CHAPTER 28

Savings Associations

ARTICLE 1

General Provisions

**SECTION 34‑28‑10.** Short title of Articles 1 through 10.

 Articles 1 through 10 of this chapter are known and may be cited as the “South Carolina Savings Association Act”. Wherever “this Act” appears in this chapter, unless the context clearly indicates otherwise, it means Articles 1 through 10 of Chapter 28 of Title 34.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑20.** Application of the South Carolina Business Corporation Act.

 When not in direct conflict with or superseded by specific provisions of this chapter, the provisions of the South Carolina Business Corporation Act, Chapters 1 to 25 of Title 33, apply to any association organized or operated under this chapter.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑30.** Definitions.

 As used in this act, unless the context otherwise requires:

 (1) “Assets” means, at any particular time, those properties and rights which are properly entered in the accounts and balance sheets of an association and any of its subsidiaries (to the extent of the association’s interest therein) in terms of a monetary value.

 (2) “Association” means a mutual or stock‑owned savings association, savings and loan association, building and loan association, or savings bank that is subject to the provisions of this chapter.

 (3) “Board” means the State Board of Financial Institutions.

 (4) “Capital stock” means the aggregate of shares of nonwithdrawable capital represented by stock certificates.

 (5) “Company” means any corporation (domestic or foreign), partnership, trust, association, joint venture, syndicate, or any other type of business organization.

 (6) “Control” of a company means directly or indirectly acting alone or in concert with one or more other persons or through one or more subsidiaries or through proxies, for the following: (i) ownership of or voting control of more than twenty‑five percent of the voting shares or rights of the company; (ii) the right to control in any manner the election or appointment of a majority of the directors or trustees of the company; or (iii) a general partner in or contributor of more than twenty‑five percent of the capital of the company.

 (7) “Dwelling unit” means a single, unified combination of rooms which is designed for residential use by one family in a multiple dwelling unit structure and which is not “home property”.

 (8) “Earnings” means that part of the sources available for payment of earnings of a mutual association which is declared payable on savings accounts by the Board of Directors and is the cost of savings money to the association. Earnings also may be referred to as “interest”.

 (9) “Home property” means real estate on which there is located, or will be located pursuant to a real estate loan, either a structure designed for residential use by one family, or a single condominium unit or cooperative including common elements pertinent thereto, designed for residential use by one family in a multiple‑dwelling unit structure or complex and includes fixtures and home furnishings and equipment.

 (10) “Impaired condition” means a condition in which the assets of an association as recorded on the books of the association (book value) are less than the aggregate amount of liabilities of the association to its creditors, including the holders of its savings and other deposit accounts or in which an association is unable to meet current obligations as they mature, even though assets may exceed liabilities.

 (11) “Improved real estate” means real estate on which there is a structure or an enclosure or which is cultivated, reclaimed, used for the purpose of agriculture in any form, prepared as building lots or sites, or otherwise occupied, made better, more useful, or of greater value by care.

 (12) “Insured association” means an association the deposit accounts of which are insured wholly or in part by the Federal Savings and Loan Insurance Corporation or any successor or assignee federal agency established for the purpose of insuring savings and other deposit accounts in associations.

 (13) “Liquid assets” means:

 (a) Cash on hand;

 (b) Cash on deposit in federal home loan banks, federal reserve banks, state banks performing similar reserve functions, or financial depository institutions, which is withdrawable upon not more than thirty days’ notice and which is not pledged as security for indebtedness, except that any deposits in a financial depository institution under the control or in the possession of any supervisory authority are not considered as liquid assets;

 (c) Obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or this State; and

 (d) Such other assets as may be approved by the Board which are accepted as liquid assets for insured associations by the appropriate federal regulatory agency.

 (14) “Member” means a person holding a deposit account in a mutual association, or borrowing from or assuming or obligated upon a loan or interest therein held by a mutual association, or purchasing property securing a loan or interest therein held by a mutual association. A joint and survivorship relationship, whether of depositors or borrowers, constitutes a single membership. A stock association has no members.

 (15) “Net income” means the gross revenue of a mutual association for an accounting period less the sum of all expenses paid or incurred, taxes, and losses sustained as have not been charged to reserves pursuant to the provisions of this chapter.

 (16) “Officer” means the president, any vice‑president (but not an assistant vice‑president, second vice‑president, or other vice‑president having authority similar to an assistant or second vice‑president), the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any association. “Officer” also includes the chairman of the board of directors of an association if the chairman is authorized by the charter or bylaws of the organization to participate in its operating management or if the chairman in fact participates in this management.

 (17) “Person” means an individual, a fiduciary, or a company.

 (18) “Primarily residential property” means real estate on which there is located, or will be located pursuant to a real estate loan, any of the following:

 (a) structure or structures designed or used primarily for residential rather than nonresidential purposes and consisting of more than one dwelling unit;

 (b) structure or structures designed or used primarily for residential rather than nonresidential purposes for students, residents, and persons under care, or primarily for employees, or members of the staff of an educational, health, or welfare institution or facility;

 (c) structure or structures which are used in part for residential purposes for not more than one family and in part for business purposes, provided that the residential use of the structure or structures must be substantial and permanent, not merely transitory.

 (19) “Primary service area” means a reasonable geographical area from which a proposed or existing association or branch thereof expects to draw approximately seventy‑five percent of its deposits.

 (20) “Real estate loan” means any loan or other obligation:

 (1) secured by property that is real property pursuant to the law of the state where the property is located;

 (2) where the security interest of the holder of the loan or obligation may be enforced as a real estate mortgage or its equivalent pursuant to the law of the state where the property is located;

 (3) where the security property is capable of separate appraisal;

 (4) where the lender relies substantially upon the real estate as the primary security for the loan;

 (5) where, with regard to a security property that is a leasehold or other interest for a period of years, the term of the interest extends, or is subject to extension or renewal at the option of the holder of the loan or other obligation, for a term of at least the maturity of the loan.

 (21) “Remote service unit” means an information processing device, including associated equipment, structures, and systems by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to an association or other financial institution having its home or approved branch office in this State. The term includes without limitation, point‑of‑sale terminals, merchant‑operated terminals, cash dispensing machines, and automated teller machines. A remote service unit is not a branch of an association and is not subject to any of the provisions of this title applicable to branch offices.

 (22) “Savings account” means that part of the savings liability of the association which is credited to the account of the holder. A savings account also may be referred to as and includes a “savings deposit”.

 (23) “Savings liability” means the aggregate amount of savings accounts of depositors, including earnings credited to these accounts, less redemptions and withdrawals.

 (24) “Service corporation” means an organization which is empowered to engage in any activity permitted by this chapter, and which is controlled by one or more associations. It includes any subsidiary of a service corporation.

 (25) “Sources available for payment of earnings” means net income of a mutual association for an accounting period less amounts transferred to reserves as provided in or permitted by this chapter, plus any balance of undivided profits from preceding accounting periods.

 (26) “Stockholder” means the holder of one or more shares of any class of capital stock of a capital stock association organized or operating pursuant to the provisions of this chapter.

 (27) “Subsidiary” means any company which is controlled directly or indirectly by another company.

 (28) “Surplus” means the aggregate amount of the undistributed net income of a mutual association held as undivided profits or unallocated reserves for general corporate purposes.

 (29) “Withdrawal value” means the amount credited to a savings account, less lawful deductions therefrom, as shown by the records of an association.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

ARTICLE 2

Home Incorporation Branch Offices and Facilities

**SECTION 34‑28‑100.** Application for authority to incorporate; action by Board on application.

 (1) When authorized by the Board as provided in this article, an association may be formed under the laws of this State for the purpose of conducting a general savings and loan business and having all the powers and purposes authorized by this chapter and otherwise by Title 34.

 (2) A written application for authority to organize an association as provided in subsection (1) must be filed with the Board and include:

 (a) the proposed corporate name and evidence that the proposed name has been reserved with the Secretary of State; however, evidence that an association has reserved a corporate name with the Secretary of State does not preclude the Board from disapproving the name on the grounds of potential confusion with the name of an existing financial institution;

 (b) detailed financial and biographical information as the Board may require for each proposed director, chief executive officer, and managing officer;

 (c) the total amount of the savings account capital or capital stock proposed to be issued, the amount subscribed by each incorporator, and the method to be used to raise any remaining capital required before the proposed association will be authorized to begin business;

 (d) the name and address of the proposed managing officer and chief executive officer, if known;

 (e) the community and the street and number, if available, where the proposed association is to be located; and

 (f) additional information as the Board may reasonably require. The application for authority to organize must be filed with the Board in triplicate and must be accompanied by a nonrefundable filing fee established by the Board.

 (3)(a) Upon the filing of an application, the Board shall make an investigation of:

 1. the character, reputation, financial standing, experience, and business qualifications of the proposed officers and directors;

 2. the character, reputation, financial standing, and motives of the incorporator or incorporators in organizing the proposed association;

 3. the public need for an association or additional association, as the case may be, in the primary service area where the proposed association is to be located, giving particular consideration to the ability of the primary service area to support both the proposed and all other existing associations in the community in the conduct of profitable operations and to the benefits of competition to the public.

 (b) Any applicant who files an application which requires an investigation to be conducted outside the State shall reimburse the Board for all costs incurred in the normal course of investigation, which reimbursement must be in addition to the filing fee authorized in this section.

 (4) The Board shall approve the application unless it finds that one or more of the conditions in (a) through (f) exist:

 (a) Public convenience and advantage will not be promoted by the establishment of the proposed association. In determining whether an applicant meets this requirement, the Board shall consider all materially relevant factors, including:

 1. the location and services proposed to be offered by the applicant and currently offered by existing associations in the primary service area to be served by the applicant; and

 2. the primary service area’s general economic and demographic characteristics.

 (b) Local conditions do not indicate reasonable promise of the successful operation of the proposed association and of those associations already established in the primary service area community. In determining whether an applicant meets this requirement, the Board shall consider all materially relevant factors, including:

 1. Current economic conditions and the growth potential of the primary service area in which the proposed association intends to locate; and

 2. The growth rate, size, financial strength, and operating characteristics of other associations in the primary service area of the proposed association.

 (c) The proposed officers and directors do not have sufficient experience, ability, standing, and responsibility to indicate reasonable promise of the successful operation of the association.

 (d) The applicant’s proposed capital structure is inadequate. In no event may the minimum capital required be less than three million dollars or that larger amount as may be specified in a regulation issued by the Board.

 (e) The name of the proposed association does not comply with Section 34‑28‑110.

 (f) No provision has been made for suitable quarters at the location specified in the application.

 (5) The order approving an application may impose reasonable conditions which must be met before a certificate of authorization to transact business will be issued, which conditions may include employment of suitable personnel, alterations to the proposed capital structure, the obtaining of suitable quarters at the location proposed, or those other matters as the Board may deem necessary. If the Board approves the application for authority to organize, the applicant shall file its articles of incorporation with the Secretary of State and apply for a commitment for appropriate insurance of accounts. Upon approval by the Board of the application for authority to organize, the Board shall forward a copy of its final order to the Federal Savings and Loan Insurance Corporation. The corporate existence of an association begins on the date that the approved articles of incorporation are filed with the Secretary of State, unless otherwise provided in the articles of incorporation, but the association shall not commence business before it is in possession of a certificate of authorization to transact business as provided in Section 34‑28‑150. Prior to that time, an association may perform only those acts as are necessary to perfect its organization, raise capital, obtain and equip a place of business, and otherwise prepare for a general savings association business.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑110.** Name of an association.

 (1) The name of every association shall include either the words “building and loan association”, “savings and loan association”, or “savings bank”. These words must be preceded by an appropriate descriptive word or words approved by the Board. An ordinal number may not be used as a single descriptive word in the association’s name immediately preceding the words “savings association”, “savings and loan association”, or “savings bank” unless the words are followed by the words “of \_\_\_\_\_\_\_\_\_\_,” the blank being filled by the name of the community, town, city, county, or state in which the association has its home office. The use of the words “National”, “United States”, “insured”, or “guaranteed”, separately or in any combination thereof with other words or syllables, is prohibited as part of the corporate name of an association. No certificate of incorporation of a proposed association having the same name as a corporation authorized to do business under the laws of this State or a name so nearly resembling it as to be likely to deceive or cause confusion in the mind of the public with any other financial depository institution in this State may be approved by the Board, except for an association formed by the reincorporation, reorganization, conversion, or consolidation of the other financial depository institution with the proposed association or upon the sale of all or substantially all the property and franchise of the other financial institution to the proposed association. Nothing herein may be construed to require or cause any association doing business to change its name from the way it exists on April 1, 1985. In addition to meeting the requirements of this subsection, the name of a stock‑owned association must also comply with Section 34‑28‑130(1)(a).

 (2) No person, unless he or it is lawfully authorized to do business in this State under the provisions of this chapter and actually is engaged in carrying on a savings association business, shall do business under any name or title which contains the terms “savings association”, “savings and loan association”, “savings bank”, “building and loan association”, “building association”, or any combination employing either or both of the words “building” or “loan” with one or more of the words “saving” or “savings”, or words of similar import, with one or more of the words “association”, “institution”, “society”, “company”, “fund”, or “corporation”, or words of similar import, or use any name or sign or circulate or use any letterhead, billhead, circular, or paper whatever, or advertise or represent in any manner which indicates or reasonably implies that his business is the character or kind of business carried on or transacted by an association or which is likely to lead any person to believe that his business is that of an association; however, the words “saving”, “savings”, “company”, or “corporation”, or the plural of any thereof, may be used by, and in the corporate or other name or title of, any company which is or becomes a savings and loan holding company pursuant to the provisions of this chapter or regulations of the Federal Home Loan Bank Board. Upon application by the Board or any association, a court of competent jurisdiction may issue an injunction to restrain any person from violating or continuing to violate any of the foregoing provisions of this subsection. Any person who violates any provision of this subsection is guilty of a misdemeanor and upon conviction must be punished by a fine of not more than five thousand dollars, and each day of violation shall constitute a separate offense. The prohibitions of this subsection shall not apply to any corporation or association formed for the purpose of promoting the interests of associations, their officers, or other representatives.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑120.** Capital stock of state stock associations; power and limitations on sale and issuance of stock; characteristics of capital stock; loans secured by capital stock prohibited; restrictions on ownership of stock.

 (1) A stock owned association may issue the shares of stock authorized by its articles of incorporation and none other. Capital stock shall have the par value stated in the articles of incorporation and, with the prior approval of the Board, may consist of common stock and preferred stock which may be divided into classes and classes may be divided into series. Each kind, class, and series may have those distinguishing characteristics, including designations, preferences, or restrictions as regards dividends, redemption, voting powers, or restrictions or qualifications of voting powers, as are imposed in the articles of incorporation. The provisions of the articles of incorporation shall control in any case in which any vote or consent of stockholders is now or hereafter required by statute unless the statute shall expressly provide to the contrary.

 (2) The consideration for the issuance of shares must be paid in full before their issuance and must not be less than the par value. The consideration for the shares must be paid in cash. Upon payment, the shares are considered to be fully paid and nonassessable.

 (3) The total of the par values of all outstanding shares of common and preferred capital stock is the permanent capital of the association and any amount received as consideration for outstanding shares in excess of the par values must be credited to capital surplus. No association shall reduce its permanent capital or distribute any of its capital surplus to shareholders without first obtaining the consent of the Board. Except in supervisory cases, this consent must be withheld if the reduction will cause the permanent capital to be less than the minimum required by the Board at the time of the distribution to capitalize a new stock association.

 (4) Unless otherwise provided by the articles of incorporation, no shareholder in a state stock association shall have the preemptive right to acquire unissued shares, or securities convertible or carrying a right to subscribe to or acquire shares, of the association. In the case of any capital stock association in existence prior to the effective date of this chapter, stockholders of this association shall continue to have the preemptive rights in this association which they had immediately prior to this date, unless and until the articles of incorporation are amended to alter or terminate stockholders’ preemptive rights.

 (5) An association shall not make a loan secured by the pledge of its capital stock.

 (6) No subscriber to the stock of a proposed stock‑owned association shall own or control as principal more than ten percent of any class of voting shares of the association without prior approval of the Board. No mutual association shall own or control as principal, directly or indirectly, any stock of any association, bank, bank holding company, as defined in 12 U.S.C. Section 1841(a)(1) as amended, or savings and loan holding company, as defined in the Federal Savings and Loan Holding Company Act, 12 U.S.C. Section 1730a(a)(1) (D) as amended, or any other depository financial institution. No association, bank, bank holding company, savings and loan holding company, or other depository financial institution shall own or control as principal, directly or indirectly, ten percent or more of any class of the outstanding voting shares of any stock‑owned association without prior approval of the Board, and no stock‑owned association shall own or control as principal, directly or indirectly, ten percent or more of any class of the outstanding voting shares of any association, bank, bank holding company, savings and loan holding company, or other depository institution without prior approval of the Board; provided, that no stock‑owned association or holding company owning any of the stock of the association, which desires to own stock in any bank doing business in this State or any bank holding company owning any of the stock of the bank, shall own as principal more stock in that bank or bank holding company than that bank or bank holding company is permitted to own in a stock‑owned association or holding company owning any of the stock of the association. The prohibitions of this section do not apply to a savings and loan holding company’s owning all of the outstanding stock of a stock‑owned association. Any stock of a stock‑owned association which is used as loan collateral and which is acquired by a financial institution by loan default or is acquired as a result of a bankruptcy does not constitute a violation of this restriction if the acquiring institution divests itself of this stock within five years of acquisition or that longer period as may be approved by the Board. The restriction in Section 34‑28‑540(3) against an association’s owning five percent or more of any class of voting stock in any corporation, other than a service corporation or a subsidiary in which it owns all of the voting shares, is not applicable to the stock ownership permitted by this subsection.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑130.** Articles of incorporation content; approval by Board; amendment.

 (1) The Articles of Incorporation of an association shall contain:

 (a) The name of the proposed association, which shall comply with Section 34‑28‑110, and in the case of a stock‑owned association must contain the word “corporation”, “incorporated”, “limited”, or “company” or an abbreviation thereof sufficient to distinguish a stock‑owned association from a mutual association;

 (b) The address of the principal office of the association in South Carolina, including the county and municipality where it is located, together with a registered agent for receiving service of process and the address of the agent if it differs from that of the principal office of the association;

 (c) The period of duration of the corporation which is deemed perpetual unless otherwise stated;

 (d) The general nature of the business to be transacted or a statement that the association may engage in any activity or business permitted to associations under this chapter and other provisions of Title 34. This statement shall authorize all those activities and business by the association;

 (e) With respect to a stock‑owned association, the amount of capital stock authorized, showing the maximum number of shares of par value common stock and of preferred stock, and of every kind, class, or series of each, together with the distinguishing characteristics and the par value of all shares;

 (f) The amount of capital with which the association will begin business;

 (g) The number of directors, which may not be fewer than five, and the names and street addresses of the members of the first board of directors who, unless otherwise provided by the Articles of Incorporation, the bylaws, or this chapter, shall hold office for the term set forth in Section 34‑28‑420(4) or until their successors are elected or appointed and have qualified;

 (h) The names, and addresses of all the incorporators, not less than ten in number;

 (i) Any other provisions authorized or permitted to be in the Articles of Incorporation of a corporation by Chapters 1 to 25 of Title 33 which the incorporators elect to include therein.

 (2) The Articles of Incorporation must be in writing, signed by all the incorporators, and submitted to the Board for its approval. Upon approval, the Board shall place the following legend upon the Articles of Incorporation “Approved by the Board of Financial Institutions this \_\_\_ day of \_\_\_, \_\_\_ (herein the name and signature of the Chairman of the Board)”. Thereafter, the Articles of Incorporation must be filed with the Secretary of State.

 (3) An association shall not amend its Articles of Incorporation without the prior written approval of the Board.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑140.** Bylaws.

 Unless the Articles of Incorporation provide otherwise, the Board of Directors of an association shall have authority to adopt or amend bylaws that do not conflict with bylaws that may have been adopted by the members or stockholders. The bylaws are for the government of the association, subordinate only to the Articles of Incorporation and the laws of the United States and of this State. A current copy of the bylaws must be filed with the Board.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑150.** Opening for business.

 (1) An association shall open and conduct a general savings and loan business no later than twelve months after the commencement of its corporate existence (Section 34‑28‑100(5)). The Board may extend the opening date for an additional period on its own motion or at the request of the association, for good cause shown.

 (2) At the time as subscriptions for stock in a proposed stock association have been fully paid (and in the case of a mutual association, at the time as the capital required by the Board has been paid in cash to the association in the form of pledged savings accounts meeting the standards specified by regulation issued by the Board), but no later than thirty days prior to intended opening date, the association shall file with the Board a statement containing the name and address of each subscriber and the amount of capital subscribed by each and, showing that the entire capital required by the Board has been unconditionally and fully paid in lawful money and that the funds or assets representing the required capital are held by the association, that a commitment for the insurance of all deposit accounts has been obtained from the Federal Savings and Loan Insurance Corporation or any successor or assignee federal agency established for the purpose of insuring savings and other deposit accounts in associations and that all other conditions imposed by the Board pursuant to Section 34‑28‑100(5) have been satisfied.

 (3) If the Board finds that the association has in good faith complied with all the requirements of law, and that the association’s deposit accounts are properly insured, it shall promptly issue, in duplicate, under its official seal, a certificate of authorization to transact a general savings and loan business.

 (4) Upon opening for business, an association shall have power to engage in a general savings and loan business and to exercise, subject to law and the regulations of the Board, all those incidental powers as may reasonably promote its general savings and loan business.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑160.** Home, corporate and branch offices; facilities.

 (1) Each office must be operated from the home or corporate office. All branch offices are subject to direction from the home or corporate office. The home office of an association must be the principal office specified in the Articles of Incorporation. Nothing in this chapter may be construed to prohibit any association from establishing a corporate office or offices upon prior written notification to the Board. A corporate office must be primarily established for the purpose of managing the administrative functions of the association and any service corporations and shall not accept deposits or issue payment for withdrawals of certificates or accounts. A corporate office may be established in connection with a branch office in which case an application pursuant to subsection (2) must be submitted.

 (2)(a) A “branch office” is a legally established place of business of an association, other than the home or a corporate office or a remote service unit (Section 34‑28‑30), where deposits may be accepted.

 (b) No association shall establish or maintain a branch office without the prior written approval of the Board. Each application for approval of the establishment and maintenance of a branch office must be in that form as the Board may prescribe and shall state:

 1. The proposed location;

 2. The functions to be performed;

 3. The estimated volume of business;

 4. The estimated annual expense;

 5. The mode of payment; and

 6. Other information as the Board may require.

 (c) Upon receipt by the Board of an application, it shall consider the following criteria:

 1. The sufficiency of the association’s capital to support the association’s deposit base and the additional fixed assets proposed for the branch and its operations, without undue exposure to its depositors, members, or stockholders;

 2. The sufficiency of revenue prospects to support the anticipated expenses of the branch without jeopardizing the financial position of the association;

 3. The sufficiency and quality of management of the association;

 4. Whether the name of the proposed branch reasonably identifies the branch and is not likely to unduly confuse the public;

 5. The substantial compliance by the association with all state law and federal law affecting its operations.

 (d) The Board shall approve the application unless it finds that one or more of the conditions specified in 1 through 5 exist:

 1. Public convenience and advantage will not be promoted by the establishment of the proposed branch. In determining whether an applicant meets the requirements of this paragraph, the Board shall consider all materially relevant factors, including:

 a. The location and services proposed to be offered by the applicant and currently offered by existing associations in the primary service area to be served by the applicant;

 b. The primary service area’s general economic and demographic characteristics.

 2. Local conditions do not indicate reasonable promise of the successful operation of the proposed branch and of those associations already established in the primary service area in determining whether an applicant meets the requirements of this paragraph, the Board shall consider all materially relevant factors, including:

 a. Current economic conditions and the growth potential of the community in which the proposed applicant intends to locate the proposed branch;

 b. The growth rate, size, financial strength, and operating characteristics of associations in the primary service area of the proposed branch.

 3. The officers and directors of the applicant do not have sufficient experience, ability, standing, and responsibility to indicate reasonable promise of the successful operation of the branch;

 4. The name of the proposed branch does not comply with Section 34‑28‑110.

 5. Provision has not been made for suitable quarters at the location specified in the application.

 (e) When the Board has approved a branch application, it shall promptly issue a certificate authorizing the operation of the branch and specifying the date on which it may be opened and the place where it will be located.

 (f) A nonrefundable filing fee established by the Board shall accompany each application for a branch.

 (3) With prior written notification to the Board, and in order to relieve some of the burdens on the public caused by congestion of public streets, roadways, and parking facilities, promote safety of pedestrians on public ways, or otherwise serve the needs or convenience of the public, an association may operate facilities providing services to customers. It is not necessary that any facility be a part of, or physically connected to, the main structure of the home office or branch if the facility is located on the property on which the main structure of the home office or branch is situated or on property contiguous thereto. Property which is separated from the property on which the main structure of the home office or branch is situated only by a street and one or more walkways and alleyways is, for the purpose of this subsection, considered contiguous. The operation of any facility which is not located on the property on which the main structure of the home office or branch is situated or on property contiguous thereto shall not constitute a facility within the meaning of this subsection.

 (4) A home office or branch office may be relocated with the prior written approval of the Board. The Board shall consider the criteria set forth in this section for the establishment of a branch office in the determination of approval for the relocation. A nonrefundable filing fee in the amount specified by the Board shall accompany the application to relocate a home office or branch office.

HISTORY: 1985 Act No. 124, Section 1.

ARTICLE 3

Conversions; Mergers and Consolidations with Other Associations; Dissolution

**SECTION 34‑28‑200.** Conversion of state chartered associations into federal associations without change of business form.

 (1) At an annual meeting or at any special meeting of the members or stockholders called to consider the action, any state‑chartered association may convert itself into a federal savings association, federal savings and loan association, or federal savings bank, hereinafter called “federal association”, in accordance with the laws of the United States, as now or hereafter amended, upon a vote of a majority or more of the total number of votes of the members or stockholders eligible to cast votes at the meeting. A copy of the minutes of the proceedings of the meeting of the members or stockholders, verified by the affidavit of the secretary or an assistant secretary, must be filed with the Board within ten days after the date of the meeting. A sworn copy of the proceedings of the meeting, when so filed, is presumptive evidence of the holding and action of the meeting. Within three months after the date of the meeting, the association shall commence that action in the manner prescribed and authorized by the laws of the United States as shall make it a federal association. There must be filed with the Board a copy of the charter issued to the federal association by the Federal Home Loan Bank Board or a certificate showing the organization of the association as a federal association, certified by the secretary or assistant secretary of the Federal Home Loan Bank Board. A similar copy of the charter, or of the certificate, must be filed by the association with the Secretary of State. No failure to file any of these instruments with either the Board or the Secretary of State shall affect the validity of the conversion. Upon the grant to any association of a charter by the Federal Home Loan Bank Board, the association receiving the charter shall cease to be an association incorporated under this chapter and is no longer subject to the supervision and control of the Board. Upon the conversion of any association into a federal association, the corporate existence of the association shall not terminate, but the federal association is considered to be a continuation of the entity of the association so converted, and all property of the converted association, including its right, title, and interest in all and to all property of whatever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, pertaining to it, or which would inure to it, shall immediately by operation of law and without any conveyance or transfer and without any further act or deed remain and be vested in and continue to be the property of the federal association into which the state association has converted itself, and the federal association shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held, and enjoyed by the converting association. The federal association as of the time of the taking effect of the conversion shall continue to have and succeed to all the rights, obligations, and relations of the converting association. All pending actions and other judicial proceedings to which the converting state association is a party are not considered to have abated or to have discontinued by reason of the conversion, but may be prosecuted to final judgment, order, or decree in the same manner as if the conversion into the federal association had not been made, and the federal association resulting from the conversion may continue those actions in its corporate name as a federal association; and any judgment, order, or decree may be rendered for or against it which might have been rendered for or against the converting state association involved in the judicial proceedings.

 (2) Any association or corporation which has converted itself into a federal association under the provisions of the laws of the United States and has received a charter from the Federal Home Loan Bank Board is thereafter recognized as a federal association, and its federal charter must be given full recognition by the courts of this State to the same extent as if the conversion had taken place under the provisions of this section; provided, there must have been compliance with the foregoing requirements with respect to the filing with the Board of a copy of the federal charter or a certificate showing the organization of the association as a federal association. All these conversions are hereby ratified and confirmed, and all the obligations of an association which has so converted shall continue as valid and subsisting obligations of the federal association, and the title to all of the property of the association is considered to have continued and vested, as of the date of issuance of the federal charter, in the federal association as fully and completely as if the conversion had taken place pursuant to this section since the effective date of this chapter.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑210.** Conversion of federal association into state chartered association without change of business form.

 Any federal association may apply to the Board for permission to convert itself without any change in business form into an association operated under the provisions of this chapter, in accordance with the following procedures:

 (a) The board of directors shall approve a plan of conversion by resolution adopted by a majority vote of all the directors present at the meeting at which the plan is considered. The plan shall include, among other terms:

 1. Financial statements of the association as of the last day of the month preceding adoption of the plan;

 2. Financial data as may be required by the Board to determine compliance with federal law or regulations regarding insurance, reserve requirements, liquidity, and those other federal regulatory requirements as may exist respecting financial condition; and

 3. Other information as the Board may by regulation require.

 (b) The plan of conversion must be executed by a majority of the board of directors and submitted to the Board for approval prior to any vote on conversion by the members or stockholders.

 (c) The Board may approve or disapprove the plan in its discretion, but it shall not approve the plan unless it finds that the association complies sufficiently with the requirements of this chapter to entitle it to become an association operating under this chapter and the regulations of the Board. The Board may deny any application from any federal association that is subject to any cease and desist order or other supervisory restriction or order imposed by the federal supervisory authority or insurer.

 (d) If the Board approves the plan of conversion, the question of the conversion may be submitted to members or stockholders at an annual meeting or at any special meeting of the members or stockholders called to consider the action. Any federal association may then convert itself into an association under this chapter upon a vote of a majority or more of the total number of votes of the members or stockholders of the federal association eligible to be cast at the meeting. Copies of the minutes of the proceedings of the meeting of members or stockholders, verified by the affidavit of the secretary or an assistant secretary, must be filed in the office of the Board and mailed to the Federal Home Loan Bank Board, Washington, D.C., within ten days after the meeting. Verified copies of the proceedings of the meeting when so filed are presumptive evidence of the holding and action of the meeting. At the meeting at which conversion is voted upon, the members or stockholders shall also vote upon the directors who will be the directors of the state‑chartered association after conversion takes effect. These directors shall then execute the Articles of Incorporation and two copies of the bylaws. The association shall insert in the Articles of Incorporation the following: “This association is incorporated by conversion from a federal association.” All of the directors who are chosen for the association shall sign and acknowledge the Articles of Incorporation as incorporators. The provisions of this chapter shall, so far as applicable, apply to any conversion governed by this section. All the applicable provisions regarding property and other rights contained in Section 34‑28‑200 shall apply to the conversion of a federal association into an association incorporated under this chapter, so that the state‑chartered association is a continuation of the corporate entity of the converting federal association and continues to have all of its property and rights. All rights, powers, and privileges respecting the holding of proxies of a converting association shall continue in full force and effect after the conversion.

 (e) The application for conversion of a federal association into an association operating under the provisions of this chapter must be accompanied by a nonrefundable filing fee established by the Board.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑220.** Conversion of a state or federal mutual association to a state capital stock association.

 (1) Any state or federal mutual association may apply to the Board for permission to convert itself into a stock association operated under the provisions of this chapter in accordance with the following procedures and regulations promulgated by the Board:

 (a) The Board of Directors shall approve a plan of conversion by resolution adopted by a majority vote of all the directors present at the meeting at which the plan is considered. The plan shall include, among other terms:

 1. Financial statements of the association as of the last day of the month preceding adoption of the plan;

 2. Financial data as may be required to determine compliance with applicable regulatory requirements respecting financial condition;

 3. A provision that each savings account holder of the mutual association will receive a withdrawable account in the stock association equal in amount to and having the same terms as his withdrawable account in the mutual association;

 4. A provision for the establishment and maintenance of a liquidation account for the benefit of savings account holders of the mutual association in the event of the liquidation of the association after its conversion which account shall meet all the requirements established by regulation promulgated by the Board;

 5. A provision that each member of record will be entitled to receive rights to purchase voting common stock and the terms and conditions of these rights;

 6. Pro forma financial statements of the association as a capital stock association, which shall include data required to determine compliance with applicable regulatory requirements respecting financial condition; and

 7. Other information as the Board may by regulation require.

 (b) The plan of conversion must be executed by a majority of the board of directors and submitted to the Board for approval prior to any vote on conversion by the members.

 (c) The Board may approve or disapprove the plan in its discretion, but it shall not approve the plan unless it finds that the association will comply sufficiently with the requirements of this chapter after conversion to entitle it to become an association operating under this chapter and the regulations of the Board. The Board may deny any application from any federal association that is subject to any cease and desist order or other supervisory restriction or order imposed by a federal supervisory authority or insurer.

 (d) If the Board approves the plan of conversion, the question of the conversion may be submitted to the members at a meeting of voting members called to consider the action. A vote of a majority or more of the total number of votes eligible to be cast at the meeting, unless federal law permits a lesser percentage of votes for a federal mutual association to convert, in which case that percentage shall control for conversions of both state and federal mutual associations, is required for approval. Notice of the meeting, giving the time, place, and purpose, together with a proxy statement and proxy form meeting the requirements in Section 33‑11‑140 and any applicable federal regulations approved by the Board covering all matters to be brought before the meeting, must be mailed at least thirty days prior to the Board and to each voting member at his last address as shown on the books of the association.

 (e) Copies of the minutes of the meeting of members, verified by the affidavit of the secretary or assistant secretary of the association, must be filed with the Board, and with the Federal Home Loan Bank Board if applicable, within ten days after the meeting. When so filed, the verified copies of the minutes are presumptive evidence of the holding of the meeting and of the action taken.

 (f) The directors of the association shall execute and file with the Board proposed Articles of Incorporation as provided for in Section 34‑28‑130, together with the application for conversion, and a statement showing that requisite capital required in the conversion plan approved by the Board has been paid to the association in cash, that all other conditions imposed by the Board or specified in the plan of conversion have been satisfied, and that a firm commitment for, or evidence of, insurance of deposits and other accounts of a withdrawable type from the Federal Savings and Loan Insurance Corporation has been obtained. The Articles of Incorporation of the converted association shall contain a statement that the association resulted from the conversion of a state or federal mutual association to a capital stock association. Approval by the Board must be affixed to the Articles of Incorporation. The original copy of the Articles of Incorporation must be filed with the Secretary of State and a certified copy of the Articles of Incorporation must be filed with the Board, provided that failure to file a certified copy of the Articles of Incorporation with the Board shall not affect the validity of the conversion. The association shall cease to be a mutual association at the time and on the date specified in the approved Articles of Incorporation or the date the Articles of Incorporation are filed in the office of the Secretary of State, whichever is later.

 (2) Upon conversion of a mutual association to a state‑chartered stock association, the legal existence of the association shall not terminate, but the capital stock association is a continuation of the entity of the mutual association, and all property of the mutual association, including its right, title, and interests in and to all property of whatever kind, whether real, personal, or mixed, things in action, and every right, privilege, interest, and asset of every conceivable value or benefit then existing or pertaining to it, or which would inure to it, immediately, by act of law and without any conveyance or transfer and without any further act or deed, shall vest and remain in the stock association into which the mutual association has converted itself. The capital stock association shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held, and enjoyed by the mutual association. The capital stock association, upon the effective date of the conversion, shall continue to have and succeed to all the rights, obligations, and relations of the mutual association. All pending actions and other judicial proceedings to which the mutual association is a party are not abated or discontinued by reason of the conversion but may be prosecuted to final judgment, order, or decree in the same manner as if the conversion had not been made; and the stock association resulting from the conversion may continue the actions in its corporate name as a mutual association. Any judgment, order, or decree may be rendered for or against the stock association which might have been rendered for or against the mutual association involved in the proceedings.

 (3) The application for conversion from a state or federal mutual to a state stock association must be accompanied by a nonrefundable filing fee established by the Board.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑230.** Power to reorganize, merge, or consolidate or sell assets out of the ordinary course of business.

 (1) Pursuant to a plan adopted by the board of directors and approved by the Board as equitable and as adequately protecting the interests of the association, its members or stockholders, its deposit account holders, and the public, an association shall, subject to Article 4 of this chapter, have power to reorganize, to merge, or consolidate into another association or company, or to sell all or substantially all of its assets out of the ordinary course of business to another association or company, provided the plan of the reorganization, merger, or consolidation or sale of assets meets the procedural requirements of the South Carolina Business Corporation Act, Chapters 1 to 25 of Title 33, for these transactions.

 (2) The Board may provide by regulation for the procedures to be followed by any association submitting a plan of reorganization, merger, or consolidation pursuant to this section.

 (3) The Board may not approve any proposed transactions set forth in this section:

 (a) Which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in this State; or

 (b) The effect of which in this State may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the proposed reorganization, merger, or consolidation or sale of assets in meeting the convenience and needs of the primary service area to be served.

 (4) Each application for reorganization, merger, consolidation, or sale of assets out of the ordinary course of business must be accompanied by a nonrefundable filing fee as determined by the Board.

 (5) In the event of any conflict between this section and Article 4 of this chapter, the provisions of Article 4 shall control.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑240.** Voluntary supervisory stock conversions.

 (1) A voluntary supervisory stock conversion is a conversion involving the sale of a mutual association’s newly issued stock to a third party or parties in a transaction in which the association’s members have no rights of approval or participation, and no rights to the continuance of any legal or beneficial ownership interest in the converted association pursuant to a conversion plan approved by the Board and a majority of the board of directors of the converting association.

 (2) The Board shall have the discretion to approve a voluntary supervisory stock conversion, subject to regulations it may promulgate, when:

 (a) It has the power to appoint a receiver for the purpose of liquidation of the converting association pursuant to Section 34‑28‑730;

 (b) Upon liquidation the mutual account holders of the converting association would not realize any equity value;

 (c) The converting association is in receivership, or has been authorized to receive assistance under Section 406 of the National Housing Act, l2 U.S.C. Section 1729, or the Board has determined that a severe financial condition exists which threatens the financial condition of the converting association and that approval of the voluntary supervisory conversion is likely to improve the converting association’s financial condition; and

 (d) The Board finds that following the conversion, the converting association will be a viable entity.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑250.** Supervisory case; emergency conversion, reorganization and merger.

 (1) The Board may determine that an association is a supervisory case if it finds that:

 (a) The association is in an impaired condition (Section 34‑28‑30(10)); or

 (b) The association is in imminent danger of being in an impaired condition. Any of these findings by the Board must be based upon reports furnished to it by a savings and loan association examiner or upon other evidence from which it is reasonable to conclude that the association is a supervisory case.

 (2) Notwithstanding any other provisions of this chapter, if the Board finds that immediate action is necessary in order to prevent the probable failure of an association which is a supervisory case, the Board shall have the power, with the concurrence of the appropriate federal regulatory agency in the case of any association the deposits of which are insured by the Federal Savings and Loan Insurance Corporation, to issue an emergency order authorizing:

 (a) the conversion of the association into a federal association without change of business form;

 (b) the reorganization, merger, or consolidation of the association;

 (c) the conversion of the association into a capital stock association; or

 (d) any state or federal association to acquire the assets of and assume the liabilities of the failing association.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑260.** Acquisition of majority control over existing stock‑owned association.

 Subject to the provisions of Article 4 of this chapter:

 (1)(a) In any case in which a person or group of persons propose to purchase or acquire voting common stock of any stock‑owned association, which purchase or acquisition would cause the person or group of persons to have control of that association, the person or group of persons shall first make application to the Board for a certificate of approval of the purchase or acquisition.

 (b) An application for control must be in that form and contain that information as the Board may by regulation require.

 (c) The application for control must be accompanied by a nonrefundable filing fee as determined by the Board.

 (2) The Board shall issue a certificate of approval only after it has made an investigation and determined that:

 (a) The proposed new owner or owners of voting common stock are qualified by character, experience, and financial responsibility to control the association in a legal and proper manner.

 (b) The interests of the public generally will not be jeopardized by the proposed purchase or acquisition of voting common stock.

 (c) If the Board does not disapprove a proposed change of control application within sixty days of the time it is filed with the Board, the proposed transaction is considered approved and may take place, provided that all other required regulatory approvals have been obtained, that the transaction is consummated within one year of the time the application is filed, and that there is no material change in the terms and conditions of the transaction disclosed in the application prior to the consummation. The sixty‑day period specified in the preceding sentence may be extended by the Board for up to thirty days for any reasons if written notice of the extension is given to the applicant prior to the expiration of the sixty‑day period.

 (d) The applicant is entitled to notice and a hearing contesting the denial by the Board of any change of control application filed pursuant to this section.

 (3) This section shall not apply to the acquisition of:

 (a) Directors’ voting proxies acquired in the normal course of business as a result of proxy solicitation in conjunction with a stockholders’ meeting;

 (b) Stock in a fiduciary capacity unless the acquiring person has sole discretionary authority to exercise voting rights;

 (c) Stock acquired in securing or collecting a debt contracted in good faith until two years after the date of acquisition; or

 (d) Stock acquired by an underwriter in good faith and without any intent to evade the purpose of this section if the shares are held only for a reasonable period of time as will permit the sale.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑270.** Dissolution.

 (1) Any association may, at any special meeting of the members or stockholders called to consider the action, terminate its existence in accordance with the provisions of this section upon a vote of more than a majority of the total number of votes of members or shareholders eligible to be cast at the meeting.

 (2) Upon the vote, three copies of a statement of interest to dissolve, which shall state the vote cast in favor of dissolution, must be filed with the Board, which shall examine the association, and, if it finds that the association is not in an impaired condition, it shall so note, together with its approval of the dissolution, upon all the copies of the certificate of dissolution. The Board shall place a copy in its permanent files, file a copy with the Secretary of State, and return the remaining copy to the parties who filed it.

 (3) Upon this approval, the association is dissolved and shall cease to carry on business but nevertheless shall continue as a corporate entity for the sole purpose of paying, satisfying, and discharging existing liabilities and obligations, collecting and distributing assets, and doing all other acts required to adjust, wind up, and dissolve its business and affairs.

 (4) The board of directors in office at the time of the vote of dissolution shall act as trustees for the liquidation. The board of directors shall proceed as quickly as may be practicable to wind up the affairs of the association and, to the extent necessary or expedient to that end, shall exercise all the powers of the dissolved association and, without prejudice to the general nature of this authority, may fill vacancies, elect officers, carry out contracts, make new contracts, borrow money, mortgage or pledge property, sell its assets at public or private sale, compromise claims in favor of or against the association, apply assets to the discharge of liabilities, distribute assets either in cash or in kind among savings account members of a mutual association or stockholders of a capital stock association according to their respective prorata interests after paying or adequately providing for the payment of other liabilities, and perform all acts necessary or expedient to the winding up of the association. All deeds or other instruments must be in the name of the association and executed by the president or a vice president and the secretary or an assistant secretary. The board of directors shall also have power to exchange or otherwise dispose of or put in trust all, substantially all, or any part of the assets, upon those terms and conditions and for that consideration as the board of directors may consider reasonable or expedient, and may distribute the consideration or the proceeds, trust receipts, or certificates of beneficial interest among the savings account members of a mutual association or stockholders of a stock association in proportion to their prorata interests. In the absence of fraud, any determination of value made by the board of directors for any of these purposes is conclusive.

 (5) The association, during the liquidation of the assets of the association by its board of directors, shall continue to be subject to the supervision of the Board, and the board of directors shall report the progress of the liquidation to the Board as the Board may require. Upon completion of the liquidation, the board of directors shall file with the Board a final report and accounting of the liquidation. The approval of the report by the Board shall operate as a complete and final discharge of the board of directors and each member or stockholder thereof in connection with the liquidation of the association. No dissolution or any action of the board of directors in connection with it shall impair any contract right between the association and any borrower to other person or persons or the vested rights of any member or savings account holder of the association.

HISTORY: 1985 Act No. 124, Section 1.

ARTICLE 4

Savings and Loan Acquisitions and Holding Companies

**SECTION 34‑28‑300.** Definitions.

 (1) “Acquire”, as applied to an association or a savings and loan holding company, means any of the following actions or transactions:

 (a) The merger or consolidation of an association with another association or with a savings and loan holding company.

 (b) The acquisition of the direct or indirect ownership or control of voting shares of another association or savings and loan holding company if, after the acquisition, the acquiring association or savings and loan holding company will directly or indirectly own or control more than ten percent of any class of voting shares of the acquired association or savings and loan holding company.

 (c) The direct or indirect acquisition of all or substantially all of the assets of another association or savings and loan holding company.

 (d) The taking of any other action that would result in the direct or indirect control of another association or savings and loan holding company.

 (2) “Association” means a mutual or capital stock savings and loan association, savings association, building and loan association, or savings bank chartered under the laws of any one of the states or by the Federal Home Loan Bank Board, pursuant to the “Homeowner’s Loan Act of 1933”, 12 U.S.C. Section 1464, as amended, and whose deposits are eligible to be insured by the Federal Savings and Loan Insurance Corporation.

 (3) “Board” means the State Board of Financial Institutions.

 (4) “Branch office” means any office at which an association accepts deposits. The term branch office does not include:

 (a) Unmanned automatic teller machines, point‑of‑sale terminals, remote service units, or similar unmanned electronic banking facilities at which deposits may be accepted;

 (b) Offices located outside the United States;

 (c) Loan production offices, representative offices, service corporation offices, or other offices at which deposits are not accepted.

 (5) “Company” means that which is set forth in the Federal Savings and Loan Holding Company Act, 12 U.S.C. Section 1730a(a)(1)(C), as amended.

 (6) “Control” means that which is set forth in the Federal Savings and Loan Holding Company Act, 12 U.S.C. Section 1730a(a)(2), as amended.

 (7) “Deposits” means with respect to an association withdrawable or repurchaseable shares, investment certificates, all demand, time or savings deposits in an association held by individuals, partnerships, corporations, the United States Government, states, and political subdivisions in the United States, and other entities, exclusive of deposits (a) by foreign governments and foreign official institutions, and (b) by other associations. Determinations of deposits must be made by reference to regulatory reports of condition or similar reports filed by the association with applicable state or federal regulatory authorities.

 (8) “Federal association” means an association chartered by the Federal Home Loan Bank Board pursuant to the “Homeowner’s Loan Act of 1933”, 12 U.S.C. Section 1464, as amended.

 (9) “Principal place of business” of an association means the state in which the aggregate deposits of the association are the largest. For the purposes of this section, the principal place of business of a savings and loan holding company is the state where the aggregate deposits of the association subsidiaries of the holding company are the largest.

 (10) “Savings and loan holding company” means that which is set forth in the Federal Savings and Loan Holding Company Act, 12 U.S.C. Section 1730a(a)(1)(D), as amended.

 (11) “Service corporation” means any corporation, the majority of the capital stock of which is owned by one or more associations and which engages, directly or indirectly, in any activities similar to activities which may be engaged in by a service corporation in which an association may invest under the laws of one of the states or under the laws of the United States.

 (12) “South Carolina association” means an association organized under the laws of the State of South Carolina or under the laws of the United States and that:

 (a) Has its principal place of business in the State of South Carolina;

 (b) Which if controlled by an organization, the organization is either a South Carolina association, Southern Region association, South Carolina Savings and Loan Holding Company, or a Southern Region Savings and Loan Holding Company;

 (c) More than eighty percent of its total deposits other than deposits located in branch offices pursuant to Section 34‑28‑450(1) are in its branch offices located in one or more of the Southern Region states.

 (13) “South Carolina Savings and Loan Holding Company” means a savings and loan holding company that:

 (a) Has its principal place of business in the State of South Carolina;

 (b) Has total deposits of its Southern Region association subsidiaries and South Carolina association subsidiaries that exceed eighty percent of the total deposits of all association subsidiaries of the savings and loan holding company other than those association subsidiaries held under Section 34‑28‑450(1).

 (14) “Southern Region association” means an association other than a South Carolina association organized under the laws of one of the Southern Region states or under the laws of the United States and that:

 (a) Has its principal place of business only in a Southern Region state other than South Carolina;

 (b) Which if controlled by an organization, the organization is either a Southern Region association or a Southern Region savings and loan holding company; and

 (c) More than eighty percent of its total deposits other than deposits located in branch offices pursuant to Section 34‑28‑450(1) are in its branch offices located in one or more of the Southern Region states.

 (15) “Southern Region savings and loan holding company” means a savings and loan holding company that:

 (a) Has its principal place of business in a Southern Region state other than the State of South Carolina;

 (b) Has total deposits of its Southern Region association subsidiaries and South Carolina association subsidiaries that exceed eighty percent of the total deposits of all association subsidiaries of the savings and loan holding company other than those association subsidiaries held under Section 34‑28‑350(1).

 (16) “Southern Region states” means the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.

 (17) “State” means one of the states of the United States and also the District of Columbia.

 (18) “State association” means an association organized under the laws of one of the states.

 (19) “Subsidiary” means that which is set forth in the Federal Savings and Loan Holding Company Act, 12 U.S.C. Section 1730a(a)(1)(H), as amended.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑310.** Act requiring prior approval of the Board.

 With the prior approval of the board in accordance with Section 34‑28‑340(a) and (b) and upon receipt of approval from all other applicable state and federal regulatory authorities having approval authority over the transaction:

 (1) A company may become a South Carolina savings and loan holding company;

 (2) A South Carolina savings and loan holding company may acquire a South Carolina association or another South Carolina savings and loan holding company;

 (3) A South Carolina savings and loan holding company may acquire a Southern Region association or a Southern Region savings and loan holding company;

 (4) A South Carolina savings and loan holding company may acquire an association and savings and loan holding company having association offices which are located outside of the Southern Region as is authorized under Section 34‑28‑350(1);

 (5) A Southern Region savings and loan holding company may acquire a Southern Region savings and loan holding company having a South Carolina association subsidiary;

 (6) A South Carolina state association may acquire a Southern Region association;

 (7) A Southern Region association may acquire a South Carolina state association;

 (8) A Southern Region savings and loan holding company may acquire a South Carolina association or a South Carolina savings and loan holding company.

HISTORY: 1985 Act No. 124, Section 1; 1990 Act No. 504, Section 1, eff May 30, 1990.

Effect of Amendment

The 1990 amendment added item (8) permitting a Southern Region savings and loan holding company to acquire a South Carolina association or savings and loan holding company.

**SECTION 34‑28‑320.** Acts requiring prior approval of federal authorities.

 With the prior approval of the Federal Home Loan Bank Board and other applicable federal authorities in accordance with their approval authority over the transaction and without the necessary approval of the Board except for the requirements under Section 34‑28‑340(b):

 (1) A South Carolina federal association may acquire a Southern Region association; and

 (2) A Southern Region association may acquire a South Carolina federal association.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑330.** Savings and loan holding company acquisitions not requiring prior approval.

 Without any prior approval of the Board, a Southern Region savings and loan holding company having a South Carolina association subsidiary may acquire a Southern Region savings and loan holding company that does not have a South Carolina association subsidiary, may acquire a Southern Region association that does not have any branch offices in South Carolina, or to the extent authorized by Section 34‑28‑350(1), may acquire an association or savings and loan holding company having association offices which are located outside the Southern Region. The Southern Region savings and loan holding company shall notify the Board at least thirty days prior to the consummation of the proposed transaction. The notification requirements of this section are satisfied by furnishing the Board with a copy of the completed application seeking approval for the proposed transaction which is filed with the federal savings and loan regulatory authority.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑340.** Applications to the Board for approval.

 (a) The Board may not approve any proposed transactions set forth in Section 34‑28‑310:

 (1) Which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in this State; or

 (2) The effect of which in this State may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served; and

 (3) Which does not meet the requirements set forth in subsection (b) of this section, if applicable. In every case the Board shall take into consideration the financial and managerial resources and future prospects of the savings and loan holding company and the association involved, and the convenience and needs of the communities to be served. Whenever the transaction must be approved by one or more regulatory agencies of the United States Government under criteria substantially similar to the criteria in this subsection, the Board shall delay its determination until after receipt of the ruling by the applicable federal regulatory agencies and if the proposed transaction is approved, then the approval is conclusive on the Board with respect to the criteria unless the Board finds that the determination made by the federal regulatory agency is not supported by evidence that is substantial when viewed in light of the whole record considered by the federal agency. In the event the Board denies the application under this subsection, it shall issue a ruling stating the specific reasons why it disagrees with the approval determination made by the applicable federal regulatory agency.

 (b) Whenever an application is filed as is required under Section 34‑28‑310 or if approval of the Board pursuant to this subsection (b) is required under Section 34‑28‑320, the Board shall approve the transaction if it is otherwise approved as required by applicable laws and if in addition:

 (1) The laws of the state in which the Southern Region association or Southern Region savings and loan holding company, as applicable, filing the application has its principal place of business, permit South Carolina associations and South Carolina savings and loan holding companies, as applicable, to acquire associations and savings and loan holding companies in that state;

 (2) Under the laws of the state where it has its principal place of business the Southern Region association or Southern Region savings and loan holding company filing the application could be acquired by the South Carolina association or South Carolina savings and loan holding company, as applicable;

 (3) Any conditions, restrictions, and requirements (other than regulations or requirements relating to the procedural steps necessary for approval of acquisitions) that would apply to the acquisition by a South Carolina association or a South Carolina savings and loan holding company of a Southern Region association or Southern Region savings and loan holding company in the state where it has its principal place of business, which would not apply to acquisitions by Southern Region associations or Southern Region savings and loan holding companies of a South Carolina association or a South Carolina savings and loan holding company, as applicable, must be applicable to the transaction proposed by the Southern Region association or Southern Region savings and loan holding company filing the application;

 (4) Each South Carolina association sought to be acquired directly or indirectly in the proposed transaction has been in existence and continuously operated as an association for a period of five years or more prior to the date the application for approval of the transaction was filed with the Board. This requirement does not prohibit a Southern Region association or Southern Region savings and loan holding company from acquiring all or substantially all of the ownership of a South Carolina association organized solely for the purpose of facilitating the acquisition of a South Carolina association that has been in existence and continuously operated as an association for the requisite five‑year period.

 (c) The Board shall rule on any application requiring approval under this section not later than ninety days following the date of submission of a completed application seeking approval of the proposed transaction. If the Board fails to rule on the application within the requisite ninety‑day period, the proposed transaction is approved. Whenever the Board is required to delay its ruling until after a ruling on the approval of the application by one or more federal regulatory agencies pursuant to subsection (a), the Board shall rule on the application within thirty days following receipt of the federal ruling, and if the Board fails to rule on the application within this thirty‑day period, the proposed transaction is approved.

 (d) The applicant is entitled to notice and a hearing contesting the denial by the Board of any application.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑350.** Permissible nondisqualified acquisitions.

 A Southern Region association, a Southern Region savings and loan holding company, a South Carolina association, or a South Carolina savings and loan holding company may acquire or control, and does not cease to be a Southern Region association, a Southern Region savings and loan holding company, a South Carolina association, or South Carolina savings and loan holding company, respectively, by virtue of its acquisition or control of:

 (1) An association having offices in a state other than a Southern Region state, if the acquisition has been consummated pursuant to the provisions of Section 123 of the Garn‑St. Germain Depository Institutions Act of 1982, 12 U.S.C. Section 1730a(m); or

 (2) An association or savings and loan holding company other than as expressly permissible under subsection (1) of this section or under Sections 34‑28‑310 and 34‑28‑320 if:

 (a) Immediately following the consummation of the acquisition, the South Carolina association, South Carolina savings and loan holding company, Southern Region association, or Southern Region savings and loan holding company qualifies as such, and

 (b) The association or savings and loan holding company making the application complies with the approval and notification requirements in Sections 34‑28‑310 through 34‑28‑330.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑360.** Prohibited acquisitions.

 (a) Except as specifically permitted under Section 34‑28‑350, no South Carolina association, South Carolina savings and loan holding company, Southern Region association, or Southern Region savings and loan holding company having a South Carolina association subsidiary may acquire an association or savings and loan holding company which is not either a South Carolina savings and loan holding company or a Southern Region savings and loan holding company or an association which is not either a South Carolina association or a Southern Region association.

 (b) Except as expressly permitted by federal law, no association which is not either a South Carolina association or a Southern Region association and no savings and loan holding company which is not either a South Carolina savings and loan holding company or a Southern Region savings and loan holding company may acquire a South Carolina association, a South Carolina savings and loan holding company, or a Southern Region savings and loan holding company controlling a South Carolina association.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑370.** Person acquiring a South Carolina association or South Carolina savings and loan holding company is subject to South Carolina laws.

 Any Southern Region association or Southern Region savings and loan holding company that directly or indirectly acquires a South Carolina association or a South Carolina savings and loan holding company is subject to all the laws of this State relating to the acquisition, ownership, expansion, and operation of South Carolina associations and South Carolina savings and loan holding companies.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑380.** Registration of association; reports; regulations.

 (a) Each South Carolina association, South Carolina savings and loan holding company, Southern Region association controlling a South Carolina association, and Southern Region savings and loan holding company controlling a South Carolina association that engages in a transaction which requires approval of the Board pursuant to Section 34‑28‑310, shall, within thirty days after approval of the transaction, initially register and file annually with the Board on forms prescribed by the Board which shall include information with respect to the financial condition and operations, management, and relations between applicable associations and savings and loan holding companies, and related matters, as the Board may consider necessary or appropriate to carry out the purposes of these sections.

 (b) The Board may require reports under oath to keep it informed as to whether the provisions of these sections and the regulations and orders issued under these provisions have been complied with, and the Board may, to the extent authorized by law, make examinations of each association or savings and loan holding company required to be registered pursuant to subsection (a) of this section and any service corporation or subsidiary of the association, the cost of which must be assessed against and paid by the association.

 (c) The Board may enter into cooperative and reciprocal agreements with the association and savings and loan holding company regulatory authorities of any state or of the United States for the periodic examination of associations and savings and loan holding companies that are required to be registered under the provisions of subsection (a) of this section and may accept reports of examinations and other records from the authorities in lieu of conducting its own examinations. The Board may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into the actions independently to carry out its responsibilities under these sections and assure compliance with the laws of this State.

 (d) Any association or savings and loan holding company required to be registered under this act that is not qualified to do business in this State shall advise the Board of the name and address of its registered agent located in South Carolina who is authorized to accept service of process on its behalf and shall also promptly advise the Board of any changes in the office and service of process agent it has filed with the Board.

 (e) The Board may establish regulations to carry out the purposes of Sections 34‑28‑310 through 34‑28‑390.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑390.** Penalties and remedies.

 (a) Any association or savings and loan holding company which knowingly violates any provisions of Sections 34‑28‑310 through 34‑28‑390, or any regulation or order issued by the Board pursuant to these sections is guilty of a misdemeanor and must, upon conviction, be fined not more than one hundred dollars for each day during which the violation continues. Any individual who wilfully participates in a violation of these sections, or any regulation or order of the Board issued pursuant to the provisions of these sections is guilty of a misdemeanor and must, upon conviction, be fined not more than five thousand dollars. Any officer, director, agent, or employee of an association, service corporation, or savings and loan holding company who makes any false entry in any book, report, record, or statement of an association, service corporation, or savings and loan holding company with the intent to deceive, or who with like intent wilfully omits to make a true entry of any material pertaining to the business of the association, service corporation, or savings and loan holding company in any book, report, record, or statement of the association, service corporation, or savings and loan holding company made or kept by him or under his direction, is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than one year, or both.

 (b) In the event any association or savings and loan holding company consummates an acquisition that is prohibited by these sections, the Board shall require the association or savings and loan holding company to divest itself within two years of its direct or indirect ownership or control of all South Carolina associations or South Carolina savings and loan holding companies. In addition, the Board has the power to enforce any other requirements or prohibitions in these sections by requiring divestitures of nonconforming associations and savings and loan holding companies or through the exercise of other remedies as are provided in this title or otherwise by law, including but not limited to injunctive or other judicial actions.

HISTORY: 1985 Act No. 124, Section 1.

ARTICLE 5

Corporate Administration

**SECTION 34‑28‑400.** Meetings of members or stockholders; voting rights, proxies, quorum requirements.

 (1) The annual meeting of the members or stockholders of each association must be held during the first four months of the association’s fiscal year, as fixed in the bylaws of the association. Special meetings may be called as provided in the bylaws or as otherwise provided by law.

 (2) Those who are entitled to vote at any meeting of members or shareholders are:

 (a) In the case of a mutual association, those who are members of record at the end of the calendar month next preceding the date of the meeting, except those who have ceased to be members. The number of votes which members are entitled to cast must be in accordance with the books on the date determinative of entitlement to vote.

 (b) In the case of a capital stock association, the directors may, unless prohibited by the Articles of Incorporation or the bylaws, fix a date not more than fifty days and not fewer than ten days prior to the date set for the meetings as the record date as of which the stockholders of record who have the right to and are entitled to notice of and to vote at the meeting and any adjournment will be determined.

 (3)(a) In the determination of all questions requiring action by the members of a mutual association, each member is entitled to cast one vote for each one hundred dollars of the withdrawal value of savings and deposit accounts, if any, held by the member. No member, however, shall cast more than one thousand votes.

 (b) Unless otherwise provided in the Articles of Incorporation, every shareholder of a stock association is, if present in person or voting through a duly authorized proxy, entitled at any meeting of stockholders, and upon each proposal presented at the meeting, to one vote for each share of voting stock recorded in his name on the books of the association on the record date fixed in subsection (2)(b) as above provided or, if no record date was fixed, on the day of the meeting. The books of record of stockholders must be produced at any stockholders’ meeting upon the request of any stockholder.

 (4) At any meeting of the members or stockholders, or any adjournment thereof, voting may be in person or by proxy, as provided in the bylaws. Every proxy must be in writing and signed by the member or stockholder or his duly authorized attorney‑in‑fact, and, when filed with the secretary, shall, unless otherwise specified in the proxy, continue in force from year to year until revoked by a writing duly delivered to the secretary or until superseded by subsequent proxies. In the event that any instrument shall designate two or more persons to act as proxies, a majority of the persons present at the meeting, or, if only one be present, that one shall have all of the power conferred by the instrument upon all the persons so designated unless the instrument shall otherwise provide.

 (5) At an annual meeting or at any special meeting of the members or stockholders, any number of members, or the stockholders entitled to vote a majority of the stock, present in person or by proxy eligible to be voted, constitute a quorum. A majority of all votes cast at any meeting of members or stockholders shall determine any question unless this chapter or the provisions of the South Carolina Business Corporation Act, Chapters 1 to 25 of Title 33, specifically provide otherwise.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑410.** Access to books and records; confidentiality.

 (1)(a) The books and records of an association must be confidential and may be made available for inspection and examination only:

 1. to the Board or its duly authorized representatives;

 2. to persons duly authorized to act for the association;

 3. to any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured association;

 4. as compelled by a court of competent jurisdiction;

 5. as compelled by legislative subpoena as provided by law;

 6. as authorized by the board of directors of the association; or

 7. as provided in paragraphs (b) and (c).

 (b) 1. Every depositor, borrower, or stockholder shall have the right to inspect the books and records of an association as pertain to his loans, his accounts, or the determination of his voting rights.

 2. The books and records pertaining to the accounts, loans, and voting rights of depositors, borrowers, and stockholders must be kept confidential by the association and its directors, officers, and employees and may not be released except upon expressed written authorization of the account holder as to his own accounts, loans, or voting rights; provided, that information relating to any loan made by an association may be released without the borrower’s authorization in a manner prescribed by the board of directors for the purpose of meeting the needs of commerce and for fair and accurate credit information.

 (c) No member, stockholder, or other person shall have access to or be furnished or possessed of a partial or complete list of the members or stockholders except upon express action authorized by the board of directors.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑420.** Directors; number; qualifications; meetings.

 (1)(a) The business of the association must be managed and its corporate powers exercised by a board of directors. The board of directors shall consist of not fewer than five adult individuals who, unless appointed to fill a vacancy, must be elected at the annual meeting of members or stockholders or at a special meeting called for this purpose.

 (b) At the first annual meeting, and at each annual meeting thereafter, the members or stockholders shall elect directors to hold office until the next succeeding annual meeting, except in the case of the classification of directors as permitted by this section. Each director shall hold office for the term for which elected and until any successor is elected and qualifies or until resignation, removal from office, or death.

 (c) The Articles of Incorporation may provide that the directors be divided into not more than three classes of as nearly equal numbers as possible. The term of office of directors of the first class shall expire at the annual meeting next after the first election; of the second class, one year thereafter; and of the third class, two years thereafter; and, at each annual meeting thereafter, directors must be chosen for a full term of three years to succeed those whose terms expire. If directors are classified and the number of directors is thereafter changed, any increase or decrease in directorships must be so apportioned among the classes as to make all classes as nearly equal in numbers as possible.

 (d) Any vacancy occurring in the board of directors, including any vacancy created by reason of any increase in the number of directors, may be filled by the affirmative vote of a majority of the remaining directors. A director elected to fill a vacancy shall hold office for the remainder of the original term of the vacancy.

 (2) The board of directors of each association shall meet at those times and places as are fixed by the bylaws of the association or by a majority vote of the board of directors.

 (3) No person shall serve as an officer or director of an association who:

 (a) has been convicted of an offense involving fraud or a breach of trust or which constitutes a violation of the laws relating to financial institutions, except with the prior approval of the Board upon a showing of rehabilitation; or

 (b) is indebted to the association for more than thirty days upon a judgment that has become final.

 (4) After the association’s corporate existence has begun, an organizational meeting of the board of directors named in the Articles of Incorporation must be held for the purpose of adopting bylaws, electing officers, approving organizational expenses to date, authorizing the call for payment of stock subscriptions or savings account capital, and conducting such other business relating to organization as may come before the board of directors at the meeting. Until the first annual meeting, the proposed directors shall serve as the board of directors of the association.

 (5) Unless otherwise required by the Articles of Incorporation, a member of the board of directors may be removed with or without cause by either:

 (a) in the case of a stock association, the affirmative vote of the holders of a majority of the shares entitled to vote at the election of directors, or in the case of a mutual association, by the affirmative vote of a majority of eligible votes cast by the members at the meeting where the vote is taken, or

 (b) the affirmative vote of two‑thirds of the directors other than the director who is named in the removal motion.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑430.** Indemnity bonds.

 Once an association has been authorized to commence business, all directors, officers, and employees of an association shall, before entering upon the performance of any of their duties, execute their individual bonds with adequate corporate surety payable to the association as an indemnity for any loss the association may sustain of money or other property by or through any fraud, dishonesty, forgery or alteration, larceny, theft, embezzlement, robbery, burglary, holdup, wrongful or unlawful abstraction, misapplication, misplacement, destruction, misappropriation, or other dishonest or criminal act or omission by the director, officer, employee, or agent. Associations which employ collection agents who for any reason are not covered by a bond as hereinabove required shall provide for the bonding of each agent in an amount equal to at least twice the average monthly collection of the agent. The agents must be required to make settlement with the association at least monthly. No bond coverage is required of any agent which is an insured financial depository institution. The amounts and form of the bonds and sufficiency of the surety thereon must be approved by the board of directors subject to any applicable regulations promulgated from time to time by the Board. In lieu of individual bonds, a blanket bond, protecting the association from loss through any act on the part of any director, officer, or employee, may be obtained. A true copy of every indemnity bond must be filed at all times at the association’s home office and must be available to the Board. These bonds shall provide that a cancellation thereof either by the surety or by the insured shall not become effective unless and until ten days notice in writing has been given to the Board, unless it has approved the cancellation earlier. The amount of any bond shall provide for sufficient surety.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑440.** Conflict of interest; transactions of officers and directors.

 (1) Directors and officers occupy a fiduciary relationship to the association of which they are directors or officers, and no director or officer shall engage or participate, directly or indirectly, in any business or transaction conducted on behalf of or involving the association which would result in a conflict of his own personal interests with those of the association which he serves unless:

 (a) the business or transactions are conducted in good faith and are honest, fair, and reasonable to the association;

 (b) a full disclosure of the business or transaction and the nature of the director’s or officer’s interest is made to the board of directors;

 (c) the business or transactions are approved in good faith by the board of directors, any interested directors abstaining, and the approval is recorded in the minutes;

 (d) any profits inuring to the officer or director are not at the expense of the association and do not prejudice the best interests of the association in any way; and

 (e) the business or transactions do not represent a breach of the officer’s or director’s fiduciary duty and are not fraudulent, illegal, or ultra vires.

 (2) Without limitation by any of the specific provisions of this section, the Board may by regulation require the disclosure by directors, officers, and employees of their personal interests, directly or indirectly, in any business or transactions on behalf of or involving the association and of their control of or active participation in enterprises having activities related to the business of the association.

 (3) The following restrictions governing the conduct of directors and officers expressly are specified, but this specification is not to be construed in any manner as excusing directors and officers of an association from the observance of any other aspect of the general fiduciary duty owed by them to the association which they serve:

 (a) no officer of an association shall hold office or status as an officer of a nonaffiliated association the principal office of which is located in the primary service area of the association;

 (b) no director shall receive renumeration as a director except reasonable fees for service as a director or for service as a member of a committee of directors, except that nothing herein contained is deemed to prohibit or in any way to limit any right of a director who is also an officer or employee of or attorney for the association to receive compensation for service as an officer, employee, or attorney;

 (c) no director or officer shall have any interest directly or indirectly in the proceeds of a loan or investment or of a purchase or sale made by the association unless the loan, investment, purchase, or sale is authorized expressly by resolution by the board of directors and unless the resolution is approved by vote of at least a majority of the directors authorized by the association, any interested director taking no part in the vote;

 (d) no director or officer shall have any interest, direct or indirect, in the purchase at less than its face value of any evidence of a savings account or other deposit account issued by the association;

 (e) no officer or director acting as proxy for a member of an association shall exercise, transfer, or delegate this vote or votes in any consideration of a private benefit or advantage, direct or indirect; the voting rights of members and directors may not be subject of sale, barter, exchange, or similar transaction, either directly or indirectly; and any officer or director who violates the provisions of this section is in addition to the penalty specified in subsection (4) accountable to the association for any inducement received for the transaction;

 (f) no director or officer shall solicit, accept, or agree to accept, directly or indirectly, from any person other than the association any gratuity, compensation, or other personal benefit for any action taken by the association or for endeavoring to procure any action.

 (4) Any person violating the provisions of this section is guilty of a misdemeanor and upon conviction must be punished by a fine of not more than five thousand dollars, or by imprisonment of not more than sixty days, or both.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑450.** Books, records, and accounting practices.

 (1) Every association shall keep at the home or corporate office correct and complete books of accounts, membership or stockholder records, and minutes of the proceedings of members, stockholders, directors, and the executive committee, if any. Complete records of all business transacted at the home or corporate office must be maintained at the home or corporate office. Control records of all business transacted at each branch office must be accessible to the home or corporate office. This accessibility must be by physical retention of records or direct access by electronic or other means.

 (2) Each branch office shall maintain detailed records of all transactions and shall furnish full control records to the home office. These transactions may be furnished or made available by electronic or other means.

 (3) Subject to the exceptions as may be authorized by the Board, every association shall observe generally accepted accounting principles and practices and any regulatory accounting practices authorized for use for associations by the Federal Home Loan Bank Board.

 (4) Every association shall close its books at the end of its fiscal year and at those other times as desired or as required by the Board.

 (5) No association by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any other person, or under any title or designation that is not truly descriptive of the assets.

 (6) The Board, after a determination of value made in accordance with Section 34‑28‑700, may order that assets, individually or in the aggregate, to the extent that the assets are overvalued on the books of an association, be charged off or that a special allowance for loss equal to the overvaluation be set up by transfers from undivided profits or reserves.

 (7) Every association shall have appraised each parcel of real estate at the time of acquisition thereof if acquired in foreclosure or deed in lieu of foreclosure unless the appraisal report covering the real estate in question which is on file with the association is dated not more than one year prior to the date of the reacquisition. The report of each appraisal must be kept in the records of the association. In addition to its powers under Section 34‑28‑700, the Board may require the appraisal of real estate securing loans which are delinquent more than four months.

 (8) Every association shall maintain complete loan and investment records in a manner satisfactory to the Board. Detailed records necessary to make determinations of compliance by an association with the requirements of the provisions of this chapter must be maintained consistently; and, at all times, the records of each real estate loan or other loan or investment shall contain documentation complying with regulations of the Board as to the type, adequacy, and complexion of the security.

 (9) Every mutual association shall maintain membership records which shall show the name and address of the member, the status of the member as a deposit account holder, and the type or types of deposit accounts, an obligor, or a deposit account holder and obligor, and the date of membership thereof. The association shall also prepare a list of members entitled to vote at meetings of the members that complies with Section 33‑11‑70.

 (10) Every stock association shall maintain a register of investors and stock transfers which shall show the name and address of each shareholder of record, the number of shares of each type of stock and the voting status of each shareholder, and the date each share of stock was acquired; and shall also prepare a list of shareholders entitled to vote at meetings of the shareholders that complies with Section 33‑11‑70.

 (11) Every association shall use those forms and keep those records, including, without limitation, those of its members or stockholders, as the Board may from time to time require by regulation.

 (12) Every association shall keep a record of the status of taxes, assessments, insurance premiums, ground rents, and other charges on all real estate securing its loans and on all real and other property owned by it.

 (13) Any association may cause any or all records kept by the association to be copied or reproduced by a photostatic, photographic, or microfilming process which correctly and permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a film or other durable material, and the association may thereafter dispose of the original record. Any copy or reproduction is deemed to be an original record for all purposes and must be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification, or certified copy of any copy or reproduction reproduced from a film record is, for all purposes, deemed a facsimile, exemplification, or certified copy of the original record.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

ARTICLE 6

Powers

**SECTION 34‑28‑500.** Powers of associations generally.

 Every association incorporated pursuant to or operating under the provisions of this chapter shall have all the powers enumerated, authorized, and permitted by this chapter and those other rights, privileges, and powers as may be incidental to or reasonably necessary or appropriate for the accomplishment of the objectives and purposes of the association. Among others, and except as otherwise limited by the provisions of this chapter or in its Articles of Incorporation, every association shall in addition to the powers of corporations listed in Section 33‑3‑20 have the following powers:

 (1) To borrow not more than an aggregate amount equal to one‑half of its total assets on the date of borrowing. A subsequent reduction of total assets shall not affect in any way outstanding obligations for the borrowed money. All these borrowings may be secured by property of the association and may be evidenced by notes, bonds, debentures, commercial paper, bankers’ acceptances, or other obligations or securities, except capital stock and capital certificates;

 (2) With respect to a mutual association, to issue and sell, directly or through underwriters, mutual capital certificates which shall represent nonwithdrawable capital contributions and shall constitute part of the reserves and net worth of the association. These certificates shall have no voting rights, are subordinate to all deposit accounts, debt obligations, and claims of creditors of the association, and shall constitute a claim in liquidation against any reserves, surplus, and other net worth accounts remaining after the payment in full of all savings and other deposit accounts, debt obligations, and claims of creditors. These capital certificates are entitled to the payment of earnings prior to the allocation of any income to surplus or other net worth accounts of the association and may be issued with a fixed rate of earnings or with a prior claim to distribution of a specified percentage of any net income remaining after required allocations to reserves, or a combination thereof. Losses must be charged against capital certificates only after reserves, surplus, and other net worth accounts have been exhausted;

 (3) To sell with or without recourse any loan, including any participating interests therein;

 (4) To service loans and investments for others;

 (5) To obtain and maintain insurance of its savings accounts by the Federal Savings and Loan Insurance Corporation, or any successor or assignee federal agency established for the purpose of insuring savings or other deposit accounts in associations;

 (6) To qualify as and become a member of a Federal Home Loan Bank;

 (7) To become a member of, deal with, or make reasonable payments or contributions to any organization to the extent that the organization assists in furthering or facilitating the purposes, powers, or community responsibilities of the association and to comply with any reasonable condition of eligibility;

 (8) To act as fiscal agent of the United States, and when so designated by the Secretary of the Treasury, to perform, under those regulations as he may prescribe, all reasonable duties as fiscal agent of the United States as he may require; and to act as agent for any instrumentality of the United States and as agent of this State or any instrumentality thereof;

 (9) To act as depository for receipt of payments of federal or state taxes and loan funds and to satisfy any federal or state statutory or regulatory requirements in connection therewith, including pledging of assets as collateral, payment of earnings at prescribed rates, and notwithstanding any other provision of this chapter, issuing these accounts subject to the right of immediate withdrawal;

 (10) To act as agent or escrow agent for others in any transaction incidental to the operation of its business;

 (11) To act, and receive compensation therefor, as trustee of any trust created or organized in the United States and forming a part of a stock bonus, pension, or profit sharing plan which qualifies or is qualified for specific tax treatment under Section 401(d) of the Internal Revenue Code of 1954, as amended, and to act as trustee or custodian of an individual retirement account within the meaning of Section 408 of the Internal Revenue Code, as amended from time to time, if the funds of the trust or account are invested only in savings accounts of the association or in obligations or securities issued by the association. All funds held in a fiduciary capacity by any association under the authority of this subsection may be commingled and consolidated for appropriate purposes of investment, provided that records reflecting each separate beneficial interest are maintained by the fiduciary unless this responsibility is lawfully assumed by another appropriate party;

 (12) Upon application to and approval by the Board pursuant to Chapter 21 of Title 34, to exercise trust powers under the same terms and conditions as permitted federally chartered savings and loan associations by the Federal Home Loan Bank Board from time to time;

 (13) To own and use or participate in the use or ownership and use of remote financial service units;

 (14) To offer and accept for deposit from any person or governmental unit savings accounts for fixed, minimum, or indefinite periods of time as determined by the board of directors, and to pay interest on these accounts in an amount determined by the board of directors;

 (15) To offer demand accounts to the extent that federally chartered associations are authorized to do so; provided, that state chartered associations may elect, by a majority vote of its directors, to designate a class of noninterest‑bearing savings accounts, known as NINOW accounts, from which account holders may make withdrawals by negotiable or transferable instruments. An association may charge a fee for making any payment or transfer or for maintaining a NINOW account, but an association shall not distribute earnings or pay interest on NINOW accounts. No association is authorized to pay interest on demand accounts or to offer overdraft privileges incident to a demand account except to the extent a federally chartered association may do so;

 (16) To maintain and let safes, boxes, or other receptacles or premises for the safekeeping of personal property upon those terms and conditions as may be agreed upon subject to the provisions of Chapter 19 of Title 34;

 (17) To sell money orders, traveler’s checks, and similar instruments drawn by it on its deposit accounts or as agent for any organization empowered to sell these instruments through agents within the State;

 (18) In the case of a stock‑owned association, to declare and pay dividends on capital stock in cash or property out of the unreserved and unrestricted earned surplus of the association or in its own shares, from time to time except when the payment would cause the association to fail to meet the minimum of allowances for losses required by Section 34‑28‑540(5), or except when the association is in an impaired condition, or when the payment thereof would cause the association to be in an impaired condition. A splitup or division of the issued shares of capital stock into a greater number of shares without increasing the stated capital of the association is authorized and is not construed to be a dividend within the meaning of this subsection;

 (19) To contract with the proper authorities of any public or nonpublic elementary or secondary school or institution of higher learning, or any public or charitable institution caring for minors, for the participation and implementation by the association in any school or institutional thrift or savings plan, and to accept savings accounts at a school or institution, either by its own collector or by any representative of the school or institution which becomes the agent of the association for this purpose;

 (20) To contract with any employer with respect to the solicitation, collection, and receipt of savings by payroll deduction to be credited to a designated account or accounts of his employees who voluntarily may participate or with respect to the direct deposit of wages or salary paid by the employer to the account of an employee in a financial depository institution by electronic or other medium upon authorization in writing by the employee and his designation of the association or other financial depository institution as the recipient of the deposits;

 (21) To issue drafts and similar instruments drawn on the association to aid in effecting withdrawals and for other purposes of the association;

 (22) To engage in any other activity approved by the Board pursuant to this chapter or Section 34‑1‑110.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑510.** Investment in loans.

 Every association shall have power to invest in or otherwise acquire loans and interests in loans, secured or unsecured, of any type or amount and for any purpose, subject only to the requirement that as an annual average based on monthly computations, an amount equal to at least fifty percent of the gross assets other than liquid assets of the association and any of its service corporations and subsidiaries (to the extent of the association’s interest in the service corporations or subsidiaries) must be invested in one or more of the following:

 (a) real estate loans or interests therein on home property or primarily residential property;

 (b) mortgage related securities issued in connection with mortgage loans on home property or primarily residential property, including but not limited to Federal Home Loan Mortgage Corporation participating certificates, Federal National Mortgage Association mortgage backed securities, and Government National Mortgage Association securities;

 (c) collateralized mortgage obligations issued in connection with mortgage loans on home property or primarily residential property. Any qualifying real estate loan held by a service corporation or subsidiary, and in the event the service corporation or subsidiary is not wholly owned by the association, the percentage of the outstanding principal of the qualifying loan that is equal to the association’s percentage ownership in the service corporations or subsidiaries holding the qualifying loan, will be included in the association’s qualifying real estate loans for purposes of the fifty percent test.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑520.** Investments in service corporations.

 (1) Every association shall have the power to invest in the capital stock, obligations or other securities of one or more service corporations, provided that at the time of any investment the aggregate amount paid for all the stock, obligations or other securities in service corporations by the association including the proposed investment shall not exceed ten percent of the assets of the association.

 (2) A service corporation of an association may engage in third party real estate brokerage operations and in any business activity authorized for a service corporation of a federally chartered association by the Federal Home Loan Bank Board from time to time. If the Federal Home Loan Bank Board no longer authorizes a service corporation of a federally chartered association to engage in an activity which it had previously approved, an association may continue to engage in the activity if it receives Board approval to do so.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑530.** Direct ownership of real estate by associations.

 An association may directly own or invest in real estate, improved or unimproved, to be used for office and related facilities and for rental or sale, if the investment is made and maintained under a prudent program of property acquisition to meet the association’s present needs or its reasonable future needs for office and related facilities.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑540.** Other investment powers and limitations; reserves and liquidity requirements.

 Subject to Section 34‑28‑510 through Section 34‑28‑530 an association may invest its funds subject to the following definitions, restrictions, and limitations:

 (1) Except as otherwise provided in this subsection, there is no limitation, with respect to investment of the total assets of the investing association, in the following investments:

 (a) direct obligations of the United States Government;

 (b) stock or obligations of federal agencies created by act of the United States Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment of principal and interest by the United States;

 (c) stock or obligations of any Federal Home Loan Bank, the Federal Savings and Loan Insurance Corporation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association or any successor thereto, or any other governmental or quasi‑governmental organization or similar company approved by the Board;

 (d) obligations issued or guaranteed by the International Bank for Reconstruction and Development;

 (e) obligations issued or guaranteed by the Inter‑American Development Bank;

 (f) demand, time, or savings deposits, shares, or accounts of any state or federal financial institution including without limitation any state or federally chartered association;

 (g) bankers’ acceptances which are eligible for purchase by federal reserve banks;

 (h) public housing authority obligations;

 (i) general obligations of the states of the United States and of the political subdivisions and the municipalities thereof;

 (j) obligations issued by the State Board of Education under authority of the Constitution of this State or by law;

 (k) tax anticipation certificates or warrants of counties or municipalities having maturities not exceeding one year;

 (l) prerefunded municipal bonds, the principal and interest of which are secured by the principal and interest of a direct obligation of the United States Government;

 (m) the sale of federal funds on a daily basis; however, no association shall sell at any one time federal funds to any depository institution, Federal Home Loan Bank, or Federal Reserve Bank in an amount exceeding twenty‑five percent of the total assets of the selling association.

 (2) Up to twenty‑five percent of the total assets of an association may be invested in the obligations of state agencies.

 (3) Up to ten percent of the total assets of an association may be invested in the sum of any equity and debt securities of any service corporation and equity and debt securities of any other corporation that is not controlled by the investing association; provided, that except as otherwise authorized in Section 34‑28‑120(6) and subsection (4) of this section, no association shall own five percent or more of any class of voting stock in any corporation other than a service corporation, or a subsidiary in which it owns all of the voting shares.

 (4) Subject to Section 34‑28‑120(6), an association may make those other investments, including investments in capital stock of other financial depository institutions, as the Board may approve by regulation of general application.

 (5)(a) Every association shall set up and maintain adequate allowances for potential losses satisfactory to the Board, in accordance with minimum capital reserve regulations which must be promulgated by the Board.

 (b) A stock association may designate any portion or all of its capital, surplus, or retained earnings as any insurance or other reserve required by law or by any insurer.

 (c) No association shall invest in any security, other than in liquid assets, or in any loan, at any time when its liquid assets are less than the required percentage of total liabilities established by regulation promulgated by the Board.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑550.** Dealing with successors in interest.

 With respect to any investment made by an association in a loan, in the event the ownership of the security for the loan or any part thereof becomes vested in a person other than the parties originally executing the security instruments, and provided there is not an agreement in writing to the contrary, the association may, without notice to the original parties, deal with the successors in interest with reference to the security and the debt thereby secured in the same manner as if the property were owned by the original parties, and may forbear to sue or may extend time for payment of or otherwise modify the terms of the debt secured thereby, without discharging or in any way affecting the original liability of the parties thereunder or under the debt thereby secured.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑560.** Right to avoid loss.

 Nothing in this chapter or in any other provision of law may be construed as denying to an association the right to invest its funds, operate a business, manage or deal in property, or take any other action over whatever period of time may reasonably be necessary to avoid loss on any loan or investment theretofore made or any obligation created in good faith.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑570.** Maximum loans to one borrower.

 An association may make a loan to one borrower up to the amount authorized by federal law or regulation for institutions insured by the Federal Savings and Loan Insurance Corporation, any successor thereto, or assignee federal agency established for the purpose of insuring savings accounts in associations.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

ARTICLE 7

Savings and Other Deposit Accounts

**SECTION 34‑28‑600.** Deposit accounts; general conditions.

 (1) Subject to Section 34‑28‑500, deposit accounts may be opened or deposits made and held by, or in trust or other fiduciary capacity for, any person, political subdivision, public unit, or governmental unit. Savings accounts are transferable only on the books of the association after proper written application by the transferee and acceptance by the association of the transferee as an account holder. The association may treat the holder of record of a savings account as the owner thereof for all purposes without being affected by a notice to the contrary unless the association has acknowledged in writing notice of a pledge of the savings account.

 (2) Each account holder shall execute a deposit account contract setting forth any special terms and provisions; however, the ownership thereof and the conditions upon which withdrawals may be made may not be inconsistent with the provisions of this chapter.

 (3) An account book, separate certificate, written statement, card, device, or other evidence, or means of access of identity, evidencing the ownership of the account must be issued to each savings account holder of record as shown by the books of the association.

 (4) Upon the filing with an association by the holder of record as shown by the books of the association, or by his legal representative, of an affidavit to the effect that the evidence of ownership of a savings account with the association has been lost or destroyed and that the evidence of ownership has not been pledged or assigned in whole or in part, the association shall issue a new evidence of ownership in the name of the holder of record, the evidence stating that it is issued in lieu of the one lost or destroyed, provided that the board of directors may require a bond in an amount it deems sufficient to indemnify the association against any loss which might result from the issuance of a new evidence of ownership.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑610.** Married persons and minors.

 Subject to Section 34‑28‑500, any association operating under this chapter and any federal savings and loan association authorized to conduct business in this State may accept a savings or other deposit account from any married person or minor as the sole and absolute owner of the account, receive payments thereon by or for the owner, pay withdrawals, accept pledges to the association, and act in any other matter with respect to the account of the married person or minor. Any payment or delivery of rights by an association to a married person or by a minor who holds a deposit account is a valid and sufficient release and discharge of the association for any payment so made or delivery of rights to the married person or minor. In the case of a minor, the receipt, acquittance, pledge, or other action required by the association to be taken by the minor is binding upon the minor with like effect as if he were of full age and legal capacity. The parent or guardian of the minor shall not in his capacity as parent or guardian have the power to attach or in any manner to transfer any savings account issued to or in the name of the minor. However, in the event of the death of the minor, the receipt or acquittance of either parent or guardian of the minor is a valid and sufficient discharge of the association for any sum not exceeding, in the aggregate, two thousand five hundred dollars unless the minor shall have given written notice to the association to accept the signature of the parent or guardian for a larger sum.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑620.** Deposit accounts in two or more names; administrators and other fiduciaries; incompetents and deceased nonresidents.

 (1)(a) When a deposit account is held in any association in the names of two or more persons, whether minor or adult, in a form such that the monies in the account are payable to either of the survivor or survivors, then, in the absence of fraud or undue influence, the account and all additions thereto is the property of the persons as joint tenants. The opening of the account in this form is, in the absence of fraud or undue influence, conclusive evidence in any action or proceeding to which either the association or the survivor or survivors is a party of the intention of all of the parties to the account to vest title to the account and the additions thereto in the survivor or survivors. The association is not subject to any liability for fraud or undue influence if it complies with the provisions of this paragraph.

 (b) Except as provided in paragraph (c), the monies in the account may be paid to or on order of any one of the joint tenants during their lifetime or to or on the order of any of the survivors of them after the death of any of them, and the name of a joint tenant may be deleted from the account on the written direction to the association of any other joint tenant.

 (c) By written instructions given to the association by all of the joint tenants of an account, either the signatures of more than one of the joint tenants during their lifetime or more than one of the survivors after the death of any of them may be required on any check, receipt, or withdrawal order, or the deletion of the name of a joint tenant from the account may be allowed only on the written direction of certain specified tenants. The association shall pay the monies in the account or allow deletions thereto, or both, only in accordance with these instructions, except that no instructions shall limit the right of the survivor or survivors to receive the money in the account.

 (d) Payment of all or any of the monies in this account or deletion of the name of an account holder as provided in this subsection shall discharge the association from liability with respect to the monies so paid, or names so deleted, until receipt by the association of a written notice from any one of the joint tenants directing the association not to permit withdrawals or deletions in accordance with the terms of the account or the instructions. After receipt of the notice, the association may refuse, without liability, to honor any check, receipt, or withdrawal order or deletion request on the account pending determination of the rights of the parties. No association paying any survivor in accordance with the provisions of this section is liable for any estate, inheritance, or succession taxes which may be due this State.

 (2) Subject to Section 34‑28‑500, any association may accept deposits in the name of any administrator, executor, custodian, conservator, guardian, trustee, or other fiduciary for a named beneficiary or beneficiaries. The withdrawal value of any account, and earnings thereon, or other rights relating thereto may be paid or delivered, in whole or in part, to the fiduciary without regard to any notice to the contrary as long as the fiduciary is living. The payment or delivery to a fiduciary or a receipt or acquittance signed by a fiduciary to whom any payment or any delivery or rights is made is a valid and sufficient release and discharge of an association for the payment or delivery so made. Whenever a person holding an account in a fiduciary capacity dies and no written notice of the revocation or termination of the fiduciary relationship has been given to an association and the association has no written notice of any other disposition of the beneficial estate, the withdrawal value of the account, and earnings thereon, or other rights relating thereto may, at the option of the association, be paid or delivered, in whole or in part, to the beneficiary or beneficiaries. Whenever an account is opened by any person, describing himself in opening the account as trustee for another and no other or further notice of the existence and terms of a legal and valid trust than the description is given in writing to the association, in the event of the death of the person so described as trustee the withdrawal value of the account or any part thereof together with the earnings thereon may be paid to the person for whom the account was thus described to have been opened. The payment or delivery to any beneficiary, beneficiaries or designated person, or a receipt of acquittance signed by any beneficiary, beneficiaries, or designated person, is for any payment or delivery a valid and sufficient release and discharge of an association for the payment or delivery so made. No association paying any fiduciary, beneficiary, or designated person in accordance with the provisions of this section is liable for any estate, inheritance, or succession taxes which may be due this State.

 (3) When a deposit account is held in any association by a person who becomes incompetent and an adjudication of incompetency has been made by a court of competent jurisdiction, the association may pay or deliver the withdrawal value of the account and any earnings that may have accrued thereon to the conservator for the person upon proof of his appointment and qualification; provided, that if the association has received no written notice and is not on actual notice that the account holder has been adjudicated incompetent, it may pay or deliver the funds to the holder in accordance with the provisions of the savings account contract, and the receipt or acquittance of the holder therefor is a valid and sufficient release and discharge of the association for the payment or delivery so made.

 (4) When a deposit account is held in any association by a person residing in another state or country, the account, together with additions thereto and earnings thereon, or any part thereof, is exempt from any taxation otherwise imposed by this State and may be paid to the administrator or executor appointed in the state or country where the account holder resided at the time of death; provided, the administrator or executor has furnished the association with (i) authenticated copy of his letters and of the order of the court which issued the letters to him authorizing him to collect, receive, and remove the personal estate, and (ii) an affidavit by the administrator or executor that to his knowledge no letters of administration then are outstanding in this State and no petition for letters of administration by an heir, legatee, devisee, or creditor of the decedent is pending on the estate in this State, and (iii) that there are no creditors of the estate in this State. Upon payment or delivery to the representatives after receipt of the affidavit and authenticated copies, the association is released and discharged to the same extent as if the payment or delivery had been made to a legally qualified resident executor or administrator, and is not required to see to the application or disposition of the property. No action at law or in equity may be maintained against the association for payment made in accordance with this section.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑630.** Powers of attorney on deposit accounts.

 Any association or federal association may continue to recognize the authority of an attorney‑in‑fact authorized in writing to manage or to make withdrawals either in whole or in part from any deposit account to an account holder, whether minor or adult, until it receives written notice or is on actual notice of the revocation of his authority. For the purposes of this section, written notice of the death or adjudication of incompetency of the account holder constitutes written notice of revocation of the authority of his attorney. No association is liable for damages, penalty, or tax by reason of any payment made pursuant to this section.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑640.** Pledge to association of savings accounts in joint tenancy.

 The pledge or hypothecation to any association of all or part of a savings account in joint tenancy by any tenant or tenants, whether minor or adult, upon whose signature or signatures withdrawals may be made from the account is, unless the terms of the savings account provide specifically to the contrary, a valid pledge and transfer to the association of that part of the account pledged or hypothecated, and does not operate to sever or terminate the joint and survivorship ownership of all or any part of the account.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑650.** Adverse claim to deposit account.

 Notice to any association of an adverse claim to a deposit account on the books of the association to the credit of any person does not cause the association to recognize the adverse claimant unless the adverse claimant also either:

 (1) procures a restraining order, injunction, or other appropriate process against the association from a court in a case therein instituted by him wherein the person to whose credit the account stands is made a party and served with process; or

 (2) execute to the association, in a form and amount and with sureties acceptable to it, a bond indemnifying the association from any and against all liability, loss, damage, costs, and expenses, for and on account of the payment of the adverse claim or the dishonor of any draft or other order by the person to whose credit the account stands on the books of the association.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑660.** Withdrawal of savings accounts.

 (1) An association shall reserve the right to require a fourteen‑day advance notice of intention to withdraw from any savings accounts not having a fixed or minimum term of at least fourteen days or a prior notice‑of‑withdrawal requirement of at least fourteen days.

 (2) Unless otherwise specified in its Articles of Incorporation, when an association cannot pay withdrawal requests within fourteen days of the date of receipt of written requests in the order received, it shall proceed in the following manner:

 (a) Requests must be paid in numerical order as filed with the association, and as each number is reached the account holder must be paid the lesser of one thousand dollars or the amount of the withdrawal request. If the amount of the request is not paid in full, the request must be renumbered, placed at the end of the list of requests, and acted upon in the same way when its new number is reached, until the request is paid in full. However, when a request is reached for payment, the association shall so notify the account holder by registered mail at his last address as recorded on the association’s books and, unless the holder within fourteen days from the mailing of the notice applies in person or in writing for payment, the request must be cancelled and not paid. Regardless of any other provision in this section, the board of directors may pay on an equitable basis an amount not exceeding two hundred dollars to any account holder in any calendar month;

 (b) The association shall allot to the payment of the withdrawal requests the remainder of the association’s receipts from all sources after deducting therefrom amounts for expenses, required payments on indebtedness, earnings distributable in cash to holders of savings accounts, and a fund for general corporate purposes of not more than twenty percent of the association’s receipts from its account holders and its borrowers.

 (3) An association may compute earnings on amounts withdrawn from its insured accounts having an indefinite term during the last three business days of any period for which earnings are distributable as if the withdrawal had been made immediately after the close of that period.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑670.** Redemption of savings accounts.

 At any time funds are on hand for that purpose, the association has the right to redeem by lot or otherwise, as the board of directors may determine, all or any part of any of its savings accounts on an earnings date by giving thirty days’ notice by registered mail addressed to each affected account holder at his last address as recorded on the books of the association. No association may redeem any of its savings accounts when the association is in an impaired condition or when it has applications for withdrawal which have been on file for more than thirty days and have not been reached for payment. The redemption price of savings accounts redeemed must be the full value of the account redeemed, as determined by the board of directors, but in no event may the redemption price be less than the withdrawal value. If this notice of redemption has been given, and if on or before the redemption date the funds necessary for the redemption have been set aside so as to be available therefor, earnings upon the accounts called for redemption shall cease to accrue from and after the earnings date specified as the redemption date, and all rights with respect to these accounts shall terminate after the redemption date, except the right of an account holder of record to receive the redemption price without interest. All savings account evidences of ownership evidencing former savings accounts which have been validly called for redemption must be tendered for payment within ten years from the date of redemption designated in the redemption notice; otherwise they must be canceled, the funds set aside for this account shall become the property of the State, and all claims of these former account holders against the association are barred forever.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑680.** Savings accounts as legal investments and security.

 (1) Administrators, executors, custodians, personal representatives, conservators, guardians, trustees, and other fiduciaries of every kind and nature, insurance companies, business and manufacturing companies, banks, trust companies, credit unions, and other types of similar financial organizations, charitable, educational, eleemosynary, and public corporations, funds, and organizations, and municipalities and other public corporations, and governmental bodies and public officials are specifically authorized and empowered to invest funds held by them, without any order of any court, in deposit accounts of associations which are under state supervision and in deposit accounts of federal associations organized under the laws of the United States and under federal supervision, and these investments are legal investments for these funds. However, the investment of public funds is subject to the same requirements relating to the deposit and pledge of securities to secure these investments as may be provided by law or regulation with respect to the deposit of these funds in banks, except to the extent that these savings accounts may be insured.

 (2) Whenever as provided by law, a deposit of securities is required for any purpose, the savings accounts and accounts made legal investments by this section are acceptable for these deposits to the extent the savings accounts and accounts made legal by this section are insured. Whenever as provided by law, a bond is required with security, the bond may be furnished, and the savings accounts and accounts made legal investments by this section in the amount of the bond when deposited therewith are acceptable as security without other security.

 (3) The provisions of this section are supplemental to any other laws relating to and declaring what are legal investments for the individuals, fiduciaries, corporations, organizations, funds, municipalities, governmental bodies, and officials referred to in this section and are supplemental to the laws relating to the deposit of securities and the making and filing of bonds for any purpose.

HISTORY: 1985 Act No. 124, Section 1.

ARTICLE 8

Reports and Examinations and Enforcement Powers of the Board of Financial Institutions; Criminal Penalties

**SECTION 34‑28‑700.** Annual and other reports; examinations.

 (1) Every association, service corporation, savings and loan holding company, and subsidiary of any association or savings and loan holding company shall make an annual and those other reports as the Board may require, which must be in that form and filed on that date as may be prescribed by the Board.

 (2) The Board, without previous notice, may examine or cause an examination to be made into the affairs of every association, savings and loan holding company, service corporation, or subsidiary of any association or savings and loan holding company subject to this chapter. If an audit at least once each year is not conducted in a manner satisfactory to the Board, the examination by the Board shall include an audit.

 (3) In lieu of the examination, the Board may accept any examination made by a Federal Home Loan Bank, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, or the savings association supervisory authority of other states. Two copies of any audit, signed and certified by the auditor making the audit, must be filed with the Board.

 (4) Whenever, in the judgment of the Board, the condition of any association, savings and loan holding company or any subsidiary, or service corporation thereof renders it necessary or expedient to make an extra examination or audit or to devote any extraordinary attention to its affairs, the Board shall cause the same to be done. A full and complete copy of the report of all examinations and audits must be furnished to the examined institution. The report of examination or audit must be presented by the president to the board of directors of the examined association or company at its next regular or special meeting.

 (5) The Board is authorized in connection with any examination or audit of any association, savings and loan holding company, or any service corporation or subsidiary thereof, to cause appraisals to be made of real estate or other property held by the company being audited or securing its assets when specific facts or information with respect to real estate or other property held, with respect to secured loans or lending, or when in the Board’s opinion its policies, practices, operating results, and trends give evidence that its appraisals or valuations of ability to make payments may be excessive, that lending or investment may be a marginal nature, that appraisal policies and loan practices may not conform with generally accepted and established professional standards, or that real estate or other property held by it or assets secured by real estate or other property are overvalued. In lieu of causing these appraisals to be made, the Board may accept any appraisal caused to be made by a Federal Home Loan Bank, the Federal Home Loan Bank Board, or the Federal Savings and Loan Insurance Corporation. Unless otherwise ordered by the Board, appraisal of real estate or other property in connection with any examination or audit pursuant to this subsection must be made by a professional appraiser or appraisers selected by the Board, and the cost of the appraisal must be paid by the association, savings and loan holding company, or service corporation or subsidiary thereof directly to the appraiser or appraisers upon receipt by it of a statement of the cost bearing the written approval of the Board. A copy of the report of each appraisal caused to be made by the Board pursuant to this subsection must be furnished to the association, savings and loan holding company, or service corporation or subsidiary thereof within a reasonable time, not to exceed sixty days, following the completion of the appraisals and may in the case of an insured association be furnished to the insuring agency.

 (6) The Board and any of its examiners or auditors have free access to all books and papers of an association, savings and loan holding company, and any subsidiary or service corporation thereof doing business in this State which relate to its business and to the books and papers kept by an officer, agent, or employee, relating to or upon which any record of its business is kept. The Board may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of any association, savings and loan holding company, any service corporation or subsidiary thereof, or any other person in relation to its affairs, transactions, and conditions and may require and compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑710.** Board may order association to discontinue any illegal practice.

 If the Board as a result of any examination or from any report made to it finds that any association, savings and loan holding company, or any service corporation or subsidiary thereof is violating the provisions of its articles of incorporation or bylaws, the laws of this State or of the United States, or any lawful order or regulation of the Board, it shall by a formal written order delivered to the home office state any alleged violation, together with a statement of the facts alleged to constitute the violation, and order discontinuance of the violation and conformance with all requirements of law. The order shall specify the effective date thereof, which may be immediate or may be at a later date, and it shall remain in effect until withdrawn by the Board or until terminated by a court order. The order of the Board, upon application made on or after the effective date thereof by the Board to the circuit court in the county in which the home office of the association or organization is located, may be enforced ex parte and without notice by an order to comply entered by the court. These proceedings must be given precedence over other cases pending in the court and must in every way be expedited by the court. Any association or company affected by an order of the Board shall, after receipt thereof, have the right to apply within thirty days to any court of competent jurisdiction for an immediate hearing and order suspending the order of the Board until such time as the hearing has been completed. The hearing of the application to the court must be upon that notice to the Board as the court shall provide. Whether upon application by the Board or by the association or other company, the court shall have power to and shall adjudicate the question and enter the proper orders and enforce the same.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑720.** Conservatorship.

 (1) If the Board as a result of any examination or from any report made to it believes that the public interest may be served by the appointment of a conservator, and if it shall find that any association:

 (a) is in an impaired condition;

 (b) is engaging in practices which threaten to result in an impaired condition; or

 (c) is in violation of an order or injunction as authorized by Section 34‑28‑710 which has become final in that time to appeal has expired without appeal or a final order has been entered from which there can be no appeal, the Board may appoint a conservator for the association, which may be the chairman of the Board, his deputy, or any other person and, upon their appointment, shall apply immediately to the circuit court in the county in which the home office of the association is located and, in the case of a foreign association doing business in this State, the county in which its registered office in this State is located, for confirmation of the appointment, and the court has exclusive jurisdiction to determine the issues and all related matters. These proceedings must be given precedence over other cases pending in the court and must in every way be expedited. The court shall confirm the appointment if it finds that one or more of the grounds specified in this subsection exist, and a certified copy of the order of the court confirming the appointment is evidence thereof. The conservator has the power and authority provided in this chapter and any other power and authority as may be expressed in the order of the court. The conservator shall endeavor promptly to remedy the situations complained of by the Board in its application for confirmation of the appointment. Within six months of the date of the appointment, or within twelve months if the court extends the six months’ period, the association must be returned to the board of directors thereof and thereafter must be managed and operated as if no conservator had been appointed, or a receiver must be managed and operated as hereinafter provided. If the chairman of the Board, or his deputy, or an employee of the Board is appointed conservator, he shall receive no additional compensation, but if another person is appointed, then the compensation of the conservator, as determined by the court, must be paid by the association. A certified copy of the order of the court discharging the conservator and returning the association to the directors is sufficient evidence thereof.

 (2) Any conservator has all the rights, powers, and privileges possessed by the officers, directors, members, and stockholders of the association.

 (3) The conservator shall not retain special counsel or other experts, incur any expense other than normal operating expenses, or liquidate assets except in the ordinary course of operations.

 (4) The directors and officers shall remain in the office and the employees shall remain in their respective positions, but the conservator may remove any director, officer, or employee, provided the order of removal of a director or officer is approved in writing by the Board.

 (5) While the association is in the charge of a conservator, borrowers and other obligors of the association shall continue to make payments to the association in accordance with the terms and conditions of their contracts, and the conservator, in his discretion, may permit deposit account holders to withdraw their account from the association pursuant to the provisions of this chapter or under and subject to those regulations as the Board may prescribe. The conservator has power to accept new deposit accounts and additions to existing deposit accounts, but any amounts received by the conservator may be segregated if the Board shall so order in writing; and, if so ordered, the segregated amounts are not subject to offset and may not be used to liquidate any indebtedness of the association existing at the time the conservator was appointed for it or any subsequent indebtedness incurred for the purposes of liquidating the indebtedness of any association existing at the time the conservator was appointed. All expenses of the association during the conservatorship must be paid by the association.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑730.** Receivership.

 (1) If the Board finds that any association:

 (a) is in an impaired condition;

 (b) is engaging in practices which threaten to result in an impaired condition; or

 (c) is in violation of an order or injunction, as provided in Section 34‑24‑710, which has become final in that the time to appeal has expired without appeal or a final order has been entered from which there can be no appeal, the Board may appoint a receiver for the association, which may be the chairman of the Board, his deputy, or any other person and, upon this appointment, shall apply immediately to the circuit court in the county in which the home office of the association is located and, in the case of a foreign association doing business in this State, the county in which its registered office in this State is located, for confirmation of the appointment, and the court has exclusive jurisdiction to determine the issues and all related matters. These proceedings must be given precedence over other cases pending in the court and must in every way be expedited. The court shall confirm the appointment if it finds that one or more of the grounds specified in this section exist, and a certified copy of the order of the court confirming the appointment is evidence of confirmation thereof. In the case of an insured association, the appointment by the Board of a receiver under this section constitutes an official determination of a public authority in this State pursuant to which a receiver is appointed for the purpose of liquidation as contemplated by and within the meaning of Section 401(d) of the National Housing Act of 1934, as amended, if, within ten days after the date the application of the Board is filed, confirmation of the appointment or denial of confirmation has not been issued by the court. The receiver has all the powers and authority of a conservator plus the power to liquidate and shall have those other powers and authority as may be expressed in the order of the court. If the chairman of the Board, or his deputy, or an employee of the Board is appointed receiver, he shall receive no additional compensation, but if another person is appointed, then the compensation of the receiver, as determined by the court, must be paid from the assets of the association.

 (2) If the association is an institution insured by the Federal Savings and Loan Insurance Corporation, the Federal Savings and Loan Insurance Corporation must be tendered appointment as receiver or coreceiver. If it accepts the appointment, it may still make loans on the security of or purchase at public or private sale any part or all of the assets of the association of which it is receiver or coreceiver, provided the loan or purchase is approved by the court.

 (3) The procedure in the receivership action must be in all other respects in accordance with the practice in the court where the action was filed, including all rights of appeal and review. The directors, officers, and attorneys of an association in office at the time of the initiation of any proceeding under this or the preceding section are expressly authorized to contest the proceeding and must be reimbursed for reasonable expenses and attorney fees by the association or from its assets. Any court having a proceeding before it shall allow and order paid reasonable expenses and attorney fees for the directors, officers, and attorneys.

HISTORY: 1985 Act No. 124, Section 1.

Editor’s Note

1990 Act No. 504, Section 2, effective May 30, 1990, provides as follows:

“As used in Chapter 28 of Title 34 of the 1976 Code, the term “Federal Savings and Loan Insurance Corporation” is changed to “Federal Deposit Insurance Corporation”, and the term “Federal Home Loan Bank Board” is changed to “Office of Thrift Supervision”. Any abbreviations or variations of these terms must also be construed accordingly. The term “Federal Home Loan Bank” as used in Section 34‑28‑540(c) remains the same.”

**SECTION 34‑28‑740.** False statement affecting credit or standing of association.

 Any person who falsely and wilfully and with intent to injure circulates any report or makes any false oral statement as to the assets or liabilities of any association, savings and loan holding company, or any service corporation or subsidiary thereof, its solvency or ability to meet its obligations or its soundness or who makes any other false oral statement calculated to affect the credit or standing of any or to cast suspicion upon its solvency, soundness, or ability to meet its obligations in due course is guilty of a misdemeanor and upon conviction must be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than one year, or both.

HISTORY: 1985 Act No. 124, Section 1.

ARTICLE 9

Foreign Associations; Federal Associations with their Principal Office in this State

**SECTION 34‑28‑800.** Foreign associations.

 (1) For the purpose of this section, “foreign association” includes any person, firm, company, association, fiduciary, partnership, or corporation, or whatever name called, actually engaged in the business of a savings association, which is not organized under the provisions of this chapter or the laws of the United States, and the principal business office of which is located outside the territorial limits of this State.

 (2) No foreign association shall do any business of a savings association within this State or maintain an office in this State for the purpose of doing business including, but not limited to, establishment of a branch office except as otherwise authorized by this chapter or otherwise by law. The origination of real estate mortgages covering real property located in this State or acquiring a participation interest in any mortgage is considered doing business as a savings association if the state of domicile of the principal business office of the foreign association does not permit associations from this State to originate real estate mortgages covering real property located in that state, unless an association having an authorized office in this State is either the originator of the mortgage or is a partner or joint venturer in the company that originates the mortgages.

 (3) The Board is authorized and required to obtain an injunction or to take any other action necessary to prevent any foreign association from doing any business of an association in this State.

 (4) Except as otherwise provided in subsection (2), for the purpose of this section and any other law of this State prohibiting, limiting, or regulating the doing of business in this State by foreign associations or foreign corporations of any type, any federal association the principal office of which is located outside this State, and any foreign association which is subject to state or federal supervision which by law are subject to periodic examination by these supervisory authorities and to a requirement of periodic audit, are not considered to be doing business in this State by reason of engaging in any of the following activities:

 (a) The purchase, acquisition, holding, sale, assignment, transfer, collecting, and enforcement of obligations or any interest therein secured by real estate mortgages or other instruments in the nature of a mortgage, covering real property located in this State, or the foreclosure of these instruments, or the acquisition of title to the property at foreclosure, or otherwise, as a result of default under these instruments, or the holding, protection, rental, maintenance, and operation of the property so acquired, or the disposition thereof; provided the associations shall not hold, own, or operate property for a period exceeding five years without securing the approval of the Board.

 (b) The advertising or solicitation of savings accounts or the making of any representations with respect thereto in this State through the medium of the mail, radio, television, magazines, or newspapers or any other medium which is published or circulated within this State provided that the advertising, solicitation, or the making of these representations is accurately descriptive of the facts.

 (5) Any foreign association or federal association described in subsection (4) which engages in any of the activities described in paragraph (a) thereof pursuant to the provisions of this section is subject to suit in the courts of this State by this State and the citizens of this State. Service on the association must be effected by serving the Secretary of State of this State, except that the provisions of this section shall have no other application to the questions of whether any foreign association or federal association is subject to service of process and suit in this State as a result of the transaction of business or other activities in this State.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑810.** Federal savings and loan associations.

 Federal savings and loan associations, which are incorporated pursuant to the laws of the United States and the principal place of business of which is located within this State, are not foreign corporations or foreign associations. Unless federal laws or regulations provide otherwise, these federal associations and the members or stockholders thereof shall possess all of the rights, powers, privileges, benefits, immunities, and exemptions that are provided by the laws of this State for associations organized under the laws of this State and for the members or stockholders thereof. This provision is additional and supplemental to any provision which, by specific reference, is applicable to federal associations and the members or stockholders thereof.

HISTORY: 1985 Act No. 124, Section 1.

ARTICLE 10

Transition Provisions

**SECTION 34‑28‑900.** Grandfather clause.

 This chapter does not impair or affect any act done, offense committed, right accruing, accrued, or acquired, or liability, penalty, forfeiture, or punishment incurred prior to the effective date of the chapter, but the same may be enjoyed, asserted, enforced, prosecuted, or inflicted as fully and to the same extent as if this chapter had not been enacted.

HISTORY: 1985 Act No. 124, Section 1.

**SECTION 34‑28‑910.** Effect on existing associations.

 The name, rights, powers, privileges, and immunities of associations heretofore incorporated in this State are governed, controlled, construed, extended, limited, and determined by the provisions of this chapter to the same extent and effect as if the association had been incorporated pursuant thereto. The articles of incorporation, certificate of incorporation, charter, bylaws, constitution, and other rules of these associations heretofore made or existing are hereby modified, altered, and amended to conform to the provisions of this chapter, with or without the issuance or approval by the Board of conformed copies of these documents, and the same are declared void to the extent that they are inconsistent with the provisions of this chapter. Notwithstanding the above provisions of this subsection, the obligations of any existing association whether between the association and its members or stockholders or other persons, or any valid contract between the members or stockholders of any association or between the associations and any other person existing on the effective date of this chapter, is not impaired by the provisions of this chapter. With this exception, these associations shall possess the rights, powers, privileges, and immunities and are subject to the duties, liabilities, disabilities, and restrictions conferred and imposed by this chapter, notwithstanding anything to the contrary in its articles, certificate of incorporation, bylaws, constitution, or rules.

HISTORY: 1985 Act No. 124, Section 1.