CHAPTER 1

State Board of Financial Institutions

**SECTION 34‑1‑10.** Definitions.

 Effective July 1, 1976, all references to "the Board" in this title means the State Board of Financial Institutions unless context clearly indicates otherwise.

 Except when otherwise specifically provided "bank" as used in this title must be construed to include all institutions doing any kind of banking business whose deposits are eligible for insurance by the Federal Deposit Insurance Corporation, excluding a savings bank, and "building and loan association" as used in this title must be construed to include a mutual or stock savings association, savings and loan association, or savings bank and all other institutions doing any kind of building and loan business whose deposits are eligible for insurance by the Federal Savings and Loan Insurance Corporation.

HISTORY: 1962 Code Section 8‑51; 1952 Code Section 8‑51; 1942 Code Section 7829; 1936 (39) 1484; 1976 Act No. 683 Section 1; 1985 Act No. 124, Section 2.

**SECTION 34‑1‑20.** Appointment of members.

 The State Board of Financial Institutions is composed of eleven members, one of whom is the State Treasurer as an ex officio member and as the chairman. The remaining ten members must be appointed by the Governor with the advice and consent of the Senate. Four must be engaged in banking and recommended by the South Carolina Bankers Association, one must be recommended by the association of supervised lenders, one must be engaged in the mortgage lending business and recommended by the Mortgage Bankers Association of the Carolinas, one must be engaged in the licensed consumer finance business as a restricted lender or a supervised lender and recommended by the Independent Consumer Finance Association, two must be engaged in the cooperative credit union business and recommended by the State Cooperative Credit Union League, and one must be unaffiliated with a financial organization and serve as a representative of the consumers of the State. The terms of the present members are not affected. Each member shall represent the best interests of the public and shall not serve more than two consecutive four‑year terms. The association which is to provide a member to fill a vacancy on the board, except for a consumer representative, shall submit three names, from three different institutions, from which the Governor shall select one.

HISTORY: 1962 Code Section 8‑52; 1952 Code Section 8‑52; 1942 Code Section 7829; 1936 (39) 1484; 1953 (48) 357; 1964 (53) 1743; 1965 (54) 243; 1976 Act No. 683 Section 2; 1980 Act No. 517 Part II, Section 17; 1984 Act No. 395, Section 4; 1985 Act No. 15; 1990 Act No. 392, Section 1, eff April 3, 1990; 1998 Act No. 437, Section 1, eff upon approval (became law without the Governor's signature on April 21, 1998); 2006 Act No. 252, Section 1, eff March 24, 2006; 2009 Act No. 67, Section 3.A, eff January 1, 2010.

Effect of Amendment

The 1990 amendment increased the membership from nine to ten, substituted "one must be recommended by the association of supervised lenders" for "one must be engaged in the licensed consumer finance business and be recommended by the Consumer Financial Associations", and added "one must be engaged in the licensed consumer business as a restricted lender and recommended by the association of restricted lenders."

The 1998 amendment rewrote this section.

The 2006 amendment, in the third sentence, added "or a supervised lender" following "restricted lender" and substituted "Independent Consumer Finance Association" for "association of restricted lenders".

The 2009 amendment substituted in the first sentence "eleven" for "ten", and in the second sentence substituted "ten" for "nine" and added "one must be engaged in the mortgage lending business and recommended by the Mortgage Bankers Association of the Carolinas,".

**SECTION 34‑1‑30.** Terms of members; vacancies.

 The Governor originally having appointed four members of the Board, one to serve for the term of one year, one for the term of two years, one for the term of three years and one for the term of four years, the successors of the present members, upon the expiration of their respective terms of office, shall be appointed for a term of four years and until their successors are appointed and have qualified. All vacancies shall be filled in the same manner as regular appointments.

HISTORY: 1962 Code Section 8‑53; 1952 Code Section 8‑53; 1942 Code Section 7829; 1936 (39) 1484.

**SECTION 34‑1‑40.** Expenses of members.

 The members of the Board shall receive a per diem (which shall not be paid to the State Treasurer) not exceeding forty days per annum. In addition they shall be paid their actual necessary travelling and subsistence expenses incurred in the discharge of their duties.

HISTORY: 1962 Code Section 8‑54; 1952 Code Section 8‑54; 1942 Code Section 7829; 1936 (39) 1484; 1951 (47) 506.

**SECTION 34‑1‑50.** Office space.

 The office space occupied by the Board shall be in one of the State office buildings if space is available.

HISTORY: 1962 Code Section 8‑55; 1952 Code Section 8‑55; 1942 Code Section 7829‑6; 1936 (39) 1484.

**SECTION 34‑1‑60.** Powers.

 The Board may supervise all banks and building and loan associations and provide regulations and instructions for the direction, control and protection of all such institutions, the conservation of their assets and the liquidation thereof, as may be necessary or proper to effectuate the purposes of this Title.

HISTORY: 1962 Code Section 8‑56; 1952 Code Section 8‑56; 1942 Code Sections 7829‑1, 7830; 1936 (39) 1484; 1937 (40) 218; 1950 (46) 2362; 1951 (47) 783.

**SECTION 34‑1‑70.** Repealed.

HISTORY: Former Section, titled Approval of charters of banks, building and loan associations, savings and loan associations, and savings banks; approval of branches, had the following history: 1962 Code Section 8‑57; 1952 Code Section 8‑57; 1942 Code Section 7829‑2; 1936 (39) 1484; 1956 (49) 2073; 1985 Act No. 128, Section 2. Repealed by 2021 Act No. 30, Section 19, eff May 6, 2021.

**SECTION 34‑1‑80.** Examining department; Commissioner of Banking.

 The board shall set up an examining department, appointing a Commissioner of Banking in charge with assistants, to be appointed by him subject to the consent of the board, as necessary to perform the duties incidental to the work of the board. The term of office of the Commissioner of Banking and his assistants is at the pleasure of the board. The board may also examine the Business Development Corporation of South Carolina and Carolina Capital Investment Corporation.

HISTORY: 1962 Code Section 8‑58; 1952 Code Section 8‑58; 1942 Code Section 7829‑3; 1936 (39) 1484; 1973 (58) 41; 1986 Act No. 311; 1998 Act No. 414, Section 1, eff June 9, 1998.

Effect of Amendment

The 1998 amendment added "and Carolina Capital Investment Corporation".

**SECTION 34‑1‑90.** Commissioner of Banking shall report criminal violations to Board.

 When in the exercise by the Board through its examining department of its powers of supervision over banks, banking institutions, building and loan associations, cash depositories and all institutions doing any kind of banking or building and loan business there shall be found any apparent criminal violation of any statute of this State or of any rule or regulation of the Board, the Commissioner of Banking shall file with the Board a written report of such apparent criminal violations.

HISTORY: 1962 Code Section 8‑60; 1952 Code Section 8‑60; 1942 Code Section 7829‑12; 1937 (40) 219.

**SECTION 34‑1‑100.** Initiation of criminal prosecutions.

 The report shall be considered by the Board at its next meeting and should the Board conclude that the matters covered in such report of the Commissioner of Banking do constitute an apparent violation of existing statutes or rules or regulations of the Board, then the Board may direct the Commissioner of Banking to file a detailed written report of such apparent criminal violations of existing statutes or rules or regulations with the grand jury for the county in which the apparent criminal violations were committed, or direct him to make affidavit before a magistrate and obtain a warrant. The Board may direct the Commissioner of Banking to file a copy of the detailed written report of the apparent criminal violations with the solicitor for the judicial circuit in which the county in which the apparent criminal violations were committed is located.

HISTORY: 1962 Code Section 8‑61; 1952 Code Section 8‑61; 1942 Code Section 7829‑12; 1937 (40) 219; 1953 (48) 357.

**SECTION 34‑1‑110.** Authority for state‑chartered banks, savings and loan associations, and credit unions, and licensed consumer finance companies to engage in certain activities.

 (A) Notwithstanding any other provision of law and in addition to all of the powers granted under Chapters 1 through 31, Title 34 and Chapter 3, Title 37, the State Board of Financial Institutions, by regulation or by issuing operational instructions, may permit:

 (1) state‑chartered banks to engage in any activity authorized for national banks by federal law or regulation of the Comptroller of the Currency or for state‑chartered savings and loan associations by this title or regulation or operational instruction of the State Board of Financial Institutions;

 (2) state‑chartered savings and loan associations to engage in any activity authorized for federally chartered savings and loan associations by federal law or regulation of the Office of Thrift Supervision or for state‑chartered banks by this title or regulation or operational instruction of the State Board of Financial Institutions;

 (3) cooperative credit unions to engage in any activity authorized for federally chartered credit unions by federal law or by regulation of the National Credit Union Administration;

 (4) consumer finance companies operating pursuant to a license to make supervised loans as provided in Part 5, Chapter 3, Title 37, to engage in any lending activity authorized for supervised financial organizations by law or by regulation of an agency given supervisory authority over those institutions, except where otherwise restricted by statute; and

 (5) mortgage lenders and loan originators operating pursuant to a license to make mortgage loans as provided in Chapter 22, Title 37, to engage in a mortgage lending activity authorized for licensed mortgage lenders and loan originators by law or by regulation of an agency given supervisory authority over those institutions, except where otherwise restricted by statute.

 (B) For the purpose of this section, the term "activity" includes the terms and conditions under which the activity may be exercised, as well as the authority to make a particular type of loan or investment or otherwise to engage in an approved activity.

HISTORY: 1975 (59) 333; 1979 Act No. 59; 1982 Act No. 385, Section 57(2)(b); 1985 Act No. 124, Section 3; 1999 Act No. 42, Section 1, eff June 1, 1999; 2009 Act No. 67, Section 3.B, eff January 1, 2010.

Effect of Amendment

The 1999 amendment provided that the State Board of Financial Institutions may permit certain activities by operational instruction as well as by regulation.

The 2009 amendment added subparagraph (A)(5) relating to mortgage lenders and loan originators.

**SECTION 34‑1‑120.** Penalties for obstructing Commissioner of Banking.

 Any person who obstructs or interferes with the Commissioner of Banking or any of his assistants or agents in any way in performance of his duties, shall, upon conviction, be deemed guilty of a misdemeanor, and shall be subject to imprisonment for not more than one year, or a fine of not more than one thousand dollars, or both, in the discretion of the court.

HISTORY: 1962 Code Section 8‑62; 1952 Code Section 8‑62; 1942 Code Section 7874‑4; 1941 (42) 46; 1953 (48) 357.

**SECTION 34‑1‑130.** Study of capital reserve position of financial institutions; report.

 The State Board of Financial Institutions is directed to conduct an annual study as to the capital reserve position of all financial institutions and intermediaries subject to its supervision and to report its findings to the General Assembly, including recommended legislation, if any, in its annual report to the General Assembly.

HISTORY: 1985 Act No. 124; 1985 Act No. 201, Part II, Section 73.

**SECTION 34‑1‑140.** State preemption of lender regulation.

 A political subdivision of this State may not enact or enforce any ordinance, resolution, or rule regulating the financial or lending activities of a person or a subsidiary or affiliate of that person, including disqualification of a person from doing business with the political subdivision based upon lending interest rates or imposition of reporting requirements or other obligations upon a person regarding its financial services or lending practices, if that person or a subsidiary or an affiliate of that person:

 (1) is subject to the jurisdiction of the State Board of Financial Institutions;

 (2) is subject to the jurisdiction of the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

 (3) originates, purchases, sells, or assigns securities, services, property interests, or obligations created by a financial transaction or loan made, executed, or originated to assist or facilitate the transaction by a person referred to in item (1) or (2); or

 (4) sells or markets banking, insurance, securities, or commodities services provided by an institution or entity defined in or required to comply with the Federal Gramm‑Leach‑Bliley Financial Modernization Act, 113 Stat. 1338.

HISTORY: 2003 Act No. 42, Section 7, eff Jan. 1, 2004, and applying to loans for which the loan applications were taken on or after that date.

**SECTION 34‑1‑150.** Requirements for applicant seeking permission to organize a bank.

 (A) An applicant for permission to organize a bank, building and loan association, savings and loan association, or savings bank and for a charter shall file an application with the Board of Financial Institutions. The application must be in the form required by the board and must contain information as the board requires, set forth in sufficient detail to enable the board to evaluate the applicant's satisfaction of the criteria set forth in Section 34‑1‑180. The applicant shall pay a nonrefundable application fee as prescribed by the board at the time of filing the application.

 (B) An applicant for permission to establish a branch bank, branch building and loan association, branch savings and loan association, or branch savings bank shall file an application with the board. The application must be in the form required by the board and must contain information, set forth in sufficient detail, to enable the board to evaluate whether the establishment of a branch would serve the public interest, taking into consideration local circumstances and conditions at the place where the applicant proposes to do business.

 (C) Upon receipt of an application to organize or to establish a branch of a bank, building and loan association, savings and loan association, or savings bank, the board shall conduct an examination of the applicant and any other matters considered relevant by the board. The board may require additional information and may require the amendment of the application in the course of the examination. An applicant's failure to furnish all required information or to pay any required fee within thirty days after filing the application may be considered an abandonment of the application.

HISTORY: 2021 Act No. 30 (S.467), Section 1, eff May 6, 2021.

**SECTION 34‑1‑160.** Authorization of organization of proposed bank; articles of incorporation.

 (A) With the approval of the board, the organizers may file articles of incorporation for the proposed bank, building and loan association, savings and loan association, or savings bank with the Secretary of State. The board shall authorize the organization of the proposed bank, building and loan association, savings and loan association, or savings bank if the commissioner is satisfied that each of the following conditions are met:

 (1) the application is complete;

 (2) the examination as provided for in Section 34‑1‑150(C) indicates that the requirements for the issuance of a charter to the applicant as described in Section 34‑1‑180 are reasonably likely to be satisfied; and

 (3) the proposed name of the proposed bank, building and loan association, savings and loan association, or savings bank is not likely to mislead the public as to its character or purpose and is not the same as a name already adopted by an existing depository institution or trust institution operating in this State.

 (B) If the board approves the organization of the proposed bank, building and loan association, savings and loan association, or savings bank, the board shall issue a certificate to the Secretary of State. The Secretary of State shall transmit to the board a certified copy of the filed articles of incorporation of the proposed bank, building and loan association, savings and loan association, or savings bank.

 (C)(1) Unless and until the board approves and issues a charter to the proposed bank, building and loan association, savings and loan association, or savings bank, it may not transact any business except as is incidental and necessary to its organization or the application for a charter or preparation for commencing the business of banking.

 (2) All funds, other than its operational expense fund from which to pay organizational expenses, and paid‑for shares of the proposed bank, building and loan association, savings and loan association, or savings bank must be placed in escrow under a written escrow agreement with a third‑party escrow agent satisfactory to the commissioner.

 (3) All funds for shares placed into escrow and all dividends or interest on the funds may be removed from escrow only with the commissioner's approval except to the extent that the funds are refunded to subscribers or as otherwise required by law.

 (D) A proposed bank, building and loan association, savings and loan association, or savings bank is subject to the jurisdiction of the commissioner and the board.

HISTORY: 2021 Act No. 30 (S.467), Section 1, eff May 6, 2021.

**SECTION 34‑1‑170.** Requirements for articles of incorporation of proposed bank.

 (A) The articles of incorporation of a proposed bank, building and loan association, savings and loan association, or savings bank must be signed and acknowledged by or on behalf of an organizer and must contain the following:

 (1) the information required to be set forth in articles of incorporation under Title 33;

 (2) any provision consistent with Title 33 and other applicable law that the organizers elect to set forth for the regulation of the internal affairs of the proposed bank, building and loan association, savings and loan association, or savings bank and that the board authorizes or requires; and

 (3) any provision the board requires or authorizes as a substitute for a provision that otherwise would be required by Title 33.

 (B) Before the chartering of a proposed bank, building and loan association, savings and loan association, or savings bank, the articles of incorporation filed under the provisions of Section 34‑1‑160 must be sufficiently certified to the FDIC or any other applicable regulatory agencies that the proposed bank, building and loan association, savings and loan association, or savings bank is a legal entity.

HISTORY: 2021 Act No. 30 (S.467), Section 1, eff May 6, 2021.

**SECTION 34‑1‑180.** Requirements for board to approve a charter for proposed bank.

 (A) The board may approve a charter for a proposed bank, building and loan association, savings and loan association, or savings bank only when the board determines that all of the following requirements have been satisfied or are reasonably probable to be satisfied within a reasonable period of time specified by the board in the order of approval:

 (1) The proposed bank, building and loan association, savings and loan association, or savings bank has solicited or will solicit subscriptions for purchases of shares sufficient to provide an amount of required capital satisfactory to the board for the commencement of the business of banking.

 (2) All prior public solicitations for purchases of shares and all future solicitations will be solicited with appropriate disclosure, taking into account all the circumstances of the public solicitation, including a prominent statement in any solicitation document to the effect that the solicitation has not been approved by the board and that a representation to the contrary is a criminal offense.

 (3) All payments for purchases of shares in a bank, building and loan association, savings and loan association, or savings bank in organization are made in United States currency.

 (4) The proposed bank, building and loan association, savings and loan association, or savings bank has an operational expense fund from which to pay organizational expenses, in an amount determined by the board to be sufficient for the safe and sound operation of the proposed bank, building and loan association, savings and loan association, or savings bank while the charter application is pending.

 (5) The proposed bank, building and loan association, savings and loan association, or savings bank has been formed for legitimate and lawful business purposes.

 (6) The character, competence, and experience of the organizers, proposed directors, proposed officers, and initial holders of more than ten percent of the voting securities of the proposed bank, building and loan association, savings and loan association, or savings bank will command the confidence of the public.

 (7) The proposed officers and directors, as a group, have degrees of character, competence, and experience sufficient to justify a belief that the proposed bank, building and loan association, savings and loan association, or savings bank is free from improper or unlawful influence and otherwise will operate safely, soundly, and in compliance with law.

 (8) The anticipated volume and nature of business of the proposed bank, building and loan association, savings and loan association, or savings bank projected in the application are reasonable and indicate a reasonable probability of safe, sound, and profitable operation of the proposed bank, building and loan association, savings and loan association, or savings bank.

 (9) If the proposed bank, building and loan association, savings and loan association, or savings bank intends to conduct 'trust business', trust powers should be granted based on consideration of the various factors set forth in Chapter 21, Title 34 for considering applications and setting capital for a trust institution.

 (B) The board's determination that the requirements described in subsection (A) are reasonably probable of satisfaction may be based on partial satisfaction of the requirements at a level set by the board as a prerequisite for approval of the charter, and also may be based on presentation of a plan for the full satisfaction of the requirements.

 (C) If the board determines that the proposed bank, building and loan association, savings and loan association, or savings bank has satisfied or is reasonably probable to satisfy the requirements for issuance of a charter, the board shall issue an order approving the application for a charter. The board may, in the order approving the proposed bank, building and loan association, savings and loan association, or savings bank's charter, impose other reasonable conditions or restrictions upon the proposed bank, building and loan association, savings and loan association, or savings bank or the new bank, building and loan association, savings and loan association, or savings bank, consistent with this chapter.

 (D) If the board determines that the proposed bank, building and loan association, savings and loan association, or savings bank has not satisfied and is not reasonably probable of satisfying the requirements for issuance of a charter or if the board determines that the application to establish a branch does not meet the requirements, the board shall issue an order denying approval of the application, pending a request for a hearing by the applicant. The applicant may, within ten days of issuance of the order, give notice of appeal of this decision to the board.

HISTORY: 2021 Act No. 30 (S.467), Section 1, eff May 6, 2021.

**SECTION 34‑1‑190.** Decisions to uphold or overturn denial of applications; time limits; evidence; hearings; appeals.

 (A) The board shall decide whether to uphold or overturn its denial of an application within sixty days after receipt of the applicant's request for a hearing. However, if the board requests additional information from the applicant following receipt, the time limit for decision by the board must be the later of:

 (1) the date set forth in this subsection; or

 (2) thirty days after the board's receipt of the requested additional information.

 (B) The board shall consider oral testimony and any other information and evidence it considers appropriate, either written or oral. The board's review must be limited to a determination of whether the criteria pursuant to Section 34‑1‑180 has been met and whether the provisions of this chapter have been followed.

 (C) The board in its discretion may hold a public hearing in connection with its review if a significant issue of law or fact has been raised with respect to the proposed applicant.

 (D) If the board holds a public hearing within ninety days after receipt of the applicant's request for a hearing, the time limit specified in subsection (A) must be extended to thirty days after the conclusion of the public hearing.

 (E) If the board denies an application for a charter, the applicant may appeal the denial or approval containing the conditions to the Administrative Law Court pursuant to the rules of that court.

HISTORY: 2021 Act No. 30 (S.467), Section 1, eff May 6, 2021.

**SECTION 34‑1‑200.** Requirements for issuing a bank charter; revocation of charter; appeals; dissolution and liquidation.

 (A) A proposed bank, building and loan association, savings and loan association, or savings bank may not engage in business except as allowed under Section 34‑1‑160 until the board approves the charter. In addition to the requirements set forth in Section 34‑1‑180, the board may not issue the charter until the board is satisfied that the proposed bank, building and loan association, savings and loan association, or savings bank has done each of the following:

 (1) received payment in United States currency for the purchase of shares and will have required satisfactory capital upon commencing business, in each case in at least the amount required by the board's order approving the application;

 (2) elected the proposed officers and directors named in the application or other officers and directors approved by the board;

 (3) secured deposit insurance from the FDIC;

 (4) complied with all requirements of the board's order approving the application for a charter; and

 (5) made preparations that would indicate readiness to commence the business of banking in the reasonable discretion of the board upon a preopening examination.

 (B) The charter approved by the board must set forth any trust powers of the bank, building and loan association, savings and loan association, or savings bank that may be full or partial trust powers.

 (C) If a bank, building and loan association, savings and loan association, or savings bank does not open and engage in the business of banking within six months after the date its charter is issued or within such longer period as may be permitted by the board, the board shall revoke the charter.

 (D) If the board determines that a charter should not be issued following board approval, the board shall issue an order revoking the charter, and the applicant may appeal that decision to the board. If the board upholds the revocation, the applicant may appeal the revocation to the Administrative Law Court pursuant to the rules of that court.

 (E) Following the exhaustion of all appeals, the board may dissolve and liquidate the proposed bank, building and loan association, savings and loan association, or savings bank, or order the organizers to dissolve and liquidate the proposed bank, building and loan association, savings and loan association, or savings bank, if any one of the following occurs:

 (1) the board does not issue a charter;

 (2) the board denies approval of a charter; or

 (3) the charter is revoked by the board pursuant to subsection (C) or other applicable law.

HISTORY: 2021 Act No. 30 (S.467), Section 1, eff May 6, 2021.

**SECTION 34‑1‑210.** Remote service unit not considered a branch of a bank.

 A remote service unit as defined in Section 34‑28‑30 is not considered a branch of a bank, building and loan association, savings and loan association, or a savings bank and is not subject to any of the provisions of this chapter applicable to branch applications.

HISTORY: 2021 Act No. 30 (S.467), Section 1, eff May 6, 2021.

**SECTION 34‑1‑220.** Delegations to the Commissioner of Banking.

 For purposes of the provisions of this chapter, the board may delegate to the Commissioner of Banking its authority to receive applications, develop necessary forms, issue certificates or correspondence on behalf of the board, conduct examinations, request additional information or documentation from applicants, approve articles of incorporation, and establish capital requirements and other standards for the safety and soundness of bank operations. Any such delegation may be revoked by the board at any time.

HISTORY: 2021 Act No. 30 (S.467), Section 1, eff May 6, 2021.