

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 461

Short Title: Interstate Trust Company Act/AB.

(Public)

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Sponsors: Representative Tallent.

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Referred to: Commerce, if favorable, Judiciary I.

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March 10, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE THE CHARTERING OF INDEPENDENT TRUST  
3 COMPANIES AND TO PERMIT BANKS AND TRUST COMPANIES TO  
4 CONDUCT A TRUST BUSINESS ON AN INTERSTATE BASIS.

5 The General Assembly of North Carolina enacts:

6 Section 1. The General Statutes of North Carolina are amended by adding a  
7 new Chapter to read:

8 **"CHAPTER 53C.**

9 **"TRUST Companies.**

10 **"ARTICLE 1.**

11 **"Definitions.**

12 **"§ 53C-1. Definitions.**

13 (a) Unless otherwise provided, the following terms shall apply throughout this  
14 Chapter:

15 (1) 'Account' means the client relationship established with a trust company  
16 involving the transfer of funds or property to the trust company,  
17 including a relationship in which the trust company acts as trustee,  
18 executor, administrator, guardian, custodian, conservator, bailee,  
19 receiver, registrar, or agent, but excluding a relationship in which the  
20 trust company acts solely in an advisory capacity.

- 1           (2) 'Act as a fiduciary' or 'acting as a fiduciary' means to:  
2           a. Accept or execute trusts, including to (i) act as trustee under a  
3           written agreement; (ii) receive money or other property in its  
4           capacity as trustee for investment in real or personal property;  
5           (iii) act as trustee and perform the fiduciary duties committed or  
6           transferred to it by order of a court of competent jurisdiction; (iv)  
7           act as trustee of the estate of a deceased person; or (v) act as  
8           trustee for a minor or incapacitated person;  
9           b. Administer in any other fiduciary capacity real or tangible  
10           personal property; or  
11           c. Act pursuant to order of a court of competent jurisdiction as  
12           executor or administrator of the estate of a deceased person or as  
13           a guardian or conservator for a minor or incapacitated person.  
14       (3) 'Administer' with respect to real or tangible personal property means, as  
15       an agent or in another representative capacity, to possess, purchase, sell,  
16       lease or insure, safekeep, or otherwise manage the property.  
17       (4) 'Affiliate' means a company that directly or indirectly controls, is  
18       controlled by, or is under common control with a trust institution or  
19       other company.  
20       (5) 'Bank' has the meaning set forth in 12 U.S.C. § 1813(h); provided that  
21       the term 'bank' shall not include any 'foreign bank' as defined in 12  
22       U.S.C. § 3101(7), except for any foreign bank organized under the laws  
23       of a territory of the United States, Puerto Rico, Guam, American Samoa,  
24       or the Virgin Islands, the deposits of which are insured by the Federal  
25       Deposit Insurance Corporation.  
26       (6) 'Bank supervisory agency' means:  
27       a. Any agency of another state with primary responsibility for  
28       chartering and supervising a trust institution; and  
29       b. The Office of the Comptroller of the Currency, the Federal  
30       Deposit Insurance Corporation, the Board of Governors of the  
31       Federal Reserve System, the Office of Thrift Supervision and any  
32       successor to these agencies.  
33       (7) 'Branch' with respect to a depository institution has the meaning set  
34       forth in G.S. 53-1(1a).  
35       (8) 'Capital' means:  
36       a. The sum of:  
37           1. The par value of all shares of the State trust company  
38           having a par value that have been issued;  
39           2. The consideration fixed by the board in the manner  
40           provided by the North Carolina Business Corporation Act  
41           for all shares of the State trust company without par value  
42           that have been issued, except a part of that consideration  
43           that:

- 1                                    I. Has not been actually received;  
2                                    II. Is less than all of that consideration; and  
3                                    III. The board, by resolution adopted not later than the  
4                                    sixtieth day following the date of issuance of those  
5                                    shares, has allocated to surplus with the prior  
6                                    approval of the Commissioner; and  
7                                    3. An amount not included in subparagraphs 1. and 2. that  
8                                    has been transferred to capital of the State trust company,  
9                                    on the payment of a share dividend or on adoption by the  
10                                   board of a resolution directing that all or part of surplus be  
11                                   transferred to capital, minus each reduction made as  
12                                   permitted by law; less  
13                                    b. All amounts otherwise included in Paragraphs a.1. and a.2. of  
14                                    this subdivision that are attributable to the issuance of securities  
15                                    by the State trust company and that the Commissioner  
16                                    determines, after notice and an opportunity for hearing, should be  
17                                    classified as debt rather than equity securities.  
18                                    (9) 'Charter' means a charter, license, or other authority issued by the  
19                                    Commissioner or a bank supervisory agency authorizing a trust  
20                                    institution to act as a fiduciary in its home state.  
21                                    (10) 'Client' means a person to whom a trust institution owes a duty or  
22                                    obligation under a trust or other account administered by the trust  
23                                    institution or as an advisor or agent, regardless of whether the trust  
24                                    institution owes a fiduciary duty to the person. The term includes the  
25                                    noncontingent beneficiaries of an account.  
26                                    (11) 'Commission' means the North Carolina State Banking Commission.  
27                                    (12) 'Commissioner' means the Commissioner of Banks for the State of  
28                                    North Carolina.  
29                                    (13) 'Company' includes a bank, trust company, corporation, partnership,  
30                                    association, business trust, or another trust.  
31                                    (14) 'Conservator' means the Commissioner or an agent of the Commissioner  
32                                    exercising the powers and duties hereinafter provided.  
33                                    (15) 'Control' means:  
34                                    a. The ownership of or ability or power to vote, directly, acting  
35                                    through one or more other persons, or otherwise indirectly, more  
36                                    than twenty-five percent (25%) of the outstanding shares of a  
37                                    class of voting securities of a State trust company or other  
38                                    company;  
39                                    b. The ability to control the election of a majority of the board of a  
40                                    State trust company or other company;  
41                                    c. The power to exercise, directly or indirectly, a controlling  
42                                    influence over the management or policies of the State trust

- 1                    company or other company as determined by the Commissioner  
2                    after notice and an opportunity for hearing; or  
3                    d.                The conditioning of the transfer of more than twenty-five percent  
4                    (25%) of the outstanding shares of a class of voting securities of a  
5                    State trust company or other company on the transfer of more  
6                    than twenty-five percent (25%) of the outstanding shares of a  
7                    class of voting securities of another State trust company or other  
8                    company.
- 9                    (16)            'Depository institution' means any company chartered to act as a  
10                    fiduciary and included for any purpose within any of the definitions of  
11                    'insured depository institution' as set forth in 12 U.S.C. § 1813(c)(2) and  
12                    (3).
- 13                    (17)            'Equity capital' means the amount by which the total assets of a State  
14                    trust company exceed the total liabilities of the State trust company.
- 15                    (18)            'Equity security' means:
- 16                    a.                Stock, other than adjustable rate preferred stock and money  
17                    market (auction rate) preferred stock;
- 18                    b.                A certificate of interest or participation in a profit-sharing  
19                    agreement, collateral-trust certificate, preorganization certificate  
20                    or subscription, transferable share, investment contract, voting-  
21                    trust certificate;
- 22                    c.                A security immediately convertible at the option of the holder  
23                    without payment of significant additional consideration into a  
24                    security described by this subdivision;
- 25                    d.                A security carrying a warrant or right to subscribe to or purchase  
26                    a security described by this subdivision; and
- 27                    e.                A certificate of interest or participation in, temporary or interim  
28                    certificate for, or receipt for a security described by this  
29                    subdivision that evidences an existing or contingent equity  
30                    ownership interest.
- 31                    (19)            'Fiduciary record' means a matter written, transcribed, recorded,  
32                    received, or otherwise in the possession or control of a trust company,  
33                    whether in physical or electromagnetic form, that is necessary to  
34                    preserve information concerning an act or event relevant to an account  
35                    or a client of a trust company.
- 36                    (20)            'Foreign bank' means a foreign bank, as defined in section 1(b)(7) of the  
37                    International Banking Act of 1978, chartered to act as a fiduciary in a  
38                    state other than this State.
- 39                    (21)            'Hazardous condition' with respect to a trust company means:
- 40                    a.                A refusal by the trust company to permit examination of its  
41                    books, papers, accounts, records, or affairs by the Commissioner;

- 1           b. Violation by a trust company of a condition of its chartering or  
2           an agreement entered into between the trust company and the  
3           Commissioner; or
- 4           c. A circumstance or condition in which an unreasonable risk of  
5           loss is threatened to clients or creditors of a trust company,  
6           excluding risk of loss to a client that arises as a result of the  
7           client's decisions or actions, but including a circumstance or  
8           condition in which a trust company:
- 9               1. Is unable or lacks the means to meet its current obligations  
10              as they come due in the regular and ordinary course of  
11              business, even though the book or fair market value of its  
12              assets may exceed its liabilities;
- 13              2. Has equity capital less than the amount of restricted  
14              capital the trust company is required to maintain under  
15              G.S. 53C-40, or the adequacy of its equity capital is  
16              threatened, as determined under regulatory accounting  
17              principles;
- 18              3. Has concentrated an excessive or unreasonable portion of  
19              its assets in a particular type or character of investment;
- 20              4. Violates or refuses to comply with this Chapter, another  
21              statute or regulation applicable to trust companies, or any  
22              final and enforceable order of the Commissioner;
- 23              5. Is in a condition that renders the continuation of a  
24              particular business practice hazardous to its clients and  
25              creditors; or
- 26              6. Conducts business in an unsafe or unsound manner, which  
27              includes, but is not limited to, conducting business with:
- 28                   I. Inexperienced or inattentive management;  
29                   II. Potentially dangerous operating practices;  
30                   III. Infrequent or inadequate audits;  
31                   IV. Administration of assets that is notably deficient in  
32                   relation to the volume and character or  
33                   responsibility for asset holdings;
- 34                   V. Failure to adhere to sound administrative practices;  
35                   VI. Frequent occurrences of violations of laws,  
36                   regulations, or terms of the governing instruments;  
37                   or
- 38                   VII. Engaging in self-dealing or evidencing a notable  
39                   degree of potential or actual conflicts of interest.

40           (22) 'Home state' means (i) with respect to a federally chartered trust  
41           institution and a foreign bank, the state in which the institution  
42           maintains its principal office and (ii) with respect to any other trust  
43           institution, the state which chartered the institution.

- 1           (23) 'Home state regulator' means the bank supervisory agency with primary  
2           responsibility for chartering and supervising an out-of-state trust  
3           institution.
- 4           (24) 'Host state' means a state, other than the home state of a trust institution,  
5           or a foreign country in which the trust institution maintains or seeks to  
6           acquire or establish an office.
- 7           (25) 'Insider' means:  
8           a. Each director, officer, and principal shareholder of the trust  
9           company;  
10          b. Any company controlled by a director, officer, or principal  
11          shareholder of the trust company; or  
12          c. Any person who participates or has authority to participate, other  
13          than in the capacity of a director, in major policy-making  
14          functions of the State trust company, whether or not the person  
15          has an official title or the officer is serving without salary or  
16          compensation.
- 17          (26) 'Insolvent' means a circumstance or condition in which a State trust  
18          company:  
19          a. Is unable or lacks the means to meet its current obligations as  
20          they come due in the regular and ordinary course of business,  
21          even if the value of its assets exceeds its liabilities;  
22          b. Has equity capital less than five hundred thousand dollars  
23          (\$500,000), as determined under regulatory accounting  
24          principles;  
25          c. Sells or attempts to sell substantially all of its assets or merges or  
26          attempts to merge substantially all of its assets or business with  
27          another entity other than as hereinafter provided by this Chapter;  
28          or  
29          d. Attempts to dissolve or liquidate other than as hereinafter  
30          provided by this Chapter.
- 31          (27) 'Investment security' means a marketable obligation evidencing  
32          indebtedness of a person in the form of a bond, note, debenture, or other  
33          debt instrument not otherwise classified as a loan or extension of credit.
- 34          (28) 'License' means the authority granted by the Commissioner pursuant to  
35          this Chapter to establish, acquire, or maintain a trust office.
- 36          (29) 'Loans and extensions of credit' means direct or indirect advances of  
37          funds by a State trust company to a person that are conditioned on the  
38          obligation of the person to repay the funds or that are repayable from  
39          specific property pledged by or on behalf of the person.
- 40          (30) 'New trust office' means a trust office located in a host state which (i) is  
41          originally established by the trust institution as a trust office and (ii)  
42          does not become a trust office of the trust institution as a result of (A)  
43          the acquisition of another trust institution or trust office of another trust

- 1                    institution or (B) a merger, consolidation, or conversion involving any  
2                    trust institution or trust office.
- 3            (31) 'Office' with respect to a trust institution means the principal office, a  
4                    trust office, or a representative trust office, but not a branch.
- 5            (32) 'Officer' means the presiding officer of the board, the principal  
6                    executive officer, or another officer appointed by the board of a State  
7                    trust company or other company, or a person or group of persons acting  
8                    in a comparable capacity for the State trust company or other company.
- 9            (33) 'Operating subsidiary' means a company for which a State trust  
10                   company has the ownership, ability, or power to vote, directly, acting  
11                   through one or more other persons, or otherwise indirectly, more than  
12                   fifty percent (50%) of the outstanding shares of each class of voting  
13                   securities or its equivalent of the company.
- 14           (34) 'Out-of-state bank' means a bank chartered to act as a fiduciary in any  
15                   state or states other than this State.
- 16           (35) 'Out-of-state trust company' means either a trust company that is not a  
17                   State trust company or a savings institution whose principal office is not  
18                   located in this State.
- 19           (36) 'Out-of-state trust institution' means a trust institution that is not a State  
20                   trust institution.
- 21           (37) 'Person' means an individual, a company, or any other legal entity.
- 22           (38) 'Principal office' with respect to:
- 23                   a. A State trust company, means a location registered with the  
24                   Commissioner as the State trust company's home office at which:
- 25                            1. The State trust company does business;  
26                            2. The State trust company keeps its corporate books and a  
27                            set of its material records, including material fiduciary  
28                            records; and  
29                            3. At least one executive officer of the State trust company  
30                            maintains an office; or
- 31                   b. A trust institution other than a State trust company, means its  
32                   principal place of business in the United States.
- 33           (39) 'Principal shareholder' means a person who owns or has the ability or  
34                   power to vote, directly, acting through one or more other persons, or  
35                   otherwise indirectly, ten percent (10%) or more of the outstanding  
36                   shares of any class of voting securities of a State trust company or other  
37                   company.
- 38           (40) 'Registration' means the process by which a trust institution has been  
39                   authorized by the Commissioner to acquire, establish, or maintain a  
40                   representative trust office in this State.
- 41           (41) 'Representative trust office' means an office at which a trust institution  
42                   has been authorized by the Commissioner to engage in a trust business  
43                   other than acting as a fiduciary.

- 1           (42) 'Savings institution' means a depository institution that is neither a bank  
2           nor a foreign bank.
- 3           (43) 'Shareholder' means an owner of a share in a State trust company.
- 4           (44) 'Shares' means the units into which the proprietary interests of a State  
5           trust company are divided or subdivided by means of classes, series,  
6           relative rights, or preferences.
- 7           (45) 'State' means any state of the United States, the District of Columbia,  
8           any territory of the United States, Puerto Rico, Guam, American Samoa,  
9           the Trust Territory of the Pacific Islands, the Virgin Islands, and the  
10           Northern Mariana Islands.
- 11          (46) 'State bank' means (i) a bank chartered to act as a fiduciary by this State  
12          or (ii) a foreign bank as defined in section 1(b)(7) of the International  
13          Banking Act of 1978 chartered to act as a fiduciary in this State.
- 14          (47) 'State trust company' means a corporation organized or reorganized  
15          under this Chapter, including a trust company organized under Chapter  
16          53 of the North Carolina General Statutes.
- 17          (48) 'State trust institution' means a trust institution having its principal  
18          office in this State.
- 19          (49) 'Subsidiary' means a company that is controlled by another person. The  
20          term includes a subsidiary of a subsidiary.
- 21          (50) 'Surplus' means the amount by which the assets of a State trust company  
22          exceeds its liabilities, capital, and undivided profits.
- 23          (51) 'Trust business' means the holding out by a person to the public by  
24          advertising, solicitation, or other means that the person is available to  
25          perform any service of a fiduciary in this or another state, including:  
26                a. Acting as a fiduciary, or  
27                b. To the extent not acting as a fiduciary, any of the following: (i)  
28                    receiving for safekeeping personal property of every description;  
29                    (ii) acting as assignee, bailee, conservator, custodian, escrow  
30                    agent, registrar, receiver, or transfer agent; or (iii) acting as  
31                    financial advisor, investment advisor or manager, agent or  
32                    attorney-in-fact in any agreed upon capacity.
- 33          (52) 'Trust company' means a State trust company or any other company  
34          chartered to act as a fiduciary that is neither a depository institution nor  
35          a foreign bank.
- 36          (53) 'Trust deposits' means the client funds held by a State trust company and  
37          authorized to be deposited with itself pending investment, distribution,  
38          or payment of debts on behalf of the client.
- 39          (54) 'Trust institution' means a depository institution, foreign bank, State  
40          bank, or trust company.
- 41          (55) 'Trust office' means an office, other than the principal office, at which a  
42          trust institution is licensed by the Commissioner to act as a fiduciary.



(56) 'Unauthorized trust activity' means (i) a company, other than one identified in G.S. 53-5(a), acting as a fiduciary within this State, (ii) a company engaging in a trust business in this State at any office of the company that is not its principal office, if it is a State trust institution, or that is not a trust office or a representative trust office of the company, or (iii) an out-of-state trust institution engaging in a trust business in this State at any time an order issued by the Commissioner pursuant to G.S. 53C-23(b) is in effect.

(57) 'Undivided profits' means the part of equity capital of a State trust company equal to the balance of its net profits, income, gains, and losses since the date of its formation, minus subsequent distributions to shareholders and transfers to surplus or capital under share dividends or appropriate board resolutions. The term includes amounts allocated to undivided profits as a result of a merger.

(58) 'Voting security' means a share or other evidence of proprietary interest in a State trust company or other company that has as an attribute the right to vote or participate in the election of the board of the State trust company or other company, regardless of whether the right is limited to the election of fewer than all of the board members. The term includes a security that is convertible or exchangeable into a voting security.

(b) These definitions shall be liberally construed to accomplish the purposes of this Chapter. The State Banking Commission may adopt other definitions to accomplish the purposes of this Chapter.

"ARTICLE 2.

"Multistate Trust Institutions Act.

"Part 1. General.

**"§ 53C-2. Title and purposes.**

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

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

**"§ 53C-3. Regulations.**

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

"Part 2. Companies Authorized to Act as a Fiduciary.

**"§ 53C-4. Companies authorized to act as a fiduciary.**

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

(1) A State trust company;

(2) A State bank;

- 1           (3) A savings institution organized under the laws of this State and  
2 authorized to act as a fiduciary pursuant to Chapter 54B or Chapter 54C  
3 of the North Carolina General Statutes;
- 4           (4) A national bank having its principal office in this State and authorized  
5 by the Comptroller of the Currency to act as a fiduciary pursuant to 12  
6 U.S.C. § 92a;
- 7           (5) A federally chartered savings institution having its principal office in  
8 this State and authorized by its federal chartering authority to act as a  
9 fiduciary;
- 10          (6) An out-of-state bank with a branch in this State established or  
11 maintained pursuant to Article 17A of Chapter 53 of the North Carolina  
12 General Statutes or a trust office licensed by the Commissioner pursuant  
13 to this Article;
- 14          (7) An out-of-state trust company with a trust office licensed by the  
15 Commissioner pursuant to this Article; or
- 16          (8) A foreign bank with a trust office licensed by the Commissioner  
17 pursuant to this Article.

18          (b) In addition to the authority granted pursuant to subsection (a) of this section, an  
19 out-of-state trust institution may act as a fiduciary in this State provided that the home  
20 state of the out-of-state trust institution permits a trust institution organized under the  
21 laws of this State, or having its principal office in this State, to act as a fiduciary in the  
22 home state of the out-of-state trust institution under no greater restrictions than are  
23 imposed by this Chapter.

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

25 **"§ 53C-5. Activities not requiring a charter, etc.**

26 Notwithstanding any other provision of this Chapter, a company does not engage in  
27 the trust business or in any other business in a manner requiring a charter, license, or  
28 registration under this Chapter or in an unauthorized trust activity by:

- 29          (1) Acting in a manner authorized by law and in the scope of authority as an  
30 agent of a trust institution with respect to an activity which is not an  
31 unauthorized trust activity;
- 32          (2) Rendering a service customarily performed as an attorney or law firm in  
33 a manner approved and authorized by the North Carolina State Bar;
- 34          (3) Acting as trustee under a deed of trust delivered only as security for the  
35 payment of money or for the performance of another act;
- 36          (4) Receiving and distributing rents and proceeds of sale as a licensed real  
37 estate broker on behalf of a principal in a manner authorized by the  
38 North Carolina Real Estate Commission;
- 39          (5) Engaging in a securities transaction or providing an investment advisory  
40 service as a licensed and registered broker-dealer, investment advisor, or  
41 registered representative thereof, provided the activity is regulated by  
42 the Secretary of State or the United States Securities and Exchange  
43 Commission;

- 1           (6) Engaging in the sale and administration of an insurance product by an  
2 insurance company or agent licensed by the Department of Insurance to  
3 the extent that the activity is regulated by the Department of Insurance;  
4           (7) Engaging in the lawful sale of prepaid funeral benefits under a license  
5 issued by the North Carolina Board of Mortuary Science pursuant to  
6 Article 13D of Chapter 90 of the General Statutes or engaging in the  
7 lawful business of a perpetual care cemetery corporation pursuant to  
8 Chapter 65 of the General Statutes;  
9           (8) Acting as trustee under a voting trust as provided by the North Carolina  
10 Business Corporation Act;  
11           (9) Acting as trustee by a public, private, or independent institution of  
12 higher education or a university system, including its affiliated  
13 foundations or corporations, with respect to endowment funds or other  
14 funds owned, controlled, provided to, or otherwise made available to the  
15 institution with respect to its educational or research purposes;  
16           (10) Engaging in other activities expressly excluded from the application of  
17 this Chapter by rule of the Commission;  
18           (11) Rendering services customarily performed by a certified public  
19 accountant in a manner authorized by the North Carolina State Board of  
20 Certified Public Accountant Examiners; or  
21           (12) Provided the company is a trust institution and is not barred by order of  
22 the Commissioner from engaging in a trust business in this State  
23 pursuant to G.S. 53C-23(b), (i) marketing or soliciting in this State  
24 through the mail, telephone, any electronic means, or in person with  
25 respect to acting or proposing to act as fiduciary outside of this State;  
26 (ii) delivering money or other intangible assets and receiving money or  
27 other intangible assets from a client or other person in this State; or (iii)  
28 accepting or executing outside of this State a trust of any client or  
29 otherwise acting as a fiduciary outside of this State for any client.

30 **"§ 53C-6. Trust business of State trust institution.**

31           (a) A State trust institution may act as a fiduciary or otherwise engage in a trust  
32 business in this or any other state or foreign country, subject to complying with  
33 applicable laws of the state or foreign country, at an office established and maintained  
34 pursuant to this Article, at a branch or at any location other than an office or branch.

35           (b) In addition, a State trust institution may conduct any activities at any office  
36 outside this State that are permissible for a trust institution chartered by the host state  
37 where the office is located, except to the extent the activities are expressly prohibited by  
38 the laws of this State or by any regulation or order of the Commissioner applicable to the  
39 State trust institution; provided, however, that the Commissioner may waive any  
40 prohibition if the Commissioner determines, by order or regulation, that the involvement  
41 of out-of-state offices of State trust institutions in particular activities would not threaten  
42 the safety or soundness of the institutions.

43 **"§ 53C-7. Trust business of out-of-state trust institution.**

1 An out-of-state trust institution that establishes or maintains one or more offices in  
2 this State under this Article may conduct any activity that is authorized under the laws of  
3 this State.

4 **"§ 53C-8. Name of trust institution.**

5 A State trust company or out-of-state trust institution may register any name with the  
6 Secretary of State in connection with establishing a principal office, trust office, or  
7 representative trust office in this State pursuant to this Chapter, except that the  
8 Commissioner may determine that a name proposed to be registered is potentially  
9 misleading to the public and require the registrant to select a name that is not potentially  
10 misleading.

11 "Part 3. State Trust Institution Offices.

12 **"§ 53C-9. Trust business.**

13 A State trust company or a State bank may:

- 14 (1) Perform any act as a fiduciary;
- 15 (2) Engage in any trust business;
- 16 (3) Exercise any incidental power that is reasonably necessary to enable it  
17 to fully exercise, according to commonly accepted fiduciary customs  
18 and usages, a power conferred in this Article; and
- 19 (4) If a State trust company, exercise any other power authorized by G.S.  
20 53C-34.

21 **"§ 53C-10. Branches and offices of State trust institutions.**

22 (a) A State trust institution may act as a fiduciary and engage in a trust business at  
23 a branch and at each trust office as permitted by this Article.

24 (b) A State trust institution may not act as a fiduciary but may otherwise engage in  
25 a trust business at a representative trust office as permitted by this Article.

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

30 **"§ 53C-11. State trust company principal office.**

31 (a) Each State trust company is required to have and maintain continuously a  
32 principal office in this State.

33 (b) Each executive officer at the principal office is an agent of the State trust  
34 company for service of process.

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

40 (d) The change of principal office shall take effect on the thirty-first day following  
41 the date the Commissioner receives the notice pursuant to subsection (c) of this section,  
42 unless (i) the Commissioner establishes an earlier or later date, or (ii) prior to the thirty-  
43 first day, the Commissioner notifies the State trust company that it must establish to the

1 satisfaction of the Commissioner that the relocation is consistent with the original  
2 determination made under G.S. 53C-36(b) for the establishment of a State trust company  
3 at that location, in which event the change of principal office shall take effect when  
4 approved by the Commissioner.

5 **"§ 53C-12. Trust office; representative trust office.**

6 (a) A State trust institution may establish or acquire and maintain trust offices or  
7 representative trust offices anywhere in this State. A State trust institution desiring to  
8 establish or acquire and maintain an office shall file a written notice with the  
9 Commissioner setting forth the name of the State trust institution, the location of the  
10 proposed additional office and whether the additional office will be a trust office or a  
11 representative trust office, shall furnish a copy of the resolution adopted by the board  
12 authorizing the additional office and shall pay the filing fee, if any, set by rule.

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

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

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

24 **"§ 53C-13. Out-of-state offices.**

25 (a) A State bank, a State trust company, or a savings institution chartered under  
26 the laws of this State may establish and maintain a new trust office or a representative  
27 trust office or acquire and maintain an office in a state other than this State. The trust  
28 institution desiring to establish or acquire and maintain an office in another state under  
29 this section shall file a notice on a form adopted by the Commissioner that sets forth the  
30 name of the trust institution, the location of the proposed office, whether the office will  
31 be a trust office or a representative trust office, and whether the laws of the jurisdiction  
32 where the office will be located permit the office to be maintained by the trust institution,  
33 shall furnish a copy of the resolution adopted by the board authorizing the out-of-state  
34 office, and shall pay the filing fee, if any, set by rule.

35 (b) The State bank, State trust institution, or savings institution may commence  
36 business at the additional office on the thirty-first day following the date the  
37 Commissioner receives the notice, unless the Commissioner specifies an earlier or later  
38 date.

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

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

6                   "Part 4. Out-of-State Trust Institution Trust Office.

7 **"§ 53C-14. Trust business at a branch or trust office.**

8       Except as provided by G.S. 53C-4(b), an out-of-state trust institution may act as a  
9 fiduciary in this State or engage in a trust business at an office in this State only if it  
10 maintains (i) a trust office in this State as permitted by this Part or (ii) a branch in this  
11 State.

12 **"§ 53C-15. Establishing an interstate trust office.**

13       An out-of-state trust institution that does not operate a trust office in this State and  
14 that meets the requirements of this Part may establish and maintain a new trust office in  
15 this State; provided that an out-of-state trust institution may not establish a new trust  
16 office in this State unless a similar institution chartered under the laws of this State to act  
17 as a fiduciary, is permitted to establish a new trust office that may engage in activities  
18 substantially similar to those permitted to trust offices of out-of-state trust institutions  
19 under G.S. 53C-14, in the state where the out-of-state trust institution has its principal  
20 office.

21 **"§ 53C-16. Acquiring an interstate trust office.**

22       An out-of-state trust institution that does not operate a trust office in this State and  
23 that meets the requirements of this Part may acquire and maintain a trust office in this  
24 State; provided that no out-of-state trust institution may maintain a trust office in this  
25 State unless a similar institution chartered under the laws of this State to act as a fiduciary  
26 is permitted to acquire and maintain a trust office through an acquisition of a trust office  
27 in the state where the out-of-state trust institution has its principal office and may engage  
28 in activities substantially similar to those permitted to trust offices of out-of-state trust  
29 institutions under G.S. 53C-14, in the state where the out-of-state trust institution has its  
30 principal office.

31 **"§ 53C-17. Requirement of notice.**

32       An out-of-state trust institution desiring to establish and maintain a new trust office or  
33 acquire and maintain a trust office in this State pursuant to this Part, shall provide, or  
34 cause its home state regulator to provide, written notice of the proposed transaction to the  
35 Commissioner on or after the date on which the out-of-state trust institution applies to the  
36 home state regulator for approval to establish and maintain or acquire the trust office. The  
37 filing of the notice shall be preceded or accompanied by a copy of the resolution adopted  
38 by the board authorizing the additional office and any fee set by rule.

39 **"§ 53C-18. Conditions for approval.**

40       (a) No trust office of an out-of-state trust institution may be acquired or  
41 established in this State under this Part unless:

- 1           (1) The out-of-state trust institution has confirmed in writing to the  
2 Commissioner that for as long as it maintains a trust office in this State  
3 it will comply with all applicable laws of this State;
- 4           (2) The institution has provided satisfactory evidence to the Commissioner  
5 of compliance with (i) any applicable requirements of Article 15 of  
6 Chapter 55 of the General Statutes; and (ii) the applicable requirements  
7 of its home state regulator for acquiring or establishing and maintaining  
8 the office; and
- 9           (3) The Commissioner, acting within 60 days after receiving notice under  
10 G.S. 53C-17, has certified to the home state regulator that the  
11 requirements of this Part have been met and the notice has been  
12 approved or, if applicable, that any conditions imposed by the  
13 Commissioner pursuant to subsection (b) of this section have been  
14 satisfied.

15           (b) The out-of-state trust institution may commence business at the trust office on  
16 the sixty-first day following the date the Commissioner receives the notice, unless the  
17 Commissioner specifies an earlier or later date. With respect to an out-of-state trust  
18 institution that is not a depository institution and for which the Commissioner has  
19 conditioned approval on the satisfaction by the institution of any requirement applicable  
20 to a State trust company pursuant to G.S. 53C-36(b) or G.S. 53C-40, the institution shall  
21 comply and provide evidence to the Commissioner of compliance before the institution  
22 may commence business.

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

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

32 **"§ 53C-19. Additional trust offices.**

33           An out-of-state trust institution that maintains a trust office in this State under this  
34 Part may establish or acquire additional trust offices or representative trust offices in this  
35 State to the same extent that a State trust institution may establish or acquire additional  
36 offices in this State pursuant to the procedures for establishing or acquiring offices set  
37 forth in G.S. 53C-12.

38 **"§ 53C-20. Representative trust office business.**

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

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

43 **"§ 53C-21. Registration of representative trust office.**

1 (a) An out-of-state trust institution may establish or acquire and maintain a  
2 representative trust office in this State. An out-of-state trust institution not maintaining a  
3 trust office in this State and desiring to establish or acquire and maintain a representative  
4 trust office shall file a notice on a form adopted by the Commissioner that sets forth the  
5 name of the out-of-state trust institution and the location of the proposed office and  
6 satisfactory evidence that the notificant is a trust institution, shall furnish a copy of the  
7 resolution adopted by the board authorizing the representative trust office, and shall pay  
8 the filing fee, if any, set by rule.

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

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

17 (d) The Commissioner may deny approval of the representative trust office if the  
18 Commissioner finds that the notificant lacks sufficient financial resources to undertake  
19 the proposed expansion without adversely affecting its safety or soundness or that the  
20 proposed office would be contrary to the public interest. In acting on the notice, the  
21 Commissioner shall consider the views of the appropriate bank supervisory agency.

22 **"§ 53C-22. Examinations; periodic reports; cooperative agreements; assessment of**  
23 **fees.**

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

30 (b) The Commissioner may require periodic reports regarding any out-of-state  
31 trust institution that has established and maintained an office in this State pursuant to this  
32 Article. The required reports shall be provided by the trust institution or by the home state  
33 regulator. Any reporting requirements shall be (i) consistent with the reporting  
34 requirements applicable to State trust companies and (ii) appropriate for the purpose of  
35 enabling the Commissioner to carry out the Commissioner's responsibilities under this  
36 Chapter.

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



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

8       (e) The Commissioner may enter into joint examinations or joint enforcement  
9 actions with other bank supervisory agencies having concurrent jurisdiction over any  
10 office established and maintained in this State by an out-of-state trust institution or any  
11 office established and maintained by a State trust institution in any host state; provided,  
12 that the Commissioner may at any time take actions independently if the Commissioner  
13 considers the actions to be necessary or appropriate to carry out the Commissioner's  
14 responsibilities under this Chapter or to ensure compliance with the laws of this State. In  
15 the case of an out-of-state trust institution, the Commissioner shall recognize the  
16 exclusive authority of the home state regulator over corporate governance matters and the  
17 primary responsibility of the home state regulator with respect to safety and soundness  
18 matters.

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

25 **"§ 53C-23. Enforcement.**

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

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

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

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

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

42       (c) In cases involving extraordinary circumstances requiring immediate action, the  
43 Commissioner may take any action permitted by subsections (a) or (b) of this section.

1 without notice or opportunity for hearing, but shall promptly afford a subsequent hearing  
2 upon an application to rescind the action taken. The Commissioner shall promptly give  
3 notice to the home state regulator of each enforcement action taken against an out-of-  
4 state trust institution and, to the extent practicable, shall consult and cooperate with the  
5 home state regulator in pursuing and resolving the enforcement action.

6 **"§ 53C-24. Notice of subsequent merger, closing, etc.**

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

19 "ARTICLE 3.

20 "State Trust Institution Charter Modernization Act.

21  
22 "Part 1. Trust and Fiduciaries.

23 **"§ 53C-25. Title and purposes.**

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

26 (b) The express purposes of this Article are to:

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

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

43 **"§ 53C-26. Designation of trustee.**

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

3 **"§ 53C-27. Choice of law governing trusts.**

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

9 **"§ 53C-28. Choice of law governing fiduciary investments.**

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

16 **"§ 53C-29. Delegation and fiduciary responsibility.**

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

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

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

29 **"§ 53C-30. Affiliates.**

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

- 32 (1) Authorized by a trust or fiduciary instrument;
- 33 (2) Authorized by court order;
- 34 (3) Authorized in writing by each affected client; or
- 35 (4) The standards of G.S. 53C-29 are satisfied.

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

38 **"§ 53C-31. Fee determination.**

39 The compensation arrangement between a client and any person acting as a trustee or  
40 as any other fiduciary pursuant to this Article shall be at arm's length, and any  
41 compensation pursuant to an arrangement shall be a reasonable amount with respect to  
42 the services rendered.

43 **"§ 53C-32. Disclosure of potential conflicts of interest.**

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

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

14 **"§ 53C-33. Purchase of assets of another trust institution.**

15       (a) Subject to the provisions of this section, a trust institution may purchase assets  
16 of a State trust company or trust-related assets of another trust institution, including the  
17 right to control accounts established with the trust institution. Except as otherwise  
18 expressly provided by this or another statute, the purchase of all or part of the assets of  
19 the trust institution does not make the purchasing trust institution responsible for any  
20 liability or obligation of the selling trust institution that the purchasing trust institution  
21 does not expressly assume. Except as otherwise provided by this Part, this Part does not  
22 govern or prohibit the purchase by a State trust institution of all or part of the assets of a  
23 corporation or other entity that is not a trust institution.

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

- 33       (1) The acquiring trust institution will be solvent and have sufficient  
34 capitalization for its business and location;
- 35       (2) The acquiring trust institution has complied with all applicable statutes  
36 and rules including, without limitation, any applicable requirements of  
37 this Article;
- 38       (3) All fiduciary obligations and liabilities of the parties have been properly  
39 discharged or otherwise assumed by the acquiring trust institution;
- 40       (4) All conditions imposed by the Commissioner have been satisfied or  
41 otherwise resolved; and
- 42       (5) All fees and costs have been paid.

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

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

7 "Part 2. State Trust Company.

8 **"§ 53C-34. Organization and powers of State trust company.**

9 (a) Subject to the other provisions of this Article, one or more persons may  
10 organize and charter a State trust company. A State trust company may perform any act  
11 as a fiduciary or engage in any trust business within or without this State.

12 (b) Subject to G.S. 53C-41, a State trust company may exercise the powers of a  
13 business corporation organized under North Carolina law reasonably necessary or helpful  
14 to enable exercise of its specific powers under this Article.

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

18 (d) Subject to G.S. 53C-55, a State trust company may deposit trust funds with  
19 itself or an affiliate.

20 **"§ 53C-35. Articles of incorporation of State trust company.**

21 The articles of incorporation of a State trust company shall be signed and  
22 acknowledged by each organizer and shall contain:

23 (1) The name of the State trust company;

24 (2) The period of its duration, which may be perpetual;

25 (3) The powers of the State trust company, which may be stated as:

26 a. All powers granted to a State trust company in this State; or

27 b. A list of the specific powers that the State trust company chooses  
28 and is authorized to exercise;

29 (4) The aggregate number of shares that the State trust company will be  
30 authorized to issue, the number of classes of shares, which may be one  
31 or more, the number of shares of each class if more than one class, and a  
32 statement of the par value of the shares of each class or that the shares  
33 are to be without par value;

34 (5) If the shares are to be divided into classes, the designation of each class  
35 and statement of the preferences, limitations, and relative rights of the  
36 shares of each class;

37 (6) Any provision limiting or denying to shareholders the preemptive right  
38 to acquire additional or treasury shares of the State trust company;

39 (7) Any provision granting the right of shareholders to cumulative voting in  
40 the election of directors or managers;

41 (8) The aggregate amount of consideration to be received for all shares  
42 initially issued by the State trust company, and a statement that all  
43 authorized shares have been subscribed and that all subscriptions

1           received provide for the consideration to be fully paid in cash before  
2           issuance of the charter;

3           (9)   Any provision consistent with law that the organizers elect to set forth  
4           in the articles of incorporation for the regulation of the internal affairs of  
5           the State trust company or that is otherwise required by this Article to be  
6           set forth in the articles of incorporation;

7           (10)   The street address of the State trust company's principal office required  
8           to be maintained under G.S. 53C-11; and

9           (11)   The number of directors constituting the initial board, which may not be  
10          fewer than five or more than 25, and the names and street addresses of  
11          the persons who are to serve as directors until the first annual meeting of  
12          shareholders or until successor directors have been elected and  
13          qualified.

14   **"§ 53C-36. Application for State trust company charter.**

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

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

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

25               (2)   Whether the proposed organizational and capital structure and amount  
26               of initial capitalization is adequate for the proposed business and  
27               location;

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

31               (4)   Whether the proposed officers and directors, as a group, have sufficient  
32               fiduciary experience, ability, standing, competence, trustworthiness, and  
33               integrity to justify a belief that the proposed State trust company will  
34               operate in compliance with law and that success of the proposed State  
35               trust company is probable;

36               (5)   Whether each principal shareholder has sufficient experience, ability,  
37               standing, competence, trustworthiness, and integrity to justify a belief  
38               that the proposed State trust company will be free from improper or  
39               unlawful influence or interference with respect to the State trust  
40               company's operation in compliance with law; and

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

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

4 **"§ 53C-37. Notice and investigation of charter application; written reports.**

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

10 (b) At the expense of the organizers, the Commissioner shall investigate the  
11 application and inquire into the identity and character of each proposed director, officer,  
12 and principal shareholder. The Commissioner shall prepare a written report of the  
13 investigation, and any person may request a copy of the nonconfidential portions of the  
14 application and written report as provided by Chapter 132 of the General Statutes. Rules  
15 adopted under this Chapter may specify the confidential or nonconfidential character of  
16 information obtained by the Commission under this section. Except as provided in rules  
17 regarding confidential information, the financial statement of a proposed officer or  
18 director is confidential and not subject to public disclosure.

19 **"§ 53C-38. Decision on charter application and hearing.**

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

22 (b) Not later than the thirtieth day following the last date the notice was published  
23 under G.S. 53C-37(a), the Commissioner shall determine whether the application meets  
24 the requirements of G.S. 53C-36, based on the application and investigation, and shall  
25 enter an order approving the application, or shall set a hearing pursuant to Article 3A of  
26 Chapter 150B of the General Statutes.

27 (c) Based on the record of any hearing set pursuant to subsection (b) of this  
28 section, the Commissioner shall determine whether all of the necessary conditions set  
29 forth in G.S. 53C-36 have been established and shall enter an order granting or denying  
30 the charter. The Commissioner may make approval of any application conditional and  
31 shall include any conditions in the order granting the charter.

32 (d) Any order entered by the Commissioner with respect to a Charter Application  
33 shall be subject to review by the State Banking Commission for entry of a final agency  
34 decision.

35 **"§ 53C-39. Issuance of charter.**

36 (a) A State trust company may not engage in the trust business until it receives its  
37 charter from the Commissioner. The Commissioner may not deliver the charter until the  
38 State trust company has:

39 (1) Received cash or United States government securities in at least the full  
40 amount of required capital from subscriptions for the issuance of shares;

41 (2) Elected or qualified the initial officers and directors named in the  
42 application for charter or other officers and directors approved by the  
43 Commissioner; and

1           (3) Complied with all other requirements of this Article relative to the  
2           organization of a State trust company.

3           (b) If a State trust company does not open and engage in the trust business within  
4 six months after the date it receives its charter or conditional approval of application for  
5 charter, or within a further period as extended by the Commissioner, the Commissioner  
6 shall revoke the charter or cancel the conditional approval of application for charter  
7 without judicial action.

8 **"§ 53C-40. Required capital.**

9           (a) The Commissioner may not issue a charter to a State trust company having  
10 required capital of less than three million dollars (\$3,000,000), except as provided in  
11 subsection (b) of this section.

12           (b) The Commissioner may require additional capital for a proposed or existing  
13 State trust company if the Commissioner finds the condition and operation of the existing  
14 State trust company or the proposed scope or type of operation of a proposed State trust  
15 company requires additional capital consistent with the safety and soundness of the State  
16 trust company. The Commissioner may, in the exercise of discretion consistent with  
17 protecting safety and soundness, reduce the amount of minimum capital required for a  
18 proposed or existing State trust company, if the Commissioner finds the condition and  
19 operation of an existing State trust company or the proposed scope or type of operation of  
20 a proposed State trust company permits reduced capital consistent with the safety and  
21 soundness of the State trust company. The safety and soundness factors to be considered  
22 by the Commissioner in the exercise of the Commissioner's discretion include:

23           (1) The nature and type of business conducted;

24           (2) The nature and degree of liquidity in assets held in a corporate capacity;

25           (3) The amount of fiduciary assets under management;

26           (4) The type of fiduciary assets held and the depository of the assets;

27           (5) The complexity of fiduciary duties and degree of discretion undertaken;

28           (6) The competence and experience of management;

29           (7) The extent and adequacy of internal controls;

30           (8) The presence or absence of annual unqualified audits by an independent  
31 certified public accountant;

32           (9) The reasonableness of business plans for retaining or acquiring  
33 additional capital; and

34           (10) The existence and adequacy of insurance obtained or held by the trust  
35 company for the purpose of protecting its clients, beneficiaries, and  
36 grantors.

37           (c) The proposed effective date of an order requiring an existing State trust  
38 company to increase its capital shall be stated in the order as of or after the twenty-first  
39 day following the date the proposed order is mailed or delivered. Unless the State trust  
40 company requests a hearing before the Commissioner in writing before the effective date  
41 of the proposed order, the order becomes effective and is final and nonappealable. This  
42 subsection does not prohibit an application to reduce capital requirements of a proposed  
43 or an existing State trust company under subsection (b) of this section.



1       (d) Subject to subsection (b) of this section, a State trust company to which the  
2 Commissioner issues a charter shall at all times maintain capital in at least the amount  
3 required under subsection (a) of this section, plus any additional amount or less any  
4 reduction the Commissioner directs under subsection (b) of this section.

5 **"§ 53C-41. Application of laws relating to general business corporations.**

6       (a) The North Carolina Business Corporation Act applies to a trust company to the  
7 extent not inconsistent with this Chapter or the proper business of a trust company,  
8 except that, unless expressly authorized by this Chapter or a rule adopted by the State  
9 Banking Commission, a trust company may not take an action authorized by the North  
10 Carolina Business Corporation Act regarding its corporate status, capital structure, or a  
11 matter of corporate governance, of the type for which the North Carolina Business  
12 Corporation Act would require a filing with the Secretary of State, without first obtaining  
13 the approval of the Commissioner.

14       (b) The State Banking Commission may adopt rules to limit or refine the  
15 applicability of subsection (a) of this section to a trust company or to alter or supplement  
16 the procedures and requirements of the North Carolina Business Corporation Act  
17 applicable to an action taken under this Chapter.

18 **"§ 53C-42. Amendment of State trust company articles of incorporation.**

19       (a) A State trust company that has been granted a charter under G.S. 53C-39 or a  
20 predecessor statute may amend or restate its articles of incorporation for any lawful  
21 purpose, including the creation of authorized but unissued shares in one or more classes  
22 or series.

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

24           (1) The designation of each series and any variations in the preferences,  
25 limitations, and relative rights among series to the extent that the  
26 preferences, limitations, and relative rights are to be established in the  
27 articles of incorporation; and

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

31       (c) Amendment or restatement of the articles of incorporation of a State trust  
32 company and approval of the board and shareholders shall be made or obtained in  
33 accordance with provisions of the North Carolina Business Corporation Act for the  
34 amendment or restatement of articles of incorporation except as otherwise provided by  
35 this Chapter or rules adopted by the State Banking Commission. Unless the submission  
36 presents novel or unusual questions, the Commissioner shall approve or reject the  
37 amendment or restatement not later than 10 days after the date the Commissioner  
38 considers the submission informationally complete. The Commissioner may require the  
39 submission of additional information as considered necessary to an informed decision to  
40 approve or reject any amendment or restatement of articles of incorporation under this  
41 section.

42 **"§ 53C-43. Establishing a series of shares.**

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

5 (b) A series of shares may be established in the manner provided by the provisions  
6 of the North Carolina Business Corporation Act, but the shares of the series may not be  
7 issued and sold except upon compliance with this section. Unless the submission  
8 presents novel or unusual questions, the Commissioner shall approve or reject the series  
9 not later than 10 days after the date the Commissioner considers the submission  
10 informationally complete. The Commissioner may require the submission of additional  
11 information as considered necessary to an informed decision.

12 **"§ 53C-44. Change in outstanding capital and surplus.**

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

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

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

20 (2) Declaration and payment of pro rata share dividends as defined in the  
21 North Carolina Business Corporation Act; or

22 (3) Adoption by the board of a resolution directing that all or part of  
23 undivided profits be transferred to capital.

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

26 **"§ 53C-45. Capital notes or debentures.**

27 (a) With the prior written approval of the Commissioner, any State trust company  
28 may, at any time, through action of its board, and without requiring action of its  
29 shareholders, issue and sell its capital notes or debentures which may be subordinate to  
30 other claims, including the claims of other creditors or classes of creditors or the  
31 shareholders.

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

35 (c) Without the prior written approval of the Commissioner, interest due or  
36 principal repayable on outstanding capital notes or debentures may not be paid by a State  
37 trust company when the State trust company is in hazardous condition or insolvent, as  
38 determined by the Commissioner, or to the extent that payment will cause the State trust  
39 company to be in hazardous condition or insolvent.

40 (d) The amount of any outstanding capital notes or debentures that meet the  
41 requirements of this section and that are subordinated to unsecured creditors of the State  
42 trust company may be included in equity capital of the State trust company for purposes

1 of determining hazardous condition or insolvency, and for any other purposes provided  
2 by rules adopted under this Chapter.

3 "Part 3. Investments and Loans.

4 **"§ 53C-46. Investment in State trust company facilities.**

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

- 8 (1) Providing space for State trust company employees to perform their  
9 duties and space for parking by State trust company employees and  
10 customers;
- 11 (2) Conducting trust business, including meeting the reasonable needs and  
12 convenience of the State trust company's customers, computer  
13 operations, document and other item processing, maintenance and  
14 record retention, and storage;
- 15 (3) Holding, improving, and occupying as an incident to future expansion  
16 of the State trust company's facilities; or
- 17 (4) Conducting another activity authorized by rules adopted by the State  
18 Banking Commission.

19 (b) Without the prior written approval of the Commissioner, a State trust company  
20 may not directly or indirectly invest an amount in excess of its restricted capital in State  
21 trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided  
22 by rules adopted by the State Banking Commission, in computing this limitation a State  
23 trust company shall include:

- 24 (1) Its direct investment in State trust company facilities;
- 25 (2) Any investment in equity or investment securities of a company holding  
26 title to a facility used by the State trust company for the purposes  
27 specified by subsection (a) of this section;
- 28 (3) Any loan made by the State trust company to or on the security of  
29 equity or investment securities issued by a company holding title to a  
30 facility used by the State trust company; and
- 31 (4) Any indebtedness incurred on State trust company facilities by a  
32 company:
  - 33 a. That holds title to the facility;
  - 34 b. That is an affiliate of the State trust company; and
  - 35 c. In which the State trust company is invested in the manner  
36 described by subdivision (2) or (3) of this subsection.

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

42 (c) Real estate acquired under subdivision (3) of subsection (a) of this section and  
43 not improved and occupied by the State trust company ceases to be a State trust company

1 facility on the third anniversary of the date of its acquisition, unless the Commissioner on  
2 application grants written approval to further delay in the improvement and occupation of  
3 the property by the State trust company.

4 (d) A State trust company shall comply with generally accepted accounting  
5 principles, consistently applied, in accounting for its investment in and depreciation of  
6 State trust company facilities, furniture, fixtures, and equipment.

7 **"§ 53C-47. Other real estate.**

8 (a) A State trust company may not acquire real estate except:

9 (1) As permitted by G.S. 53C-46 or as otherwise provided by this Article,  
10 including rules adopted by the State Banking Commission;

11 (2) If necessary to avoid or minimize a loss on a loan or investment  
12 previously made in good faith; or

13 (3) With the prior written approval of the Commissioner.

14 (b) To the extent reasonably necessary to avoid or minimize loss on real estate  
15 acquired as permitted by subsection (a) of this section, a State trust company may  
16 exchange real estate for other real estate or personal property, invest additional funds in  
17 or improve real estate acquired under this subsection or subsection (a) of this section, or  
18 acquire additional real estate.

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

21 (1) The fifth anniversary of the date:

22 a. It was acquired, except as otherwise provided by rules adopted  
23 by the State Banking Commission;

24 b. It ceases to be used as a State trust company facility; or

25 (2) The third anniversary of the date it ceases to be a State trust company  
26 facility as provided by G.S. 53C-46.

27 (d) The Commissioner on application may grant one or more extensions of time  
28 for disposing of real estate if the Commissioner determines that:

29 (1) The State trust company has made a good faith effort to dispose of the  
30 real estate; or

31 (2) Disposal of the real estate would be detrimental to the State trust  
32 company.

33 **"§ 53C-48. Securities.**

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

36 (b) Unless the Commissioner approves maintenance of a lesser amount in writing,  
37 a State trust company shall invest and maintain an amount equal to at least forty percent  
38 (40%) of the State trust company's capital under G.S. 53C-40 in unencumbered cash,  
39 cash equivalents, and readily marketable securities.

40 (c) Subject to subsection (d) of this section, the total investment in equity and  
41 investment securities of any one issuer, obligor, or maker, held by the State trust  
42 company for its own account, may not exceed an amount equal to fifteen percent (15%)

1 of the State trust company's capital. The Commissioner may authorize investments in  
2 excess of this limitation on written application if the Commissioner concludes that:

- 3       (1) The excess investment is not prohibited by other applicable law; and  
4       (2) The safety and soundness of the requesting State trust company is not  
5       adversely affected.

6       (d) Notwithstanding subsection (c) of this section, a State trust company may  
7 purchase for its own account, without limitation and subject only to the exercise of  
8 prudent judgment:

9       (1) Bonds and other legally created general obligations of a state, an  
10 agency, or political subdivision of a state, the United States, or an  
11 agency or instrumentality of the United States;

12       (2) An investment security that this State, an agency or political subdivision  
13 of this State, the United States, or an agency or instrumentality of the  
14 United States has unconditionally agreed to purchase, insure, or  
15 guarantee;

16       (3) Securities that are offered and sold under 15 U.S.C. § 77d(5);

17       (4) Mortgage-related securities as defined in 15 U.S.C. § 78c(a), except that  
18 notwithstanding section 347 of the Riegle Community Development and  
19 Regulatory Improvement Act of 1994, a note or obligation that is  
20 secured by a first lien on one or more parcels of real estate on which is  
21 located one or more commercial structures is subject to the limitations  
22 of subsection (c) of this section;

23       (5) Investment securities issued or guaranteed by the Federal Home Loan  
24 Mortgage Corporation, the Federal National Mortgage Association, the  
25 Government National Mortgage Association, the Federal Agricultural  
26 Mortgage Association, or the Federal Farm Credit Banks Funding  
27 Corporation;

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

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

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

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

37 **"§ 53C-49. Transactions in State trust company shares.**

38       (a) A State trust company may acquire its own shares if:

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

41       (2) The State trust company obtains the prior written approval of the  
42 Commissioner.

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

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

3           (2) The State trust company obtains the prior written approval of the  
4           Commissioner.

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

6           (1) The State trust company may not hold its own shares as treasury stock  
7           for more than two years; and

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

10 **"§ 53C-50. Subsidiaries.**

11       (a) Except as otherwise provided by this Chapter or rules adopted by the State  
12 Banking Commission, a State trust company may acquire or establish a subsidiary to  
13 conduct any activity that may be conducted lawfully through the form of organization  
14 chosen for the subsidiary.

15       (b) A State trust company may not invest more than an amount equal to fifteen  
16 percent (15%) of its capital in a single subsidiary and may not invest an amount in excess  
17 of its restricted capital in all subsidiaries. The amount of a State trust company's  
18 investment in a subsidiary is the total amount of the State trust company's investment in  
19 equity or investment securities issued by its subsidiary and any loans and extensions of  
20 credit from the State trust company to its subsidiary. The Commissioner may authorize  
21 investments in excess of these limitations on written application if the Commissioner  
22 concludes that:

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

24           (2) The safety and soundness of the requesting State trust company is not  
25           adversely affected.

26       (c) A State trust company that intends to acquire, establish, or perform new  
27 activities through a subsidiary shall submit a letter to the Commissioner describing in  
28 detail the proposed activities of the subsidiary.

29       (d) The State trust company may acquire or establish a subsidiary or begin  
30 performing new activities in an existing subsidiary 30 days following the date the  
31 Commissioner receives the State trust company's letter, unless the Commissioner  
32 specifies an earlier or later date. The Commissioner may extend the 30-day period of  
33 review on a determination that the State trust company's letter raises issues that require  
34 additional information or additional time for analysis. If the period of review is extended,  
35 the State trust company may acquire or establish the subsidiary, or perform new activities  
36 in an existing subsidiary, only on prior written approval of the Commissioner.

37       (e) A subsidiary of a State trust company is subject to regulation by the  
38 Commissioner to the extent provided by this Chapter or rules adopted by the State  
39 Banking Commission. In the absence of limiting rules, the Commissioner may regulate a  
40 subsidiary as if it were a State trust company.

41 **"§ 53C-51. Mutual funds.**

42       (a) A State trust company may invest for its own account in equity securities of an  
43 investment company registered under the Investment Company Act of 1940 (15 U.S.C. §

1 80a-1, et seq.) and the Securities Act of 1933 (15 U.S.C. § 77a, et seq.) if the portfolio of  
2 the investment company consists wholly of investments in which the State trust company  
3 could invest directly for its own account.

4 (b) If the portfolio of an investment company described in subsection (a) of this  
5 section consists wholly of investments in which the State trust company could invest  
6 directly without limitation under G.S. 53C-48(d), the State trust company may invest in  
7 the investment company without limitation.

8 (c) If the portfolio of an investment company described in subsection (a) of this  
9 section contains any investment that is subject to the limits of G.S. 53C-48(c), the State  
10 trust company may invest in the investment company not more than an amount equal to  
11 fifteen percent (15%) of the State trust company's capital. This provision does not apply  
12 to a money market fund.

13 (d) In evaluating investment limits under this Article, a State trust company may  
14 not be required to combine:

15 (1) The State trust company's pro rata share of the securities of an issuer in  
16 the portfolio of an investment company with the State trust company's  
17 pro rata share of the securities of that issuer held by another investment  
18 company in which the State trust company has invested; or

19 (2) The State trust company's own direct investment in the securities of an  
20 issuer with the State trust company's pro rata share of the securities of  
21 that issuer held by each investment company in which the State trust  
22 company has invested under this section.

23 **"§ 53C-52. Engaging in commerce prohibited.**

24 Except as otherwise provided by this Article, or rules adopted by the State Banking  
25 Commission, a State trust company may not invest its funds in trade or commerce by  
26 buying, selling, or otherwise dealing in goods or by owning or operating a business not  
27 part of the State trust business, except as necessary to fulfill a fiduciary obligation to a  
28 client.

29 **"§ 53C-53. Lending limits.**

30 (a) A State trust company's total outstanding loans and extensions of credit to a  
31 person other than an insider may not exceed an amount equal to fifteen percent (15%) of  
32 the State trust company's capital.

33 (b) The aggregate loans and extensions of credit outstanding at any time to insiders  
34 of the State trust company may not exceed an amount equal to fifteen percent (15%) of  
35 the State trust company's capital. All covered transactions between an insider and a State  
36 trust company shall be engaged in only on terms and under circumstances, including  
37 credit standards, that are substantially the same as those for comparable transactions with  
38 a noninsider.

39 (c) The State Banking Commission may adopt rules to administer and carry out  
40 this section, including rules to establish limits, requirements, or exemptions other than  
41 those specified by this section for particular classes or categories of loans or extensions of  
42 credit, and establish collective lending and investment limits.

1       (d) The Commissioner may determine whether a loan or extension of credit  
2 putatively made to a person will be attributed to another person for purposes of this  
3 section.

4       (e) A State trust company may not lend trust deposits, except that a trustee may  
5 make a loan to a beneficiary of the trust if the loan is expressly authorized or directed by  
6 the instrument or transaction establishing the trust.

7       (f) An officer, director, or employee of a State trust company who approves or  
8 participates in the approval of a loan with actual knowledge that the loan violates this  
9 section is jointly and severally liable to the State trust company for the lesser of the  
10 amount by which the loan exceeded applicable lending limits or the State trust company's  
11 actual loss and remains liable for that amount until the loan and all prior indebtedness of  
12 the borrower to the State trust company has been fully repaid. The State trust company  
13 may initiate a proceeding to collect an amount due under this subsection at any time  
14 before the date the borrower defaults on the subject loan or any prior indebtedness or  
15 before the fourth anniversary of that date. A person that is liable for and pays amounts to  
16 the State trust company under this subsection is entitled to an assignment of the State  
17 trust company's claim against the borrower to the extent of the payments. For purposes of  
18 this subsection, an officer, director, or employee of a State trust company is presumed to  
19 know the amount of the State trust company's lending limit under subsection (a) of this  
20 section and the amount of the borrower's aggregate outstanding indebtedness to the State  
21 trust company immediately before a new loan or extension of credit to that borrower.

22 **"§ 53C-54. Lease financing transactions.**

23       (a) Subject to rules adopted by the State Banking Commission, a State trust  
24 company may become the owner and lessor of tangible personal property for lease  
25 financing transactions on a net lease basis on the specific request and for the use of a  
26 client. Without the written approval of the Commissioner to continue holding property  
27 acquired for leasing purposes under this subsection, the State trust company may not hold  
28 the property more than six months after the date of expiration of the original or any  
29 extended or renewed lease period agreed to by the client for whom the property was  
30 acquired or by a subsequent lessee.

31       (b) Rental payments received by the trust company in a lease financing transaction  
32 under this section are considered to be rent and not interest or compensation for the use,  
33 forbearance, or detention of money. However, a lease financing transaction is considered  
34 to be a loan or extension of credit for purposes of G.S. 53C-53.

35 **"§ 53C-55. Trust deposits.**

36       (a) A State trust company may deposit trust funds with itself as an investment if  
37 authorized by the seller or the beneficiary provided:

- 38           (1) It maintains as security for the deposits a separate fund of securities,  
39 legal for trust investments, under control of a federal reserve bank or a  
40 clearing corporation, as defined by either this State or elsewhere;
- 41           (2) The total market value of the security is at all times at least equal to the  
42 amount of the deposit;
- 43           (3) The separate fund is designated as such; and



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

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

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

9 **"§ 53C-56. Common investment funds.**

10          (a) A State trust company may establish common trust funds to provide  
11 investment to itself as a fiduciary.

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

17 **"§ 53C-57. Borrowing limit.**

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

20 **"§ 53C-58. Pledge of assets.**

21          A State trust company may not pledge or create a lien on any of its assets, except to  
22 secure the repayment of money borrowed or as specifically authorized or required by  
23 G.S. 53C-55, or by rules adopted by the State Banking Commission. An act, deed,  
24 conveyance, pledge, or contract in violation of this section is void.

25                   "Part 4. Additional Definitions; Ownership;  
26                   Governance; Mergers.

27 **"§ 53C-59. Acquisition of control.**

28          (a) Except as expressly otherwise permitted, a person may not, without the prior  
29 written approval of the Commissioner, directly or indirectly acquire control of a State  
30 trust company through a change in a legal or beneficial interest in voting securities of a  
31 State trust company or a corporation or other entity owning voting securities of a State  
32 trust company.

33          (b) This Part does not prohibit a person from negotiating to acquire, but not  
34 acquiring, control of a State trust company or a person from controlling a State trust  
35 company.

36          (c) This section does not apply to:

37           (1) The acquisition of securities in connection with the exercise of a  
38 security interest or otherwise in full or partial satisfaction of a debt  
39 previously contracted for in good faith if the acquiring person files  
40 written notice of acquisition with the Commissioner before the person  
41 votes the securities acquired.

42           (2) The acquisition of voting securities in any class or series by a  
43 controlling person who has previously complied with and received

1 approval under this Chapter or who was identified as a controlling  
2 person in a prior application filed with and approved by the  
3 Commissioner.

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

7 (4) A transaction exempted by the Commissioner by rule or order because  
8 (i) the transaction is not within the purposes of this Article, or (ii)  
9 regulation of the transaction is not necessary or appropriate to achieve  
10 the objectives of this Article.

11 **"§ 53C-60. Application regarding acquisition of control.**

12 (a) The proposed transferee seeking approval to acquire control of a State trust  
13 company or a person that controls a State trust company shall file with the  
14 Commissioner:

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

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

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

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

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

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

30 (e) The proposed transferee shall publish notice of the application, its date of  
31 filing, and the identity of each participant, in the form specified by the Commissioner, in  
32 a newspaper of general circulation in the county where the State trust company's home  
33 office is located, promptly after the Commissioner accepts the application as complete.  
34 Publication of notice of an application filed in contemplation of a public tender offer  
35 subject to the requirements of 15 U.S.C. § 78n(d)(1) may be deferred for not more than  
36 34 days after the date the application is filed if:

37 (1) The proposed transferee requests confidential treatment and represents  
38 that a public announcement of the tender offer and the filing of  
39 appropriate forms with the Securities and Exchange Commission or the  
40 appropriate federal banking agency, as applicable, will occur within the  
41 period of deferral; and

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

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

4 **"§ 53C-61. Hearing and decision on acquisition of control.**

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

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

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

15               a. The anticompetitive effects of the proposed acquisition are  
16 clearly outweighed in the public interest by the probable effect of  
17 acquisition in meeting the convenience and needs of the  
18 community to be served; and

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

21           (2) The financial condition of the proposed transferee, or any member of a  
22 group composing the proposed transferee, might jeopardize the financial  
23 stability of the State trust company being acquired;

24           (3) Plans or proposals to operate, liquidate, or sell the State trust company  
25 or its assets are not in the best interest of the State trust company;

26           (4) The experience, ability, standing, competence, trustworthiness, and  
27 integrity of the proposed transferee, or any member of a group  
28 comprising the proposed transferee, are insufficient to justify a belief  
29 that the State trust company will be free from improper or unlawful  
30 influence or interference with respect to the State trust company's  
31 operation in compliance with law;

32           (5) The State trust company will not be solvent, have adequate  
33 capitalization, or be in compliance with the laws of this State after the  
34 acquisition;

35           (6) The proposed transferee has failed to furnish all information pertinent to  
36 the application reasonably required by the Commissioner; or

37           (7) The proposed transferee is not acting in good faith.

38       (c) If an application filed under this section is approved by the Commissioner, the  
39 transaction may be consummated. Any written commitment from the proposed transferee  
40 offered to and accepted by the Commissioner as a condition for approval of the  
41 application is enforceable against the State trust company and the transferee and is  
42 considered for all purposes an agreement under this Chapter.

43 **"§ 53C-62. Appeal.**

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

4 **"§ 53C-63. Objection to other transfer.**

5        Nothing in this Article shall be construed to prevent the Commissioner from  
6 investigating, commenting on, or seeking to enjoin or set aside a transfer of voting  
7 securities that evidence a direct or indirect interest in a State trust company, regardless of  
8 whether the transfer is included within this Article, if the Commissioner considers the  
9 transfer to be against the public interest.

10 **"§ 53C-64. Criminal penalties.**

11        A person who knowingly fails or refuses to file the application required by G.S. 53C-  
12 60 shall be guilty of a Class 1 misdemeanor.

13 **"§ 53C-65. Voting securities held by State trust company.**

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

18            (1) Under the terms of the will or trust, the manner in which the voting  
19 securities are to be voted may be determined by a donor or beneficiary  
20 of the will or trust, and the donor or beneficiary actually makes the  
21 determination in the matter at issue;

22            (2) The terms of the will or trust expressly direct the manner in which the  
23 securities shall be voted to the extent that no discretion is vested in the  
24 State trust company as fiduciary; or

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

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

30 **"§ 53C-66. Bylaws.**

31        Each State trust company shall adopt bylaws and may amend its bylaws from time to  
32 time for the purposes of and in accordance with the procedures set forth in the North  
33 Carolina Business Corporation Act.

34 **"§ 53C-67. Board of directors.**

35        (a) The board of a State trust company shall consist of not fewer than five or more  
36 than 25 directors, the majority of whom shall be residents of this State. The principal  
37 executive officer of the State trust company shall be a member of the board. The  
38 principal executive officer acting in the capacity of a board member is the board's  
39 presiding officer unless the board elects a different presiding officer to perform the duties  
40 as designated by the board.

41        (b) Unless the Commissioner consents otherwise in writing, a person may not  
42 serve as director of a State trust company if:

1           (1) The State trust company incurs an unreimbursed loss attributable to a  
2 charged-off obligation of or holds a judgment against the person or an  
3 entity that was controlled by the person at the time of funding and at the  
4 time of default on the loan that gave rise to the judgment or charged-off  
5 obligation;

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

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

10       (c) If a State trust company does not elect directors before the sixty-first day  
11 following the date of its regular annual meeting, the Commissioner may appoint a  
12 conservator under G.S. 53C-129 to operate the State trust company and elect directors, as  
13 appropriate. If the conservator is unable to locate or elect persons willing and able to  
14 serve as directors, the Commissioner may close the State trust company for liquidation.

15       (d) A vacancy on the board that reduces the number of directors to fewer than five  
16 shall be filled not later than the thirtieth day following the date the vacancy occurs. After  
17 30 days following the date the vacancy occurs, the Commissioner may appoint a  
18 conservator under G.S. 53C-129 to operate the State trust company and elect a board of  
19 not fewer than five persons to resolve the vacancy. If the conservator is unable to locate  
20 or elect five persons willing and able to serve as directors, the Commissioner may close  
21 the State trust company for liquidation.

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

25           (1) Accepts the position and is not disqualified from serving in the position;

26           (2) Will not violate or knowingly permit an officer, director, or employee of  
27 the State trust company to violate any law applicable to the conduct of  
28 business of the State trust company; and

29           (3) Will diligently perform the duties of the position.

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

31           (1) Is not elected by the shareholders of the State trust company;

32           (2) Does not vote on matters before the board or a committee of the board  
33 and is not counted for purposes of determining a quorum of the board or  
34 committee; and

35           (3) Provides solely general policy advice to the board.

36 **"§ 53C-68. Required board meetings.**

37       The board of a State trust company shall hold at least one regular meeting each  
38 quarter. At each regular meeting the board shall review and approve the minutes of the  
39 prior meeting and review the operations, activities, and financial condition of the State  
40 trust company. The board may designate committees from among its members to  
41 perform these duties and approve or disapprove the committees' reports at each regular  
42 meeting. All actions of the board shall be recorded in its minutes.

43 **"§ 53C-69. Officers.**

1 (a) The board shall annually appoint the officers of the State trust company, who  
2 shall serve at the pleasure of the board. The State trust company shall have a principal  
3 executive officer primarily responsible for the execution of board policies and operation  
4 of the State trust company, and an officer responsible for the maintenance and storage of  
5 all corporate books and records of the State trust company, and for required attestation of  
6 signatures. These positions may not be held by the same person. The board may appoint  
7 other officers of the State trust company as the board considers necessary.

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

11 **"§ 53C-70. Certain criminal offenses.**

12 (a) An officer, director, employee, or shareholder of a State trust company  
13 commits an offense if the person knowingly:

14 (1) Conceals information or a fact, or removes, destroys, or conceals a book  
15 or record of the State trust company for the purpose of concealing  
16 information or a fact from the Commissioner or an agent of the  
17 Commissioner; or

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

21 (b) An officer, director, or employee of a State trust company commits an offense  
22 if the person knowingly makes a false entry in the books or records or in any report or  
23 statement of the State trust company.

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

25 **"§ 53C-71. Transactions with management and affiliates.**

26 (a) Without the prior approval of a disinterested majority of the board recorded in  
27 the minutes or, if a disinterested majority cannot be obtained, the prior written approval  
28 of the Commissioner, a State trust company may not directly or indirectly:

29 (1) Sell or lease an asset of the State trust company to an officer, director,  
30 or principal shareholder of the State trust company or an affiliate of the  
31 State trust company;

32 (2) Purchase or lease an asset in which an officer, director, or principal  
33 shareholder of the State trust company or an affiliate of the State trust  
34 company has an interest; or

35 (3) Subject to G.S. 53C-53, extend credit to an officer, director, or principal  
36 shareholder of the State trust company or an affiliate of the State trust  
37 company.

38 (b) Notwithstanding subsection (a) of this section, a lease transaction described in  
39 subdivision (2) of subsection (a) of this section involving real property may not be  
40 consummated, renewed, or extended without the prior written approval of the  
41 Commissioner. For purposes of this subsection only, an affiliate of the State trust  
42 company does not include a subsidiary of the State trust company.

1 (c) Subject to G.S. 53C-53, a State trust company may not directly or indirectly  
2 extend credit to an employee, officer, director, or principal shareholder of the State trust  
3 company or an affiliate of the State trust company, unless:

4 (1) The extension of credit:

5 a. Is made on substantially the same terms, including interest rates  
6 and collateral, as those prevailing at the time for comparable  
7 transactions by the State trust company with persons who are not  
8 employees, officers, directors, or principal shareholders or  
9 affiliates of the State trust company; and

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

12 (2) The State trust company follows credit underwriting procedures that are  
13 not less stringent than those applicable to comparable transactions by  
14 the State trust company with persons who are not employees, officers,  
15 directors, or principal shareholders or affiliates of the State trust  
16 company.

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

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

22 **"§ 53C-72. Fiduciary responsibility.**

23 The board of a State trust company is responsible for the proper exercise of fiduciary  
24 powers by the State trust company and each matter pertinent to the exercise of fiduciary  
25 powers, including:

26 (1) The determination of policies;

27 (2) The investment and disposition of property held in a fiduciary capacity;  
28 and

29 (3) The direction and review of the actions of each officer, employee, and  
30 committee used by the State trust company in the exercise of its  
31 fiduciary powers.

32 **"§ 53C-73. Record keeping.**

33 A State trust company shall keep its fiduciary records separate and distinct from other  
34 records of the State trust company. The fiduciary records shall contain all material  
35 information relative to each account as appropriate under the circumstances.

36 **"§ 53C-74. Bonding requirements.**

37 (a) The board of a State trust company shall require protection and indemnity for  
38 clients in reasonable amounts established by rules adopted under this Chapter, against  
39 dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses, with  
40 corporate insurance or surety companies:

41 (1) Authorized to do business in this State; or

42 (2) Acceptable to the Commissioner and otherwise lawfully permitted to  
43 issue the coverage against those losses in this State.

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

4 **"§ 53C-75. Reports of apparent crime.**

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

13 **"§ 53C-76. Merger authority.**

14 (a) With the prior written approval of the Commissioner, a State trust company  
15 may merge or consolidate with another trust company or corporate entity.

16 (b) Implementation of the plan of merger by the parties and approval of the board  
17 or shareholders shall be made or obtained as provided by the North Carolina Business  
18 Corporation Act.

19 **"§ 53C-77. Merger application.**

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

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

- 25 (1) Each resulting State trust company will be solvent and have adequate  
26 capitalization for its business and location;
- 27 (2) Each resulting State trust company has in all respects complied with the  
28 statutes and rules relative to the organization of a State trust company;
- 29 (3) All fiduciary obligations and liabilities of each State trust company that  
30 is a party to the merger have been discharged properly or otherwise  
31 have been assumed or retained by a State trust company or other  
32 fiduciary lawfully;
- 33 (4) Each surviving, new, or acquiring party that is not authorized to engage  
34 in the trust business will not engage in the trust business and has in all  
35 respects complied with the laws of this State; and
- 36 (5) All conditions imposed by the Commissioner have been satisfied or  
37 otherwise resolved.

38 **"§ 53C-78. Notice and investigation of merger; decision; hearing and appeal.**

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



1 (b) At the expense of the parties to a merger, the Commissioner shall investigate  
2 the proposed transaction, including the character of the proposed directors, officers, and  
3 principal shareholders. The Commissioner shall prepare a report of the investigation, and  
4 any person may request a copy of the nonconfidential portions of the report as provided  
5 by Chapter 132 of the General Statutes. Rules adopted may specify the confidential and  
6 nonconfidential character of information obtained by the Commissioner under this  
7 section. Except as provided by rules regarding confidential information, the financial  
8 statements of officers and directors are confidential and shall not be disclosed to the  
9 public.

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

12 (d) Not later than the thirtieth day following the last date notification is published  
13 pursuant to subsection (a) of this section, the Commissioner shall determine whether the  
14 application meets the requirements of G.S. 53C-77, based on the application and  
15 investigation, and shall enter an order approving the merger or shall set a hearing  
16 pursuant to Article 3A of Chapter 150B of the General Statutes.

17 (e) Any order entered by the Commissioner with respect to an Application for  
18 Merger shall be subject to review by the State Banking Commission for entry of a final  
19 agency decision.

20 **"§ 53C-79. Rights of dissenters to mergers.**

21 A shareholder may dissent from the merger to the extent and by following the  
22 procedure provided by the North Carolina Business Corporation Act.

23 **"§ 53C-80. Authority to act as disbursing agent.**

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

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

35 (2) Is not responsible for:

36 a. Any error made by the selling institution in determining its  
37 liabilities, and creditors to whom the liabilities are due, or the  
38 amounts due the creditors; or

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

41 **"§ 53C-81. Liquidation of selling State trust company.**

42 If the selling trust institution is at any time after the sale of assets voluntarily or  
43 involuntarily closed for liquidation by a State or federal regulatory agency, the

1 purchasing trust company shall pay to the receiver of the selling institution the balance of  
2 the funds held by it in trust for the selling institution and not yet paid to the creditors of  
3 the selling institution. Without further action, the purchasing trust institution is  
4 discharged of all responsibilities to the selling institution, its receiver, or its creditors or  
5 shareholders.

6 **"§ 53C-82. Payment to creditors.**

7 Payment to a creditor of the selling institution of the amount to be paid the person  
8 under the terms of the contract of agency may be made by the purchasing trust company  
9 by (i) opening an agency account in the name of the creditor, (ii) crediting the account  
10 with the amount to be paid the creditor under the terms of the agency contract, and (iii)  
11 mailing or personally delivering a duplicate ticket evidencing the credit to the creditor at  
12 the person's address shown in the records of the selling institution. The relationship  
13 between the purchasing trust institution and the creditor is that of agent to creditor only to  
14 the extent of the credit reflected by the ticket.

15 **"§ 53C-83. Sale of assets.**

16 (a) The board of a State trust company, with the Commissioner's approval, may  
17 cause a State trust company to sell all or substantially all of its assets, including the right  
18 to control accounts established with the trust company, without shareholder approval if  
19 the Commissioner finds:

20 (1) The interests of the State trust company's clients and creditors are  
21 jeopardized because of insolvency or imminent insolvency of the State  
22 trust company; and

23 (2) The sale is in the best interest of the State trust company's clients and  
24 creditors.

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

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

28 (2) All of the State trust company's liabilities for salaries of the State trust  
29 company's employees incurred before the date of the sale;

30 (3) Obligations incurred by the Commissioner arising out of the supervision  
31 or sale of the State trust company; and

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

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

35 (d) This section does not affect the Commissioner's right to take action under  
36 another law. The sale by a trust company of all or substantially all of its assets with  
37 shareholder approval is considered a voluntary dissolution and liquidation and is  
38 governed by Part 1 of Article 5 of this Chapter.

39 "ARTICLE 4.

40 "Enforcement Actions.

41  
42 "Part 1. Supervision and Examination.

43 **"§ 53C-84. Authorized trust institution.**

1 For the purposes of this Article, the term 'authorized trust institution' shall be defined  
2 to mean any State trust company, trust office, or representative trust office.

3 **"§ 53C-85. Commissioner shall have supervision over authorized trust institutions**  
4 **and shall examine.**

5 Every authorized trust institution shall be under the supervision of the Commissioner.  
6 The Commissioner shall execute and enforce through examiners and any other agents as  
7 are now or may hereafter be created or appointed, all laws that are now or may be enacted  
8 relating to authorized trust institutions. For the more complete and thorough enforcement  
9 of the provisions of this Chapter, the State Banking Commission may adopt any rules not  
10 inconsistent with the provisions of this Chapter, to carry out the provisions of the laws  
11 relating to authorized trust institutions and to insure safe and conservative management of  
12 an authorized trust institution under its supervision, taking into consideration the  
13 appropriate interest of the creditors, stockholders, and the public in their relations with  
14 the authorized trust institutions. All authorized trust institutions doing business under the  
15 provisions of this Chapter shall conduct their business in a manner consistent with all  
16 laws relating to authorized trust institutions and all rules and instructions that may be  
17 adopted or issued by the State Banking Commission.

18 **"§ 53C-86. Assessment of State trust companies.**

19 (a) For the cost of examinations and other services, each State trust company shall  
20 pay into the Office of the Commissioner of Banks, within 10 days after notice, an  
21 assessment not to exceed annually one dollar (\$1.00) per one hundred thousand dollars  
22 (\$100,000) of trust assets, exclusive of real estate carried as such. Provided, however, a  
23 State trust company shall pay a minimum annual assessment of six thousand dollars  
24 (\$6,000). The amount of trust assets shall be determined as of the close of business on  
25 December 31 each year.

26 (b) If an application for merger or acquisition and control occasions an  
27 examination or if the Commissioner determines that the financial condition or manner of  
28 operation of a State trust company warrants further examination or an increased level of  
29 supervision, a State trust company may be subject to additional assessment not to exceed  
30 an amount determined in accordance with the schedule set forth in subsection (a) of this  
31 section.

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

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

39 "Part 2. Enforcement Orders; Trust Company Management.

40 **"§ 53C-87. Administrative orders; penalties for violation.**

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

- 1           (1) Order any authorized trust institution, or subsidiary thereof; or any  
2 director, officer, or employee to cease and desist violating any provision  
3 of this Chapter or any lawful regulation issued thereunder.
- 4           (2) Order any authorized trust institution, or subsidiary thereof, or any  
5 director, officer, or employee to cease and desist from a course of  
6 conduct that is unsafe or unsound and which is likely to cause  
7 insolvency or dissipation of assets or is likely to jeopardize or otherwise  
8 seriously prejudice the interests of the public in their relationship with  
9 the authorized trust institution.
- 10          (3) Order any company to cease engaging in an unauthorized trust activity.
- 11          (4) Enter any order pursuant to G.S. 53C-23.

12          (b) The Commissioner may impose a civil money penalty of not more than one  
13 thousand dollars (\$1,000) for each violation by any authorized trust institution, or  
14 subsidiary thereof, or any director, officer, or employee of an order issued under  
15 subdivision (1) of subsection (a) of this section. The Commissioner may impose a civil  
16 money penalty of not more than five hundred dollars (\$500.00) per day for each day that  
17 an authorized trust institution, or subsidiary thereof, or any director, officer, or employee  
18 violates a cease and desist order issued under subdivision (2) or (3) of subsection (a) of  
19 this section. All civil money penalties collected under this section shall be paid to the  
20 county school fund.

21 **"§ 53C-88. Notice and opportunity for hearing.**

22          Consistent with Chapter 150B of the General Statutes, notice and opportunity for  
23 hearing shall be provided before the Commissioner may act pursuant to G.S. 53C-87. In  
24 cases involving extraordinary circumstances requiring immediate action, the  
25 Commissioner may take action without a hearing, but shall promptly afford a subsequent  
26 hearing upon application to rescind the action taken.

27 **"§ 53C-89. Subpoena power and examination under oath.**

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

32 **"§ 53C-90. Removal of directors, officers, and employees.**

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

38 **"§ 53C-91. Review by the State Banking Commission; additional penalties.**

39          Administrative orders issued by the Commissioner and civil money penalties imposed  
40 for violation of orders shall be subject to review by the State Banking Commission,  
41 which may amend, modify, or disapprove orders or penalties at any regular or special  
42 meeting. Notwithstanding any penalty imposed by the Commissioner, the State Banking  
43 Commission may after notice and opportunity for hearing, impose, enter judgment for,

1 and enforce by appropriate process, a penalty of not more than ten thousand dollars  
2 (\$10,000) against any authorized trust institution, or subsidiary thereof, or against any of  
3 its directors, officers, or employees for violating any lawful orders of the Commissioner.  
4 All civil money penalties collected under this section shall be paid to the county school  
5 fund.

6 "ARTICLE 5.

7 "Dissolution and Receivership; Conservatorship.

8  
9 "Part 1. Voluntary Dissolution and Liquidation.

10 "**§ 53C-92. Required vote of shareholders.**

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

14 "**§ 53C-93. Corporate procedure.**

15 Shareholder action to liquidate a State trust company shall be taken at a meeting of  
16 the shareholders duly called by resolution of the board of directors, written notice of  
17 which, stating the purpose of the meeting, shall be mailed to each shareholder, or in case  
18 of a shareholder's death, to the shareholder's legal representative or heirs at law,  
19 addressed to the shareholder's last known residence 10 days previous to the date of the  
20 meeting. If stockholders shall, by the required vote, elect to liquidate a trust company, a  
21 certified copy of all proceedings of the meeting at which the action was taken, verified by  
22 the oath of the president and secretary, shall be transmitted to the Commissioner for  
23 approval.

24 "**§ 53C-94. Authority to liquidate; publication.**

25 If the Commissioner approves the liquidation, the Commissioner shall issue to the  
26 State trust company under the Commissioner's seal, a permit for liquidation. No permit  
27 shall be issued by the Commissioner until the Commissioner is satisfied that provision  
28 has been made by the State trust company to satisfy and pay off all creditors. If not so  
29 satisfied, the Commissioner shall refuse to issue a permit, shall be authorized to take  
30 possession of the State trust company and its assets and business, and shall hold and  
31 liquidate the State trust company in the manner provided in this Chapter. When the  
32 Commissioner approves the voluntary liquidation of a State trust company, the directors  
33 of the State trust company shall cause to be published in a newspaper in the county in  
34 which the newspaper is located, or if no newspaper is published in the county, then in a  
35 newspaper having a general circulation in the county, a notice that the State trust  
36 company is closing down its affairs and going into liquidation and notify its creditors to  
37 present their claims for payment. The notice shall be published once a week for four  
38 consecutive weeks.

39 "**§ 53C-95. Examination and reports.**

40 When any State trust company is in process of voluntary liquidation, it shall be  
41 subject to examination by the Commissioner and shall furnish any reports required by the  
42 Commissioner.

43 "**§ 53C-96. Unclaimed property.**

1 All unclaimed property remaining with a liquidated State trust company shall be  
2 subject to the provisions of Chapter 116B of the General Statutes.

3 **"§ 53C-97. Sell or transfer of property.**

4 Whenever the Commissioner approves, a State trust company may sell and transfer to  
5 any other trust institution, whether State or federally chartered, all of its assets of every  
6 kind upon any terms agreed upon and approved by the Commissioner and by two-thirds  
7 vote of its board of directors. A certified copy of the minutes of any meeting at which the  
8 action is taken, under the oath of the president and secretary, together with a copy of the  
9 contract of sale and transfer, shall be filed with the Commissioner. Whenever voluntary  
10 liquidation is approved by the Commissioner or the sale and transfer of the assets of any  
11 State trust company is approved by the Commissioner, a certified copy of the approval  
12 under seal of the Commissioner, filed in the office of the Secretary of State, shall  
13 authorize the cancellation of the charter of the State trust company, subject, however, to  
14 its continued existence, as provided by this Chapter and the general law relative to  
15 corporations.

16 "Part 2. Involuntary Dissolution and Liquidation.

17 **"§ 53C-98. When Commissioner may take charge.**

18 The Commissioner may take possession of the business and property of any State  
19 trust company whenever it shall appear that the trust company:

- 20 (1) Has violated its charter or any laws applicable thereto;
- 21 (2) Is conducting its business in an unauthorized or unsafe manner;
- 22 (3) Is in a hazardous condition to transact its business;
- 23 (4) Has an impairment of its capital;
- 24 (5) Has become otherwise insolvent;
- 25 (6) Has neglected or refused to comply with the terms of a duly issued  
26 lawful order of the Commissioner;
- 27 (7) Has refused, upon proper demand, to submit its records, affairs, and  
28 concerns for inspection and examination of a duly appointed or  
29 authorized examiner of the Commissioner; or
- 30 (8) Has made a voluntary assignment of its assets to trustees.

31 The Commissioner may take possession of the business and property of any State  
32 trust company whenever it shall appear that its officers have refused to be examined upon  
33 oath regarding its affairs.

34 **"§ 53C-99. Directors may act.**

35 A State trust company may place its assets and business under the control of the  
36 Commissioner for liquidation by a resolution of a majority of its directors upon notice to  
37 the Commissioner, and, upon taking possession of the State trust company, the  
38 Commissioner, or duly appointed agent, shall retain possession thereof until the State  
39 trust company is authorized by the Commissioner to resume business or until the affairs  
40 of the State trust company are fully liquidated, as herein provided. No State trust  
41 company shall make any general assignment for the benefit of its creditors except by  
42 surrendering possession of its assets to the Commissioner, as herein provided. Whenever  
43 any State trust company for any reason shall suspend operations for any length of time,

1 the State trust company shall, immediately upon suspension of operations, be deemed in  
2 the possession of the Commissioner and subject to liquidation hereunder.

3 **"§ 53C-100. Notice of seizure; bar to attachment.**

4 When the Commissioner, or duly appointed agent, takes possession of any State trust  
5 company under G.S. 53C-98 or G.S. 53C-99, the Commissioner or agent shall, within 48  
6 hours, file with the clerk of the superior court in the county where the State trust  
7 company is located, a notice of the action which shall state the reason for the action and  
8 which shall be deemed the equivalent of a summons and complaint against the State trust  
9 company in an action in the superior court except that it shall not be necessary to serve  
10 the notice. The taking possession of any State trust company shall be effective on the  
11 date when the authority was exercised and from and after the time all assets and property  
12 of the State trust company, of whatever nature, shall be deemed to be in possession of the  
13 Commissioner, and the exercise of the authority shall operate as a bar to any attachment  
14 or other legal proceeding against the State trust company or its assets. After the  
15 Commissioner's exercise of authority, no lien shall be acquired, in any manner binding or  
16 affecting any of the assets of the State trust company and every transfer or assignment  
17 made thereafter by the State trust company, or by its authority, of the whole or any part of  
18 its assets, shall be null and void; and the Commissioner shall be substituted in place of  
19 the State trust company in all actions in the State or federal courts, pending at the time of  
20 the exercise of the authority.

21 **"§ 53C-101. Notice to trust institutions, corporations, and others holding assets;  
22 liens not to accrue.**

23 Upon taking possession of the assets and business of any State trust company, the  
24 Commissioner, or duly appointed agent, shall forthwith give notice, by mail or otherwise,  
25 of the action to all trust institutions or other persons or corporations holding, or having in  
26 possession, any assets of the State trust company. No trust company or other person or  
27 corporation shall have a lien or charge for any payment, advance, or clearance made, or  
28 liability incurred against any of the assets of the State trust company after possession has  
29 been taken as provided under this section, except as hereinafter provided.

30 **"§ 53C-102. Permission to resume business.**

31 (a) After the Commissioner has taken possession of any State trust company, the  
32 company may resume business upon terms and conditions approved by the State Banking  
33 Commission.

34 (b) When possession of a State trust company has been taken either pursuant to  
35 G.S. 53C-98 or G.S. 53C-99, the conditions under which it may resume business shall be  
36 fully stated in writing and a copy thereof shall be filed with the clerk of superior court in  
37 the action required to be commenced in cases against a State trust company under the  
38 provisions for involuntary dissolution and liquidation in this Article.

39 (c) Notwithstanding subsections (a) and (b) of this section, no State trust company  
40 that has been taken in possession by the Commissioner under the provisions of this  
41 Article shall be reopened to resume a trust business unless and until (i) the State trust  
42 company has been completely restored to solvency; (ii) the capital stock, if impaired, has  
43 been entirely restored to solvency; (iii) the capital stock, if impaired, has been entirely

1 restored in cash or United States government securities; and (iv) it shall clearly appear to  
2 the Commissioner that the State trust company may be reopened with safety to the public  
3 and the reopening is necessary to serve the business interest of the community.

4 **"§ 53C-103. Remedy for seizure; answer to notice, injunction; and appeal.**

5 Whenever any State trust company, of whose assets and business the Commissioner  
6 has taken possession as herein provided, except where possession is taken under G.S.  
7 53C-98, shall deem itself aggrieved thereby, it may, at any time within 10 days after the  
8 filing of the notice with the clerk of the superior court, file an answer to the notice and  
9 may also upon notice to the Commissioner, apply to the resident or presiding judge of the  
10 superior court for an injunction to enjoin further proceedings by the Commissioner. The  
11 judge of the superior court may cite the Commissioner to show cause within 10 days  
12 thereafter why further proceedings should not be enjoined, and, after hearing the  
13 allegations and proof of the parties with respect to the condition of the State trust  
14 company, may dismiss an application for injunction or may enjoin further proceedings  
15 under this section by the Commissioner. If the judge enjoins further action of the  
16 Commissioner and permits the reopening of the State trust company, the judge may  
17 require of the State trust company a surety bond as the judge deems necessary to insure  
18 its solvency, payable to the Commissioner for the sole benefit of the general creditors of  
19 the State trust company, and upon any terms the judge deems proper. Either party has the  
20 right to appeal a decision as in other actions.

21 **"§ 53C-104. Collection of debts and claims; commissioner succeeds to all property  
22 of the State trust company.**

23 (a) Upon taking possession of the assets and business of any State trust company  
24 by the Commissioner, or a duly appointed agent, the Commissioner or agent is authorized  
25 to collect all money due the State trust company, and to do any other acts necessary to  
26 conserve its assets and property, and shall proceed to liquidate the affairs thereof, as  
27 hereinafter provided. The Commissioner, or a duly appointed agent, shall collect all debts  
28 due and claims belonging to the State trust company, and, by order of the court, may sell,  
29 compromise, or compound any bad or doubtful debt or claim or sell the real and personal  
30 property of the State trust company on any terms provided by the order. Where the sale  
31 is made under power contained in any mortgage or lien bond or other paper wherein the  
32 title is retained for sale and the terms of sale set out, sale may be made under that  
33 authority.

34 (b) Upon taking possession of any State trust company under this section, the  
35 Commissioner, or the duly appointed agent, shall have the possession and the right to the  
36 possession of all the property, assets, choses in action, rights, and privileges of the State  
37 trust company, including the right to resign the trust or exercise the power in all papers  
38 executed to secure the payment of money in any form in which the State trust company  
39 has been named as trustee or pledgee. The property right and privileges shall vest in the  
40 Commissioner or duly appointed liquidating agent absolutely, for the purpose of  
41 liquidating, selling, or conveying the property right and privileges, together with all other  
42 incidental rights, privileges, and powers necessary for the right of conveyance and sale.  
43 Upon the motion made, the State trust company or any person interested may be heard,



1 but the judge hearing the motion shall enter an order as in the judge's discretion will best  
2 serve the parties interested.

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

6 **"§ 53C-105. Bond of the commissioner; surety; condition; minimum penalty.**

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

17 **"§ 53C-106. Inventory.**

18 Within 60 days after the filing of the notice of the taking possession of a State trust  
19 company in the office of the clerk of the superior court, the Commissioner, or a duly  
20 appointed agent, shall file an inventory of the assets and liabilities of the State trust  
21 company. A copy of the inventory shall be filed with the clerk of the superior court in  
22 the pending action and a copy shall be kept on file in the State trust company. The  
23 inventory shall be open for inspection during the usual business hours; provided that  
24 nothing herein shall require the State trust company to remain open unnecessarily.

25 **"§ 53C-107. Notice and time for filing claims.**

26 Notice shall be given by advertisement once a week for four consecutive weeks in a  
27 newspaper published in the county where the State trust company is located, or if no  
28 newspaper is published in the county, then in some newspaper having a general  
29 circulation in the county, calling on all persons who may have claims against the State  
30 trust company to present them to the Commissioner at the office of the State trust  
31 company, and within the time to be specified in the notice which time shall not be less  
32 than 90 days from the date of the first publication. A copy of this notice shall be mailed  
33 to all persons whose names appear as creditors upon the books of the State trust  
34 company. Affidavit by the Commissioner, or agent mailing the notice, to the effect that  
35 the notice was mailed shall be conclusive evidence thereof.

36 **"§ 53C-108. Power to reject claims; notice; affidavit of service; action on claims.**

37 (a) If the Commissioner doubts the validity of any claim, the Commissioner may  
38 reject the claim and serve notice of the rejection upon the claimant, either personally or  
39 by certified mail, and an affidavit of the service of the notice shall be filed in the office of  
40 the clerk of the superior court in the pending action and shall be conclusive evidence of  
41 the notice. Any action or suit upon rejected claim shall be brought by the claimant  
42 against the Commissioner in the superior court of the county in which the State trust  
43 company is located within 90 days after service, or the action or suit shall be barred.

1 Objections to any claim not rejected by the Commissioner may be made by any person  
2 interested by filing the objection in the pending action and by serving a copy thereof on  
3 the Commissioner. The Commissioner, after investigation, shall either allow the  
4 objection and reject the claim, or disallow the objection. If the objection is not allowed  
5 and the claim not rejected, the Commissioner shall file a notice in the pending action.  
6 Within 10 days after notice is filed, the person filing objection by motion in the pending  
7 action may question the validity of the claim and the questions of law and issues of fact  
8 shall thereupon be determined as in other civil actions. A copy of the notice that the  
9 objection is not allowed shall be served upon the person who submitted the claim or  
10 deposit.

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

13 **"§ 53C-109. List of claims presented and deposits; copies; proviso.**

14 Upon the expiration of the time fixed for presentation of claims, the Commissioner, or  
15 the duly appointed agent, shall make a full and complete list of the claims presented,  
16 including and specifying any claims that have been rejected. One copy shall be filed in  
17 the office of the clerk of the superior court in the pending action, and one copy shall be  
18 kept on file with the inventory in the office of the State trust company for examination.  
19 Any claim that may be presented after the expiration of the time fixed for the presentation  
20 of claims in the notice hereinbefore provided shall, if allowed, share pro rata in the  
21 distribution only of those assets of the State trust company in the hands of the  
22 Commissioner, and undistributed at the time the claim is presented. Provided, that when  
23 it is made to appear to the judge of the superior court, resident, or presiding in the county,  
24 that the claim could not have been filed within the period, the judge may permit those  
25 creditors or depositors who subsequently file their claim to share as other creditors.

26 **"§ 53C-110. Declaration of dividends; order of preference in distribution.**

27 At any time after the expiration of the date fixed by the Commissioner, or the duly  
28 appointed agent, for the presentation of claims against the State trust company, and from  
29 time to time thereafter, the Commissioner, after the payment of expenses and priorities,  
30 may declare and pay dividends to the shareholders and other creditors of the State trust  
31 company. Dividends may be declared when and as often as the available funds shall be  
32 sufficient to pay ten percent (10%) of all claims entitled to share in the dividends. In  
33 paying and calculating dividends, all disputed claims shall be taken into account, but no  
34 dividend shall be paid upon the disputed claims until the claims have been finally  
35 determined. The following shall be the order and preference in the distribution of the  
36 assets of any State trust company liquidated hereunder:

- 37 (1) Taxes and fees due the Commissioner for examination or other services;
- 38 (2) Wages and salaries due officers and employees of the State trust  
39 company, for a period of not more than four months;
- 40 (3) Expenses of liquidation; and
- 41 (4) Amounts due creditors other than stockholders.

42 The word 'asset' used herein shall not be deemed to include bailments or other  
43 property to which the State trust company has no title. A statement of all dividends paid

1 shall be filed in the office of the clerk of the superior court in the pending action, and the  
2 statements shall show the expenses deducted and the disputed claims in determining the  
3 dividend.

4 **"§ 53C-111. Deposit of funds collected.**

5 All funds collected by the Commissioner, in liquidating any State trust company, shall  
6 be deposited from time to time in a bank as may be selected by the Commissioner and  
7 shall be subject to withdrawal by check of the Commissioner.

8 **"§ 53C-112. Employment of counsel; accountants; and other experts; compensation.**

9 The Commissioner, for the purpose of liquidating State trust companies as herein  
10 provided, shall (i) employ any liquidating agents, competent local attorneys, accountants,  
11 and clerks necessary to properly liquidate and distribute the assets of a State trust  
12 company; (ii) fix the compensation for the agents, attorneys, accountants, and clerks; and  
13 (iii) pay the compensation out of the funds derived from the liquidation of the assets of  
14 the State trust company. Provided, that all expenditures for the purpose herein provided  
15 shall be approved by the resident or presiding judge in the pending action at such time as  
16 the expenditure may be reported, and the charges shall be a proper charge and lien on the  
17 assets of the State trust company until paid.

18 **"§ 53C-113. Unclaimed dividends held in trust.**

19 Any unclaimed dividends remaining in the hands of the Commissioner for six months  
20 after the order for final distributions shall be held in trust for the several creditors of the  
21 liquidated State trust company; and the money so held by the Commissioner shall be paid  
22 over to the persons entitled to the money when they furnish satisfactory evidence of their  
23 right to the money. In case of doubtful or conflicting claims, the Commissioner may  
24 apply to the superior court of the county, by motion in the pending action, for an order  
25 from the resident or presiding judge of the superior court directing the payment of the  
26 moneys so claimed. Issues of fact raised by motion may, upon request of any claimant,  
27 be determined as in other civil actions. Interest earned on any unclaimed dividends so  
28 held shall be applied toward defraying the expenses incurred in the distribution of the  
29 unclaimed dividends. The balance of interest, if any, shall be deposited and held as other  
30 funds to the credit of the Commissioner. After the Commissioner has held the unclaimed  
31 dividends in trust under the provisions of this statute for the creditors of the liquidated  
32 State trust company for a period of 10 years, the Commissioner is hereby given the  
33 authority to pay the principal amount of the unclaimed dividends to the State Treasurer,  
34 to be held by the State Treasurer without liability for profit or interest until a just claim  
35 therefor shall be made by the parties entitled thereto. Upon payment of unclaimed  
36 dividends to the State Treasurer, the Commissioner shall be fully discharged from all  
37 further liability therefor.

38 **"§ 53C-114. Action by the Commissioner following full settlement.**

39 Whenever the Commissioner has paid all the expenses of liquidation and has paid to  
40 each and every creditor of the State trust company, whose claims have been duly proven  
41 and allowed, the full amount of the claims, and has made proper provision for unclaimed  
42 and unpaid and disputed claims, and has other assets of the State trust company, the  
43 Commissioner shall call a meeting of the shareholders of the State trust company by

1 giving notice thereof by publication once a week for four consecutive weeks in a  
2 newspaper published in the county, or if no newspaper is published in the county, then in  
3 a newspaper having general circulation in the county, and by mailing a copy of the notice  
4 to each shareholder's address as it appears on the books of the State trust company.  
5 Affidavit of the mailing of the notice herein required and of the printer as to the  
6 publication shall be conclusive evidence of notice hereunder. At the meeting, any  
7 shareholders may be represented by proxy and the shareholders shall elect, by a majority  
8 vote of the stock present, an agent or agents who shall be authorized to receive from the  
9 Commissioner all the assets of the State trust company then remaining in the  
10 Commissioner's hands; and the Commissioner shall cause to be transferred and delivered  
11 to the agent, or agents, all the assets of the State trust company. The Commissioner shall  
12 thereupon cause to be filed in the office of the clerk of the superior court in the pending  
13 actions a full and complete report of all transactions, showing the assets of the State trust  
14 company so transferred, together with the name of the agent or agents receipting for the  
15 assets; and the filing of the report shall act as a full and complete discharge of the  
16 Commissioner from all further liabilities by reason of the liquidation of the State trust  
17 company. The agent shall convert the assets coming into the agent's hands into cash, and  
18 shall make distribution to the shareholders of the State trust company as herein provided.  
19 The agent shall file semiannually a report of all transactions with the superior court of the  
20 county in which the State trust company is located, and with the Commissioner, and shall  
21 be allowed for the services such fees not in excess of five percent (5%), as may be fixed  
22 by the court. In case of death, removal, or refusal to act, of any agent or agents elected  
23 by the shareholders, the Commissioner shall, upon report of the action on the part of the  
24 agent or agents to the superior court of the county in which the State trust company is  
25 located, turn over to the superior court for the stockholders of the State trust company, all  
26 the remaining assets of the State trust company, file the required report, and be  
27 discharged from any further liability to the shareholders as herein provided. The assets,  
28 when turned over to the superior court, shall remain in the court until such time as the  
29 court by order or the shareholders provide for distribution.

30 **"§ 53C-115. Annual report of the Commissioner; items included.**

31 The Commissioner shall file, as a part of an annual report to the Governor, a list of the  
32 names of the State trust companies of which possession was taken and liquidated; and the  
33 Commissioner shall, from time to time compile and make available for public inspection,  
34 reports showing the condition of the State trust companies; and the annual report of the  
35 Commissioner shall show the sum of unclaimed assets, with respect to each State trust  
36 company and shall show all depositories of all sums coming into the hands of the  
37 Commissioner under the provisions of this section.

38 **"§ 53C-116. Compensation of the Commissioner.**

39 The Commissioner, for services rendered in connection with the liquidation of State  
40 trust companies hereunder, shall be entitled to actual expenses incurred in connection  
41 with the liquidation of each State trust company, including a reasonable sum for the time  
42 of the examiners and other agents of the Commissioner. The expenses shall be a prior

1 lien on the assets of the State trust company liquidated until paid in full, and the  
2 Commissioner may adopt rules for fixing the expenses.

3 **"§ 53C-117. Exclusive method of liquidation.**

4 No State trust company created prior to the effective date of this Chapter shall be  
5 liquidated in any other way or manner than that provided herein.

6 **"§ 53C-118. Disposition of books and records.**

7 All books, papers, and records of a State trust company that has been finally  
8 liquidated shall be deposited by the receiver in the office of the clerk of the superior court  
9 for the county in which the office of the State trust company is located, or in any other  
10 place as in the receiver's judgment will provide for the proper safekeeping and protection  
11 of books, papers, and records. The books, papers, and records herein referred to shall be  
12 held subject to the orders of the Commissioner and the clerk of the superior court for the  
13 county in which the State trust company was located.

14 **"§ 53C-119. Destruction of books and records.**

15 After the expiration of five years from the date of filing in the office of the clerk of  
16 the superior court of a final order approving the liquidation by the Commissioner of any  
17 insolvent State trust company and the delivery to the clerk or into the clerk's custody of  
18 the records of the State trust company, the order may be destroyed by the clerk of the  
19 superior court.

20 After five years from the filing by the Commissioner of a final report of liquidation of  
21 any insolvent State trust company, the Commissioner, by and with the consent of the  
22 State Banking Commission, may destroy the records of any insolvent State trust company  
23 held in the office of the Commissioner in connection with the liquidation of the State  
24 trust company. However, in connection with any unpaid dividends, the Commissioner  
25 shall preserve the records or other evidence of indebtedness of the State trust company  
26 with reference to the unpaid dividends until the dividends have been paid.

27 **"§ 53C-120. Trust terminated on insolvency of State trust company.**

28 Whenever any State trust company appointed trustee in any indenture, deed of trust,  
29 or other instrument of like character, executed to secure the payment of any bonds, notes,  
30 or other evidences of indebtedness is taken over for liquidation by the Commissioner or  
31 by any other legally reconstituted authority, the powers and duties of the State trust  
32 company as trustee shall cease and terminate upon petition and the entry of an order of  
33 the clerk of the superior court appointing a successor trustee.

34 **"§ 53C-121. Petition for new trustee.**

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

43 **"§ 53C-122. Publication and notice.**

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

5 **"§ 53C-123. Appointment where no objection made.**

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

11 **"§ 53C-124. Hearing upon objection.**

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

15 **"§ 53C-125. Registration of final order.**

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

21 **"§ 53C-126. Petition and order applicable to all instruments.**

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

25 **"§ 53C-127. Additional remedy.**

26       G.S. 53C-121 and G.S. 53C-126 shall be in addition to and not in substitution for any  
27 other remedy provided by law.

28 **"§ 53C-128. Report to the Secretary of State.**

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

36       Within five days from the receipt of the report, the Secretary of State shall publish the  
37 report in a newspaper published in each county in which the State trust company or State  
38 trust companies are under liquidation. If there is no newspaper published in the county,  
39 the Secretary of State shall cause a copy of the report to be posted at the courthouse door  
40 in the county.

41                                   "Part 3. Conservatorship.

42 **"§ 53C-129. Provisions for conservator; duties and powers.**

1        When the Commissioner deems it necessary in order to conserve the assets of a State  
2 trust company for the benefit of clients, creditors, and other customers, the Commissioner  
3 may appoint a conservator for the trust company and require of the conservator a bond  
4 with any surety the Commissioner deems necessary and proper. The conservator, under  
5 the direction of the Commissioner, shall take possession of the books, records, and assets  
6 of every description of a State trust company placed under conservatorship and take  
7 actions necessary to conserve those assets pending further disposition of its business as  
8 provided by law. The conservator shall have all rights, powers, and privileges, subject to  
9 the approval by the Commissioner, now possessed by or hereafter given to the  
10 Commissioner under the provisions for involuntary dissolution and liquidation in this  
11 Article. All expenses of the conservator shall be paid out of the assets of the State trust  
12 company under conservatorship and shall be a lien thereon which shall be prior to any  
13 other lien provided by law. The compensation of the conservator shall be determined by  
14 the Commissioner and shall be based on the time and experience of the conservator and  
15 the complexity of the conservatorship.

16 **"§ 53C-130. Examination.**

17        The Commissioner shall examine the affairs of a State trust company placed under  
18 conservatorship in the manner and form necessary for the Commissioner to determine the  
19 financial condition of the company.

20 **"§ 53C-131. Termination of conservatorship.**

21        If the Commissioner is satisfied that it may be safely done, the Commissioner may  
22 terminate the conservatorship of a State trust company and permit the company to resume  
23 the transaction of its business, subject to the terms, conditions, restrictions, and  
24 limitations the Commissioner prescribes.

25 **"§ 53C-132. Criminal liabilities of conservator.**

26        The conservator appointed pursuant to the provisions of this Article is subject to the  
27 provisions of and to the penalties prescribed by G.S. 53C-70.

28 **"§ 53C-133. Naming of conservator not liquidation.**

29        No power conferred in this Article upon the Commissioner, when exercised, shall be  
30 deemed as an act of possession for the purposes of liquidation; and whenever the  
31 Commissioner shall, with reference to any State trust company for which a conservator is  
32 appointed, deem that liquidation is necessary, the Commissioner shall exercise the  
33 powers for the purposes of liquidation as provided in Part 2 of this Article.

34                                    "ARTICLE 6.

35                                    "Authority, Hearings, Enforcement, and Severability.

36 **"§ 53C-134. Commissioner to act under authority of the State Banking**  
37 **Commission.**

38        All the powers, duties, and functions granted to or imposed upon the Commissioner  
39 by law shall be exercised under the direction and supervision of the State Banking  
40 Commission. Wherever provision is made in any law authorizing and permitting the  
41 Commissioner to make rules, the words ‘the Commissioner’ shall be construed to mean  
42 the State Banking Commission, and the words ‘State Banking Commission’ shall be  
43 substituted in the statutes for ‘Commissioner’.

1 **"§ 53C-135. Commissioner hearings; appeals.**

2 (a) This section does not grant a right to hearing to a person that is not otherwise  
3 granted by governing law.

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

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

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

15 **"§ 53C-136. Civil enforcement.**

16 The Commissioner may bring any appropriate civil action against any person who the  
17 Commissioner believes has committed or is about to commit a violation of this Chapter  
18 or a rule or order of the Commissioner pertaining to this Chapter.

19 **"§ 53C-137. Severability.**

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

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

26 **"§ 53-2. How incorporated.**

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

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

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

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

40 (4) The amount of its authorized common capital stock, the number of  
41 shares into which it is divided, the par value of each share; and the  
42 amount of common capital stock with which it will commence business.

43 The amount of capital required to charter a bank shall be determined as



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

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

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

31 Section 3. Effective January 1, 1999, G.S. 53C-15, as enacted by this act,  
32 reads as rewritten:

33 **"§ 53C-15. Establishing an interstate trust office.**

34 An out-of-state trust institution that does not operate a trust office in this State and  
35 that meets the requirements of this Part may establish and maintain a new trust office in  
36 this State; ~~provided that an out-of-state trust institution may not establish a new trust office in~~  
37 ~~this State unless a similar institution chartered under the laws of this State to act as a fiduciary, is~~  
38 ~~permitted to establish a new trust office that may engage in activities substantially similar to~~  
39 ~~those permitted to trust offices of out-of-state trust institutions under G.S. 53C-14, in the state~~  
40 ~~where the out-of-state trust institution has its principal office. State."~~

41 Section 4. Effective January 1, 1999, G.S. 53C-16, as enacted by this act,  
42 reads as rewritten:

43 **"§ 53C-16. Acquiring an interstate trust office.**

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

9 Section 5. Trust companies organized under Chapter 53 of the General  
10 Statutes shall hereafter be governed by this Chapter, and these companies may apply to  
11 the Commissioner for authority to amend their articles of incorporation or to take such  
12 other steps as may be necessary or appropriate to conform to the provisions hereof. The  
13 Commissioner shall allow a reasonable period of time for this transition.

14 Section 6. Sections 3 and 4 of this act become effective January 1, 1999. The  
15 remainder of this act becomes effective October 1, 1997, and applies to acts or omissions  
16 occurring and agreements or contracts entered into on or after that date.