by law to be filed
11 with the Commissioner of Banks and for obtaining copies of any publication or public
12 record of the Banking Commission.

13 (d) The Commissioner may collect the assessments provided for in subsections (a)
14 and (b) of this section annually or in periodic installments as approved by the State
15 Banking Commission.

16 **"SUBPART B. ENFORCEMENT ORDERS; TRUST COMPANY**
17 **MANAGEMENT.**

18 **"§ 53-379. Administrative orders; penalties for violation.**

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

21 (1) Order any authorized trust institution, or subsidiary thereof; or any
22 director, officer, or employee to cease and desist violating any provision
23 of this Article or any lawful regulation issued thereunder.

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

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

31 (4) Enter any order pursuant to G.S. 53-312.

32 (b) The Commissioner may impose a civil money penalty of not more than one
33 thousand dollars (\$1,000) for each violation by any authorized trust institution, or
34 subsidiary thereof, or any director, officer, or employee of an order issued under
35 subdivision (1) of subsection (a) of this section. The Commissioner may impose a civil
36 money penalty of not more than five hundred dollars (\$500.00) per day for each day that
37 an authorized trust institution, or subsidiary thereof, or any director, officer, or employee
38 violates a cease and desist order issued under subdivision (2) or (3) of subsection (a) of
39 this section. All civil money penalties collected under this section shall be paid to the
40 county school fund.

41 **"§ 53-380. Notice and opportunity for hearing.**

42 Consistent with Chapter 150B of the General Statutes, notice and opportunity for
43 hearing shall be provided before the Commissioner may act pursuant to G.S. 53-375. In

1 cases involving extraordinary circumstances requiring immediate action, the
2 Commissioner may take action without a hearing, but shall promptly afford a subsequent
3 hearing upon application to rescind the action taken.

4 **"§ 53-381. Subpoena power and examination under oath.**

5 The Commissioner may subpoena witnesses, compel their attendance, require the
6 production of evidence, administer oaths, and examine any person under oath in
7 connection with any subject related to a duty imposed or a power vested in the
8 Commissioner.

9 **"§ 53-382. Removal of directors, officers, and employees.**

10 The Commissioner may require the immediate removal from office of any officer,
11 director, or employee of any authorized trust institution, who shall be found to be
12 dishonest, incompetent, or reckless in the management of the affairs of the authorized
13 trust institution, or who persistently violates the laws of this State or the lawful orders,
14 instructions, and rules issued by the State Banking Commission.

15 **"§ 53-383. Review by the State Banking Commission; additional penalties.**

16 Administrative orders issued by the Commissioner and civil money penalties imposed
17 for violation of orders shall be subject to review by the State Banking Commission,
18 which may amend, modify, or disapprove orders or penalties at any regular or special
19 meeting. Notwithstanding any penalty imposed by the Commissioner, the State Banking
20 Commission may after notice and opportunity for hearing, impose, enter judgment for,
21 and enforce by appropriate process, a penalty of not more than ten thousand dollars
22 (\$10,000) against any authorized trust institution, or subsidiary thereof, or against any of
23 its directors, officers, or employees for violating any lawful orders of the Commissioner.
24 All civil money penalties collected under this section shall be paid to the county school
25 fund.

26 **"PART 5. DISSOLUTION AND RECEIVERSHIP; CONSERVATORSHIP.**

27 **"SUBPART A. VOLUNTARY DISSOLUTION AND LIQUIDATION.**

28 **"§ 53-384. Required vote of shareholders.**

29 A state trust company may go into voluntary liquidation and be closed and may
30 surrender its charter and franchise as a corporation of this State by the affirmative votes
31 of its shareholders or participants owning two-thirds of its stock.

32 **"§ 53-385. Corporate procedure.**

33 Shareholder action to liquidate a state trust company shall be taken at a meeting of the
34 shareholders duly called by resolution of the board of directors, written notice of which,
35 stating the purpose of the meeting, shall be mailed to each shareholder, or in case of a
36 shareholder's death, to the shareholder's legal representative or heirs at law, addressed to
37 the shareholder's last known residence 10 days previous to the date of the meeting. If
38 stockholders shall, by the required vote, elect to liquidate a trust company, a certified
39 copy of all proceedings of the meeting at which the action was taken, verified by the oath
40 of the president and secretary, shall be transmitted to the Commissioner for approval.

41 **"§ 53-386. Authority to liquidate; publication.**

42 If the Commissioner approves the liquidation, the Commissioner shall issue to the
43 state trust company under the Commissioner's seal, a permit for liquidation. No permit

1 shall be issued by the Commissioner until the Commissioner is satisfied that provision
2 has been made by the state trust company to satisfy and pay off all creditors. If not so
3 satisfied, the Commissioner shall refuse to issue a permit, shall be authorized to take
4 possession of the state trust company and its assets and business, and shall hold and
5 liquidate the state trust company in the manner provided in this Article. When the
6 Commissioner approves the voluntary liquidation of a state trust company, the directors
7 of the state trust company shall cause to be published in a newspaper in the county in
8 which the trust company is located, or if no newspaper is published in the county, then in
9 a newspaper having a general circulation in the county, a notice that the state trust
10 company is closing down its affairs and going into liquidation and notify its creditors to
11 present their claims for payment. The notice shall be published once a week for four
12 consecutive weeks.

13 **"§ 53-387. Examination and reports.**

14 When any state trust company is in process of voluntary liquidation, it shall be subject
15 to examination by the Commissioner and shall furnish any reports required by the
16 Commissioner.

17 **"§ 53-388. Unclaimed property.**

18 All unclaimed property remaining with a liquidated state trust company shall be
19 subject to the provisions of Chapter 116B of the General Statutes.

20 **"§ 53-389. Sell or transfer of property.**

21 Whenever the Commissioner approves, a state trust company may sell and transfer to
22 any other trust institution, whether State or federally chartered, all of its assets of every
23 kind upon any terms agreed upon and approved by the Commissioner and by two-thirds
24 vote of its board of directors. A certified copy of the minutes of any meeting at which the
25 action is taken, under the oath of the president and secretary, together with a copy of the
26 contract of sale and transfer, shall be filed with the Commissioner. Whenever voluntary
27 liquidation is approved by the Commissioner or the sale and transfer of the assets of any
28 state trust company is approved by the Commissioner, a certified copy of the approval
29 under seal of the Commissioner, filed in the office of the Secretary of State, shall
30 authorize the cancellation of the charter of the state trust company, subject, however, to
31 its continued existence, as provided by this Article and the general law relative to
32 corporations.

33 **"SUBPART B. INVOLUNTARY DISSOLUTION AND LIQUIDATION.**

34 **"§ 53-390. When Commissioner may take charge.**

35 The Commissioner may take possession of the business and property of any state trust
36 company whenever it shall appear that the trust company:

- 37 (1) Has violated its charter or any laws applicable thereto;
- 38 (2) Is conducting its business in an unauthorized or unsafe manner;
- 39 (3) Is in a hazardous condition to transact its business;
- 40 (4) Has an impairment of its capital;
- 41 (5) Has become otherwise insolvent;
- 42 (6) Has neglected or refused to comply with the terms of a duly issued
43 lawful order of the Commissioner;

1 (7) Has refused, upon proper demand, to submit its records, affairs, and
2 concerns for inspection and examination of a duly appointed or
3 authorized examiner of the Commissioner; or

4 (8) Has made a voluntary assignment of its assets to trustees.

5 The Commissioner may take possession of the business and property of any state trust
6 company whenever it shall appear that its officers have refused to be examined upon oath
7 regarding its affairs.

8 **"§ 53-391. Directors may act.**

9 A state trust company may place its assets and business under the control of the
10 Commissioner for liquidation by a resolution of a majority of its directors upon notice to
11 the Commissioner, and, upon taking possession of the state trust company, the
12 Commissioner, or duly appointed agent, shall retain possession thereof until the state trust
13 company is authorized by the Commissioner to resume business or until the affairs of the
14 state trust company are fully liquidated, as herein provided. No state trust company shall
15 make any general assignment for the benefit of its creditors except by surrendering
16 possession of its assets to the Commissioner, as herein provided. Whenever any state
17 trust company for any reason shall suspend operations for any length of time, the state
18 trust company shall, immediately upon suspension of operations, be deemed in the
19 possession of the Commissioner and subject to liquidation hereunder.

20 **"§ 53-392. Notice of seizure; bar to attachment.**

21 When the Commissioner, or duly appointed agent, takes possession of any state trust
22 company under G.S. 53-390 or G.S. 53-391, the Commissioner or agent shall, within 48
23 hours, file with the clerk of the superior court in the county where the state trust company
24 is located, a notice of the action which shall state the reason for the action and which
25 shall be deemed the equivalent of a summons and complaint against the state trust
26 company in an action in the superior court except that it shall not be necessary to serve
27 the notice. The taking possession of any state trust company shall be effective on the
28 date when the authority was exercised and from and after the time all assets and property
29 of the state trust company, of whatever nature, shall be deemed to be in possession of the
30 Commissioner, and the exercise of the authority shall operate as a bar to any attachment
31 or other legal proceeding against the state trust company or its assets. After the
32 Commissioner's exercise of authority, no lien shall be acquired, in any manner binding or
33 affecting any of the assets of the state trust company and every transfer or assignment
34 made thereafter by the state trust company, or by its authority, of the whole or any part of
35 its assets, shall be null and void; and the Commissioner shall be substituted in place of
36 the state trust company in all actions in the State or federal courts, pending at the time of
37 the exercise of the authority.

38 **"§ 53-393. Notice to trust institutions, corporations, and others holding assets; liens**
39 **not to accrue.**

40 Upon taking possession of the assets and business of any state trust company, the
41 Commissioner, or duly appointed agent, shall forthwith give notice, by mail or otherwise,
42 of the action to all trust institutions or other persons or corporations holding, or having in
43 possession, any assets of the state trust company. No trust company or other person or

1 corporation shall have a lien or charge for any payment, advance, or clearance made, or
2 liability incurred against any of the assets of the state trust company after possession has
3 been taken as provided under this section, except as hereinafter provided.

4 **"§ 53-394. Permission to resume business.**

5 (a) After the Commissioner has taken possession of any state trust company, the
6 company may resume business upon terms and conditions approved by the State Banking
7 Commission.

8 (b) When possession of a state trust company has been taken either pursuant to
9 G.S. 53-390 or G.S. 53-391, the conditions under which it may resume business shall be
10 fully stated in writing and a copy thereof shall be filed with the clerk of superior court in
11 the action required to be commenced in cases against a state trust company under the
12 provisions for involuntary dissolution and liquidation in this Article.

13 (c) Notwithstanding subsections (a) and (b) of this section, no state trust company
14 that has been taken in possession by the Commissioner under the provisions of this
15 Article shall be reopened to resume a trust business unless and until (i) the state trust
16 company has been completely restored to solvency; (ii) the capital stock, if impaired, has
17 been entirely restored to solvency; (iii) the capital stock, if impaired, has been entirely
18 restored in cash or United States government securities; and (iv) it shall clearly appear to
19 the Commissioner that the state trust company may be reopened with safety to the public
20 and the reopening is necessary to serve the business interest of the community.

21 **"§ 53-395. Remedy for seizure; answer to notice, injunction; and appeal.**

22 Whenever any state trust company, of whose assets and business the Commissioner
23 has taken possession as herein provided, except where possession is taken under G.S. 53-
24 390, shall deem itself aggrieved thereby, it may, at any time within 10 days after the
25 filing of the notice with the clerk of the superior court, file an answer to the notice and
26 may also upon notice to the Commissioner, apply to the resident or presiding judge of the
27 superior court for an injunction to enjoin further proceedings by the Commissioner. The
28 judge of the superior court may cite the Commissioner to show cause within 10 days
29 thereafter why further proceedings should not be enjoined, and, after hearing the
30 allegations and proof of the parties with respect to the condition of the state trust
31 company, may dismiss an application for injunction or may enjoin further proceedings
32 under this section by the Commissioner. If the judge enjoins further action of the
33 Commissioner and permits the reopening of the state trust company, the judge may
34 require of the state trust company a surety bond as the judge deems necessary to insure its
35 solvency, payable to the Commissioner for the sole benefit of the general creditors of the
36 state trust company, and upon any terms the judge deems proper. Either party has the
37 right to appeal a decision as in other actions.

38 **"§ 53-396. Collection of debts and claims; commissioner succeeds to all property of
39 the state trust company.**

40 (a) Upon taking possession of the assets and business of any state trust company
41 by the Commissioner, or a duly appointed agent, the Commissioner or agent is authorized
42 to collect all money due the state trust company, and to do any other acts necessary to
43 conserve its assets and property, and shall proceed to liquidate the affairs thereof, as

1 hereinafter provided. The Commissioner, or a duly appointed agent, shall collect all debts
2 due and claims belonging to the state trust company, and, by order of the court, may sell,
3 compromise, or compound any bad or doubtful debt or claim or sell the real and personal
4 property of the state trust company on any terms provided by the order. Where the sale is
5 made under power contained in any mortgage or lien bond or other paper wherein the
6 title is retained for sale and the terms of sale set out, sale may be made under that
7 authority.

8 (b) Upon taking possession of any state trust company under this section, the
9 Commissioner, or the duly appointed agent, shall have the possession and the right to the
10 possession of all the property, assets, choses in action, rights, and privileges of the state
11 trust company, including the right to resign the trust or exercise the power in all papers
12 executed to secure the payment of money in any form in which the state trust company
13 has been named as trustee or pledgee. The property right and privileges shall vest in the
14 Commissioner or duly appointed liquidating agent absolutely, for the purpose of
15 liquidating, selling, or conveying the property right and privileges, together with all other
16 incidental rights, privileges, and powers necessary for the right of conveyance and sale.
17 Upon the motion made, the state trust company or any person interested may be heard,
18 but the judge hearing the motion shall enter an order as in the judge's discretion will best
19 serve the parties interested.

20 (c) The officers and directors of any state trust company, or any state trust
21 company that is in liquidation as provided by law, shall not hereafter exercise any powers
22 herein declared to be vested in the Commissioner or the duly appointed liquidating agent.

23 **"§ 53-397. Bond of the commissioner; surety; condition; minimum penalty.**

24 Upon taking possession of any state trust company, the Commissioner, or a duly
25 appointed agent, shall execute and file a bond payable to this State, with some surety
26 company as surety thereon, with the clerk of the superior court of the county where the
27 state trust company is located, conditioned upon the faithful performance of all duties
28 imposed by reason of the liquidation of the state trust company by the Commissioner, or
29 a duly appointed agent, assisting in the liquidation of a state trust company, the penal sum
30 of the bond to be fixed by order of the Commissioner, which in no case shall be less than
31 two hundred fifty thousand dollars (\$250,000). Any person interested, by motion in the
32 pending action, shall be heard by the resident or presiding judge of the superior court as
33 to the sufficiency of the bond. The judge hearing the motion may fix the bond.

34 **"§ 53-398. Inventory.**

35 Within 90 days after the filing of the notice of the taking possession of a state trust
36 company in the office of the clerk of the superior court, the Commissioner, or a duly
37 appointed agent, shall file an inventory of the assets and liabilities of the state trust
38 company. A copy of the inventory shall be filed with the clerk of the superior court in
39 the pending action and a copy shall be kept on file in the state trust company. The
40 inventory shall be open for inspection during the usual business hours; provided that
41 nothing herein shall require the state trust company to remain open unnecessarily.

42 **"§ 53-399. Notice and time for filing claims.**

1 Notice shall be given by advertisement once a week for four consecutive weeks in a
2 newspaper published in the county where the state trust company is located, or if no
3 newspaper is published in the county, then in some newspaper having a general
4 circulation in the county, calling on all persons who may have claims against the state
5 trust company to present them to the Commissioner at the office of the state trust
6 company, and within the time to be specified in the notice which time shall not be less
7 than 90 days from the date of the first publication. A copy of this notice shall be mailed
8 to all persons whose names appear as creditors upon the books of the state trust company.
9 Affidavit by the Commissioner or agent mailing the notice, to the effect that the notice
10 was mailed, shall be conclusive evidence thereof.

11 **"§ 53-400. Power to reject claims; notice; affidavit of service; action on claims.**

12 (a) If the Commissioner doubts the validity of any claim, the Commissioner may
13 reject the claim and serve notice of the rejection upon the claimant, either personally or
14 by certified mail, and an affidavit of the service of the notice shall be filed in the office of
15 the clerk of the superior court in the pending action and shall be conclusive evidence of
16 the notice. Any action or suit upon rejected claim shall be brought by the claimant
17 against the Commissioner in the superior court of the county in which the state trust
18 company is located within 90 days after service, or the action or suit shall be barred.
19 Objections to any claim not rejected by the Commissioner may be made by any person
20 interested by filing the objection in the pending action and by serving a copy thereof on
21 the Commissioner. The Commissioner, after investigation, shall either allow the
22 objection and reject the claim, or disallow the objection. If the objection is not allowed
23 and the claim not rejected, the Commissioner shall file a notice in the pending action.
24 Within 10 days after notice is filed, the person filing objection by motion in the pending
25 action may question the validity of the claim and the questions of law and issues of fact
26 shall thereupon be determined as in other civil actions. A copy of the notice that the
27 objection is not allowed shall be served upon the person who submitted the claim or
28 deposit.

29 (b) As used in this section, 'Commissioner' includes the Commissioner's duly
30 appointed agent.

31 **"§ 53-401. List of claims presented and deposits; copies; proviso.**

32 Upon the expiration of the time fixed for presentation of claims, the Commissioner, or
33 the duly appointed agent, shall make a full and complete list of the claims presented,
34 including and specifying any claims that have been rejected. One copy shall be filed in
35 the office of the clerk of the superior court in the pending action, and one copy shall be
36 kept on file with the inventory in the office of the state trust company for examination.
37 Any claim that may be presented after the expiration of the time fixed for the presentation
38 of claims in the notice hereinbefore provided shall, if allowed, share pro rata in the
39 distribution only of those assets of the state trust company in the hands of the
40 Commissioner, and undistributed at the time the claim is presented. Provided, that when
41 it is made to appear to the judge of the superior court, resident or presiding in the county,
42 that the claim could not have been filed within the period, the judge may permit those
43 creditors or depositors who subsequently file their claim to share as other creditors.

1 **"§ 53-402. Declaration of dividends; order of preference in distribution.**

2 At any time after the expiration of the date fixed by the Commissioner, or the duly
3 appointed agent, for the presentation of claims against the state trust company, and from
4 time to time thereafter, the Commissioner, after the payment of expenses and priorities,
5 may declare and pay dividends to the shareholders and other creditors of the state trust
6 company. Dividends may be declared when and as often as the available funds shall be
7 sufficient to pay ten percent (10%) of all claims entitled to share in the dividends. In
8 paying and calculating dividends, all disputed claims shall be taken into account, but no
9 dividend shall be paid upon the disputed claims until the claims have been finally
10 determined. The following shall be the order and preference in the distribution of the
11 assets of any state trust company liquidated hereunder:

- 12 (1) Taxes and fees due the Commissioner for examination or other services;
13 (2) Wages and salaries due officers and employees of the state trust
14 company, for a period of not more than four months;
15 (3) Expenses of liquidation; and
16 (4) Amounts due creditors other than stockholders.

17 The word 'asset' used herein shall not be deemed to include bailments or other
18 property to which the state trust company has no title. A statement of all dividends paid
19 shall be filed in the office of the clerk of the superior court in the pending action, and the
20 statements shall show the expenses deducted and the disputed claims in determining the
21 dividend.

22 **"§ 53-403. Deposit of funds collected.**

23 All funds collected by the Commissioner, in liquidating any state trust company, shall
24 be deposited from time to time in a bank as may be selected by the Commissioner and
25 shall be subject to withdrawal by check of the Commissioner.

26 **"§ 53-404. Employment of counsel; accountants; and other experts; compensation.**

27 The Commissioner, for the purpose of liquidating state trust companies as herein
28 provided, shall (i) employ any liquidating agents, competent local attorneys,
29 accountants, and clerks necessary to properly liquidate and distribute the assets of a state
30 trust company; (ii) fix the compensation for the agents, attorneys, accountants, and
31 clerks; and (iii) pay the compensation out of the funds derived from the liquidation of the
32 assets of the state trust company. Provided, that all expenditures for the purpose herein
33 provided shall be approved by the resident or presiding judge in the pending action at
34 such time as the expenditure may be reported, and the charges shall be a proper charge
35 and lien on the assets of the state trust company until paid. Payments made by the
36 Commissioner pursuant to this section shall not be subject to the requirements of Article
37 3 of Chapter 143 of the General Statutes.

38 **"§ 53-405. Unclaimed dividends held in trust.**

39 Any unclaimed dividends remaining in the hands of the Commissioner for six months
40 after the order for final distributions shall be held in trust for the several creditors of the
41 liquidated state trust company; and the moneys so held by the Commissioner shall be
42 paid over to the persons entitled to the moneys when they furnish satisfactory evidence of
43 their right to the moneys. In case of doubtful or conflicting claims, the Commissioner

1 may apply to the superior court of the county, by motion in the pending action, for an
2 order from the resident or presiding judge of the superior court directing the payment of
3 the moneys so claimed. Issues of fact raised by motion may, upon request of any
4 claimant, be determined as in other civil actions. Interest earned on any unclaimed
5 dividends so held shall be applied toward defraying the expenses incurred in the
6 distribution of the unclaimed dividends. The balance of interest, if any, shall be
7 deposited and held as other funds to the credit of the Commissioner. After the
8 Commissioner has held the unclaimed dividends in trust under the provisions of this
9 statute for the creditors of the liquidated state trust company for a period of five years, the
10 Commissioner is hereby given the authority to pay the principal amount of the unclaimed
11 dividends to the State Treasurer, to be held by the State Treasurer without liability for
12 profit or interest until a just claim therefor shall be made by the parties entitled thereto.
13 Upon payment of unclaimed dividends to the State Treasurer, the Commissioner shall be
14 fully discharged from all further liability therefor.

15 **"§ 53-406. Action by the Commissioner following full settlement.**

16 Whenever the Commissioner has paid all the expenses of liquidation and has paid to
17 each and every creditor of the state trust company, whose claims have been duly proven
18 and allowed, the full amount of the claims, and has made proper provision for unclaimed
19 and unpaid and disputed claims, and has other assets of the state trust company, the
20 Commissioner shall call a meeting of the shareholders of the state trust company by
21 giving notice thereof by publication once a week for four consecutive weeks in a
22 newspaper published in the county, or if no newspaper is published in the county, then in
23 a newspaper having general circulation in the county, and by mailing a copy of the notice
24 to each shareholder's address as it appears on the books of the state trust company.
25 Affidavit of the mailing of the notice herein required and of the printer as to the
26 publication shall be conclusive evidence of notice hereunder. At the meeting, any
27 shareholders may be represented by proxy and the shareholders shall elect, by a majority
28 vote of the stock present, an agent or agents who shall be authorized to receive from the
29 Commissioner all the assets of the state trust company then remaining in the
30 Commissioner's hands; and the Commissioner shall cause to be transferred and delivered
31 to the agent, or agents, all the assets of the state trust company. The Commissioner shall
32 thereupon cause to be filed in the office of the clerk of the superior court in the pending
33 actions a full and complete report of all transactions, showing the assets of the state trust
34 company so transferred, together with the name of the agent or agents receipting for the
35 assets; and the filing of the report shall act as a full and complete discharge of the
36 Commissioner from all further liabilities by reason of the liquidation of the state trust
37 company. The agent shall convert the assets coming into the agent's hands into cash, and
38 shall make distribution to the shareholders of the state trust company as herein provided.
39 The agent shall file semiannually a report of all transactions with the superior court of the
40 county in which the state trust company is located, and with the Commissioner, and shall
41 be allowed for the services such fees not in excess of five percent (5%), as may be fixed
42 by the court. In case of death, removal, or refusal to act, of any agent or agents elected
43 by the shareholders, the Commissioner shall, upon report of the action on the part of the

1 agent or agents to the superior court of the county in which the state trust company is
2 located, turn over to the superior court for the stockholders of the state trust company, all
3 the remaining assets of the state trust company, file the required report, and be discharged
4 from any further liability to the shareholders as herein provided. The assets, when turned
5 over to the superior court, shall remain in the court until such time as the court by order
6 or the shareholders provide for distribution.

7 **"§ 53-407. Annual report of the Commissioner; items included.**

8 The Commissioner shall file, as a part of an annual report to the Governor, a list of the
9 names of the state trust companies of which possession was taken and liquidated; and the
10 Commissioner shall, from time to time compile and make available for public inspection,
11 reports showing the condition of the state trust companies; and the annual report of the
12 Commissioner shall show the sum of unclaimed assets, with respect to each state trust
13 company and shall show all depositories of all sums coming into the hands of the
14 Commissioner under the provisions of this section.

15 **"§ 53-408. Compensation of the Commissioner.**

16 The Commissioner, for services rendered in connection with the liquidation of state
17 trust companies hereunder, shall be entitled to actual expenses incurred in connection
18 with the liquidation of each state trust company, including a reasonable sum for the time
19 of the examiners and other agents of the Commissioner. The expenses shall be a prior
20 lien on the assets of the state trust company liquidated until paid in full, and the
21 Commissioner may adopt rules for fixing the expenses.

22 **"§ 53-409. Exclusive method of liquidation.**

23 No state trust company created prior to the effective date of this Article shall be
24 liquidated in any other way or manner than that provided herein.

25 **"§ 53-410. Disposition of books and records.**

26 All books, papers, and records of a state trust company that has been finally liquidated
27 shall be deposited by the receiver in the office of the clerk of the superior court for the
28 county in which the office of the state trust company is located, or in any other place as in
29 the receiver's judgment will provide for the proper safekeeping and protection of books,
30 papers, and records. The books, papers, and records herein referred to shall be held
31 subject to the orders of the Commissioner and the clerk of the superior court for the
32 county in which the state trust company was located.

33 **"§ 53-411. Destruction of books and records.**

34 After the expiration of five years from the date of filing in the office of the clerk of
35 the superior court of a final order approving the liquidation by the Commissioner of any
36 insolvent state trust company and the delivery to the clerk or into the clerk's custody of
37 the records of the state trust company, the order may be destroyed by the clerk of the
38 superior court.

39 After five years from the filing by the Commissioner of a final report of liquidation of
40 any insolvent state trust company, the Commissioner, by and with the consent of the State
41 Banking Commission, may destroy the records of any insolvent state trust company held
42 in the office of the Commissioner in connection with the liquidation of the state trust
43 company. However, in connection with any unpaid dividends, the Commissioner shall

1 preserve the records or other evidence of indebtedness of the state trust company with
2 reference to the unpaid dividends until the dividends have been paid.

3 **"§ 53-412. Trust terminated on insolvency of state trust company.**

4 Whenever any state trust company appointed trustee in any indenture, deed of trust, or
5 other instrument of like character, executed to secure the payment of any bonds, notes, or
6 other evidences of indebtedness is taken over for liquidation by the Commissioner or by
7 any other legally reconstituted authority, the powers and duties of the state trust company
8 as trustee shall cease and terminate upon petition and the entry of an order of the clerk of
9 the superior court appointing a successor trustee.

10 **"§ 53-413. Petition for new trustee.**

11 Any person interested in any trust, either as trustee, beneficiary, or otherwise, may
12 petition the clerk of superior court for a new trustee in all cases of insolvency and
13 liquidation provided in this Article. The petition shall be verified and shall state the
14 petitioner's interest. The clerk of superior court shall enter an order directing service on
15 all persons having an interest in the trust to appear and show cause within 30 days from
16 the date of service why a new trustee should not be appointed. The notice may be served
17 personally or by publication in a newspaper in the county where the petition is filed or in
18 an adjoining county if no newspaper is published in that county.

19 **"§ 53-414. Publication and notice.**

20 The notice shall be published in the manner required by law for service of summons
21 by publication and shall set forth the names of the parties to the indenture deed of trust, or
22 other instrument, the date thereof, and the place or places where the instrument is
23 recorded.

24 **"§ 53-415. Appointment where no objection made.**

25 If, upon the day fixed in the notice, no person appears and objects to the appointment
26 of a substitute trustee, the clerk, shall, upon any terms the clerk deems advisable and in
27 the best interest of all parties, appoint some competent person, or corporation authorized,
28 substitute trustee. The substitute trustee shall be vested with and shall exercise all the
29 powers reconferred upon the trustee named in this instrument.

30 **"§ 53-416. Hearing upon objection.**

31 If objections are made to the appointment of a new trustee, the clerk shall hear and
32 determine the matter, and from the clerk's decision, an appeal may be prosecuted as in the
33 case of special proceedings generally.

34 **"§ 53-417. Registration of final order.**

35 The final order of appointment of a new trustee shall be certified by the clerk of the
36 superior court in an order that shall be recorded in the office of the register of deeds in the
37 county or counties in which the instrument under which the appointment has been made
38 was recorded, and a notation of the order shall be entered by the register of deeds on the
39 margin of the record where the original instrument was recorded.

40 **"§ 53-418. Petition and order applicable to all instruments.**

41 The petition and the order appointing a new trustee may include, relate, and apply to
42 any number of indentures, deeds of trust, or other instruments wherein the same trustee is
43 named.

1 **"§ 53-419. Additional remedy.**

2 G.S. 53-413 and G.S. 53-418 shall be in addition to and not in substitution for any
3 other remedy provided by law.

4 **"§ 53-420. Report to the Secretary of State.**

5 The Commissioner shall on or before the first day of each year thereafter file with the
6 Secretary of State a report showing all state trust companies under liquidation in this
7 State, and the names of any auditors, together with the amounts paid to them for auditing
8 each of the state trust companies, and the names of any attorneys employed in connection
9 with the liquidation of the state trust companies, together with the amount paid or
10 contracted to be paid to each of the attorneys. If any attorney has been employed on a fee
11 contingent upon recovery, the report shall state in substance the contract.

12 **"SUBPART C. CONSERVATORSHIP.**

13 **"§ 53-421. Provisions for conservator; duties and powers.**

14 When the Commissioner deems it necessary in order to conserve the assets of a state
15 trust company for the benefit of clients, creditors, and other customers, the Commissioner
16 may appoint a conservator for the trust company and require of the conservator a bond
17 with any surety the Commissioner deems necessary and proper. The conservator, under
18 the direction of the Commissioner, shall take possession of the books, records, and assets
19 of every description of a state trust company placed under conservatorship and take
20 actions necessary to conserve those assets pending further disposition of its business as
21 provided by law. The conservator shall have all rights, powers, and privileges, subject to
22 the approval by the Commissioner, now possessed by or hereafter given to the
23 Commissioner under the provisions for involuntary dissolution and liquidation in this
24 Article. All expenses of the conservator shall be paid out of the assets of the state trust
25 company under conservatorship and shall be a lien thereon which shall be prior to any
26 other lien provided by law. The compensation of the conservator shall be determined by
27 the Commissioner and shall be based on the time and experience of the conservator and
28 the complexity of the conservatorship.

29 **"§ 53-422. Examination.**

30 The Commissioner shall examine the affairs of a state trust company placed under
31 conservatorship in the manner and form necessary for the Commissioner to determine the
32 financial condition of the company.

33 **"§ 53-423. Termination of conservatorship.**

34 If the Commissioner is satisfied that it may be safely done, the Commissioner may
35 terminate the conservatorship of a state trust company and permit the company to resume
36 the transaction of its business, subject to the terms, conditions, restrictions, and
37 limitations the Commissioner prescribes.

38 **"§ 53-424. Criminal liabilities of conservator.**

39 The conservator appointed pursuant to the provisions of this Article is subject to the
40 provisions of and to the penalties prescribed by G.S. 53-359.

41 **"§ 53-425. Naming of conservator not liquidation.**

42 No power conferred in this Article upon the Commissioner, when exercised, shall be
43 deemed as an act of possession for the purposes of liquidation; and whenever the

1 Commissioner shall, with reference to any state trust company for which a conservator is
2 appointed, deem that liquidation is necessary, the Commissioner shall exercise the
3 powers for the purposes of liquidation as provided in Subpart B of Part 5 of this Article.

4 **"PART 6. AUTHORITY, HEARINGS, ENFORCEMENT, AND SEVERABILITY.**

5 **"§ 53-426. Commissioner hearings; appeals.**

6 (a) This section does not grant a right to hearing to a person who is not otherwise
7 granted by governing law.

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

12 (c) Except as expressly provided otherwise by this Chapter, a decision or order of
13 the Commissioner may be appealed to the State Banking Commission for review. The
14 Commissioner may affirm, modify, or reverse a decision of the Commission.

15 (d) Appeals from the State Banking Commission shall be to the Wake County
16 Superior Court and shall proceed pursuant to G.S. 53-92. An appeal to the Wake County
17 Superior Court does not stay or vacate the appealed order unless the court, after notice
18 and hearing, expressly stays or vacates the order.

19 **"§ 53-427. Civil enforcement.**

20 The Commissioner may bring any appropriate civil action against any person who the
21 Commissioner believes has committed or is about to commit a violation of this Article or
22 a rule or order of the Commissioner pertaining to this Article.

23 **"§ 53-428. Severability.**

24 If any provision of this Article or the application of the provision is found by any
25 court of competent jurisdiction in the United States to be invalid as to any trust institution
26 or other person or circumstance, or to be superseded by federal law, the remaining
27 provisions of this Article shall not be affected and shall continue to apply to any trust
28 institution or other person or circumstance."

29 Section 2. G.S. 53-2 reads as rewritten:

30 **"§ 53-2. How incorporated.**

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

37 (1) The name of the corporation; no name shall be used already in use by
38 another existing corporation organized under the laws of this State or of
39 the Congress, or so nearly similar thereto as to lead to uncertainty or
40 confusion.

41 (2) The location of its principal office in this State.

42 (3) The nature of its business, whether that of a commercial bank, trust
43 company, or a combination of both such classes of business.

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

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

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

35 Section 3. Trust companies organized under Article 1 of Chapter 53 of the
36 General Statutes shall hereafter be governed by this Article, and these companies may
37 apply to the Commissioner for authority to amend their articles of incorporation or to take
38 such other steps as may be necessary or appropriate to conform to the provisions hereof.
39 The Commissioner shall allow a period of up to one year for this transition.

40 Section 4. This act becomes effective October 1, 2000, and applies to acts or
41 omissions occurring and agreements or contracts entered into on or after that date.