

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 860

Short Title: Interstate Trust Business.

(Public)

Sponsors: Senators Clodfelter, Warren, and Soles.

Referred to: Judiciary I.

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CHARTERING OF INDEPENDENT TRUST
COMPANIES AND TO PERMIT BANKS AND TRUST COMPANIES TO
CONDUCT TRUST BUSINESS ON AN INTERSTATE BASIS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 53 of the General Statutes is amended by adding a
new article to read:

"Article 24.

"Trust Companies and Interstate Trust Business.

"Part 1. Definitions.

"§ 53-301. Definitions.

(a) Except as otherwise provided in this Article, or when the context clearly
indicates that a different meaning is intended, the following definitions shall apply
throughout this Article:

(1) 'Account' means the client relationship established with a trust
institution involving the transfer of real or personal property to the
trust institution or the assumption of duties by the trust institution
concerning real or personal property.

(2) 'Act as a fiduciary' means:

a. To (i) act as trustee under a written instrument or by judicial
appointment or order; (ii) receive money or other property as
trustee for investment or reinvestment in real or personal
property; (iii) act as custodian or custodial trustee under a gifts
to minors act, a transfers to minors act, a custodial trust act, or
similar statute; (iv) act as personal representative of the estate
of a deceased person; (v) act as trustee, guardian, or conservator
for the person or estate of an incompetent such as a minor or
incapacitated person, or in other circumstances in which a

- 1 guardian may be appointed; or (vi) act in a capacity similar to
2 one listed in (i) through (v), however such capacity may be
3 designated under applicable law or governing instrument; or
4 b. To possess, purchase, sell, safekeep, or otherwise manage or
5 administer property in any other fiduciary capacity.
6 (3) 'Affiliate' means a company that directly or indirectly controls, is
7 controlled by, or is under common control with another company.
8 (4) 'Authorized trust institution' means any State trust company and any
9 trust office or representative trust office of a trust institution located in
10 this State that is not a bank.
11 (5) 'Bank' has the meaning set forth in 12 U.S.C. § 1813(a)(1), except that
12 'bank' does not include a trust company.
13 (6) 'Bank supervisory agency' means:
14 a. Any agency of another state or a home country with primary
15 responsibility for chartering or supervising a trust institution;
16 and
17 b. The Office of the Comptroller of the Currency, the Federal
18 Deposit Insurance Corporation, the Board of Governors of the
19 Federal Reserve System, a Federal Reserve Bank acting in a
20 supervisory capacity over any bank or bank holding company,
21 the Office of Thrift Supervision, and any successor to these
22 agencies.
23 (7) 'Branch' has the meaning set forth in G.S. 53-1(1a).
24 (8) 'Charter' means a charter issued to a State trust company by the
25 Commissioner or a charter, license, or other authority issued by the
26 Commissioner or a bank supervisory agency authorizing a trust
27 institution to act as a fiduciary in its home state or home country, and
28 the issuance of the charter, license, or other authority.
29 (9) 'Client' means a person to whom a trust institution owes a duty or
30 obligation under an account.
31 (10) 'Commission' means the North Carolina State Banking Commission.
32 (11) 'Commissioner' means the Commissioner of Banks for the State of
33 North Carolina.
34 (12) 'Company' includes a bank, trust company, corporation, partnership,
35 association, limited liability company, trust, business trust, joint
36 venture, foundation, pool, syndicate, unincorporated organization, or
37 other form of entity not specifically listed herein.
38 (13) 'Control,' with respect to a State trust company, means:
39 a. The ownership of or ability or power to vote directly, acting
40 through one or more other persons, or otherwise indirectly, ten
41 percent (10%) or more of the outstanding shares of a class of
42 voting securities of the State trust company;
43 b. The ability to control, directly or indirectly, the election of a
44 majority of the board of the State trust company; or

- 1 c. The power to exercise, directly or indirectly, a controlling
2 influence over the management or policies of the State trust
3 company.
- 4 (14) 'Debt security' means a marketable obligation evidencing indebtedness
5 of a company in the form of a bond, note, debenture, or other debt
6 instrument.
- 7 (15) 'Depository institution' means any company within any of the
8 definitions of "insured depository institution" set forth in 12 U.S.C.
9 § 1813(c).
- 10 (16) 'Equity capital' means the amount by which the total assets of a State
11 trust company exceed its total liabilities.
- 12 (17) 'Equity security' means:
- 13 a. Stock, other than adjustable rate preferred stock and money
14 market (auction rate) preferred stock;
- 15 b. A certificate of interest or participation in a profit-sharing
16 agreement, collateral-trust certificate, preorganization
17 certificate or subscription, transferable share, investment
18 contract, or voting-trust certificate;
- 19 c. A security immediately convertible at the option of the holder
20 without payment of significant additional consideration into a
21 security described by this subdivision;
- 22 d. A security carrying a warrant or right to subscribe to or
23 purchase a security described by this subdivision; and
- 24 e. A certificate of interest or participation in, temporary or interim
25 certificate for, or receipt for a security described by this
26 subdivision that evidences an existing or contingent equity
27 ownership interest.
- 28 (18) 'Executive officer' means an officer of a company who is named an
29 executive officer by the company or who participates in major policy-
30 making functions of the company.
- 31 (19) 'Federally chartered savings association' means a company described
32 in 12 U.S.C. § 1813(b)(2).
- 33 (20) 'Fiduciary record' means a matter written, transcribed, recorded,
34 received, or otherwise in the possession or control of a trust institution,
35 whether in physical, electronic, magnetic, or other form, that preserves
36 information concerning an account or a client.
- 37 (21) 'Foreign bank' means a foreign bank, as defined in 12 U.S.C.
38 § 1813(s)(1), except for a bank organized under the laws of a territory
39 of the United States.
- 40 (22) 'Foreign trust institution' means a trust institution, other than a foreign
41 bank, chartered in a foreign country.
- 42 (23) 'Hazardous condition' with respect to a trust institution means:
- 43 a. A refusal by the trust institution to permit examination of its
44 books, papers, accounts, records, or affairs by the

- 1 Commissioner or a duly appointed or authorized examiner of
2 the Commissioner, or a refusal by the officers or directors of a
3 trust institution to be examined under oath regarding its affairs;
- 4 b. A material violation by a trust institution of a condition of its
5 chartering or an agreement entered into between the trust
6 institution and the Commissioner; or
- 7 c. A circumstance or condition in which an unreasonable risk of
8 loss is threatened to clients, creditors, or shareholders of a trust
9 institution because the trust institution:
- 10 1. Has equity capital that is, or is in substantial danger of
11 becoming, inadequate for the safe and sound conduct of
12 its business without regard to whether it is, or is in
13 substantial danger of becoming, insolvent;
- 14 2. Has concentrated an excessive or unreasonable portion
15 of its assets in a particular type or character of
16 investment;
- 17 3. Violates or fails to comply with this Article, another
18 statute or rule applicable to trust institutions, or any duly
19 issued order of the Commissioner;
- 20 4. Is in a condition that renders the continuation of a
21 particular business practice hazardous to its clients,
22 creditors, or shareholders; or
- 23 5. Conducts business in an unsafe or unsound manner,
24 which includes conducting business with:
- 25 I. Materially inexperienced or inattentive
26 management;
- 27 II. Dangerous operating practices;
- 28 III. Materially infrequent or inadequate audits;
- 29 IV. Materially deficient administration of assets in
30 relation to the volume and character of the assets
31 it administers or the trust institution's
32 responsibility for such assets;
- 33 V. Materially frequent or serious failures to adhere to
34 sound administrative practices;
- 35 VI. Materially frequent or serious violations of
36 applicable laws, rules, or terms of instruments
37 governing accounts; or
- 38 VII. Materially serious self-dealing or conflicts of
39 interest.
- 40 (24) 'Home country' means a foreign country in which a foreign trust
41 institution is chartered.
- 42 (25) 'Home country regulator' means the bank supervisory agency with
43 primary responsibility for chartering and supervising a foreign trust
44 institution.

- 1 (26) 'Home state' means:
2 a. With respect to a federally chartered savings association and a
3 national bank, the state in which the institution maintains its
4 principal office;
5 b. With respect to a foreign bank, the home state of the foreign
6 bank as determined in accordance with the International
7 Banking Act of 1978, 12 U.S.C. §§ 3101, et seq., and Article
8 18A of this Chapter or, if there is no such home state, the state
9 in which the foreign bank maintains its principal office in the
10 United States; and
11 c. With respect to any other trust institution, the state or home
12 country which chartered the institution.
13 (27) 'Home state regulator' means the bank supervisory agency with
14 primary responsibility for chartering and supervising an out-of-state
15 trust institution.
16 (28) 'Host state' means a state other than the home state of a trust
17 institution, or a foreign country, in which the trust institution maintains
18 or seeks to establish or acquire and maintain a trust office or
19 representative trust office.
20 (29) 'Initial capital' means the amount of equity capital required for
21 approval of a charter pursuant to G.S. 53-337.
22 (30) 'Insolvent,' with respect to a State trust company, means a
23 circumstance or condition in which a State trust company:
24 a. Is unable or lacks the means to meet its current obligations as
25 they come due in the regular and ordinary course of business,
26 without regard to whether its assets exceed its liabilities;
27 b. Has equity capital less than one-fourth of its initial capital,
28 except as otherwise specified by the Commissioner; or
29 c. Has purported to make a voluntary assignment of its assets for
30 the benefit of creditors or to take any action for protection
31 against creditors under any bankruptcy or insolvency law.
32 (31) 'Jeopardized' means insolvent, in a hazardous condition, or in such
33 other condition as the Commissioner determines warrants the use of
34 procedures set forth in this Article relating to jeopardized State trust
35 companies.
36 (32) 'License', with respect to a State trust company, means the authority
37 granted by the Commissioner pursuant to G.S. 53-160.
38 (33) 'National bank' means a bank chartered under 12 U.S.C. § 21.
39 (34) 'Office' with respect to a trust institution means its principal office, a
40 trust office, or a representative trust office, but not a branch.
41 (35) 'Out-of-state trust institution' means a trust institution that is neither a
42 State trust institution nor a foreign trust institution.
43 (36) 'Person' means an individual or a company.
44 (37) 'Principal office' means:

- 1 a. With respect to a State trust company, a location, registered
2 with the Commissioner as the State trust company's principal
3 office, at which:
4 1. The State trust company does business; and
5 2. At least one executive officer of the State trust company
6 maintains a customary place of work; and
7 b. With respect to a trust institution other than a State trust
8 company, its principal place of business.
9 (38) 'Principal shareholder' means a person who owns or has the ability or
10 power to vote, directly, acting through one or more other persons, or
11 otherwise indirectly, ten percent (10%) or more of the outstanding
12 shares of any class of voting securities of a company.
13 (39) 'Private trust company' means a State trust company that is organized
14 to engage in business with one or more family members and does not
15 transact business with the general public, as defined in G.S. 53-363.
16 (40) 'Representative trust office' means an office at which a trust institution
17 engages in trust marketing, but not trust business.
18 (41) 'Savings association' has the meaning set forth in 12 U.S.C. §
19 1813(b)(1).
20 (42) 'State' means any state of the United States, the District of Columbia,
21 and any territory of the United States.
22 (43) 'State bank' means:
23 a. A bank organized under the provisions of this Chapter and
24 authorized to act as a fiduciary by this State or
25 b. A foreign bank lawfully doing business in this State pursuant to
26 Article 18A of this Chapter.
27 (44) 'State savings association' means a savings association organized under
28 the laws of this State and authorized to act as a fiduciary pursuant to
29 Chapter 54B or Chapter 54C of the General Statutes.
30 (45) 'State trust company' means a corporation organized under the
31 provisions of this Article and a trust company previously organized
32 under other provisions of Chapter 53 of the General Statutes to operate
33 only as a trust company and not as a commercial bank.
34 (46) 'State trust company facility' has the meaning set forth in G.S. 53-340.
35 (47) 'State trust institution' means a trust institution organized under the
36 laws of, or having its principal office in, this State.
37 (48) 'Subsidiary' means a company that is controlled by another company,
38 and includes a subsidiary of a subsidiary.
39 (49) 'Territory of the United States' means any geographic area over which
40 the United States exercises sovereignty.
41 (50) 'Trust business' means acting as a fiduciary or in other capacities
42 permissible for a trust institution under G.S. 53-331.
43 (51) 'Trust company' means a trust institution that is neither a depository
44 institution nor a foreign bank.

1 (52) 'Trust institution' means any company lawfully acting as a fiduciary in
2 a state or in a foreign country.

3 (53) 'Trust office' means an office, other than the principal office, at which
4 a trust institution acts as a fiduciary.

5 (54) 'Trust marketing' means the holding out by a company to the public by
6 advertising, solicitation, or other means that the company is available
7 to act as a fiduciary.

8 (55) 'Unauthorized trust activity' means:

9 a. Engaging in trust business within this State by a company other
10 than one identified in G.S. 53-303; or

11 b. Maintenance of a representative trust office by an out-of-state
12 trust institution without approval from or in violation of an
13 order issued by the Commissioner.

14 (b) These definitions shall be liberally construed to accomplish the purposes of
15 this Article. The Commission may adopt other definitions to accomplish the purposes of
16 this Article.

17 (c) References to statutory laws of North Carolina and of the United States of
18 America shall be deemed to refer to recodified, amended, predecessor, or successor
19 statutes. References to agencies of North Carolina and of the United States of America
20 shall be deemed to refer to predecessor or successor agencies.

21 "Part 2. Multistate Trust Institutions Act.

22 "Subpart A. General.

23 **"§ 53-302. Title and purposes.**

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

25 (b) It is the express intent of this Part to permit trust institutions to engage in trust
26 business on a multistate and international basis subject to the provisions of this Part.

27 "Subpart B. Companies Authorized to Engage in Trust Business.

28 **"§ 53-303. Companies authorized to engage in trust business.**

29 (a) No company shall engage in trust business in this State except:

30 (1) A State trust company;

31 (2) A State bank;

32 (3) A State savings association;

33 (4) A national bank having its principal office in this State;

34 (5) A federally chartered savings association having its principal office in
35 this State;

36 (6) An out-of-state trust institution in accordance with and subject to the
37 provisions of Subpart D of this Part;

38 (7) A foreign trust institution in accordance with and subject to the
39 provisions of Subpart E of this Part; or

40 (8) A company otherwise authorized to engage in trust business or to act
41 in a particular capacity described in G.S. 53-331(b)(2) under the laws
42 of this State or of the United States.

1 **(b)** No company shall engage in unauthorized trust activity, and all companies
2 shall engage in trust business in accordance with and subject to all applicable laws of
3 this State.

4 **"§ 53-304. Activities not requiring a charter, license, or approval.**

5 Notwithstanding any other provision of this Article, a company does not act as a
6 fiduciary; engage in trust business or in any other business requiring a charter, license,
7 or approval under the provisions of this Chapter; or engage in unauthorized trust activity
8 by:

- 9 (1) Acting in a manner authorized by law as an agent of a trust institution
10 with respect to any activity that is not unauthorized trust activity;
- 11 (2) Rendering legal services in a manner authorized by the North Carolina
12 State Bar;
- 13 (3) Acting as trustee under a deed of trust delivered only as security for
14 the payment of money or for the performance of another act;
- 15 (4) Receiving and distributing rents and proceeds of sales of real property
16 in a manner authorized by the North Carolina Real Estate
17 Commission;
- 18 (5) Engaging in securities transactions or providing investment advisory
19 services in accordance with applicable securities laws;
- 20 (6) Engaging in the issuance, sale, or administration of an insurance or
21 annuity product in a manner authorized by the North Carolina
22 Department of Insurance;
- 23 (7) Engaging in the lawful sale of prepaid funeral benefits in accordance
24 with and subject to Article 13D of Chapter 90 of the General Statutes
25 or engaging in the lawful business of a perpetual care cemetery
26 corporation in accordance with and subject to Chapter 65 of the
27 General Statutes;
- 28 (8) Acting as trustee under a voting trust;
- 29 (9) Acting as fiduciary by an organization described in paragraphs (1)
30 through (5) of section 170(c) or section 501(c) of the Internal Revenue
31 Code of 1986, as amended, with respect to endowment funds or other
32 funds owned, controlled, provided to, or otherwise made available to
33 the organization with respect to its exempt purposes (including,
34 without limitation, trust funds in which the organization has a
35 beneficial interest).
- 36 (10) Engaging in other activities expressly excluded from the application of
37 this Article by rule, order, or declaratory ruling of the Commissioner;
- 38 (11) Rendering services as a certified public accountant in a manner
39 authorized by the North Carolina State Board of Certified Public
40 Accountant Examiners;
- 41 (12) Provided the company is a trust institution and is not barred by order
42 of the Commissioner from engaging in trust marketing in this State
43 pursuant to G.S. 53-321(b), (i) marketing or soliciting in this State
44 with respect to acting as a fiduciary outside this State; (ii) delivering

1 money or other intangible assets to, and receiving money or other
2 intangible assets for administration outside this State from, a person in
3 this State; or (iii) accepting an account outside this State or otherwise
4 engaging in trust business outside this State; or

5 (13) Receiving, holding, administering, or distributing real or personal
6 property for or on behalf of another person solely incidental to a
7 lawfully conducted activity or transaction.

8 **"§ 53-305. Trust business of State trust institution.**

9 A State trust institution may conduct any activities outside this State that are
10 permissible for a trust institution in the host state, subject to the laws of this State and,
11 in the case of a State bank or a State trust company, subject to rules, orders, or
12 declaratory rulings of the Commissioner.

13 **"§ 53-306. Trust business of out-of-state trust institution.**

14 An out-of-state trust institution that establishes or acquires and maintains one or
15 more trust offices or representative trust offices in this State under the provisions of this
16 Part or that maintains one or more branches in this State may, subject to the provisions
17 of this Part, conduct any activity at such a trust office, representative trust office, or
18 branch that a State trust company or a State bank is authorized to conduct at a trust
19 office, representative trust office, or branch under the laws of this State.

20 **"§ 53-307. Trust business of foreign trust institution.**

21 A foreign trust institution that establishes or acquires and maintains one or more
22 trust offices in this State under the provisions of this Part may, subject to the provisions
23 of this Part, also establish or acquire one or more representative trust offices and
24 conduct any activity at the trust offices or representative trust offices that a State trust
25 company is authorized to conduct at trust offices or representative trust offices under the
26 laws of this State.

27 **"§ 53-308. Name of trust institution.**

28 Subject to other provisions of applicable law, a person may register or reserve any
29 name with the Secretary of State in connection with engaging or proposing to engage in
30 trust business or trust marketing in this State, except that the Commissioner may
31 determine that a name registered or reserved is potentially misleading to the public and
32 require the use of a name that is not potentially misleading.

33 **"§ 53-309. Trust deposits of authorized trust institutions.**

34 (a) Subsection (b) of G.S. 36A-63 shall not apply to an authorized trust
35 institution.

36 (b) In the absence of a contrary provision in an instrument governing an account,
37 an authorized trust institution may deposit client funds with itself to satisfy its duties
38 under G.S. 36A-63(a) provided:

39 (1) It maintains, as collateral for the deposits, a separate fund of readily
40 marketable commercial bonds having not less than a recognized "A"
41 rating equal to one hundred and twenty-five percent (125%) of the
42 funds so deposited;

43 (2) The separate fund is designated as such; and

1 (3) The separate fund either is maintained under the control of another
2 trust institution, a bank, or a government agency, or is held by the
3 authorized trust institution for the benefit of the accounts with deposits
4 secured by the separate fund; provided, that the Commissioner may
5 require such a separate fund of an authorized trust institution that is
6 insolvent, in a hazardous condition, or jeopardized, to be held by a
7 separate trust institution or bank approved by the Commissioner.

8 (c) An authorized trust institution may make periodic withdrawals from or
9 additions to the separate fund required by subsection (b) of this section as long as the
10 required value is maintained. Income from the separate fund belongs to the authorized
11 trust institution.

12 (d) Collateral is not required for a deposit under subsection (b) of this section to
13 the extent the deposit is insured by the Federal Deposit Insurance Corporation.

14 Subpart C. State Trust Company Trust Offices and Representative Trust Offices.

15 **"§ 53-310. Offices of State trust companies.**

16 (a) A State trust company may engage in trust business or trust marketing at its
17 principal office and at each trust office as permitted by this Part.

18 (b) A State trust company may engage in trust marketing at a representative trust
19 office as permitted by this Part.

20 (c) A State trust company may engage in trust business and trust marketing in
21 out-of-state trust offices or representative trust offices to the same extent permitted for
22 trust institutions located in the host state in which those out-of-state trust offices or
23 representative trust offices are located, subject to the laws of this State and as provided
24 by rules, orders, or declaratory rulings of the Commissioner.

25 **"§ 53-311. State trust company principal office.**

26 (a) Each State trust company is required to maintain a principal office in this
27 State and to register that principal office with the Commissioner by setting forth the
28 current street address and telephone number of the principal office.

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

31 (c) Before changing the location of its principal office, a State trust company
32 shall file a notice with the Commissioner setting forth the name of the State trust
33 company, the current street address and telephone number of its principal office, the
34 street address, and telephone number if known, of the proposed new principal office,
35 and a copy of the resolution adopted by the board of directors or duly authorized
36 committee of the board of directors of the State trust company authorizing the change. If
37 the State trust company is unable to provide the Commissioner with the telephone
38 number for the proposed new principal office at the time of the notice, it shall do so
39 immediately after beginning to operate at the new principal office location.

40 (d) The change of principal office shall take effect on the thirty-first day
41 following the date the Commissioner receives the notice described in subsection (c) of
42 this section, unless prior to the thirty-first day following receipt of the notice, the
43 Commissioner (i) establishes an earlier or later date, or (ii) notifies the State trust
44 company that the notice raises issues that require additional information or additional

1 time for analysis, or (iii) disapproves the proposed trust office or representative trust
2 office.

3 (e) If the Commissioner gives a notification described in subsection (d) of this
4 section, the State trust company may change the location of its principal office only on
5 approval by the Commissioner. The Commissioner may disapprove the change of
6 location if the Commissioner finds that the change will adversely affect the safe and
7 sound operation of the State trust company.

8 **"§ 53-312. Trust offices; representative trust offices.**

9 (a) Before establishing or acquiring and maintaining a trust office or
10 representative trust office in this State, a State trust company shall file a notice with the
11 Commissioner, in the form required by the Commissioner, setting forth the name of the
12 State trust company, the location of the proposed trust office or representative trust
13 office, and whether the office will be a trust office or a representative trust office. The
14 State trust company also shall furnish a copy of the resolution adopted by the board of
15 directors or duly authorized committee of the board of directors of the State trust
16 company authorizing the trust office or representative trust office and shall pay the
17 filing fee, if any, set by rule.

18 (b) The State trust company may commence business at the trust office or
19 representative trust office on the thirty-first day after the date the Commissioner
20 receives the notice, unless the Commissioner (i) establishes an earlier or later date; (ii)
21 notifies the State trust company that the notice raises issues that require additional
22 information or additional time for analysis; or (iii) disapproves the proposed trust office
23 or representative trust office.

24 (c) If the Commissioner gives a notification described in subsection (b) of this
25 section, the State trust company may establish the trust office or representative trust
26 office only on approval by the Commissioner. The Commissioner may disapprove the
27 proposed trust office or representative trust office if the Commissioner finds that the
28 State trust company lacks sufficient resources to undertake the proposed expansion
29 without adversely affecting its safety or soundness.

30 **"§ 53-313. Out-of-state trust offices and representative trust offices.**

31 (a) Before establishing or acquiring and maintaining a trust office or
32 representative trust office in a host state, a State trust company shall file a notice with
33 the Commissioner, in the form required by the Commissioner, that sets forth the name
34 of the State trust company, the location of the proposed trust office or representative
35 trust office, whether the office will be a trust office or a representative trust office, and
36 whether the laws of the host state permit the trust office or representative trust office to
37 be maintained by the State trust company. The State trust company also shall furnish a
38 copy of the resolution adopted by the board of directors or duly authorized committee of
39 the board of directors of the State trust company authorizing the out-of-state trust office
40 or representative trust office and shall pay the filing fee, if any, set by rule.

41 (b) The State trust company may commence business at the trust office or
42 representative trust office on the thirty-first day following the date the Commissioner
43 receives the notice, unless the Commissioner (i) establishes an earlier or later date;
44 (ii) notifies the State trust company that the notice raises issues that require additional

1 information or additional time for analysis; or (iii) disapproves the proposed trust office
2 or representative trust office.

3 (c) If the Commissioner gives a notification described in subsection (b) of this
4 section, the State trust company may establish the trust office or representative trust
5 office only on approval by the Commissioner. The Commissioner may disapprove the
6 proposed trust office or representative trust office if the Commissioner finds that the
7 State trust company lacks sufficient resources to undertake the proposed expansion
8 without adversely affecting its safety or soundness.

9 "Subpart D. Out-of-State Trust Institution Trust Offices and Representative Trust
10 Offices.

11 **"§ 53-314. Trust business at a branch or trust office.**

12 An out-of-state trust institution may engage in trust business in this State only if it
13 (i) maintains a trust office in this State as permitted by this Subpart, (ii) was allowed to
14 maintain a trust office in this State under laws, or rules or orders of the Commissioner in
15 effect prior to the date of enactment of this Article, but only to the extent allowed and
16 subject to all limitations and conditions imposed under those laws, rules, or orders, or
17 (iii) is a depository institution that maintains a branch in this State.

18 **"§ 53-315. Establishing an interstate trust office.**

19 An out-of-state trust institution that obtains approval from the Commissioner in
20 accordance with the provisions of this Subpart may establish and maintain a trust office
21 in this State; provided that the Commissioner shall not grant that approval unless the
22 home state of the out-of-state trust institution permits a State trust institution to establish
23 and maintain a trust office in that home state under restrictions not materially greater
24 than those imposed by this Article.

25 **"§ 53-316. Acquiring an interstate trust office.**

26 An out-of-state trust institution that obtains approval from the Commissioner in
27 accordance with the provisions of this Subpart may acquire and maintain a trust office
28 in this State; provided that the Commissioner shall not grant that approval unless the
29 home state of the out-of-state trust institution permits a State trust institution to acquire
30 and maintain a trust office in that home state under restrictions not materially greater
31 than those imposed by this Article.

32 **"§ 53-317. Requirement of notice.**

33 Before establishing or acquiring and maintaining a trust office in this State, an
34 out-of-state trust institution shall provide, or cause its home state regulator to provide,
35 notice to the Commissioner, in the form required by the Commissioner, along with
36 copies of any applications, notices, or similar filings made with the home state regulator
37 regarding the trust office. The notice shall be preceded or accompanied by:

- 38 (1) Evidence satisfactory to the Commissioner of compliance by the
39 out-of-state trust institution with any applicable requirements of
40 Article 15 of Chapter 55 of the General Statutes;
- 41 (2) Evidence satisfactory to the Commissioner of compliance by the
42 out-of-state trust institution with any applicable requirements of its
43 home state regulator for maintenance of capital, for expansion within

1 the borders of the home state, and for acquiring or establishing and
2 maintaining each trust office in this State;

3 (3) Evidence satisfactory to the Commissioner that the out-of-state trust
4 institution is not in a hazardous condition;

5 (4) A copy of the resolution adopted by the board of directors of the out-
6 of-state trust institution (or similar governing body or a duly-
7 authorized committee thereof) authorizing the trust office; and

8 (5) Payment of any fee set by rule.

9 **"§ 53-318. Action on notice.**

10 (a) The out-of-state trust institution may commence business in this State at the
11 trust office on the sixty-first day following the date the Commissioner receives the
12 notice described in G.S. 53-317 unless the Commissioner, within 60 days of receiving
13 the notice:

14 (1) Specifies an earlier or later date for commencing business,

15 (2) Extends the period of review on a determination that the notice raises
16 issues that require additional information or additional time for
17 analysis; or

18 (3) Disapproves the proposed trust office.

19 (b) If the Commissioner gives a notification described in subdivision (2) of
20 subsection (a) of this section, the out-of-state trust institution may establish the trust
21 office only on approval by the Commissioner. The Commissioner may disapprove the
22 proposed trust office if the Commissioner finds that the out-of-state trust institution
23 lacks sufficient resources to undertake the proposed expansion without adversely
24 affecting its safety or soundness or that the requirements of G.S. 53-315 or G.S. 53-316
25 have not been satisfied.

26 **"§ 53-319. Additional trust offices; representative trust offices.**

27 (a) An out-of-state trust institution that maintains a trust office in this State may
28 establish or acquire and maintain additional trust offices or one or more representative
29 trust offices in this State to the same extent that a State trust institution may establish or
30 acquire and maintain trust offices or representative trust offices in this State and shall
31 follow the procedures for establishing or acquiring and maintaining trust offices or
32 representative trust offices set forth in G.S. 53-312.

33 (b) An out-of-state trust institution that does not maintain a trust office in this
34 State shall file a notice with the Commissioner, in the form required by the
35 Commissioner, before establishing or acquiring a representative trust office in this State.
36 The notice shall be preceded or accompanied by:

37 (1) Evidence satisfactory to the Commissioner of compliance by the
38 out-of-state trust institution with any applicable requirements of
39 Article 15 of Chapter 55 of the General Statutes;

40 (2) Evidence satisfactory to the Commissioner of compliance by the
41 out-of-state trust institution with any applicable requirements of its
42 home state regulator for maintenance of capital, for expansion within
43 the borders of the home state, and for acquiring or establishing and
44 maintaining each representative trust office in this State;

- 1 (3) Evidence satisfactory to the Commissioner that the out-of-state trust
2 institution is not in a hazardous condition;
3 (4) A copy of the resolution adopted by the board of directors of the out-
4 of-state trust institution (or similar governing body or a duly
5 authorized committee thereof) authorizing the representative trust
6 office;
7 (5) The proposed location of each proposed representative trust office; and
8 (6) Payment of any fee set by rule.

9 (c) 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 described in subsection (b) of this section, unless the Commissioner, within 30
12 days of receiving the notice:

- 13 (1) Specifies an earlier or later date for commencing business;
14 (2) Extends the period of review on a determination that the notice raises
15 issues that require additional information or additional time for
16 analysis; or
17 (3) Disapproves the proposed representative trust office.

18 (d) If the Commissioner gives a notification described in subdivision (2) of
19 subsection (c) of this section, the out-of-state trust institution may commence business
20 at the representative trust office only on approval by the Commissioner. The
21 Commissioner may disapprove the representative trust office if the Commissioner finds
22 that the out-of-state trust institution lacks sufficient resources to undertake the proposed
23 expansion without adversely affecting its safety or soundness or that the requirements of
24 G.S. 53-315 or G.S. 53-316 have not been satisfied.

25 (e) An out-of-state trust institution that was allowed to maintain a representative
26 trust office in this State under laws, or rules or orders of the Commissioner in effect
27 prior to the effective date of this Article may continue to do so, but only to the extent
28 allowed and subject to all limitations and conditions imposed under those laws, rules, or
29 orders.

30 **"§ 53-320. Examinations; periodic reports; cooperative agreements; assessment of**
31 **fees.**

32 (a) The Commissioner may examine any trust office or representative trust office
33 maintained in this State by an out-of-state trust institution to determine whether the trust
34 office or representative trust office is being operated in compliance with the laws of this
35 State and in accordance with safe and sound practices. The pertinent provisions of Part
36 4 of this Article shall apply to these examinations.

37 (b) The Commissioner may require periodic reports regarding any out-of-state
38 trust institution that maintains a trust office or representative trust office in this State
39 pursuant to this Subpart. The required reports shall be provided by the trust institution
40 or by the home state regulator. Any reporting requirements shall be (i) consistent, to the
41 extent practicable, with the reporting requirements applicable to State trust companies
42 and (ii) appropriate for the purpose of enabling the Commissioner to carry out the
43 Commissioner's responsibilities under the provisions of this Article. The pertinent
44 provisions of Part 4 of this Article shall apply to these reports.

1 (c) The Commissioner may enter into cooperative, coordinating, and
2 information-sharing agreements with bank supervisory agencies, including agreements
3 arranged by an organization composed of, affiliated with, or representing one or more
4 bank supervisory agencies, with respect to the periodic supervision and examination of
5 any trust office or representative trust office of an out-of-state trust institution in this
6 State, or any trust office or representative trust office of a State trust institution in any
7 host state. The Commissioner may accept and rely upon a report of examination and
8 report of investigation of a bank supervisory agency in lieu of conducting a separate
9 examination or investigation.

10 (d) The Commissioner may enter into agreements with any bank supervisory
11 agency supervising (i) a State trust institution engaging in trust business outside this
12 State or (ii) an out-of-state trust institution maintaining a trust office or representative
13 trust office in this State to engage the services of the agency's examiners at a reasonable
14 rate of compensation or to provide the services of the Commissioner's examiners to the
15 agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General
16 Statutes does not apply to agreements authorized by this subsection.

17 (e) The Commissioner may enter into joint examinations or joint enforcement
18 actions with bank supervisory agencies supervising any trust office or representative
19 trust office maintained in this State by an out-of-state trust institution or any trust office
20 or representative trust office maintained by a State trust institution in any host state;
21 provided, that the Commissioner may at any time take actions independently if the
22 Commissioner considers the actions to be necessary or appropriate to carry out the
23 Commissioner's responsibilities under the provisions of this Article or to ensure
24 compliance with the laws of this State.

25 (f) Each out-of-state trust institution that maintains one or more trust offices or
26 representative trust offices in this State may be assessed and, if assessed, shall pay
27 supervisory and examination fees as provided by rules of the Commissioner. The fees
28 may be shared with bank supervisory agencies or any organization composed of,
29 affiliated with, or representing one or more bank supervisory agencies as agreed
30 between those bank supervisory agencies and organizations and the Commissioner.

31 **"§ 53-321. Enforcement.**

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

34 (1) That a trust office maintained by an out-of-state trust institution in this
35 State is being operated in violation of the laws of this State or any rule,
36 order, or declaratory ruling issued by the Commissioner, or in an
37 unsafe and unsound manner, or that the out-of-state trust institution
38 does not meet or no longer meets the requirements of this Subpart for
39 maintaining a trust office in this State; or

40 (2) That an out-of-state trust institution is engaged in unauthorized trust
41 activity.

42 In either event, the Commissioner may take any enforcement actions the
43 Commissioner would be authorized to take if the trust office or the out-of-state trust
44 institution were a State trust company and may issue an order temporarily or

1 permanently prohibiting the out-of-state trust institution from engaging in trust business
2 in this State.

3 (b) Consistent with Article 3A of Chapter 150B of the General Statutes, after
4 notice and opportunity for hearing, the Commissioner may determine by order that an
5 out-of-state trust institution maintaining a representative trust office in this State does
6 not meet or no longer meets the requirements of this Subpart for maintaining a
7 representative trust office in this State. The order shall be effective on the date of
8 issuance or any other date the Commissioner determines.

9 (c) In cases involving extraordinary circumstances requiring immediate action,
10 the Commissioner may take any action permitted by subsection (a) or (b) of this section
11 without notice or opportunity for hearing but shall promptly afford a subsequent hearing
12 upon an application to rescind the action taken.

13 (d) The Commissioner shall promptly give notice to the home state regulator and
14 any other bank supervisory agency supervising the out-of-state trust institution of each
15 enforcement action taken against an out-of-state trust institution and may consult and
16 cooperate with other bank supervisory agencies in pursuing and resolving the
17 enforcement action.

18 **"§ 53-322. Notice of transactions that cause a change in control.**

19 Each out-of-state trust institution that maintains a trust office or representative trust
20 office in this State, or the home state regulator of the trust institution, shall give at least
21 30 days' notice or, in the case of an emergency transaction, as much notice as
22 practicable, to the Commissioner of:

- 23 (1) Any merger, consolidation, share exchange, or other transaction that
24 would cause a change in control of an out-of-state trust institution
25 (i) that would be subject to Subpart D of Part 3 of this Article if the
26 out-of-state trust institution were a State trust company or (ii) is
27 required to be filed with any bank supervisory agency;
28 (2) Any transfer of all or substantially all of the accounts or account assets
29 of the out-of-state trust institution to another person; or
30 (3) The closing or transfer of any trust office or representative trust office
31 in this State.

32 "Subpart E. Foreign Trust Institution Trust Offices and Representative Trust Offices.

33 **"§ 53-323. Foreign trust institution application for trust office or representative**
34 **trust office.**

35 Before establishing or acquiring and maintaining a trust office in this State, a foreign
36 trust institution shall make application to the Commissioner for permission to do so in
37 the English language and in the form required by the Commissioner. The application
38 shall be preceded or accompanied by:

- 39 (1) Evidence satisfactory to the Commissioner of compliance with any
40 applicable requirements of Article 15 of Chapter 55 of the General
41 Statutes;
42 (2) Evidence satisfactory to the Commissioner of compliance by the
43 foreign trust institution with any applicable requirements of its home
44 country regulator for maintenance of capital, for expansion within the

1 borders of its home country or within a political subdivision of its
2 home country, and for acquiring or establishing and maintaining the
3 trust office in this State;

4 (3) Evidence satisfactory to the Commissioner that the foreign trust
5 institution is not in a hazardous condition;

6 (4) A copy of the resolution adopted by the board of directors of the
7 foreign trust institution, or similar governing body or a duly-authorized
8 committee thereof, authorizing the trust office; and

9 (5) Payment of any fee set by rule.

10 The Commissioner may require any materials not written in the English language to
11 be translated, and the translation certified in a manner satisfactory to the Commissioner,
12 at the expense of the foreign trust institution.

13 **"§ 53-324. Conditions for approval.**

14 (a) A foreign trust institution may engage in trust business in this State only on
15 approval by the Commissioner of an application described in G.S. 53-323, which may
16 be given upon conditions required by the the Commissioner for prudential reasons
17 consistent with any applicable international agreements to which the United States is a
18 party.

19 (b) The Commissioner may deny approval of the application if the Commissioner
20 finds that the foreign trust institution lacks sufficient resources to undertake the
21 proposed expansion without adversely affecting its safety or soundness or that the
22 management, integrity, or reputation of the foreign trust institution does not justify
23 approval. The Commissioner also may deny approval if the Commissioner is unable to
24 determine from the application materials whether the foreign trust institution possesses
25 sufficient resources to undertake the proposed expansion without adversely affecting its
26 safety or soundness or whether the management, integrity, or reputation of the foreign
27 trust institution justifies approval.

28 **"§ 53-325. Additional trust offices and representative trust offices.**

29 A foreign trust institution that maintains a trust office in this State under the
30 provisions of this Subpart may establish or acquire and maintain additional trust offices
31 or representative trust offices in this State in the manner provided by G.S. 53-319 for
32 out-of-state trust institutions, except that the Commissioner may require any additional
33 information and impose any additional conditions as the Commissioner deems
34 necessary for prudential reasons consistent with any applicable international agreements
35 to which the United States is a party.

36 **"§ 53-326. Examinations; periodic reports; cooperative agreements; assessment of**
37 **fees.**

38 (a) The Commissioner may examine any trust office or representative trust office
39 maintained in this State by a foreign trust institution to determine whether the trust
40 office or representative trust office is being operated in compliance with the laws of this
41 State and in accordance with safe and sound practices. The pertinent provisions of Part
42 4 of this Article shall apply to these examinations.

43 (b) The Commissioner may require periodic reports regarding any foreign trust
44 institution that maintains a trust office or representative trust office in this State. The

1 required reports shall be provided in the English language by the trust institution or by
2 its home country regulator. The reporting requirements shall be those the Commissioner
3 considers appropriate for the purpose of enabling the Commissioner to carry out the
4 Commissioner's responsibilities under the provisions of this Article for prudential
5 reasons consistent with any applicable international agreements to which the United
6 States is a party. The pertinent provisions of Part 4 of this Article shall apply to these
7 reports.

8 (c) The Commissioner may enter into cooperative, coordinating, and
9 information-sharing agreements with bank supervisory agencies supervising foreign
10 trust institutions, including agreements arranged by an organization composed of,
11 affiliated with, or representing one or more bank supervisory agencies, with respect to
12 the periodic supervision and examination of any trust office or representative trust office
13 of a foreign trust institution in this State, or any trust office or representative trust office
14 of a State trust institution engaged in trust business or trust marketing in a foreign
15 country. The Commissioner may accept and rely upon a report of examination and
16 report of investigation of a bank supervisory agency in lieu of conducting a separate
17 examination or investigation of a foreign trust institution.

18 (d) The Commissioner may enter into agreements with bank supervisory
19 agencies supervising (i) a State trust institution engaging in trust business in a foreign
20 country or (ii) a foreign trust institution maintaining a trust office or representative trust
21 office in this State to engage the services of the bank supervisory agency's examiners at
22 a reasonable rate of compensation or to provide the services of the Commissioner's
23 examiners to the bank supervisory agency at a reasonable rate of compensation. Article
24 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by
25 this section.

26 (e) The Commissioner may enter into joint examinations or joint enforcement
27 actions with bank supervisory agencies supervising any trust office or representative
28 trust office maintained in this State by a foreign trust institution or any trust office or
29 representative trust office maintained by a State trust institution in any foreign country;
30 provided, that the Commissioner may at any time take actions independently if the
31 Commissioner considers the actions to be necessary or appropriate to carry out the
32 Commissioner's responsibilities under the provisions of this Article or to ensure
33 compliance with the laws of this State.

34 (f) Each foreign trust institution that maintains one or more trust offices or
35 representative trust offices in this State may be assessed and, if assessed, shall pay
36 supervisory and examination fees as provided by rules of the Commissioner. The fees
37 may be shared with bank supervisory agencies or with any organization composed of,
38 affiliated with, or representing one or more bank supervisory agencies, as agreed
39 between the bank supervisory agencies and organizations and the Commissioner.

40 **"§ 53-327. Enforcement.**

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

43 (1) That a trust office or representative trust office maintained by a foreign
44 trust institution in this State is being operated in violation of the laws

1 of this State or any rule, order, or declaratory ruling issued by the
2 Commissioner, or in an unsafe and unsound manner, or that the foreign
3 trust institution does not meet or no longer meets the requirements of
4 this Subpart for maintaining a trust office or representative trust office
5 in this State; or

6 (2) That a foreign trust institution is engaged in unauthorized trust activity.

7 In either event, the Commissioner may take any enforcement actions the
8 Commissioner would be authorized to take if the foreign trust institution were a State
9 trust company and may issue an order temporarily or permanently prohibiting the
10 foreign trust institution from engaging in trust business or trust marketing in this State.

11 (b) Consistent with Article 3A of Chapter 150B of the General Statutes, after
12 notice and opportunity for hearing, the Commissioner may determine by order that a
13 foreign trust institution maintaining a representative trust office in this State does not
14 meet or no longer meets the requirements of this Subpart for maintaining a
15 representative trust office in this State. The order shall be effective on the date of
16 issuance or any other date the Commissioner determines.

17 (c) In cases involving extraordinary circumstances requiring immediate action,
18 the Commissioner may take any action permitted by subsection (a) or (b) of this section
19 without notice or opportunity for hearing but shall promptly afford a subsequent hearing
20 upon request to rescind the action taken.

21 (d) The Commissioner shall promptly give notice to the home country regulator
22 and any other bank supervisory agency supervising the foreign trust institution of each
23 enforcement action taken against a foreign trust institution and may consult and
24 cooperate with bank supervisory agencies in pursuing and resolving the enforcement
25 action.

26 **"§ 53-328. Notice of transactions that cause a change in control.**

27 Each foreign trust institution that maintains a trust office or representative trust
28 office in this State, or the home country regulator of the foreign trust institution, shall
29 give at least 30 days' notice (or, in the case of an emergency transaction, as much notice
30 as practicable) to the Commissioner, in the form required by the Commissioner, of:

31 (1) Any merger, consolidation, share exchange, or other transaction that
32 would cause a change of control of a foreign trust institution:

33 a. That would be subject to Subpart D of Part 3 of this Article if
34 the foreign trust institution were a State trust company; or

35 b. Is required to be filed with any bank supervisory agency;

36 (2) Any transfer of all or substantially all of the accounts or account assets
37 of the foreign trust institution to another person; or

38 (3) The closing or transfer of any trust office or representative trust office
39 in this State.

40 **"§ 53-329. International agreements.**

41 If any provision of this Article concerning foreign trust institutions, or the
42 application of that provision, is found by any competent adjudicatory body to violate
43 any international agreement to which the United States is a party, the provision shall be
44 deemed modified only to the extent and only in the particular circumstances necessary

1 to make the provision as modified comply with the international agreement, and the
2 remaining provisions of this Article shall not be affected and shall continue to apply to
3 foreign trust institutions.

4 "Part 3. State Trust Company Charter Act.

5 "Subpart A. General.

6 **"§ 53-330. Title and purposes.**

7 (a) This Part may be cited as the State Trust Company Charter Act.

8 (b) It is the express intent of this Part to provide for the chartering of trust
9 companies apart from the provisions of Article 2 of this Chapter and to permit trust
10 companies to engage in trust business subject to the provisions of this Article.

11 "Subpart B. Organization and Powers of State Trust Company.

12 **"§ 53-331. Organization and powers of State trust company.**

13 (a) Subject to the other provisions of this Part, one or more persons may organize
14 and charter a State trust company, which may be incorporated in the manner described
15 in this Part and in no other way.

16 (b) Subject to G.S. 53-313 and G.S. 53-336(b) and other applicable provisions of
17 State and federal law, a State trust company may:

18 (1) Act as a fiduciary within or outside this State;

19 (2) Act within or outside this State as agent, advisory agent, assignee,
20 assignee for the benefit of creditors, attorney-in-fact, authenticating
21 agent, bailee, bond or indenture trustee, conservator, conversion agent,
22 curator, custodian, escrow agent, exchange agent, fiscal or paying
23 agent, financial adviser, investment adviser, investment manager,
24 managing agent, purchase agent, receiver, registrar, safekeeping agent,
25 subscription agent, transfer agent, warrant agent, or in similar
26 capacities generally performed by corporate trustees, and in so acting
27 to possess, purchase, sell, invest, reinvest, safekeep, or otherwise
28 manage or administer real or personal property of other persons;

29 (3) Engage in trust marketing within this State; and

30 (4) Exercise the powers of a business corporation organized under North
31 Carolina law and any incidental powers that are reasonably necessary
32 to enable it to fully exercise, in accordance with commonly accepted
33 fiduciary customs and usages, a power conferred in this Article.

34 **"§ 53-332. Articles of incorporation of State trust company.**

35 The articles of incorporation of a State trust company shall be signed and
36 acknowledged by or on behalf of each organizer and shall contain:

37 (1) The information required to be set forth in G.S. 55-2-02(a) and, except
38 for telephone information, G.S. 53-311(c); and

39 (2) Any provision consistent with G.S. 55-2-02(b) and other applicable
40 law that the organizers elect to set forth in the articles of incorporation
41 for the regulation of the internal affairs of the State trust company.

42 **"§ 53-333. Application for State trust company charter and permission to**
43 **incorporate State trust company.**

1 (a) An application for a State trust company charter and permission to
2 incorporate the State trust company shall be made to the Commissioner in the form
3 required by the Commissioner and shall be supported by information, data, and records
4 that the Commissioner requires. The application shall be accompanied by the fee set by
5 the Commissioner by rule.

6 (b) Upon receipt of the application, the Commissioner shall at once conduct an
7 examination of all relevant facts connected with the formation of the proposed State
8 trust company. The Commissioner may consider the following factors:

9 (1) The proposed market or markets to be served;

10 (2) Whether the proposed organizational and capital structure and the
11 amount of initial capital appear adequate in relation to the proposed
12 business and market or markets;

13 (3) Whether the anticipated volume and nature of business indicate a
14 reasonable probability of success and profitability based on the market
15 or markets proposed to be served;

16 (4) Whether the proposed officers and directors, as a group, have
17 sufficient experience, ability, standing, competence, trustworthiness,
18 and integrity to justify a belief that the proposed State trust company
19 will be free from improper or unlawful influence and otherwise will
20 operate in compliance with law, and that success of the proposed State
21 trust company is reasonably probable; and

22 (5) Whether the proposed name of the proposed State trust company is
23 likely to mislead the public as to its character or purpose or is the same
24 as a name already adopted by an existing bank, savings association, or
25 trust institution in this State, or so similar thereto as to be likely to
26 mislead the public.

27 (c) The failure of an applicant to furnish required information, data, other
28 material, or the required fee within 30 days after a request may be considered an
29 abandonment of the application.

30 **"§ 53-334. Notice and investigation of charter application.**

31 (a) The Commissioner shall notify the organizers when the application is
32 complete and accepted for filing and all required fees have been paid.

33 (b) The Commissioner shall investigate the application and inquire into the
34 identity and character of each proposed director, officer, and principal shareholder.
35 Notwithstanding any laws to the contrary, information in the application bearing on the
36 character, or information about the personal finances, of an existing or proposed
37 organizer, officer, director, or shareholder is confidential and not subject to public
38 disclosure.

39 **"§ 53-335. Decision on charter application and hearing.**

40 (a) The Commissioner, based on the application and investigation described in
41 this Subpart, shall enter an order approving or denying approval of the application.

42 (b) If the Commissioner orders that the proposed State trust company may be
43 formed, the Commissioner shall issue a State trust company charter and a certification
44 to the Secretary of State permitting the incorporation of the State trust company. The

1 Commissioner may make approval of any application conditional and shall include any
2 conditions in the order granting the charter.

3 (c) Any order entered by the Commissioner with respect to a charter application
4 shall be subject to review by the Commission for entry of final agency decision.

5 **"§ 53-336. Issuance of charter.**

6 (a) A proposed State trust company shall not be incorporated or engage in trust
7 business or trust marketing until it receives a charter issued by the Commissioner. The
8 Commissioner shall not issue the charter until the State trust company certifies that it
9 has:

- 10 (1) Received cash or United States government securities having a market
11 value on the date of capitalization in at least the full amount of
12 required initial capital from subscriptions for the issuance of shares;
- 13 (2) Elected the initial officers and directors named in the application for
14 charter or other officers and directors approved by the Commissioner;
15 and
- 16 (3) Complied with all other requirements of this Subpart relative to the
17 organization of a State trust company.

18 (b) The charter issued by the Commissioner shall set forth the trust powers of the
19 State trust company, which may be stated as:

- 20 (1) All powers granted to a State trust company in this State; or
- 21 (2) Specific powers that the State trust company chooses and is authorized
22 by the Commissioner to exercise.

23 (c) If a State trust company does not open and engage in trust business within six
24 months after the date it receives its charter, or within such further period as may be
25 extended by the Commissioner, the Commissioner may cancel the charter.

26 **"§ 53-337. Required initial capital.**

27 (a) The Commissioner shall not issue a charter to a proposed State trust company
28 having initial capital of less than two million dollars (\$2,000,000), except as provided in
29 subsection (b) of this section.

30 (b) The Commissioner may require additional initial capital for a proposed State
31 trust company if the Commissioner finds the proposed scope or type of operation of a
32 proposed State trust company requires additional initial capital for the safe and sound
33 operation of the State trust company. The Commissioner may reduce the amount of
34 minimum initial capital required for a proposed State trust company if the
35 Commissioner finds the proposed scope or type of operation of a proposed State trust
36 company may be formed with reduced initial capital consistent with the safe and sound
37 operation of the State trust company. The safety and soundness factors to be considered
38 by the Commissioner in the exercise of the Commissioner's discretion include:

- 39 (1) The nature and type of business proposed to be conducted;
- 40 (2) The nature and liquidity of assets proposed to be held in a corporate
41 capacity;
- 42 (3) The amount of fiduciary assets projected to be under management;
- 43 (4) The type of fiduciary assets proposed to be held and the proposed
44 depository of the assets;

- 1 (5) The complexity of fiduciary duties and degree of discretion proposed
2 to be undertaken;
- 3 (6) The competence and experience of proposed management;
- 4 (7) The extent and adequacy of proposed internal controls;
- 5 (8) The proposed presence or absence of annual unqualified audits by an
6 independent certified public accountant;
- 7 (9) The reasonableness of business plans for retaining or acquiring
8 additional equity capital; and
- 9 (10) The existence and adequacy of insurance proposed to be obtained by
10 the trust company for the purpose of protecting its clients,
11 beneficiaries, and grantors.

12 **"§ 53-338. Subordinated notes or debentures.**

13 The amount of any outstanding notes or debentures that are subordinated to creditors
14 or classes of creditors of the State trust company may be treated as equity capital of the
15 State trust company for purposes of determining equity capital adequacy, hazardous
16 condition, or insolvency, and for other purposes, as provided by rules, orders, or
17 declaratory rulings of the Commissioner.

18 **"§ 53-339. Application of laws relating to general business corporations.**

19 Chapter 55 of the General Statutes applies to a State trust company to the extent not
20 inconsistent with this Article, except that, unless expressly authorized by this Article or
21 a rule adopted by the Commission, a State trust company shall not take an action
22 authorized by Chapter 55 of the General Statutes that requires a filing with the Secretary
23 of State without first obtaining the approval of the Commissioner.

24 "Subpart C. Investments and Activities.

25 **"§ 53-340. Investment in State trust company facilities.**

26 (a) A State trust company may invest in one or more State trust company
27 facilities consistent with the safe and sound operation of a State trust company.

28 (b) For the purposes of this Part, 'State trust company facility' means real estate
29 owned, or leased to the extent the lease or the leasehold improvements are capitalized,
30 by a State trust company for the purposes of:

- 31 (1) Providing space for State trust company employees, officers, and
32 directors to perform their duties and space for appropriate parking;
- 33 (2) Conducting trust business, including meeting the reasonable needs and
34 convenience of the State trust company's customers, employees,
35 officers, and directors, and providing for necessary computer
36 operations, data processing, maintenance, and record retention and
37 storage;
- 38 (3) Future expansion of the State trust company's facilities; or
- 39 (4) Conducting another activity authorized by law or by rules, orders, or
40 declaratory rulings of the Commissioner.

41 (c) Without the approval of the Commissioner, a State trust company shall not,
42 within the first three years following issuance of its charter, directly or indirectly, invest
43 an amount in excess of one-half of its initial capital in State trust company facilities,
44 furniture, fixtures, and equipment. Except as otherwise provided by rules, orders, or

1 declaratory rulings of the Commissioner, in computing this limitation, a State trust
2 company shall include:

- 3 (1) Its direct investment in State trust company facilities;
- 4 (2) Any investment in a company with an interest in a State trust company
5 facility;
- 6 (3) Any indebtedness incurred on State trust company facilities by an
7 affiliate of the State trust company.

8 Except as otherwise provided by rules, orders, or declaratory rulings of the
9 Commissioner, in computing this limitation, a State trust company may exclude an
10 amount included under subdivisions (1) through (3) of this subsection to the extent any
11 lease of a facility from the company holding title to the facility is capitalized by the
12 State trust company.

13 (d) Real estate acquired under subdivision (3) of subsection (b) of this section
14 ceases to be a State trust company facility if it is not used for a purpose listed in
15 subdivision (1), (2), or (4) of subsection (b) of this section on the third anniversary of
16 the date of its acquisition unless the Commissioner grants approval to hold the real
17 estate for a longer period.

18 **"§ 53-341. Other real estate.**

19 (a) A State trust company shall not acquire real estate other than a State trust
20 company facility for its own account except:

- 21 (1) Securitized interests in real estate and obligations secured by real
22 estate;
- 23 (2) As necessary to avoid or minimize a loss on an investment previously
24 made in good faith; or
- 25 (3) As provided by rules, orders, or declaratory rulings of the
26 Commissioner.

27 (b) To the extent reasonably necessary to avoid or minimize loss on real estate
28 acquired as permitted by subsection (a) of this section or under G.S. 53-340, a State
29 trust company may exchange real estate for other real estate or personal property, invest
30 additional funds in or improve such real estate, or acquire additional real estate.

31 (c) Except as provided in subsection (d) of this section, a State trust company
32 shall dispose of any real estate acquired as permitted by subdivision (2) of subsection
33 (a) of this section or under G.S. 53-340:

- 34 (1) In the case of real estate acquired under subdivision (2) of subsection
35 (a) of this section, on or before the fifth anniversary of:
 - 36 a. The date it was acquired; or
 - 37 b. The date it ceases to be used as a State trust company facility if
38 it began to be so used after its acquisition.
- 39 (2) In the case of real estate acquired under G.S. 53-340, on or before the
40 third anniversary of the date it ceases to be a State trust company
41 facility as provided by G.S. 53-340.

42 (d) The Commissioner may grant one or more extensions of time for disposing of
43 real estate if the Commissioner determines that:

1 (1) The State trust company has made a good faith effort to dispose of the
2 real estate and has been unable to do so on reasonably advantageous
3 terms; or

4 (2) Disposal of the real estate otherwise would be detrimental to the State
5 trust company.

6 **"§ 53-342. Securities and other investments.**

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

9 (b) Unless the Commissioner approves maintenance of a lesser amount, a State
10 trust company shall invest and maintain an amount equal to at least forty percent (40%)
11 of its equity capital in unencumbered cash, cash equivalents, and readily marketable
12 securities.

13 (c) Subject to subsections (d) and (e) of this section, the total investment in
14 equity and investment securities of any one issuer, obligor, or maker held by a State
15 trust company for its own account shall not exceed an amount equal to fifteen percent
16 (15%) of the State trust company's equity capital. The Commissioner may authorize
17 investments in excess of this limitation if the Commissioner concludes that the safe and
18 sound operation of a State trust company would not be adversely affected by a proposed
19 investment exceeding this limitation.

20 (d) In calculating compliance with the investment limits set forth in subsection
21 (c) of this section, a State trust company shall not be required to combine:

22 (1) The State trust company's pro rata share of the securities of an issuer in
23 the portfolio of a collective investment vehicle with the State trust
24 company's pro rata share of the securities of that issuer held by another
25 collective investment vehicle in which the State trust company has
26 invested; or

27 (2) The State trust company's own direct investment in the securities of an
28 issuer with the State trust company's pro rata share of the securities of
29 that issuer held by collective investment vehicles in which the State
30 trust company has invested under the provisions of this section.

31 (e) Notwithstanding subsection (c) of this section, a State trust company may
32 purchase for its own account, without limitation and subject only to the exercise of
33 prudent judgment:

34 (1) Bonds and other general obligations of a state, an agency, or political
35 subdivision of a state, the United States, or an agency or
36 instrumentality of the United States;

37 (2) A debt security that this State, an agency or political subdivision of
38 this State, the United States, or an agency or instrumentality of the
39 United States has unconditionally agreed to purchase, insure, or
40 guarantee;

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

42 (4) Mortgage-related securities as defined in 15 U.S.C. § 78c(a);

43 (5) Investment securities issued or guaranteed by the Federal Home Loan
44 Mortgage Corporation, Fannie Mae, the Government National

1 Mortgage Association, the Federal Agricultural Mortgage Association,
2 or the Federal Farm Credit Banks Funding Corporation; and

3 (6) Investment securities issued or guaranteed by the North American
4 Development Bank.

5 (f) The Commissioner may allow State trust companies to make other
6 investments of its corporate funds not specified in this Subpart by rules, orders, or
7 declaratory rulings.

8 **"§ 53-343. Prohibited distributions, acquisitions, liens, or pledges.**

9 A State trust company shall not make any distribution to its shareholders, acquire its
10 own shares, acquire a lien upon its own shares, or pledge its own assets while an order
11 of the Commissioner prohibiting such distributions, acquisitions, liens, or pledges is in
12 effect.

13 **"§ 53-344. Subsidiaries.**

14 (a) Before acquiring, establishing, or performing activities through a subsidiary,
15 a State trust company shall file a notice with the Commissioner, in the form required by
16 the Commissioner, describing in detail the proposed activities of the subsidiary, the
17 amount of the State trust company's proposed investment in the subsidiary, and the State
18 trust company's proposed ownership interest in the subsidiary.

19 (b) The State trust company may acquire or establish a subsidiary or begin
20 performing activities in an existing subsidiary 30 days following the date the
21 Commissioner receives the notice, unless the Commissioner:

22 (1) Establishes an earlier or later date;

23 (2) Notifies the State trust company that the notice raises issues that
24 require additional information or additional time for analysis; or

25 (3) Disapproves the acquisition, establishment, or performance of
26 activities through the subsidiary.

27 (c) If the Commissioner gives a notification described in subdivision (2) of
28 subsection (b) of this section, the State trust company may acquire, establish or conduct
29 activities through the subsidiary only on approval by the Commissioner. The
30 Commissioner may disapprove the subsidiary if the Commissioner finds that the State
31 trust company lacks sufficient resources to undertake the proposed expansion or
32 perform the activity without adversely affecting its safety or soundness.

33 (d) The Commissioner may make the establishment, acquisition, or performance
34 of new activities through a subsidiary conditional and shall include any such conditions
35 in an order.

36 (e) The provisions of this section, rather than G.S. 53-342, shall apply to the
37 establishment of a subsidiary by a State trust company.

38 (f) Changes in ownership or control of a subsidiary of a State trust company
39 shall be made only upon the approval of the Commissioner obtained in accordance with
40 the procedures set forth in this section.

41 **"§ 53-345. Engaging in commerce prohibited.**

42 Except as otherwise provided by this Part, or by rules, orders, or declaratory rulings
43 of the Commissioner, a State trust company shall not engage in trade or commerce by
44 buying, selling, or otherwise dealing in goods, or by conducting business other than

1 trust business and trust marketing, except as necessary to fulfill a fiduciary obligation to
2 a client.

3 **"§ 53-346. Lending and lease financing; conversion to State bank.**

4 (a) Except as may be appropriate for extensions of credit in connection with trust
5 or other account relationships, and as provided in and subject to the provisions of
6 Article 5 of Chapter 36A of the General Statutes and other provisions of applicable law,
7 a State trust company shall not engage in a loan business or in lease financing
8 transactions as the party extending credit.

9 (b) Notwithstanding any other provision of this Chapter, a State trust company
10 may, with the approval of the Commissioner, convert to a State bank by following the
11 procedures and requirements set forth in Article 2 of this Chapter, subject to any
12 modifications to those procedures and requirements that are necessary and appropriate
13 for the conversion of a State trust company. The Commissioner may make
14 modifications to procedures or requirements of Article 2 of this Chapter by rule, order
15 or declaratory ruling.

16 "Subpart D. Ownership; Governance; Mergers.

17 **"§ 53-347. Acquisition of control.**

18 (a) Except as this section otherwise expressly permits, a person shall not, without
19 the approval of the Commissioner, directly or indirectly acquire control of a State trust
20 company.

21 (b) This Subpart does not prohibit a person from contracting to acquire control of
22 a State trust company subject to required approvals.

23 (c) This Subpart does not require the approval of the Commissioner for the
24 acquisition of securities in the following circumstances:

25 (1) The acquisition of securities in connection with securing, collecting, or
26 satisfying a debt previously contracted for in good faith if the
27 acquiring person files notice of acquisition of control with the
28 Commissioner, in the form required by the Commissioner, at least 10
29 days before the person votes the securities acquired;

30 (2) The acquisition of additional voting securities in any class or series by
31 a controlling person who previously has complied with and received
32 approval under the provisions of this Article or who was identified as a
33 controlling person in a prior application filed with and approved by the
34 Commissioner if the acquiring person files notice of acquisition of
35 those securities with the Commissioner, in the form required by the
36 Commissioner, at least 10 days before the person votes the securities
37 acquired;

38 (3) An acquisition or transfer of securities by operation of law, will, or
39 intestate succession if the acquiring person files notice of acquisition
40 of control with the Commissioner, in the form required by the
41 Commissioner, at least 10 days before the person votes the securities
42 acquired;

43 (4) An acquisition of securities by gift, unless the gift is made for the
44 purpose of circumventing this section, if the acquiring person files

1 notice of acquisition of control with the Commissioner, in the form
2 required by the Commissioner, at least 10 days before the person votes
3 the securities acquired; or

4 (5) A transaction exempted by the Commissioner by rules, orders, or
5 declaratory rulings because (i) the transaction is not within the
6 purposes of this Article, or (ii) regulation of the transaction is not
7 necessary or appropriate to achieve the objectives of this Article.

8 (d) Information provided under the provisions of subsection (c) of this section
9 shall be subject to G.S. 53-348(c), and persons providing that information shall be
10 subject to G.S. 53-348(d).

11 (e) Upon receiving a notice described in subsection (c) of this section, the
12 Commissioner may, on or before the tenth day after the acquiring person files the
13 notice, notify the acquiring person of objection to the voting of securities by the
14 acquiring person or of a request for further information concerning the acquisition of
15 control. If the Commissioner notifies the acquiring person of the objection or request for
16 further information, the acquiring person may vote the shares only on approval by the
17 Commissioner and:

18 (1) The acquiring person shall follow the procedures prescribed in this
19 Subpart for an application to acquire control of a State trust company;

20 (2) The Commissioner may request any information that may be requested
21 under the procedures prescribed in this Subpart in connection with an
22 application to acquire control of a State trust company; and

23 (3) For purposes of determining a quorum of shareholders of a State trust
24 company, the shares shall be treated as authorized but unissued shares
25 unless (i) the Commissioner approves the application to vote the
26 securities or (ii) the acquiring person no longer has the power to vote
27 the shares, either directly or indirectly.

28 **"§ 53-348. Application regarding acquisition of control.**

29 (a) A person seeking approval to acquire control of a State trust company shall
30 file with the Commissioner:

31 (1) An application in the form required by the Commissioner;

32 (2) Any filing fee required by rule; and

33 (3) All information required by rule or that the Commissioner requires in
34 connection with a particular application in order to make an informed
35 decision to approve or reject the proposed acquisition of control.

36 (b) If any group of individuals or entities acting in concert seek approval to
37 acquire control, the information the Commissioner may require under the provisions of
38 this Subpart may be required of each member of the group.

39 (c) Notwithstanding any laws to the contrary, information bearing on the
40 character or information about the personal finances of an existing or proposed
41 shareholder of a State trust company or other individual is confidential and not subject
42 to public disclosure.

43 (d) If a person seeking approval to acquire control is not a North Carolina
44 resident, a North Carolina corporation, or an out-of-state corporation qualified to do

1 business in this State, the Commissioner may require the person to appoint a resident
2 agent for service of process.

3 **"§ 53-349. Decision on acquisition of control.**

4 (a) Not later than the sixtieth day following receipt of the application, the
5 Commissioner shall either approve or deny the proposed acquisition of control.

6 (b) The Commissioner may deny an acquisition of control if:

7 (1) The financial condition of the person seeking approval to acquire
8 control, or any member of a group seeking approval to acquire control,
9 might jeopardize the financial stability of the State trust company or
10 the interests of its clients;

11 (2) Investigation of the character, competence, general fitness, experience,
12 or integrity of the person seeking approval to acquire control, or any
13 member of a group seeking approval to acquire control, shows that the
14 proposed acquisition of control would not be in the best interests of the
15 clients of the State trust company;

16 (3) Plans or proposals to operate, liquidate, or sell the State trust company
17 or its assets following the acquisition of control are not in the best
18 interests of the State trust company's clients;

19 (4) The State trust company would not be solvent, have adequate equity
20 capital, or be in compliance with the laws of this State after the
21 acquisition of control; or

22 (5) The person seeking approval to acquire control has failed to furnish all
23 information required by the Commissioner.

24 (c) If an application filed under the provisions of this section is approved by the
25 Commissioner, the transaction may be consummated. Any written commitment from the
26 person seeking approval to acquire control made as a condition for approval of the
27 application is enforceable against the State trust company and the person acquiring
28 control.

29 **"§ 53-350. Appeal.**

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

33 **"§ 53-351. Report of changes in chief executive officer or directors.**

34 Each State trust company shall report to the Commissioner within 48 hours, on the
35 forms and with the information required by the Commissioner, any changes in the chief
36 executive officer or the directors of the State trust company, including in its report a
37 statement of the past and current business and professional affiliations of each new chief
38 executive officer or director.

39 **"§ 53-352. Board of directors.**

40 (a) All corporate powers of a State trust company shall be exercised under the
41 authority of, and the business and affairs of a State trust company shall be managed
42 under the direction of, its board of directors. Without the approval of the Commissioner,
43 the board shall consist of not less than five directors. The shareholders of a State trust
44 company, at any shareholders' meeting, may authorize not more than two additional

1 directorships which may be left unfilled and to be filled in the discretion of the directors
2 of the State trust company during the interval between shareholders' meetings. Except as
3 specifically provided otherwise in this section, the number, election, term, and
4 classification of the directors of a State trust company shall be governed by the
5 provisions of Chapter 55 of the General Statutes.

6 (b) Before each term to which a person is elected to serve as a director of a State
7 trust company, the person shall submit an affidavit for filing in the minutes of the State
8 trust company stating that the person:

9 (1) Accepts the position;

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

13 (3) Will diligently perform the duties of a director.

14 (c) A person designated with a title such as advisory director is not considered a
15 director if that person:

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

17 (2) Does not vote on matters before the board of directors or any
18 committee of the board and is not counted for purposes of determining
19 a quorum of the board or any committee of the board.

20 "**§ 53-353. Required board meetings.**

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

28 "**§ 53-354. Officers.**

29 The board of directors shall annually appoint the officers of the State trust company
30 who shall serve at the pleasure of the board. The contract rights of officers, if any, shall
31 be governed by applicable provisions of Chapter 55 of the General Statutes and general
32 law. The State trust company shall have a chief executive officer primarily responsible
33 for the execution of board policies and operation of the State trust company. The State
34 trust company also shall have an officer responsible for the maintenance and storage of
35 all corporate books and records of the State trust company and for required attestation of
36 signatures. These positions shall not be held by the same person. The board may appoint
37 any other officers of the State trust company, including assistants to the officers
38 required by this section, the board considers necessary or appropriate.

39 "**§ 53-355. Certain criminal offenses.**

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

42 (1) Conceals information or a fact, or removes, destroys, or conceals a
43 book or record of the State trust company for the purpose of

1 concealing information or a fact, from the Commissioner or an agent
2 of the Commissioner; or

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

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

9 (c) An offense under the provisions of this section shall be a Class H felony.

10 **"§ 53-356. Responsibility of directors.**

11 (a) The standard of conduct for directors shall be as set forth in G.S. 55-8-30.

12 (b) Any director of a State trust company who shall knowingly violate, or who
13 shall knowingly permit to be violated by any officers, agents, or employees of such
14 State trust company, any of the provisions of this Article shall be held personally and
15 individually liable for all damages which the State trust company, its shareholders, or
16 any other person has sustained in consequence of the violation. Any aggrieved
17 shareholder of any State trust company in liquidation may prosecute an action for the
18 enforcement of the provisions of this section. Only one such action may be brought. The
19 procedure shall follow, as much as possible, that prescribed by Article 3 of Chapter 44A
20 of the General Statutes, relative to suits on bonds of contractors with municipal
21 corporations.

22 **"§ 53-357. Record keeping.**

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

26 **"§ 53-358. Bonding requirements; reports of apparent crime.**

27 (a) The board of directors of a State trust company shall require protection and
28 indemnity for the State trust company and its clients in amounts established by rules,
29 orders, or declaratory rulings of the Commissioner, or otherwise in reasonable amounts,
30 against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses,
31 with corporate insurance or surety companies:

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

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

35 (b) Except as otherwise provided by rules, orders, or declaratory rulings of the
36 Commissioner, coverage required under subsection (a) of this section shall include each
37 director, officer, and employee of the State trust company without regard to whether the
38 person receives salary or other compensation.

39 (c) A State trust company that is the victim of a robbery, has a shortage of
40 corporate or account assets in excess of five thousand dollars (\$5,000), or is the victim
41 of an apparent or suspected misapplication of its corporate property or account assets in
42 any amount shall report the robbery, shortage, or apparent or suspected misapplication
43 to the Commissioner within 48 hours after the time it is discovered. The initial report
44 may be oral if a written report is made promptly following the oral report. Neither the

1 State trust company nor any director, officer, employee, or agent of the State trust
2 company is subject to any liability for providing any information in any such report in
3 good faith.

4 **"§ 53-359. Merger, share exchange, or asset transfer authority.**

5 (a) With the approval of the Commissioner, a State trust company may merge or
6 exchange its shares with, or acquire or be acquired through a merger or share exchange
7 with, another company, or may transfer to another company all or substantially all of its
8 assets and liabilities, or may acquire from another company all or substantially all of its
9 assets and liabilities.

10 (b) A merger or share exchange authorized by subsection (a) of this section, shall
11 be governed by Article 11 of Chapter 55 of the General Statutes and G.S. 53-17. An
12 acquisition or transfer of assets authorized by subsection (a) of this section shall be
13 governed by Article 12 of Chapter 55 of the General Statutes and G.S. 53-17.

14 **"§ 53-360. Merger, share exchange, or asset transfer application.**

15 (a) A copy of the proposed articles of merger or share exchange, or asset transfer
16 agreement, and an application in the form required by the Commissioner, shall be filed
17 with the Commissioner. The Commissioner shall investigate the condition of the parties
18 proposing to engage in the merger, share exchange, or asset transfer and may require the
19 submission of additional information.

20 (b) The Commissioner may approve the merger or share exchange if:

- 21 (1) Each resulting trust institution will be solvent and have adequate
22 capitalization;
- 23 (2) Each resulting trust institution appears able and ready to comply
24 substantially with the statutes and rules relative to its organization;
- 25 (3) Each resulting State trust company will be a 'domestic corporation' as
26 that term is defined in G.S. 55-1-40(4);
- 27 (4) All fiduciary obligations and liabilities of each trust institution that is a
28 party to the merger, share exchange, or asset transfer have been
29 discharged properly or otherwise have been or will be assumed or
30 retained properly by a person;
- 31 (5) Each surviving, new, acquiring, or transferring party that is not
32 authorized to engage in trust business will not engage in trust business
33 and appears able and ready to comply substantially with applicable
34 laws and rules; and
- 35 (6) All conditions imposed by the Commissioner have been satisfied or
36 otherwise resolved.

37 **"§ 53-361. Notice and investigation of merger, share exchange, or asset transfer;**
38 **decision, hearing, and appeal.**

39 (a) The Commissioner shall notify the parties to the proposed merger, share
40 exchange, or asset transfer when the application is complete and all required fees have
41 been paid. Promptly following this notification, the parties shall provide notice to clients
42 who may be affected by the proposed merger, share exchange, or asset transfer in the
43 form and manner specified by the Commissioner.

1 **(b)** At the expense of the parties to the proposed merger, share exchange, or asset
2 transfer, the Commissioner may investigate the proposed transaction, including the
3 character of the proposed directors, officers, and principal shareholders of each resulting
4 trust institution and of any other person proposed to succeed to the accounts of the
5 applying institutions. Notwithstanding any laws to the contrary, information bearing on
6 the character or information about the personal finances of an existing or proposed
7 organizer, officer, director, or shareholder is confidential and not subject to public
8 disclosure.

9 **(c)** Based on the application and investigation, the Commissioner shall enter an
10 order approving or denying approval of the proposed merger, share exchange, or asset
11 transfer not later than the sixtieth day following the date the Commissioner notifies the
12 parties that the application is complete, unless extraordinary circumstances require a
13 longer period of review.

14 **(d)** Any written commitment made by a person proposing to engage in the
15 merger, share exchange, or asset transfer as a condition for approval of the application is
16 enforceable against that person.

17 **(e)** Any order entered by the Commissioner under the provisions of this section
18 shall be subject to review by the Commission for entry of a final agency decision.

19 **"§ 53-362. Rights of dissenters to mergers, share exchanges, or asset transfers.**

20 A shareholder of a State trust company may dissent from the proposed merger, share
21 exchange, or asset transfer to the extent allowed under, and by following the procedures
22 prescribed by, Article 13 of Chapter 55 of the General Statutes.

23 "Subpart E. Private Trust Companies.

24 **"§ 53-363. Private trust companies.**

25 **(a)** The following definitions apply in this Subpart:

26 **(1)** 'Designated relative' means the individual required to be named in the
27 application under G.S. 53-364(a)(5) requesting an exemption from
28 certain provisions of this Act pursuant to G.S. 53-364.

29 **(2)** 'Family member' means the designated relative and

30 **a.** Any individual within the fifth degree of lineal kinship to the
31 designated relative computed in accordance with G.S. 104A-1;

32 **b.** Any individual within the ninth degree of collateral kinship to
33 the designated relative computed in accordance with G.S.
34 104A-1;

35 **c.** The spouse of the designated relative and of any individual
36 qualifying as a family member under sub-subdivision a. and b.
37 of this subdivision;

38 **d.** A company controlled by one or more family members;

39 **e.** A trust established by (i) a family member or (ii) an individual
40 who is not a family member if income or principal of the trust
41 could be distributed currently to or for the benefit of a family
42 member;

43 **f.** The estate of a family member; or

1 g. A charitable foundation or other charitable entity created by a
2 family member.

3 For purposes of this subdivision, a legally adopted individual shall be treated
4 as a natural child of the adoptive parents.

5 (3) 'Transact business with the general public' means to engage in any
6 sales, solicitations, arrangements, agreements, or transactions to
7 provide trust business services, whether or not for a fee, commission,
8 or other type of remuneration, to more than 35 persons who are not
9 family members, except that rules, orders, or declaratory rulings of the
10 Commissioner may provide for other circumstances in which a State
11 trust company does not transact business with the general public. For
12 purposes of this subdivision, an estate, trust, or other legal entity
13 having multiple beneficiaries or owners shall be deemed to constitute
14 one person.

15 (b) A private trust company engaging in trust business in this State shall comply
16 with all provisions of this Article applicable to a State trust company unless expressly
17 exempted from this Article by the Commissioner pursuant to this section or prior to the
18 enactment of this Article.

19 (c) A private trust company or proposed private trust company may request in
20 writing that it be exempted from specified provisions of G.S. 53-333(b), 53-337(a),
21 53-340, 53-341, 53-342, 53-345, 53-346, and 53-394(b). The Commissioner may grant
22 the exemption request in whole or in part. The Commissioner also may issue rules,
23 orders, or declaratory rulings granting exemptions to all private trust companies, or to
24 private trust companies that meet specified conditions.

25 (d) The Commissioner may examine or investigate the private trust company or
26 proposed private trust company in connection with the application for exemption.
27 Unless the application presents novel or unusual questions, the Commissioner shall
28 approve or deny the application for exemption no later than the sixty-first day after the
29 date the Commissioner considers the application complete and accepted for filing. The
30 Commissioner may require the submission of additional information in order to make an
31 informed decision to approve or reject the proposed exemption.

32 (e) Any exemption granted under the provisions of this section may be made
33 subject to conditions or limitations imposed by the Commissioner consistent with this
34 Subpart, and those conditions or limitations shall be included in an order.

35 (f) Rules, orders, or declaratory rulings of the Commissioner may provide for
36 other circumstances that justify exemption from specific provisions of this Article,
37 specifying the provisions of this Act that are subject to the exemption request, and
38 establishing procedures and requirements for obtaining, maintaining, or revoking
39 exemptions.

40 "**§ 53-364. Requirements to apply for and maintain status as a private trust**
41 **company.**

42 (a) A private trust company or a proposed private trust company requesting an
43 exemption from the provisions of this Article pursuant to G.S. 53-363 shall file an

1 application with the Commissioner, in the form required by the Commissioner,
2 containing, preceded, or accompanied by:

- 3 (1) An application fee as set by rules of the Commissioner;
- 4 (2) A statement under oath of the reasons for requesting the exemption;
- 5 (3) A statement under oath showing that the private trust company is not
6 currently transacting business with the general public and that the
7 company will not transact business with the general public without the
8 approval of the Commissioner;
- 9 (4) A listing of the specific provisions of the Act from which exemption is
10 requested; and
- 11 (5) The name of the designated relative whose relationship to other
12 individuals determines whether the individuals are family members
13 under G.S. 53-363(a)(2). The designated relative must be living and 18
14 years of age or older at the time the application is made.

15 (b) The Commissioner may make further inquiry and investigation as the
16 Commissioner deems appropriate. Notwithstanding any other law to the contrary,
17 information bearing on actual or proposed accounts of the private trust company or
18 proposed private trust company applying for the exemption is confidential and not
19 subject to public disclosure.

20 (c) To maintain its status as a private trust company and to maintain any
21 exemptions from the provisions of this Article granted by the Commissioner, a private
22 trust company shall file with the Commissioner an annual certification that it is in
23 compliance with the provisions of this Subpart and the conditions and limitations of all
24 exemptions granted. This annual certification shall be filed in the form required by the
25 Commissioner and accompanied by any fee required by the Commissioner by rule. The
26 annual certification shall be filed on or before December 31 of each year. The
27 Commissioner may examine or investigate the private trust company periodically as
28 necessary to verify the certification.

29 (d) In any transaction involving a private trust company for which an application
30 is required under G.S. 53-360, any exemption from the provisions of this Article granted
31 to the private trust company shall automatically terminate upon the consummation of
32 the transaction unless the Commissioner approves the continuation of the exemption.

33 (e) The Commissioner may revoke any exemption from the provisions of this
34 Article granted to a private trust company in the following circumstances:

- 35 (1) An officer or director of the private trust company makes a false
36 statement under oath on any document required to be filed by this
37 Article or by any rules or orders of the Commissioner;
- 38 (2) The private trust company fails to submit to an examination as
39 required by G.S. 53-367;
- 40 (3) An officer or director of the private trust company withholds requested
41 information from the Commissioner; or
- 42 (4) The private trust company violates any provision of this Subpart or
43 fails to meet any condition on which the exemption is based.

1 (f) If the Commissioner determines from examination or other credible evidence
2 that a private trust company has violated any of the requirements of this Subpart or fails
3 to meet any condition or limitation on which an exemption from the provisions of this
4 Article is based, the Commissioner may by personal delivery or registered or certified
5 mail, return receipt requested, notify the private trust company that the private trust
6 company's exemptions from the provisions of this Article will be revoked unless the
7 private trust company corrects the violation or failure or shows cause why any
8 exemptions should not be revoked. The notification shall state grounds for the
9 revocation with reasonable certainty and shall advise of an opportunity for a hearing.
10 The notice shall state the date upon which the revocation shall become effective absent
11 a correction or showing of cause why the exemption should not be revoked, which shall
12 not be before the thirtieth day after the date the notification is mailed or delivered,
13 except as provided in subsection (g) of this section. The revocation shall take effect for
14 the private trust company on the date stated in the notice if the private trust company
15 does not request a hearing in writing before the effective date. After the revocation takes
16 effect, the private trust company shall be subject to all of the requirements and
17 provisions of this Article applicable to a State trust company.

18 (g) If the Commissioner determines from examination or other credible evidence
19 that a private trust company appears to be engaging or attempting to engage in acts
20 intended, designed, or likely to deceive or defraud the public, the Commissioner may
21 shorten or eliminate the 30-day notice period specified in subsection (f) of this section,
22 but shall promptly afford a subsequent hearing upon request to rescind the action taken.

23 (h) If the private trust company does not comply with all of the provisions of this
24 Article or correct any failure to meet any condition or limitation on which an exemption
25 is based within the notice period specified in subsection (f) of this section, the
26 Commissioner may institute any action or remedy prescribed by this Article or any
27 applicable rule.

28 **"§ 53-365. Conversion to public trust company.**

29 (a) Before transacting business with the general public, a private trust company
30 shall file a notice on a form prescribed by the Commissioner, which shall set forth the
31 name of the private trust company and an acknowledgment that any exemption granted
32 or otherwise applicable to the private trust company pursuant to G.S. 53-363 shall cease
33 to apply once the Commissioner terminates private trust company status. The private
34 trust company shall furnish a copy of the resolution adopted by its board of directors
35 authorizing the private trust company to commence transacting business with the
36 general public, and shall pay the filing fee, if any, prescribed by rule of the
37 Commissioner.

38 (b) The private trust company may commence transacting business with the
39 general public on the thirty-first day after the date the Commissioner receives the notice,
40 unless the Commissioner:

- 41 (1) Establishes an earlier or later date;
- 42 (2) Notifies the private trust company that the notice raises issues that
43 require additional information or additional time for analysis; or
- 44 (3) Disapproves the termination of private trust company status.

1 (c) If the Commissioner gives a notification described in subdivision (2) of
2 subsection (b) of this section, the private trust company status may be terminated only
3 on approval by the Commissioner.

4 (d) The Commissioner may deny approval of the proposed termination of private
5 trust company status if the Commissioner finds that the private trust company lacks
6 sufficient resources to undertake the proposed conversion without adversely affecting its
7 safety or soundness or if the Commissioner determines that the private trust company
8 could not within a reasonable period be in compliance with any provision of this Article
9 from which it previously had been exempted pursuant to G.S. 53-363.

10 "Part 4. Applicable Law; Enforcement Actions.

11 "Subpart A. Supervision and Examination.

12 **"§ 53-366. Applicability of other laws to authorized trust institutions; status of**
13 **State trust company.**

14 (a) Except as otherwise provided in this Article, the following provisions of this
15 Chapter shall apply to authorized trust institutions:

16 (1) G.S. 53-14;

17 (2) G.S. 53-16;

18 (3) G.S. 53-17;

19 (4) G.S. 53-68;

20 (5) G.S. 53-77.3;

21 (6) G.S. 53-85;

22 (7) Article 8 of this Chapter, except where it clearly appears from the
23 context that a particular provision is not applicable to trust business or
24 trust marketing, and except that the provisions of this Article shall
25 apply in lieu of:

26 a. G.S. 53-95;

27 b. G.S. 53-104;

28 c. G.S. 53-105;

29 d. G.S. 53-106; and

30 e. G.S. 53-107.1(a), (b) and (d).

31 (8) Article 9 of this Chapter, except where it clearly appears from the
32 context that a particular provision is not applicable to trust business or
33 trust marketing, and except that the provisions of this Article shall
34 apply in lieu of G.S. 53-119.

35 (9) Article 10 of this Chapter, except where it clearly appears from the
36 context that a particular provision is not applicable to trust business or
37 trust marketing, and except that the provisions of this Article shall
38 apply in lieu of G.S. 53-135, and except that G.S. 53-131 and G.S. 53-
39 132 shall not apply to authorized trust institutions.

40 (10) Article 14 of this Chapter.

41 (b) Rules adopted by the Commissioner to implement those provisions of this
42 Chapter made applicable to authorized trust institutions by subsection (a) of this section
43 also shall apply to authorized trust institutions unless the rules are inconsistent with this

1 Article or it clearly appears from the context that a particular provision is inapplicable to
2 trust business or trust marketing.

3 (c) Activities of authorized trust institutions for clients shall not be considered
4 the sale or issuance of checks under G.S. 53-194.

5 (d) Until the Commissioner has issued new rules governing State trust
6 companies, State trust companies shall be governed by rules issued by the
7 Commissioner for banks acting in a fiduciary capacity, except to the extent the rules are
8 inconsistent with this Article or it clearly appears from the context that a particular
9 provision is inapplicable to the business of a State trust company.

10 (e) Notwithstanding any other provision of this Chapter, a State trust company:

11 (1) Is a 'banking entity' for purposes of G.S. 53-127;

12 (2) Is a 'bank' for purposes of laws made applicable to authorized trust
13 institutions in this section and for purposes of G.S. 53-277.

14 (3) Is a trust company organized and doing business under the laws of the
15 State of North Carolina, a substantial part of the business of which is
16 exercising fiduciary powers similar to those permitted national banks
17 under authority of the Comptroller of the Currency, and which is
18 subject by law to supervision and examination by the Commissioner as
19 a banking institution; and

20 (4) Is a financial institution similar to a bank.

21 (f) In the case of a State trust company controlled by a company that has
22 declared itself to be a 'financial holding company' under 12 U.S.C. § 1843(l)(1)(C)(i),
23 deposits held for an account shall be deemed to be 'trust funds' within the meaning of 12
24 U.S.C. § 1813(p) unless all fiduciary duties with respect to the account are explicitly
25 disclaimed. This subsection does not prescribe the nature or extend the scope of any
26 fiduciary duties; the nature and extent of any fiduciary duties with respect to deposits
27 held for accounts shall be as provided by the instruments and laws applicable to those
28 accounts.

29 (g) Subject to any limitations contained in this Article, an authorized trust
30 institution is a 'trust company', a 'corporate trustee', a 'corporate fiduciary', and a
31 'corporation acting in a fiduciary capacity', as such and similar terms are used in the
32 General Statutes, except where it clearly appears from the context in which those terms
33 are used that a different meaning is intended.

34 **"§ 53-367. Commissioner shall have supervision over authorized trust institutions**
35 **and shall examine.**

36 Every authorized trust institution shall be under the supervision of the
37 Commissioner. The Commissioner may periodically examine and require reports from
38 authorized trust institutions, and shall execute and enforce, through examiners and any
39 other agents as are now or may hereafter be created or appointed, all laws and all rules,
40 orders, and declaratory rulings relating to authorized trust institutions. All authorized
41 trust institutions shall conduct their business in a manner consistent with all laws and all
42 rules, orders, and declaratory rulings that may be adopted or issued by the
43 Commissioner relating to authorized trust institutions.

44 **"§ 53-368. Assessment of State trust companies.**

1 (a) For the purpose of operating and maintaining the office of the Commissioner,
2 each State trust company shall pay into the office of the Commissioner, within 10 days
3 after notice, an annual assessment of six thousand dollars (\$6,000) plus one dollar
4 (\$1.00) per one hundred thousand dollars (\$100,000) of assets held for its accounts,
5 exclusive of nonsecuritized real estate interests. For purposes of this assessment, the
6 amount of assets held for accounts shall be determined as of the close of business on
7 December 31 of each year.

8 (b) If an application for merger, share exchange, sale of assets, change of control,
9 conversion, or a similar transaction occasions an examination or if the Commissioner
10 determines that the financial condition or manner of operation of a State trust company
11 warrants further examination or an increased level of supervision, a State trust company
12 may be subject to an additional assessment not to exceed the amount required of all
13 State trust companies by subsection (a) of this section.

14 (c) Except as set forth in this section, fees and assessments of a State trust
15 company shall be governed by G.S. 53-122. Fees and assessments collected under the
16 provisions of this section shall be considered to be part of the total fees collected under
17 G.S. 53-122(d).

18 "Subpart B. Enforcement Orders; Trust Company Management.

19 **"§ 53-369. Administrative orders; penalties for violation; increase of equity**
20 **capital.**

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

23 (1) Order any authorized trust institution, or affiliate thereof, or any
24 director, officer, or employee of an authorized trust institution, to cease
25 and desist violating any provision of this Article or any rule issued
26 thereunder.

27 (2) Order any authorized trust institution, or affiliate thereof, or any
28 director, officer, or employee of an authorized trust institution, to cease
29 and desist from a course of conduct that is unsafe or unsound and
30 which is likely to cause insolvency or dissipation of the assets of an
31 authorized trust institution, or is likely to jeopardize or otherwise
32 seriously prejudice the interests of the clients, creditors, shareholders,
33 or the public in their relationships with the authorized trust institution.

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

35 (4) Enter orders described in G.S. 53-321, 53-327, and 53-343.

36 (b) The Commissioner may impose a civil money penalty of not more than one
37 thousand dollars (\$1,000) for each violation of an order issued under subdivision (1) of
38 subsection (a) of this section. The Commissioner may impose a civil money penalty of
39 not more than five hundred dollars (\$500.00) per day for each violation of a cease and
40 desist order issued under subdivision (2) or (3) of subsection (a) or this section. The
41 clear proceeds of civil money penalties imposed pursuant to this section shall be
42 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

43 (c) The Commissioner may order that a State trust company in a hazardous
44 condition increase its equity capital to a level that is adequate for the safe and sound

1 conduct of its business. The order shall specify the period of time for meeting the
2 requirement to increase equity capital, which period of time may be extended by further
3 order of the Commissioner.

4 **"§ 53-370. Notice and opportunity for hearing.**

5 Consistent with Chapter 150B of the General Statutes, notice and opportunity for
6 hearing shall be provided before the Commissioner may act under the provisions of this
7 Subpart. In cases involving extraordinary circumstances requiring immediate action,
8 however, the Commissioner may take action without a hearing, but shall promptly
9 afford a subsequent hearing upon request to rescind the action taken.

10 **"§ 53-371. Removal of directors, officers, and employees.**

11 The Commissioner may require the immediate removal from office of any officer,
12 director, or employee of any State trust company, who shall be found to be dishonest,
13 incompetent, or reckless in the management of the affairs of the State trust company, or
14 who persistently violates the laws of this State or the rules, orders, and declaratory
15 rulings issued by the Commissioner.

16 "Part 5. Dissolution and Receivership; Conservatorship;
17 Jeopardized State Trust Companies.

18 "Subpart A. Voluntary Dissolution and Liquidation.

19 **"§ 53-372. Required vote of shareholders.**

20 With the approval of the Commissioner, a State trust company may go into
21 voluntary liquidation, be closed, and surrender its charter and franchise as a corporation
22 of this State by the affirmative vote of its shareholders owning two-thirds of its stock.

23 **"§ 53-373. Corporate procedure.**

24 Shareholder action to liquidate a State trust company shall be taken at a meeting of
25 the shareholders duly called by resolution of the board of directors. Notice of the
26 meeting, stating the purpose of the meeting, shall be mailed to each shareholder,
27 addressed to the shareholder's last known residence at least 10 days prior to the date of
28 the meeting. If the shareholders, by the required vote, elect to liquidate a trust company,
29 a certified copy of all proceedings of the meeting at which the action was taken, verified
30 by the oath of the president and secretary, shall be transmitted to the Commissioner for
31 approval.

32 **"§ 53-374. Authority to liquidate; publication.**

33 If the Commissioner approves the liquidation, the Commissioner shall issue to the
34 State trust company, under the Commissioner's seal, a permit for liquidation. No permit
35 shall be issued by the Commissioner until the Commissioner is satisfied that provision
36 has been made by the State trust company to satisfy and pay off all creditors and to
37 transfer all client accounts and fiduciary records to successor fiduciaries in the manner
38 provided by G.S. 53-383(c). If not so satisfied, the Commissioner shall refuse to issue a
39 permit, and shall be authorized to take possession of the State trust company and its
40 assets and business and to hold and liquidate the State trust company in the manner
41 provided in this Part. When the Commissioner approves the voluntary liquidation of a
42 State trust company, the directors of the State trust company shall notify clients of the
43 State trust company in the manner prescribed by the Commissioner and shall cause to be
44 published in a newspaper in the county in which the principal office of the trust

1 company is located, or if no newspaper is published in that county, then in a newspaper
2 having a general circulation in that county, a notice that the State trust company is
3 closing down its affairs and going into liquidation and that creditors of the State trust
4 company shall present their claims for payment. The notice shall be published once a
5 week for four consecutive weeks.

6 **"§ 53-375. Examination and reports.**

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

10 **"§ 53-376. Unclaimed property.**

11 All unclaimed property remaining with a State trust company voluntarily liquidated
12 under the provisions of this Subpart shall be subject to the provisions of Chapter 116B
13 of the General Statutes.

14 "Subpart B. Seizure by Commissioner; Involuntary Dissolution and Liquidation.

15 **"§ 53-377. When Commissioner may take charge.**

16 The Commissioner may take possession of the business and property of any State
17 trust company whenever it appears that the trust company:

- 18 (1) Is in a hazardous condition;
- 19 (2) Has become insolvent or is in substantial danger of becoming
20 insolvent;
- 21 (3) Has sold or attempted to sell substantially all of its assets or has
22 merged or attempted to merge its business with another entity without
23 meeting the requirements of this Article;
- 24 (4) Has dissolved or liquidated or attempted to dissolve or liquidate
25 without meeting the requirements of this Article; or
- 26 (5) Has suspended operations.

27 **"§ 53-378. Directors may act.**

28 A State trust company may place its assets and business under the control of the
29 Commissioner by a resolution of a majority of its directors upon notice to the
30 Commissioner, and, upon taking possession of the State trust company, the
31 Commissioner shall retain possession thereof until the State trust company is authorized
32 by the Commissioner to resume business or until the affairs of the State trust company
33 are fully liquidated as provided in this Subpart. No State trust company shall make any
34 general assignment for the benefit of its creditors except by surrendering possession of
35 its assets to the Commissioner as provided in this Subpart; and any other purported
36 general assignment for the benefit of creditors by a State trust company shall be void.

37 **"§ 53-379. Notice of seizure; bar to attachment of liens.**

38 When the Commissioner takes possession of any State trust company under G.S.
39 53-377 or G.S. 53-378, the Commissioner shall, within 48 hours, file with the clerk of
40 the superior court in the county where the principal office of the State trust company is
41 located a notice of the action which shall state the reason for the action, and which shall
42 be deemed the equivalent of a summons and complaint against the State trust company
43 in an action in the superior court except that it shall not be necessary to serve the notice.
44 The taking possession of any State trust company shall be effective on the date when the

1 authority is first exercised and from and after that time all assets and property of the
2 State trust company, of whatever nature, shall be deemed to be in possession of the
3 Commissioner, and the exercise of the authority shall operate as a bar to any attachment
4 or other legal proceeding against the State trust company or its assets. After the
5 Commissioner's exercise of authority, no lien shall attach in any manner binding or
6 affecting any of the assets of the State trust company, and every purported transfer or
7 assignment made thereafter by the State trust company, or by its authority, of the whole
8 or any part of its assets, shall be null and void; and the Commissioner shall be
9 substituted in place of the State trust company in any civil actions or proceedings
10 pending at the time of the exercise of the authority.

11 **"§ 53-380. Notice to trust institutions, corporations, and others holding assets;**
12 **existing liens.**

13 Upon taking possession of the assets and business of any State trust company, the
14 Commissioner shall forthwith give notice, by mail or otherwise, of the action to all
15 banks, clearing corporations, brokers, trust institutions, or other persons or corporations
16 holding, or having in possession, any assets of the State trust company. No lien against
17 any assets of the State trust company shall be enforced in any manner other than as
18 provided in this Article after the Commissioner has taken possession of the State trust
19 company.

20 **"§ 53-381. Permission to resume business.**

21 (a) After the Commissioner has taken possession of a State trust company under
22 the provisions of this Subpart, the State trust company may resume business only upon
23 approval and subject to terms and conditions specified by the Commissioner.

24 (b) When possession of a State trust company has been taken pursuant to either
25 G.S. 53-377 or G.S. 53-378, the terms and conditions under which it may resume
26 business shall be fully stated in writing, and a copy thereof shall be filed with the clerk
27 of superior court of the county in which the action is pending.

28 (c) Notwithstanding subsections (a) and (b) of this section, no State trust
29 company possessed by the Commissioner under the provisions of this Article shall
30 resume trust business unless and until the State trust company has been completely
31 restored to solvency and it clearly appears to the Commissioner that the State trust
32 company may be reopened with safety to the clients, creditors, and shareholders of the
33 State trust company and to the public.

34 (d) If the Commissioner determines that the State trust company shall not resume
35 business, the State trust company shall be liquidated in accordance with the provisions
36 of this Part and shall cancel the charter and revoke the license of the State trust company
37 as provided in G.S. 53-414.

38 **"§ 53-382. Remedy for seizure; answer to notice; injunction; appeal; and motions.**

39 (a) Whenever any State trust company of which the Commissioner has taken
40 possession under G.S. 53-377 shall deem itself aggrieved thereby, it may file an answer
41 to the notice as in other civil actions and may also, upon notice to the Commissioner,
42 apply to the resident or presiding judge of the superior court for an injunction to enjoin
43 further proceedings by the Commissioner. The judge of the superior court may cite the
44 Commissioner to show cause why further proceedings should not be enjoined and, after

1 hearing the allegations and proof of the parties with respect to the condition of the State
2 trust company, may dismiss an application for injunction or may enjoin further
3 proceedings under the provisions of this section by the Commissioner. If the judge
4 enjoins further action of the Commissioner and permits the reopening of the State trust
5 company, the judge may require of the State trust company a surety bond as the judge
6 deems necessary, payable to the Commissioner for the sole benefit of the creditors and
7 clients of the State trust company and upon any terms the judge deems proper. Either
8 party has the right to appeal a decision as in other civil actions.

9 (b) The State trust company or any person interested may be heard by motion as
10 to actions taken or proposed to be taken by the Commissioner, but the judge hearing the
11 motion shall enter an order as in the judge's discretion will best serve the parties
12 interested.

13 **"§ 53-383. Collection of debts and claims; Commissioner succeeds to all property**
14 **of the State trust company.**

15 (a) Upon taking possession of the assets and business of any State trust company,
16 the Commissioner is authorized to collect all money due the State trust company and to
17 do any other acts necessary to conserve its assets and property. The Commissioner shall
18 collect all debts due and claims belonging to the State trust company, and by order of
19 the court may sell, compromise, or compound any bad or doubtful debt or claim or sell
20 the real and personal property of the State trust company on any terms provided by the
21 order. Where the sale is made under power contained in any mortgage or lien bond or
22 other paper wherein the title is retained for sale and the terms of sale set out, sale may
23 be made under that authority.

24 (b) Upon taking possession of any State trust company under the provisions of
25 this section, the Commissioner shall have the possession and the right to the possession
26 of all the property, assets, choses in action, rights, and privileges of the State trust
27 company. The property rights and privileges shall vest in the Commissioner absolutely
28 for the purpose of liquidating, selling, or conveying the property rights and privileges,
29 together with all other incidental rights, privileges, and powers necessary for the right of
30 conveyance and sale.

31 (c) Upon taking possession of any State trust company under the provisions of
32 this section, the Commissioner shall administer each account of the State trust company
33 on a temporary basis until either (i) a successor to the State trust company is appointed
34 or the account is terminated in the manner provided by the terms of its governing
35 instrument consistent with applicable law, or by applicable law in the absence of a
36 provision in the governing instrument, or (ii) the Commissioner has granted the State
37 trust company permission to resume business under the provisions of G.S. 53-381. The
38 Commissioner may take appropriate steps for the appointment of successors or
39 termination of accounts as the Commissioner deems necessary as to some or all of the
40 accounts of the State trust company. If the governing instrument or other applicable law
41 do not prescribe methods for appointing successors, or if the methods prescribed are
42 unfeasible, the applicable law for appointment of a successor shall be as set forth in G.S.
43 53-399.

1 (d) The officers and directors of any State trust company that is in the possession
2 of the Commissioner under this Part shall not exercise any powers declared by this
3 Subpart to be vested in the Commissioner.

4 **"§ 53-384. Bond of the Commissioner; surety; condition; minimum penalty.**

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

15 **"§ 53-385. Inventory.**

16 Within 90 days after the filing of a notice described in G.S. 53-279, the
17 Commissioner shall file an inventory of the assets and liabilities, not including assets
18 and liabilities held in accounts of the State trust company, of the State trust company. A
19 copy of the inventory shall be filed with the clerk of the superior court of the county in
20 which the action is pending, and a copy shall be kept on file with the State trust
21 company. The inventory shall be open for inspection during usual business hours,
22 provided that nothing herein shall require the State trust company to remain open
23 unnecessarily.

24 **"§ 53-386. Notice and time for filing claims.**

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

37 **"§ 53-387. Power to reject claims; notice; affidavit of service; action on claims.**

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

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

11 **"§ 53-388. List of claims presented, copies, and proviso.**

12 Upon the expiration of the time fixed for presentation of claims, the Commissioner
13 shall make a full and complete list of the claims presented, including and specifying any
14 claims that have been rejected. One copy shall be filed in the office of the clerk of the
15 superior court of the county in which the action is pending, and one copy shall be kept
16 on file with the inventory in the principal office of the State trust company for
17 examination. Any indebtedness against any State trust company which has been
18 established or recognized as a valid liability of the State trust company before it went
19 into liquidation, for which no claimant has filed claim, or any liability for which a claim
20 has been filed and rejected, shall be listed by the Commissioner in the office of the clerk
21 of the superior court of the county in which the action is pending. Any claim that may
22 be presented after the expiration of the time fixed for the presentation of claims in the
23 notice provided in G.S. 53-386 shall, if allowed, share pro rata in the distribution but
24 only as to those assets of the State trust company in the hands of the Commissioner that
25 are undistributed at the time the claim is presented.

26 **"§ 53-389. Declaration of dividends; order of preference in distribution.**

27 (a) At any time after the expiration of the date fixed by the Commissioner for the
28 presentation of claims against the State trust company, and from time to time thereafter,
29 the Commissioner may declare and pay dividends to the creditors and shareholders of
30 the State trust company. In paying and calculating dividends, all disputed claims shall
31 be taken into account, but no dividend shall be paid upon the disputed claims until the
32 claims have been finally determined. The following shall be the order of preference in
33 the distribution of the assets of any State trust company liquidated hereunder:

- 34 (1) State, county, and federal taxes owed and fees due the Commissioner
35 other than those due under the provisions of this Subpart;
- 36 (2) Wages and salaries due officers and employees of the State trust
37 company for a period of not more than four months;
- 38 (3) Expenses of liquidation, including those described in G.S. 53-391 and
39 G.S. 53-395;
- 40 (4) Amounts due creditors, honoring the priorities of valid security
41 interests and subject to orders of the court concerning disputes among
42 creditors;
- 43 (5) Amounts due shareholders.

1 **(b)** A statement of all dividends paid shall be filed in the office of the clerk of the
2 superior court of the county in which the action is pending, and the statements shall
3 show the expenses deducted and the disputed claims in determining dividends.

4 **"§ 53-390. Deposit of funds collected.**

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

8 **"§ 53-391. Employment of counsel, accountants, and other experts; compensation.**

9 The Commissioner, for the purpose of exercising any power under the provisions of
10 this Subpart, may (i) employ any liquidating agents, attorneys, accountants, consultants,
11 and clerks necessary to properly conduct the business of or liquidate and distribute the
12 assets of a State trust company; (ii) fix the compensation for the agents, attorneys,
13 accountants, consultants, and clerks; and (iii) pay the compensation of those persons out
14 of the assets of the State trust company. Provided, that all expenditures described in this
15 section shall be approved by the resident or presiding judge in the county in which the
16 action is pending. Payments made by the Commissioner pursuant to this section shall
17 not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes.
18 As used in this Subpart, the term 'Commissioner' includes the Commissioner's duly
19 appointed agents.

20 **"§ 53-392. Unclaimed dividends held in trust.**

21 Unclaimed dividends for claims described in subdivisions (a)(1) through (a)(4) of
22 G.S. 53-389 shall be held by the Commissioner in trust for the claimants to whom the
23 dividends are owed; and the dividends so held by the Commissioner shall be paid over
24 to the persons entitled to the dividends when they furnish satisfactory evidence of their
25 right to the dividends. In case of doubtful or conflicting claims, the Commissioner may
26 apply to the superior court, by motion in the pending action, for an order from the
27 resident or presiding judge of the superior court directing the payment of the dividends
28 so claimed. Issues of fact raised by motion may, upon request of any claimant, be
29 determined as in other civil actions. Interest earned on any unclaimed dividends so held
30 shall be applied toward defraying the expenses incurred in the distribution of the
31 unclaimed dividends. The balance of interest, if any, shall be deposited and held as
32 other funds to the credit of the Commissioner. After the Commissioner has held any
33 unclaimed dividends in trust under the provisions of this statute for the creditors of the
34 liquidated State trust company for a period of three years following the resumption of
35 business by or cancellation of the charter of the State trust company, the unclaimed
36 dividends shall be subject to the provisions of Chapter 116B of the General Statutes.
37 Upon payment of unclaimed dividends to the State Treasurer, the Commissioner shall
38 be fully discharged from all further liability therefor.

39 **"§ 53-393. Action by the Commissioner following full settlement.**

40 Whenever the Commissioner has paid all duly proven and allowed claims described
41 in subdivisions (a)(1) through (a)(4) of G.S. 53-389, has made proper provision for
42 unclaimed and unpaid and disputed claims, and has other assets of the State trust
43 company, the Commissioner shall, unless the State trust company is granted permission
44 to resume business in accordance with G.S. 53-381, call a meeting of the shareholders

1 of the State trust company by giving notice thereof by publication once a week for four
2 consecutive weeks in a newspaper published in the county, or if no newspaper is
3 published in the county, then in a newspaper having general circulation in the county,
4 and by mailing a copy of the notice to each shareholder's address as it appears on the
5 books of the State trust company. Affidavit of the mailing of the notice herein required
6 and of the newspaper as to the publication shall be conclusive evidence of notice
7 hereunder. At the meeting, any shareholders may be represented by proxy and the
8 shareholders shall elect, by a majority vote of the shares present, an agent or agents who
9 shall be authorized to receive from the Commissioner all the remaining assets of the
10 State trust company. The shareholders also may specify the means of resolving disputes
11 between multiple agents and appointing successors to the agent or agents. The
12 Commissioner shall cause to be transferred and delivered to the agent, or agents, all the
13 remaining assets of the State trust company. The Commissioner shall thereupon cause to
14 be filed in the office of the clerk of the superior court of the county in which the action
15 is pending a full and complete report of all transactions showing the assets of the State
16 trust company so transferred together with the name of the agent or agents giving
17 receipt for the assets; and the filing of the report shall act as a full and complete
18 discharge of the Commissioner from all further liabilities to the shareholders of the
19 State trust company by reason of the liquidation of the State trust company. The agent
20 shall convert the assets coming into the agent's hands into cash, except as otherwise
21 provided by the court upon motion in the cause made by a shareholder of the State trust
22 company, and shall make distribution to the shareholders of the State trust company as
23 herein provided. The agent shall file semiannually a report of all transactions with the
24 superior court of the county in which the State trust company is located, and with the
25 Commissioner, and shall be allowed for the services such fees, not in excess of five
26 percent (5%) of receipts and disbursements, as may be fixed by the court. In case of
27 death, removal, or refusal to act of any agent or agents elected by the shareholders, the
28 Commissioner or any interested person may seek an order from the resident or presiding
29 judge in the county in which the action is pending appointing a successor to the agent or
30 agents as determined by the shareholders or, if no method was set forth by the
31 shareholders, as determined by the court to be in the best interests of the shareholders.
32 The court in its discretion may either appoint a successor or order the call of a further
33 meeting of shareholders for the election of a successor and make any orders that are
34 appropriate.

35 **"§ 53-394. Annual report of the Commissioner; items included; reports of**
36 **condition of State trust companies.**

37 (a) The Commissioner shall file, as a part of an annual report to the Governor, a
38 list of the names of any State trust companies of which possession was taken and
39 liquidated in the preceding year, the sum of unclaimed assets with respect to each State
40 trust company, and all depositories of all sums coming into the hands of the
41 Commissioner under the provisions of this Part.

42 (b) The Commissioner shall, from time to time, compile and make available for
43 public inspection reports showing the condition of State trust companies.

44 **"§ 53-395. Compensation of the Commissioner's office.**

1 The office of the Commissioner, for services rendered in connection with the duties
2 described in this Subpart, shall be entitled to actual expenses incurred in connection
3 with the liquidation of each State trust company, including a reasonable sum for the
4 time of the examiners and other agents of the Commissioner. The Commissioner may
5 adopt rules or orders for fixing these expenses.

6 **"§ 53-396. Exclusive method of liquidation.**

7 No State trust company shall be liquidated other than as provided in this Part.

8 **"§ 53-397. Disposition of books and records.**

9 All fiduciary records relating to the administration of particular accounts shall be
10 turned over to the successors in charge of administration of the accounts. All other
11 books, papers, and records of a State trust company that has been finally liquidated shall
12 be deposited by the receiver in the office of the clerk of the superior court of the county
13 in which the action is pending, or in any other place as in the clerk's judgment, after
14 consultation with the Commissioner, will provide for the proper safekeeping and
15 protection of those books, papers, and records. Such books, papers, and records shall be
16 held subject to the orders of the clerk of the superior court of the county in which the
17 action is pending, including orders necessary for preserving the confidentiality of any
18 information relating to accounts contained in those books, papers, and records.

19 **"§ 53-398. Destruction of books and records.**

20 (a) After the expiration of five years from the date of filing, in the office of the
21 clerk of the superior court of the county in which the action is pending, of a final order
22 approving the liquidation of a State trust company and the delivery to the clerk or into
23 the clerk's custody of books, papers, records of the State trust company, the books,
24 papers, and records may be destroyed by the clerk of the superior court of the county in
25 which the action is pending.

26 (b) After five years from the filing by the Commissioner of a final report of
27 liquidation of any insolvent State trust company, the Commissioner, by and with the
28 consent of the Commission, may destroy the records of any State trust company held in
29 the office of the Commissioner in connection with the liquidation of the State trust
30 company. However, in connection with any unpaid dividends, the Commissioner shall
31 preserve the records or other evidence of indebtedness of the State trust company with
32 reference to the unpaid dividends until the dividends have been paid.

33 (c) Nothing in this section shall be construed to authorize the destruction by the
34 clerk of superior court of any county or by the Commissioner of any of the formal
35 records of liquidation or the records made in the office of the Commissioner with
36 reference to the liquidation.

37 **"§ 53-399. Petition for new trustee.**

38 Any person interested in any account, either as trustee, beneficiary, client, or
39 otherwise, may petition the clerk of superior court of the county in which court
40 accountings are filed or, if there is no such county, the county in which the account is
41 being administered, for a new trustee or other successor to a State trust company in all
42 cases in which use of the procedures set forth in this Part are employed. The petition
43 and the order appointing a new trustee or other successor may relate to any number of
44 accounts administered by the State trust company. Except as specified in this section,

1 the procedure shall be as provided in Chapter 36A of the General Statutes for the
2 appointment of successor trustees.

3 **"§ 53-400. Report to the Secretary of State.**

4 The Commissioner shall, on or before the first day of each year, file with the
5 Secretary of State a report showing any State trust companies under liquidation in this
6 State and the names of any auditors or attorneys employed in connection with the
7 liquidation of these State trust companies, together with the amounts paid or contracted
8 to be paid to each of the auditors or attorneys. If any attorney has been employed on a
9 fee contingent upon recovery, the report shall set forth the material terms of the fee
10 arrangements.

11 "Subpart C. Conservatorship.

12 **"§ 53-401. Provisions for conservator; duties and powers.**

13 Whenever the Commissioner deems it necessary in order to conserve the assets of a
14 State trust company for the benefit of clients or creditors, the Commissioner may
15 appoint a conservator for the State trust company and require of the conservator a bond
16 with any surety the Commissioner deems necessary and proper in an amount deemed
17 sufficient by the Commissioner. The conservator, under the direction of the
18 Commissioner, shall take possession of the fiduciary records and other books, records,
19 and assets of every description of the State trust company placed under conservatorship
20 and take actions necessary to conserve those assets pending further disposition of its
21 business as provided by law. Except as provided in G.S. 53-405, the conservator shall
22 have all rights, powers, and privileges, subject to the approval of the Commissioner,
23 now possessed by or given to the Commissioner under the provisions of Subpart B and
24 Subpart D of this Part. All expenses of the conservator shall be paid out of the assets of
25 the State trust company under conservatorship and shall be a lien thereon which shall be
26 prior to any other lien provided by law. The compensation of the conservator shall be
27 determined by the Commissioner and shall be based on the time and experience of the
28 conservator and the complexity of the conservatorship. Compensation of the
29 conservator shall not be subject to the requirements of Article 3 of Chapter 143 of the
30 General Statutes.

31 **"§ 53-402. Examination.**

32 The Commissioner shall examine the affairs of a State trust company placed under
33 conservatorship in the manner deemed necessary by the Commissioner to oversee the
34 conservatorship.

35 **"§ 53-403. Termination of conservatorship.**

36 If the Commissioner is satisfied that the conservatorship may be terminated with
37 safety to the clients, creditors, and shareholders of the State trust company, and to the
38 public, the Commissioner may terminate the conservatorship of a State trust company
39 and permit the company to resume the transaction of its business, subject to such terms,
40 conditions, restrictions, and limitations as the Commissioner prescribes.

41 **"§ 53-404. Rights and liabilities of conservator.**

42 A conservator appointed pursuant to the provisions of this Subpart is subject to the
43 provisions of G.S. 53-331 and to the penalties prescribed by G.S. 53-129 and G.S.
44 53-355.

1 **"§ 53-405. Naming of conservator not liquidation.**

2 No power conferred in this Subpart upon the Commissioner, when exercised, shall
3 be deemed as an act of possession for the purposes of liquidation; and whenever the
4 Commissioner shall, with reference to any State trust company for which a conservator
5 is appointed, deem that liquidation is necessary, the Commissioner shall exercise the
6 powers for the purposes of liquidation as provided in Subpart B of Part 5 of this Article.

7 "Subpart D. Sale of Assets; Issuance of Preferred Stock
8 by Jeopardized State Trust Company.

9 **"§ 53-406. Sale of assets by board of jeopardized State trust company.**

10 (a) With the Commissioner's approval, the board of directors of a jeopardized
11 State trust company, acting without shareholder approval and notwithstanding any other
12 provision of this Article or any other law, or any of the provisions of the articles of
13 incorporation or bylaws of the State trust company, may cause the State trust company
14 to sell to one or more buyers all or substantially all of its assets, including the right to
15 control and act as fiduciary for accounts established with the trust company, if the
16 Commissioner finds:

17 (1) The interests of the State trust company's clients, creditors, and
18 shareholders are jeopardized by the continued operation of the State
19 trust company; and

20 (2) The sale is in the best interests of the State trust company's clients and
21 creditors.

22 (b) Sales under the provisions of this section shall include assumptions and
23 promises by one or more buyers to pay or otherwise discharge, except as provided in
24 G.S. 53-407:

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

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

28 (3) Expenses incurred by the Commissioner arising out of the supervision
29 or sale of the State trust company; and

30 (4) Taxes owed and fees and assessments due the Commissioner's office.

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

33 (d) This section does not affect the Commissioner's right to take action under
34 another law or sale under other provisions of this Article.

35 **"§ 53-407. Authority to act as disbursing agent.**

36 If a purchasing trust institution acts under a written agency contract that (i) is
37 approved by the Commissioner; (ii) specifically names each creditor and the amount to
38 be paid each; and (iii) limits the agency to the purely ministerial act of paying creditors
39 the amounts due them as determined by the selling institution and does not involve
40 discretionary duties or authority other than the identification of the creditors named,
41 then the purchasing trust institution:

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

44 (2) Is not responsible for:

- 1 a. Any error made by the selling institution in determining its
2 liabilities, the creditors to whom the liabilities are due, or the
3 amounts due the creditors; or
4 b. Any preference that results from the payments made under the
5 contract of agency and the instructions included in it.

6 **"§ 53-408. Payment to creditors.**

7 Payment to a creditor of the selling institution of the amount to be paid under the
8 terms of a contract of agency described in G.S. 53-407 may be made by the purchasing
9 trust company by (i) opening an agency account in the name of the creditor;
10 (ii) crediting the account with the amount to be paid the creditor under the terms of the
11 agency contract; and (iii) mailing or personally delivering a duplicate ticket evidencing
12 the credit to the creditor at the creditor's address shown in the records of the selling
13 institution.

14 **"§ 53-409. Issuance of preferred shares by jeopardized trust company.**

15 Notwithstanding any other provisions of this Article or any other laws, and
16 notwithstanding any of the provisions of its articles of incorporation or bylaws, any
17 jeopardized State trust company may, with the approval of the Commissioner, and by
18 vote of shareholders owning a majority of the shares of such State trust company, upon
19 not less than two days' notice given by registered mail pursuant to action taken at a
20 meeting of its board of directors (which may be held upon not less than one day's
21 notice) issue shares of preferred stock in such amount, with such voting rights, with
22 such preferences, at such dividend rate, and with such other rights and limitations as
23 shall be approved by the Commissioner. A copy of the minutes of such directors' and
24 shareholders' meetings, certified by the proper officer and under the corporate seal of
25 the State trust company, and accompanied by the written approval of the Commissioner,
26 shall be immediately filed in the office of the Secretary of State, and when so filed, shall
27 be deemed and treated as an amendment to the articles of incorporation of such State
28 trust company. For purposes of this section, a State trust company shall be considered
29 jeopardized when it is critical that the State trust company obtain additional equity
30 capital to avoid, or to cease to be in, a hazardous condition, and other means of raising
31 additional equity capital do not appear to be feasible. No issue of preferred shares shall
32 be valid until the amount of all shares so issued shall have been paid for in full in cash,
33 except as may otherwise be specifically approved by the Commissioner. The provisions
34 of this section do not limit the authority of a State trust company to issue shares as
35 provided under other applicable law.

36 "Part 6. Authority, Hearings, Enforcement, and Severability.

37 **"§ 53-410. Commissioner to act under authority of the 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 Commission.
40 Wherever provision is made in this Article authorizing and permitting the
41 Commissioner to make rules, the words 'the Commissioner' shall be construed to mean
42 the Commission.

43 **"§ 53-411. Rules.**

1 The Commission may adopt rules in accordance with Chapter 150B of the General
2 Statutes to carry out the provisions of this Article relating to authorized trust institutions
3 and to ensure safe and conservative management of authorized trust institutions under
4 its supervision, taking into consideration the appropriate interests of the clients,
5 creditors, shareholders, and the public in their relations with the authorized trust
6 institutions.

7 **"§ 53-412. Commissioner hearings; appeals.**

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

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

14 (c) Disputes over decisions and actions of the Commissioner under the
15 provisions of this Article shall be 'contested cases' as defined in G.S. 150B-2(2).

16 (d) Except as expressly provided otherwise by this Chapter, an order of the
17 Commissioner may be appealed to the Commission for review. The Commission may
18 affirm, modify, or reverse a decision of the Commissioner.

19 (e) Appeals from the Commission shall be to the Wake County Superior Court
20 and shall proceed as provided in G.S. 53-92.

21 **"§ 53-413. Civil enforcement.**

22 The Commissioner may bring any appropriate civil action against any person the
23 Commissioner believes has committed or is about to commit a violation of this Article
24 or a rule, order, or declaratory ruling of the Commissioner pertaining to this Article.

25 **"§ 53-414. Cancellation of charter.**

26 Whenever a merger, share exchange, sale of assets, liquidation, or other transaction
27 occurs by which a State trust company ceases to exist or ceases to be eligible for a
28 charter, the Commissioner shall cancel the State trust company's charter, revoke its
29 license, and provide notice of the revocation in the manner provided in G.S. 53-163.
30 The filing, in the office of the Secretary of State, of a certified copy of the cancellation
31 under seal of the Commissioner shall authorize the cancellation of the charter of the
32 State trust company, subject, however, to its continued existence, as provided by this
33 Article and the general law relative to corporations, for the purpose of winding up and
34 liquidating its business and affairs.

35 **"§ 53-415. Severability.**

36 If any provision of this Article, or its application, is found by any court of competent
37 jurisdiction in the United States to be invalid as to any trust institution or other person or
38 circumstance, or to be superseded by federal law, the provision shall be deemed
39 modified only to the extent and only in the particular circumstances necessary to render
40 the provision valid, and the remaining provisions of this Article shall not be affected
41 and shall continue to apply to any trust institution or other person or circumstance."

42 **SECTION 2.** G.S. 53-2 reads as rewritten:

43 **"§ 53-2. How incorporated.**

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

- 7 (1) The name of the corporation; no name shall be used already in use by
8 another existing corporation organized under the laws of this State or
9 of the Congress, or so nearly similar thereto as to lead to uncertainty or
10 confusion.
- 11 (2) The location of its principal office in this State.
- 12 (3) ~~The nature of its business, whether that of a commercial bank, trust~~
13 ~~company, or a combination of both such classes of business. Whether it~~
14 will do trust business as well as the business of a commercial bank.
- 15 (4) The amount of its authorized common capital stock, the number of
16 shares into which it is divided, the par value of each share; and the
17 amount of common capital stock with which it will commence
18 business. The amount of capital required to charter a bank shall be
19 determined as herein set forth by the Commissioner of Banks who
20 shall give due consideration to (i) the population of the proposed
21 bank's trade area, (ii) the total deposits of those depository financial
22 institutions already operating in the proposed bank's trade area, (iii) the
23 economic conditions and outlook within the proposed bank's trade
24 area, (iv) the business experience and reputation of the proposed
25 bank's management, (v) the business experience and reputation of the
26 proposed bank's incorporators and proposed directors, (vi) the type and
27 nature of business activities proposed to be engaged in, and (vii) the
28 proposed bank's projected deposit growth and profitability. Except as
29 otherwise provided, the amount of common capital stock required to
30 charter a bank shall not be less than two million dollars (\$2,000,000);
31 provided, however, such amount of capital may be increased or
32 decreased in the discretion of the Commissioner of Banks who, after
33 considering the above enumerated criteria, determines that a greater
34 capital requirement is necessary or that a smaller capital requirement
35 will provide a sufficient capital base. In addition to the required
36 capital, every bank shall have a paid in surplus of at least fifty percent
37 (50%) of its common capital stock. The capital and paid in surplus
38 required to charter a bank shall be exclusive of any organizational
39 expenses. This subdivision shall not apply to banks organized and
40 doing business prior to its adoption or amendment; provided, however,
41 the Banking Commission is hereby authorized and directed to adopt
42 rules ~~and regulations~~ to keep any original required minimum capital
43 funds intact to the end that they remain in and with the bank as a
44 protection for depositors.

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

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

6 **SECTION 3.** Article 14 of Chapter 53 reads as rewritten:

7 "Article 14.

8 "Banks Acting in a Fiduciary Capacity.

9 **"§ 53-159. Bank may act as fiduciary.**

10 Any bank licensed by the Commissioner of Banks, where such powers or privileges
11 are granted it in its charter, may be guardian, trustee, assignee, receiver, executor or
12 administrator or act in another fiduciary capacity in this State without giving any bond;
13 and the clerks of the superior courts, or other officers charged with the duty or clothed
14 with the power of making such appointments, are authorized to appoint such bank to
15 any such office.

16 **"§ 53-159.1. Power of fiduciary or custodian to deposit securities in a clearing
17 corporation.**

18 Notwithstanding any other provision of law, any fiduciary holding securities in its
19 fiduciary capacity, any bank or trust company holding securities in a fiduciary capacity
20 or as a custodian or agent is authorized to deposit or arrange for the deposit of such
21 securities in a clearing corporation as defined in G.S. 25-8-102. When such securities
22 are so deposited, certificates representing securities of the same class of the same issuer
23 may be merged and held in bulk in the name of the nominee of such clearing
24 corporation with any other such securities deposited in such clearing corporation by any
25 person regardless of the ownership of such securities, and certificates of small
26 denomination may be merged into one or more certificates of larger denomination. The
27 records of such fiduciary and the records of such bank or trust company acting as a
28 fiduciary or as a custodian or managing agent shall at all times show the name of the
29 party for whose account the securities are so deposited. Title to such securities may be
30 transferred by bookkeeping entry on the books of such clearing corporation without
31 physical delivery of certificates representing such securities. A bank or trust company
32 so depositing securities pursuant to this section shall be subject to such rules ~~and~~
33 ~~regulations~~ as, in the case of State-chartered institutions, the State Banking Commission
34 and, in the case of national banking associations, the Comptroller of the Currency may
35 from time to time issue. A bank or trust company acting as custodian or agent for a
36 fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the
37 securities so deposited by such bank or trust company in such clearing corporation for
38 the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial
39 proceeding for the settlement of such fiduciary's account or on demand by the attorney
40 for such party, certify in writing to such party the securities deposited by such fiduciary
41 in such clearing corporation for its account as such fiduciary. This section shall apply to
42 any fiduciary holding securities in its fiduciary capacity, and to any bank or trust
43 company holding securities as a fiduciary or as a custodian or managing agent acting on
44 May 15, 1973, or who thereafter may act regardless of the date of the agreement,

1 instrument or court order by which it is appointed and regardless of whether or not such
2 fiduciary, custodian or agent owns capital stock of such clearing corporation. The
3 fiduciary shall personally be liable for any loss to the trust resulting from an act of such
4 nominee in connection with such securities so deposited.

5 **"§ 53-160. License to do business.**

6 Before any such bank or trust company is authorized to act in any fiduciary capacity
7 without bond, it must be licensed by the Commissioner of Banks of the State. For such
8 license the licensee shall pay to the State Banking Commission an annual license fee of
9 two hundred dollars (\$200.00), which shall be remitted to the State Treasurer for the use
10 of the Commissioner of Banks in the supervision of banks and trust companies acting in
11 a fiduciary capacity, insofar as it may be necessary, and the surplus, if any, shall remain
12 in the State treasury for the use of the general fund of the State: Provided, however, that
13 a national bank which has been granted trust powers by the Comptroller of the Currency
14 or his duly authorized agent shall be annually licensed as required in this section and
15 shall be granted a certificate of solvency which will meet the provisions of G.S. 53-162
16 without examination by the Commissioner of Banks as required in G.S. 53-161.

17 **"§ 53-161. Examination as to solvency.**

18 The Commissioner of Banks shall examine into the solvency of such bank, and shall,
19 if he deem it necessary, at the expense of the bank, make or cause to be made an
20 examination at its home office of its assets and liabilities. Examinations of trust
21 institutions other than banks shall be as provided in Article 24 of this Chapter.

22 **"§ 53-162. Certificate of solvency.**

23 After any such bank has been licensed by the Commissioner of Banks, a certificate
24 issued by the Commissioner of Banks, showing the bank to be solvent to an amount not
25 less than one hundred thousand dollars (\$100,000), shall authorize such bank to act in a
26 fiduciary capacity without bond. There shall be no charge for the seal of this certificate.

27 **"§ 53-163. Clerk of superior court notified of license and revocation.**

28 The Commissioner of Banks, upon granting license to any such ~~bank,~~ bank or trust
29 company, shall immediately notify the clerk of the superior court of each county in the
30 State that ~~such~~ the bank or trust company has been licensed under this Article, and,
31 whenever the Commissioner of Banks is satisfied that any bank or trust company
32 licensed by ~~him~~ the Commissioner has become insolvent, or is in imminent danger of
33 insolvency, ~~he~~ the Commissioner shall revoke the license granted to ~~such~~ that bank and
34 notify the clerk of the superior court of each county in the State of the revocation. After
35 such notification, the right of any such bank or trust company to act in a fiduciary
36 capacity shall cease."

37 **SECTION 4.** G.S. 55-15-05(a) reads as rewritten:

38 "(a) A certificate of authority authorizes the foreign corporation to which it is
39 issued to transact business in this State subject, however, to the right of the State to
40 revoke the certificate as provided in this Chapter. A foreign corporation, however, is not
41 eligible or entitled to corporation may qualify in this State as executor, administrator, or
42 guardian, or as trustee under the will of any person domiciled in this State at the time of
43 his death, that person's death only in accordance with applicable provisions of Article 24
44 of Chapter 53. ~~except that a foreign corporation chartered under the banking laws of~~

~~Georgia, South Carolina, Tennessee or Virginia or as a national banking association in any said states may act as testamentary trustee, or executor in this State if:~~

- ~~(1) It has a bona fide capital of at least two hundred and fifty thousand dollars (\$250,000) actually paid in;~~
- ~~(2) It is authorized to act in such fiduciary capacity in the state in which it is incorporated or if such foreign corporation be a national banking association in the state in which it has its principal place of business; and~~
- ~~(3) Any bank or other corporation organized under the laws of this State or a national banking association having its principal place of business in this State is permitted by law to act in such fiduciary capacity in the state in which such foreign corporation seeking to act in this State is organized or in which it has its principal place of business if it is a national banking association without further showing or qualification other than that it is authorized to act in such fiduciary capacity in this State and upon compliance with the laws of such other state, if any, concerning service of process on nonresident fiduciaries.~~

~~Unless assets of the estate are to be removed from within the State of North Carolina, such foreign corporations seeking to act as testamentary trustee, or executor in this State, upon qualifying to act in such fiduciary capacity, shall not be required by law to give bond except as required of a resident corporate fiduciary in like circumstances. No officer, employee or agent of any such foreign corporation shall be eligible or entitled to serve as testamentary trustee, or executor in this State whether such officer, employee, or agent is a resident or nonresident of this State if such officer, employee or agent is acting as testamentary trustee or executor on behalf of any such foreign corporation except when such foreign corporation itself shall be eligible to so serve.~~

~~A foreign corporation qualifying as testamentary trustee or executor under the provisions of this section shall appoint a process agent and file such appointment with the court as required by G.S. 28A-4-2(4)."~~

SECTION 5. G.S. 53-25 reads as rewritten:

"§ 53-25. Trust terminated on insolvency of trustee bank.

~~Whenever any bank or trust company created under the laws of this State, which has heretofore been, or shall hereafter be, appointed trustee in any indenture, deed of trust or other instrument of like character, executed to secure the payment of any bonds, notes or other evidences of indebtedness, has been or shall be by reason of insolvency, or for any other cause provided by law, taken over for liquidation by the Commissioner of Banks of this State or by any other legally constituted authority, the powers and duties of such bank or trust company as trustee in any such instrument shall, upon the entry of an order of the clerk of the superior court appointing a successor trustee, upon a petition as hereinafter provided, immediately cease and determine."~~

SECTION 6. G.S. 53-1 reads as rewritten:

"§ 53-1. 'Bank,' 'surplus,' 'undivided profits,' and other words defined.

~~Except as otherwise specifically provided in this Chapter, the following definitions shall be applied to the terms used in this Chapter:~~

- 1 (1) Bank. – The term "bank" shall be construed to mean any corporation,
2 other than savings and loan associations, savings banks, industrial
3 banks, and credit unions, receiving, soliciting or accepting money or
4 its equivalent on deposit as a business.
- 5 (1a) Branch. – The term "branch" means an office of any bank in which
6 deposits are received, monies are paid, and loans are made. Any of the
7 functions or services authorized to be engaged in by a bank may be
8 carried out in a branch.
- 9 (2) Demand Deposits. – The term "demand deposits" means all deposits,
10 the payment of which can be legally required within 30 days.
- 11 (3) Insolvency. – The term "insolvency" means:
12 a. When a bank cannot meet its deposit liabilities as they become
13 due in the regular course of business;
14 b. When the actual cash market value of its assets is insufficient to
15 pay its liabilities to depositors and other creditors;
16 c. When its reserve shall fall under the amount required by this
17 Chapter, and it shall fail to make good such reserve within 30
18 days after being required to do so by the Commissioner of
19 Banks; or
20 d. Whenever the undivided profits and surplus shall be inadequate
21 to cover losses of the bank, whereby an impairment of the
22 capital stock is created.
- 23 (3a) Limited Service Facility. – The term "limited service facility" means
24 an office of a bank in which deposits are received, monies are paid, or
25 other duties and functions of a teller are performed. Loan applications
26 shall be taken in a limited service facility but notes may not be
27 executed nor loan proceeds disbursed in a limited service facility.
- 28 (4) Net Earnings. – The term "net earnings" means the excess of the gross
29 earnings of any bank over the expenses and losses chargeable against
30 such earnings during any dividend period.
- 31 (5) Practical Banker. – The term "practical banker" means an officer or
32 employee of a bank actively engaged in performing duties in managing
33 or supervising or assisting in managing or supervising the conducting
34 of a banking business, including any such banker who is in a retired
35 status from such duties.
- 36 (6) Surplus. – The term "surplus" means a fund created pursuant to the
37 provisions of this Chapter by a bank from payments by stockholders or
38 from its net earnings or undivided profits which, to the amount
39 specified and by any additions thereto set apart and designated as such,
40 is not available for the payment of dividends, and cannot be used for
41 the payment of expenses or losses so long as such bank has undivided
42 profits.
- 43 (7) Time Deposits. – The term "time deposits" means all deposits, the
44 payment of which cannot be legally required within 30 days.

1 (8) Undivided Profits. – The term "undivided profits" means the credit
2 balance of the profit and loss account of any bank.

3 (9) Unimpaired Capital Fund. – The term "unimpaired capital fund"
4 means the total of the amount of unimpaired common stock, preferred
5 stock, surplus, undivided profits, reserve for contingencies and other
6 capital reserves (excluding accrued dividends on preferred stock and
7 limited life preferred stock), mandatory convertible instruments,
8 allowance for possible loan losses, and the amount of capital
9 debentures or notes, convertible or otherwise, having an average
10 original maturity of at least seven years, which have been specifically
11 designated as part of the bank's unimpaired capital fund by resolution
12 duly adopted by the board of directors of the bank; provided, that upon
13 payment of such capital debentures or notes or upon accumulation of
14 funds in a sinking fund for amortization of such debentures or notes,
15 unimpaired capital fund shall be reduced by the amount of such
16 payment or accumulation. The terms and conditions of any issue of or
17 prepayment of capital debentures or notes must have the prior written
18 approval of the Commissioner of Banks affirming that in his opinion
19 such issue or prepayment is in the best interest of the depositors,
20 creditors and stockholders of the bank."

21 **SECTION 7.** Trust companies organized under Article 1 of Chapter 53 of
22 the General Statutes shall hereafter be governed by this Article and may take such steps
23 as may be necessary or appropriate to conform to the provisions hereof. The
24 Commissioner shall allow a period of up to one year for this transition.

25 **SECTION 8.** This act becomes effective July 1, 2001, and applies to acts or
26 omissions occurring and agreements or contracts entered into on or after that date.