CHAPTER 1

State Board of Financial Institutions

**SECTION 34‑1‑10.** Definitions applicable to Title.

 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.

CROSS REFERENCES

Exemption of the State Board of Financial Institutions from provision that state agencies can not set any fee for performing any duty, responsibility, or function unless authorized by statute, see Section 8‑21‑15.

Federal Aspects

Federal Savings and Loan Insurance Corporation, see 12 U.S.C.A. Sections 1725 et seq.

Federal Deposit Insurance Corporation, see 12 U.S.C.A. Sections 1811 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 2, Definition of a State Bank.

S.C. Jur. Cooperative Credit Unions Section 3, Restrictions on the Use of the Words “Cooperative Credit Union”.

Attorney General’s Opinions

Aiken‑Speir, Inc., a wholly‑owned mortgage company subsidiary of Bankers Trust, must comply with the banking laws and regulations of the State of South Carolina regarding the making of first and second mortgages. 1976‑77 Op Atty Gen, No. 77‑2, p 10.

State‑chartered banks may invest up to 15% of their capital accounts in capital stock of banker’s bank chartered in this or another state, subject to the percentage limitations specified in Section 34‑33‑60. 1993 Op Atty Gen No. 93‑33.

NOTES OF DECISIONS

Validity 1

1. Validity

The state banking laws, as codified in Sections 34‑1‑10 et seq. are constitutional and do not deny minimal due process. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951.

The Board of Bank Control Act of 1936 is not unconstitutional. Zimmerman v. Central Union Bank (S.C. 1940) 194 S.C. 518, 8 S.E.2d 359.

**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.

Editor’s Note

1990 Act No. 392, Section 2, effective April 3, 1990, provides as follows:

“The terms of current members of the State Board of Financial Institutions are not affected by the provisions of this act. The additional board member to be appointed by the Governor pursuant to this act must be appointed on the recommendation of the association of supervised lenders.”

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,”.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 9, Appointment of Members.

S.C. Jur. Banks and Banking Section 10, Terms of Members and Vacancies.

S.C. Jur. Cooperative Credit Unions Section 100, Appointment of Members.

S.C. Jur. Cooperative Credit Unions Section 101, Terms of Members and Vacancies.

NOTES OF DECISIONS

In general 1

1. In general

Nor does it violate the Federal Constitution and antitrust laws. The requirement of this section [Code 1962 Section 8‑52] that appointments be made by the Governor upon the recommendation of the State Bankers’ Association and the cash depositories associated with the State Bankers’ Association does not render this chapter violative of the Federal Constitution and antitrust laws. Floyd v. Gage (C.A.4 (S.C.) 1951) 192 F.2d 137.

This section [Code 1962 Section 8‑52] is not unconstitutional as an illegal delegation of legislative power. Floyd v. Thornton (S.C. 1951) 220 S.C. 414, 68 S.E.2d 334.

**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.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 10, Terms of Members and Vacancies.

S.C. Jur. Cooperative Credit Unions Section 101, Terms of Members and Vacancies.

**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.

CROSS REFERENCES

Exemption of the State Board of Financial Institutions from provision that state agencies can not set any fee for performing any duty, responsibility, or function unless authorized by statute, see Section 8‑21‑15.

Penalties for violation of this section, see Section 34‑3‑90.

Power of the board to regulate wholly‑owned subsidiaries of state banks or trust companies, see Section 34‑3‑260.

Regulation of preneed burial contracts by the State Board of Bank Control, see Sections 32‑7‑10 et seq.

Regulations promulgated under this section pertaining to banking, commercial paper and finance, see S.C. Code of Regulations R. 15‑1 et seq.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 35.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 11, Powers of the Board.

S.C. Jur. Banks and Banking Section 18, Publication of Report.

S.C. Jur. Banks and Banking Section 39, Approval of Board.

S.C. Jur. Banks and Banking Section 103, Investments by Banks.

S.C. Jur. Banks and Banking Section 120, Powers of State Board of Financial Institutions During an Emergency.

S.C. Jur. Cooperative Credit Unions Section 17, Preservation of Records.

S.C. Jur. Cooperative Credit Unions Section 102, Powers of the Board.

**SECTION 34‑1‑70.** Approval of charters of banks, building and loan associations, savings and loan associations, and savings banks; approval of branches.

 No bank, building and loan association, savings and loan association, or savings bank may be granted a charter by the Secretary of State unless and until the Board has approved the application in writing. No branch bank, branch building and loan association, branch savings and loan association, or branch savings bank may be established without the approval in writing of the Board. Before any application for the incorporation of a bank, building and loan association, savings and loan association, or savings bank, or the establishment of a branch thereof may be approved, the Board shall make an investigation to determine whether or not the applicants have complied with all the provisions of law, whether in the judgment of the Board they are qualified to operate the institution and whether the establishment of the bank, building and loan association, savings and loan association, or savings bank or of a branch thereof, would serve the public interest, taking into consideration local circumstances and conditions at the place where it proposes to do business. 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 section applicable to branch applications.

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.

CROSS REFERENCES

Penalties for violation of this section, see Section 34‑3‑90.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 11, Powers of the Board.

S.C. Jur. Banks and Banking Section 18, Publication of Report.

S.C. Jur. Banks and Banking Section 34, Issuance of Charter.

S.C. Jur. Banks and Banking Section 48, Private Banks.

**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”.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 35.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 11, Powers of the Board.

S.C. Jur. Banks and Banking Section 30, Filing Application for Charter.

S.C. Jur. Banks and Banking Section 126, Authority for Determining Insolvency‑ Procedure for Determination.

**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.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 36.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 21, Criminal Violations.

S.C. Jur. Cooperative Credit Unions Section 115, Criminal Violations.

NOTES OF DECISIONS

In general 1

1. In general

Chartering of banks is exercise of police power. The licensing or chartering of banks and savings and loan associations is an exercise of the police power and essentially a legislative and administrative function. First Federal Sav. and Loan Ass’n of Walterboro v. Board of Bank Control for South Carolina (S.C. 1974) 263 S.C. 59, 207 S.E.2d 801. Banks And Banking 6; Building And Loan Associations 3.1(1)

Factors in deciding whether to grant application for charter. In deciding whether an application for a charter to establish a building and loan association should be granted, the Board is required by this section [Code 1962 Section 8‑57] to determine (1) whether the applicants have complied with all provisions of the law; (2) whether, in the judgment of the Board, the applicants are qualified to operate such an institution; and (3) whether the establishment of such business would serve the public interest, taking into consideration local circumstances and conditions at the place where the business proposes to operate. First Federal Sav. and Loan Ass’n of Walterboro v. Board of Bank Control for South Carolina (S.C. 1974) 263 S.C. 59, 207 S.E.2d 801.

Hearing not required. This section [Code 1962 Section 8‑57] contains no requirement that a hearing be held by the Board in determining whether a charter should be issued for a building and loan association. Instead, the power and duty is placed on the Board to conduct an investigation as to whether such charter should be issued and make its determination on the basis of that investigation. First Federal Sav. and Loan Ass’n of Walterboro v. Board of Bank Control for South Carolina (S.C. 1974) 263 S.C. 59, 207 S.E.2d 801.

In the exercise of powers and duties by the Board, neither this section [Code 1962 Section 8‑57] nor procedural due process requires that an adversary hearing be afforded a competitor in passing upon an application to establish a new bank or building and loan association. First Federal Sav. and Loan Ass’n of Walterboro v. Board of Bank Control for South Carolina (S.C. 1974) 263 S.C. 59, 207 S.E.2d 801. Banks And Banking 6; Building And Loan Associations 3.1(2)

Bank charter statute requiring investigation to determine whether or not an applicant has complied with all provisions of law contains no requirement that a hearing be held by the Board of Bank Control in determining whether a charter should be issued for a building and loan association, since the Board is empowered to make a determination on the basis of an investigation. First Federal Sav. and Loan Ass’n of Walterboro v. Board of Bank Control for South Carolina (S.C. 1974) 263 S.C. 59, 207 S.E.2d 801.

This section [Code 1962 Section 8‑57] is constitutional and effective in all respects. Floyd v. Thornton (S.C. 1951) 220 S.C. 414, 68 S.E.2d 334.

**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.

CROSS REFERENCES

Bank purchase and sale of federal funds, see S.C. Code of Regulations R. 15‑15.

Brokered deposit funds, see S.C. Code of Regulations R. 15‑18.

FHA home improvement loans, savings and loan, see S.C. Code of Regulations R. 15‑16.

Powers of savings and loan associations, generally, see Section 34‑28‑500.

Provision that General Assembly review is not required for regulations promulgated pursuant to this section, see Section 1‑23‑120.

Regulations promulgated under this section pertaining to banking, commercial paper and finance, see S.C. Code of Regulations R. 15‑1 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 11, Powers of the Board.

S.C. Jur. Cooperative Credit Unions Section 14, Authority to Exercise Powers Granted to Federally Chartered Credit Unions.

S.C. Jur. Cooperative Credit Unions Section 102, Powers of the Board.

**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.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 22, Obstructing Commissioner of Banking.

S.C. Jur. Cooperative Credit Unions Section 116, Obstructing Commissioner of Banking.

**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.

RESEARCH REFERENCES

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:28, Predatory Lending.