CHAPTER 3

Banks and Banking Generally

ARTICLE 1

General Provisions

**SECTION 34‑3‑10.** Use of “bank” or “banking” by others than banking institutions.

(A) A person in this State, other than a legalized incorporated banking institution, may not use the word “bank” or “banking” in connection with a business, calling, or pursuit; except that a state‑chartered savings and loan association may change its designation and name to a “savings bank” pursuant to the same authority and subject to the same rules and regulations that federally‑chartered savings and loan associations are permitted to make that change according to the provisions of Public Law 97‑320 (the Garn‑St. Germain Depository Institutions Act of 1982). A person violating the provisions of this subsection must be fined not less than one thousand dollars and not more than ten thousand dollars or imprisoned not more than ten years or less than one year, or both fined and imprisoned, all in the discretion of the court.

(B)(1) A person in this State may not use the name or logo of a banking entity in connection with the sale, offering for sale, or advertising of a financial product or service without the written consent of that banking entity. A person violating this subsection must be fined not less than five hundred dollars and not more than one thousand dollars for each separate use of the name or logo of a banking entity in connection with the sale, offering for sale, or advertising of a financial product or service without the written consent of the banking entity.

(2) A banking entity may file an action to enjoin the use of its name or logo in connection with the sale, offering for sale, distribution, or advertising of a financial product or service without its written consent. A court of competent jurisdiction may grant an injunction to restrain the wrongful use and may require the defendants to pay to the banking entity all profits derived from, and all damages suffered by reason of, the wrongful use of the name or logo, including costs and reasonable attorney’s fees.

(3) The remedies of this subsection are not exclusive and do not preclude the use of another remedy at law.

HISTORY: 1962 Code Section 8‑101; 1952 Code Section 8‑101; 1942 Code Section 7830‑1; 1932 Code Section 1345; Cr. C. ‘22 Section 235; 1913 (28) 107; 1983 Act No. 7 Section 1; 2008 Act No. 181, Section 1, eff February 19, 2008.

Effect of Amendment

The 2008 amendment designated and rewrote subsection (A) and added subsection (B) relating to use of banking entity’s logo or name in connection with the sale of a financial product or service.

CROSS REFERENCES

Definition of term “bank”, see Section 34‑1‑10.

Federal Aspects

Public Law 93‑320, see 12 U.S.C.A. Sections 1811 et seq.

RESEARCH REFERENCES

Encyclopedias

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

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

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

Attorney General’s Opinions

A “loan production office,” regardless of its corporate structure, is a branch bank and as such is subject to the provisions of this chapter. 1969‑70 Op Atty Gen, No 2831, p 52.

The object of this section [Code 1962 Section 8‑101] is to prevent any corporation, except one subject to the control of the Board of Bank Control, from using words in its title or in its advertising which would give the general public the idea that such a corporation is a banking institution. 1962‑63 Op Atty Gen, No 1578, p 148.

Use of word “bankers.” ‑ Although the word “bankers” is not used specifically in the statute such a term, nevertheless, carries the import of a banking corporation. 1962‑63 Op Atty Gen, No 1578, p 148.

Code 1962 section applies to corporation authorized by charter to act as industrial bank. The terms “bank,” “banker” or “banking,” including the phrase “industrial banking” cannot be used in the State of South Carolina by any person, firm or corporation other than a legally incorporated banking institution, notwithstanding that the charter of a corporation provides that it can act as an industrial bank. 1962‑63 Op Atty Gen, No 1578, p 148.

**SECTION 34‑3‑20.** Provisions not applicable to national banks.

Nothing contained in Sections 34‑3‑30, 34‑3‑50, 34‑3‑60, 34‑3‑210 to 34‑3‑250, 34‑3‑380 to 34‑3‑420, 34‑9‑30, 34‑9‑130, 34‑11‑30, 34‑13‑10 to 34‑13‑80, 34‑13‑100, 34‑13‑110, 34‑13‑130, and 34‑15‑10 to 34‑15‑40 shall apply to any national bank.

HISTORY: 1962 Code Section 8‑102; 1952 Code Section 8‑102; 1942 Code Section 7865; 1932 Code Section 7861; Civ. C. ‘22 Section 3991; Civ. C. ‘12 Section 2653; 1906 (25) 103; 1911 (27) 4.

Federal Aspects

State law preemption standards for national banks and subsidiaries, see 12 U.S.C.A. Section 25b.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 56, Penalties for Nonpayment of Subscriptions.

United States Supreme Court Annotations

Banking, national banks, mortgage lending subsidiaries, state supervision, see Watters v. Wachovia Bank, N.A., 2007, 127 S.Ct. 1559, 550 U.S. 1, 167 L.Ed.2d 389.

Banking, regulation prohibiting state enforcement of non‑preempted law against national banks, see Cuomo v. Clearing House Ass’n, L.L.C., 2009, 129 S.Ct. 2710, 557 U.S. 519, 174 L.Ed.2d 464.

**SECTION 34‑3‑30.** Certain parts of bank charters repealed.

All parts of acts of incorporation granted to banking corporations repugnant to the provisions of Sections 34‑13‑10 to 34‑13‑40 are repealed.

HISTORY: 1962 Code Section 8‑103; 1952 Code Section 8‑103; 1942 Code Section 7855; 1932 Code Section 7842; Civ. C. ‘22 Section 3976; Civ. C. ‘12 Section 2641; Civ. C. ‘02 Section 1765; G. S. 1351; R. S. 1463; 1817 (8) 36.

CROSS REFERENCES

Section not applying to national banks, see Section 34‑3‑20.

**SECTION 34‑3‑40.** Shares of stock requisite for eligibility as bank director.

No stockholder in a corporation organized under the laws of this State for banking purposes is eligible for election as a director who is not the owner of unencumbered and unpledged shares of stock in the corporation having an aggregate par value of at least five hundred dollars or having an aggregate book value as of December thirty‑first of the most recent year of at least five hundred dollars. Where the banking corporation is a wholly‑owned subsidiary, the required qualifying shares must be shares in the parent corporation.

HISTORY: 1962 Code Section 8‑103.1; 1952 Code Section 8‑103.1; 1942 Code Section 7748; 1932 Code Section 7748; Civ. C. ‘22 Section 4322; Civ. C. ‘12 Section 2853; Civ. C. ‘02 Section 1896; 1896 (22) 99; 1926 (34) 1729; 1969 (56) 299; 1988 Act No. 533, eff May 18, 1988.

Effect of Amendment

The 1988 amendment made grammatical changes and added language relating to aggregate book value.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 110.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 78, Directors’ Qualifications.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Reedy v. Alderman (S.C. 1963) 242 S.C. 552, 131 S.E.2d 689.

**SECTION 34‑3‑50.** Officers and employees shall be bonded.

All active officials and employees of any State bank shall be bonded. The bonds shall be reviewed and approved or disapproved in writing annually by the board of directors.

HISTORY: 1962 Code Section 8‑104; 1952 Code Section 8‑104; 1942 Code Section 7850; 1932 Code Sections 1351, 7831; Civ. C. ‘22 Section 3973; Civ. C. ‘12 Section 2638; Civ. C. ‘02 Section 1762; G. S. 1348; R. S. 223, 1460; Cr. C. ‘22 Section 241; Cr. C. ‘12 Section 346; Cr. C. ‘02 Section 259; 1877 (16) 232; 1923 (33) 156; 1960 (51) 1675.

CROSS REFERENCES

Section not applying to national banks, see Section 34‑3‑20.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 114.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 80, Supervision of Officers and Employees.

S.C. Jur. Banks and Banking Section 86, Qualifications.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 151, Oath, Bond, and Letters of Trusteeship.

Attorney General’s Opinions

A bond secured by personal negotiable securities held in trust by a third‑party banking institution and in an amount sufficient to cover the bond does meet the requirement of Section 34‑3‑50 of the South Carolina Code of Laws, 1976, that all bank officials and employees be bonded. 1979 Op Atty Gen, No 79‑59, p 76.

**SECTION 34‑3‑60.** Branch bank shall identify itself.

Every branch bank shall indicate on its stationery, checks, drafts, notes, signs, advertisements and publications that it is a branch bank and show the name and place of business of the parent bank, or shall be identified in such manner as is prescribed for national banks.

HISTORY: 1962 Code Section 8‑106; 1952 Code Section 8‑106; 1942 Code Section 7868; 1932 Code Section 7851; Civ. C. ‘22 Section 3984; Civ. C. ‘12 Section 2647; 1911 (27) 4; 1920 (31) 739; 1923 (33) 191; 1933 (38) 296; 1936 (39) 1484; 1958 (50) 1713.

CROSS REFERENCES

Section not applying to national banks, see Section 34‑3‑20.

NOTES OF DECISIONS

In general 1

Under former law 2

1. In general

South Carolina Banking Code is regulatory framework, not penal code, and legislature has broad discretion to draft regulatory legislation especially in area of banking. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951. Banks And Banking 3

Decision of State Board of Bank Control to close bank and appoint Federal Deposit Insurance Corporation as receiver would not be overturned for abuse of discretion where there were reasonable grounds for determination that bank should be closed on account of insolvency and inability to meet demands of depositors. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951. Banks And Banking 63.5

Regulations of the State Board of Financial Institutions are not enacted to benefit borrowers, but to benefit financial institutions. The regulations are meant to be enforced by the administrative agency and not by private plaintiffs. Peoples Federal Sav. and Loan Ass’n v. Edwards (S.C.App. 1985) 286 S.C. 475, 334 S.E.2d 290.

2. Under former law

And it is empowered to supervise and control liquidation of the financial institutions of this State. Zimmerman v. Central Union Bank (S.C. 1940) 194 S.C. 518, 8 S.E.2d 359.

Powers created by prior acts. The present Board of Bank Control has succeeded to the powers and duties vested first in the Governor acting with the State Board of Bank Control under the Acts of 1933 as well as the authority and duties conferred on the Board created by the Act of 1934. Zimmerman v. Central Union Bank (S.C. 1940) 194 S.C. 518, 8 S.E.2d 359.

Power to fix attorney’s fees. The State Board of Bank Control has exclusive jurisdiction in the first instance in fixing and limiting attorneys’ fees, and may not be defeated or subverted by any party in interest by resort to the courts, unless such Board has refused to act, or has acted in such a way as results in an abuse of discretion. Zimmerman v. Central Union Bank (S.C. 1940) 194 S.C. 518, 8 S.E.2d 359.

Conservator is not an equity receiver. The fact that the law authorizes a conservator to apply to the court in certain cases for instruction does not make him an equity receiver or in any wise divest the power of the Board to supervise and control the liquidation. Zimmerman v. Central Union Bank (S.C. 1940) 194 S.C. 518, 8 S.E.2d 359. Banks And Banking 63.5

The State Board of Bank Control is a special administrative body of limited jurisdiction. Ex parte Miller (S.C. 1939) 191 S.C. 260, 1 S.E.2d 512. Banks And Banking 17

With general supervisory powers of banks and building and loan associations. Ex parte Miller (S.C. 1939) 191 S.C. 260, 1 S.E.2d 512.

**SECTION 34‑3‑65.** Opening of deposit accounts at special events; conditions.

Financial institutions may provide for account service representatives to visit public events and commercial locations including governmental, educational, and health facilities for the purpose of opening deposit accounts and providing services incidental to opening these accounts. However, access is only available if the financial institution and the sponsor of the public event or the person responsible for the commercial location agree to have the financial institution at the event or location. Account paying and receiving services may not be provided during these visits other than an initial deposit to a new account.

HISTORY: 1996 Act No. 329, Section 1, eff upon approval (became law without the Governor’s signature on May 21, 1996).

**SECTION 34‑3‑70.** False statements concerning solvency of bank.

Any person who shall falsely and wilfully and with intent to injure circulate any report or make any false oral statement as to the assets or liabilities of any bank in this State, its solvency or ability to meet its obligations or its soundness or who shall make any other false oral statement calculated to affect the credit or standing of such a bank or to cast suspicion upon its solvency, soundness or ability to meet its deposits or other obligations in due course shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars or be imprisoned for not more than one year, or both, in the discretion of the court.

HISTORY: 1962 Code Section 8‑108; 1952 Code Section 8‑108; 1942 Code Section 7874‑3; 1932 Code Section 1230; 1922 (32) 773.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 23, False Statements Concerning Solvency of a Bank.

S.C. Jur. Libel and Slander Section 27, Financial Irresponsibility or Unreliability.

S.C. Jur. Libel and Slander Section 28, Injury to a Person in His Occupation.

**SECTION 34‑3‑80.** Criminal liability of bank official furnishing false certificate to Comptroller General.

Whenever an officer of any bank engaged in business in this State shall be called upon by the Comptroller General or any of his clerks or agents for a certificate of the amount of cash on deposit to the credit of any public officer for use in settlements with such public officer and shall wilfully and knowingly give a false certificate or statement he shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment for not more than six months nor less than three months, in the discretion of the court.

HISTORY: 1962 Code Section 8‑109; 1952 Code Section 8‑109; 1942 Code Section 7852; 1932 Code Section 1252; Cr. C. ‘22 Section 147; Cr. C. ‘12 Section 297; 1910 (26) 566.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 149.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 24, Bank Officials Providing False Certificate.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Dunbar v. Fant (S.C. 1934) 174 S.C. 49, 176 S.E. 866.

**SECTION 34‑3‑90.** Penalties.

Any violation of the provisions of Sections 34‑1‑60, 34‑1‑70, 34‑3‑310 and 34‑3‑320, 34‑5‑10 to 34‑5‑80 and 34‑5‑100 to 34‑5‑150 or of any of the duly promulgated rules and regulations issued by the Board under the authority of any of such sections shall constitute a misdemeanor and shall be punishable by a fine of not exceeding five thousand dollars or by imprisonment not exceeding one year, or both.

HISTORY: 1962 Code Section 8‑110; 1952 Code Section 8‑110; 1942 Code Section 7829‑10; 1936 (39) 1484.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 38.

RESEARCH REFERENCES

Encyclopedias

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

NOTES OF DECISIONS

In general 1

1. In general

South Carolina Banking Code is regulatory framework, not penal code, and legislature has broad discretion to draft regulatory legislation especially in area of banking. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951. Banks And Banking 3

**SECTION 34‑3‑100.** Transaction of business in State by foreign bank.

Banks organized under the laws of a foreign government may transact a banking business in the State, if approved by the Board of Financial Institutions after full investigation and hearing.

HISTORY: 1978 Act No. 644 Part II Section 25.

RESEARCH REFERENCES

Encyclopedias

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

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

**SECTION 34‑3‑110.** Crimes against a federally chartered or insured financial institution.

(A) A person knowingly may not execute, or attempt to execute, a scheme or artifice to:

(1) defraud a federally chartered or insured financial institution; or

(2) obtain monies, funds, credits, assets, securities, or other property owned by or under the custody or control of a federally chartered or insured financial institution by means of false or fraudulent pretenses, representations, or promises.

(B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than five years, or both.

(C) As used in this section, “federally chartered or insured financial institution” means:

(1) a bank with deposits insured by the Federal Deposit Insurance Corporation;

(2) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;

(3) a credit union with accounts insured by the National Credit Union Administration Board;

(4) a federal home loan bank or a member, as defined in Section 2 of the Federal Home Loan Bank Act, 12 U.S.C. Section 1422, of the federal home loan bank system; or

(5) a bank, banking association, land bank, intermediate credit bank, bank for cooperatives, production credit association, land bank association, mortgage association, trust company, savings bank, or other banking or financial institution organized or operating under the laws of the United States.

(D) The provisions of this section do not affect the provisions of Section 34‑11‑70.

HISTORY: 1989 Act No. 88, Section 1, eff May 17, 1989.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 26, Crimes Against Federally‑Chartered or Insured Financial Institutions.

S.C. Jur. Cooperative Credit Unions Section 117, Crimes Against Federally‑Chartered or Insured Financial Institutions.

ARTICLE 3

Powers

**SECTION 34‑3‑210.** General powers of banking corporation.

Every banking corporation may:

(1) Receive and pay out the lawful currency of the country;

(2) Deal in exchange, gold and silver coin, bullion, uncurrent paper, public and other securities and stocks of other corporations;

(3) Purchase and hold such real estate and personal property as (a) may be conveyed to it to secure debts to the corporation, (b) may be sold under execution to satisfy debts due in whole or in part to the corporation or (c) may be deemed necessary or convenient for the transaction of its business, and sell and dispose of such real estate and personal property at pleasure;

(4) Discount notes, bills of exchange, bonds and other evidences of debt and lend money on such terms as may be agreed on, subject to the usury laws of the State;

(5) Receive on deposit moneys on such terms as may be agreed on with the depositor and issue certificates therefor, negotiable or assignable in such way as may be stipulated in the certificates;

(6) Sue and be sued and plead and be impleaded in any court of this State;

(7) Adopt and use a corporate seal and alter it at its pleasure; and

(8) Adopt all such bylaws for the general management and direction of the business and affairs of the corporation, not inconsistent with the laws of the United States and of this State, as may be deemed proper, and add to, alter or amend them from time to time as may be desired;

And shall have generally all the rights, powers and privileges in law incident or appertaining to such corporations.

HISTORY: 1962 Code Section 8‑131; 1952 Code Section 8‑131; 1942 Code Section 7843; 1932 Code Section 7862; Civ. C. ‘22 Section 3992; Civ. C. ‘12 Section 2654; Civ. C. ‘02 Section 1774; R. S. 1538; 1887 (19) 860; 1913 (28) 37; 1919 (31) 41; 1953 (48) 357.

CROSS REFERENCES

ARTICLE not applying to national banks, see Section 34‑3‑20.

Bank deposits and collections, see Section 36‑4‑101.

Commercial paper, see Sections 36‑3‑101 et seq.

Constitutional provision against incorporating a banking institution by special law, see SC Const, Art 3, Section 34.

Income tax on banks, see Sections 12‑11‑10 et seq.

Legal holidays, see Chapter 5 of Title 53.

Maximum amounts of loans, see Sections 34‑13‑50 et seq.

Note or bill negotiated by an agent after the death of the drawer or endorser, see Section 32‑11‑20.

Request by Unemployment Security Commission for check on returns of national banks, see Section 41‑29‑220.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Sections 157 et seq.

RESEARCH REFERENCES

Encyclopedias

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

S.C. Jur. Banks and Banking Section 81, Adoption of Bylaws.

S.C. Jur. Banks and Banking Section 99, General Powers of Banking Corporations‑ Overview.

S.C. Jur. Banks and Banking Section 110, Authority to Discount.

Attorney General’s Opinions

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

NOTES OF DECISIONS

In general 1

Under former law 2

1. In general

South Carolina Banking Code is regulatory framework, not penal code, and legislature has broad discretion to draft regulatory legislation especially in area of banking. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951. Banks And Banking 3

2. Under former law

State bank may pledge assets for payment of deposits. Under this section [Code 1962 Section 8‑131] permitting State banks to receive deposits under such terms as may be agreed upon with depositors, a State bank, whether solvent or insolvent, may, in absence of fraud, pledge its assets for payment of contemporaneous or future deposits of public or private funds. Temple v. McKay (S.C. 1934) 172 S.C. 305, 174 S.E. 23. Banks And Banking 86

**SECTION 34‑3‑220.** Acceptance of drafts and bills of exchange.

Every such banking corporation may accept drafts or bills of exchange drawn upon it having not more than six months’ sight to run, exclusive of grace, which (a) grow out of transactions involving the importation or exportation of goods or the domestic shipment of goods, provided shipping documents conveying or securing title are attached at the time of acceptance, or (b) are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. No such banking corporation shall accept, whether in a foreign or domestic transaction, for any one person an amount equal at any one time in the aggregate to more than ten per cent of its paid‑up and unimpaired capital stock and surplus, unless the banking corporation is secured either by attached documents or by some other actual security arising out of the same transaction as the acceptance. And no banking corporation shall accept such bills to an amount equal at any time in the aggregate to more than one half of its paid‑up and unimpaired capital stock and surplus. But the Commissioner of Banking, under such general regulations as he may prescribe which shall apply to all banking corporations alike regardless of the amount of capital stock and surplus, may authorize any banking corporation to accept such bills to an amount not exceeding at any time in the aggregate one hundred per cent of its paid‑up and unimpaired capital stock and surplus.

HISTORY: 1962 Code Section 8‑132; 1952 Code Section 8‑132; 1942 Code Section 7843; 1932 Code Section 7862; Civ. C. ‘22 Section 3992; Civ. C. ‘12 Section 2654; Civ. C. ‘02 Section 1774; R. S. 1538; 1887 (19) 860; 1913 (28) 37; 1919 (31) 41.

CROSS REFERENCES

Collection of documentary drafts, see Section 36‑4‑501 et seq.

Maximum amounts of loans, see Sections 34‑13‑50 to 34‑13‑70.

Warehouse receipts, bills of lading and other documents of title, see Section 36‑7‑101 et seq.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 165.

RESEARCH REFERENCES

Encyclopedias

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

S.C. Jur. Banks and Banking Section 100, General Powers of Banking Corporations‑ Acceptance of Drafts and Bills of Exchange.

**SECTION 34‑3‑230.** Directors may make and change bylaws.

The directors of any bank may make and change bylaws, not inconsistent with law, regulating the manner in which the stock of the bank shall be transferred, its directors elected or appointed, its property transferred, its general business conducted and the privileges granted to it by law exercised and enjoyed.

HISTORY: 1962 Code Section 8‑133; 1952 Code Section 8‑133; 1942 Code Section 7845; 1932 Code Section 7874; Civ. C. ‘22 Section 4001; Civ. C. ‘12 Section 2663; Civ. C. ‘02 Section 1778; R. S. 1541; 1885 (19) 214.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 56.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 81, Adoption of Bylaws.

**SECTION 34‑3‑240.** Other powers of directors.

The directors may:

(1) Appoint all necessary officers and employees of the corporation, fix their compensation and take security for the faithful discharge of their respective duties;

(2) Prescribe the manner of paying for the stock of the corporation and the transfer thereof; and

(3) Prescribe from time to time such penalties for the nonpayment of subscriptions to the capital stock of the corporation as they may deem proper.

HISTORY: 1962 Code Section 8‑134; 1952 Code Section 8‑134; 1942 Code Section 7845; 1932 Code Section 7874; Civ. C. ‘22 Section 4001; Civ. C. ‘12 Section 2663; Civ. C. ‘02 Section 1778; R. S. 1541; 1885 (19) 214.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 206.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 55, Payment for Shares.

S.C. Jur. Banks and Banking Section 56, Penalties for Nonpayment of Subscriptions.

S.C. Jur. Banks and Banking Section 75, Extent of Liability.

S.C. Jur. Banks and Banking Section 80, Supervision of Officers and Employees.

S.C. Jur. Banks and Banking Section 85, Election of Officers.

**SECTION 34‑3‑250.** Association with national reserve association.

Any bank, banking association or trust company chartered and engaged in the banking business under the laws of this State may associate itself with any national reserve association of the United States or any branch thereof under any law enacted by the Congress of the United States and may invest such part of its capital or surplus therein as may be necessary to acquire and preserve its membership in such association.

HISTORY: 1962 Code Section 8‑135; 1952 Code Section 8‑135; 1942 Code Section 7842; 1932 Code Section 7875; Civ. C. ‘22 Section 4002; 1914 (28) 588.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 101, Association With National Reserve System.

**SECTION 34‑3‑260.** Transaction of business by wholly‑owned subsidiary of state bank or trust company.

Notwithstanding any other provision of the law, a wholly‑owned subsidiary of a state bank or trust company, provided both subsidiary and the parent are corporations organized and existing pursuant to the laws of the State of South Carolina, shall hereafter be permitted to establish offices, operate and conduct such bank related business as authorized by its Articles of Incorporation (Charter) just as if it were not a wholly‑owned subsidiary of a bank or trust company; provided, however, that the State Board of Financial Institutions shall impose upon such subsidiary, instructions, regulations and limitations with a view to effectuating maximum uniformity with those instructions, regulations and limitations imposed now and from time to time by law and regulation upon the organization and operation of any wholly‑owned subsidiary of a bank holding company; provided, further, that nothing contained herein shall prevent the State Board of Financial Institutions, at any time in the future, from imposing upon such subsidiary such additional instructions, regulations and limitations as it deems appropriate to protect the assets of its parent.

HISTORY: 1979 Act No. 154 Section 1.

CROSS REFERENCES

For provisions relating to the State Board of Financial Institutions generally, see Sections 34‑1‑10 et seq.

ARTICLE 5

Periodic Statements and Examinations

**SECTION 34‑3‑310.** Examination of banks.

The State Board of Bank Control may cause to be made at any time such examination of the affairs of any bank as it may deem necessary to inform it as to the financial condition of such bank and the Commissioner shall make a report thereon to the Board at the earliest practicable date.

HISTORY: 1962 Code Section 8‑251; 1952 Code Section 8‑251; 1942 Code Section 7829‑7; 1936 (39) 1484.

CROSS REFERENCES

Examination of banks and trust companies doing a trust business, see Section 34‑21‑20.

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

LIBRARY REFERENCES

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

RESEARCH REFERENCES

Encyclopedias

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

S.C. Jur. Banks and Banking Section 82, Review of Reports and Statements.

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

**SECTION 34‑3‑320.** Examination fees; number of examinations annually.

The State Board of Financial Institutions shall fix the examination fees of banks and savings and loan associations on a scale which will yield sufficient revenue to defray the entire expense of examinations for each bank and savings and loan association. Provided, that the board shall make at least one examination every twenty‑four months of all banks and savings and loan associations.

HISTORY: 1962 Code Section 8‑252; 1952 Code Section 8‑252; 1942 Code Section 7829‑5; 1936 (39) 1484, 1713; 1964 (53) 2069; 1980 Act No. 457; 1996 Act No. 329, Section 2, eff upon approval (became law without the Governor’s signature on May 21, 1996).

Effect of Amendment

The 1996 amendment, in the last sentence, replaced “eighteen” with “twenty‑four” preceding “months”.

CROSS REFERENCES

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

LIBRARY REFERENCES

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

RESEARCH REFERENCES

Encyclopedias

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

**SECTION 34‑3‑330.** Federal examinations.

Any examination made under the authority of any agency of the Federal Government may be accepted by the Board, in its discretion, as equivalent to an examination made under the terms of Section 34‑3‑320.

HISTORY: 1962 Code Section 8‑254; 1952 Code Section 8‑254; 1942 Code Section 7829‑5; 1936 (39) 1484, 1713.

RESEARCH REFERENCES

Encyclopedias

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

**SECTION 34‑3‑340.** Reports and examinations by Federal Deposit Insurance Corporation.

The Commissioner of Banking may also, in his discretion, accept any report which may have been obtained by the Federal Deposit Insurance Corporation relative to the condition of a banking institution within a reasonable period in lieu of a report authorized by the laws of this State to be required of such institution by his department, provided copies of such report are furnished to the Commissioner of Banking.

The Commissioner may furnish to the Corporation, or to any official or examiner thereof, a copy or copies of any or all examinations made of any such banking institutions and of any or all reports made by any of them and may give access to and disclose to the Corporation or any official or examiner thereof any and all information possessed by the office of the Commissioner with reference to the condition of affairs of any such insured institution.

Nothing in this section shall be construed to limit the duty of any banking institution in this State, deposits in which are to any extent insured under the provisions of Section 8 of the “Banking Act of 1933” (Section 12B of the Federal Reserve Act, as amended) or of any amendment of such act, its amendments or substitutions, or the requirements of the Corporation relative to examinations and reports nor to limit the powers of the Commissioner of Banking with reference to examinations and reports under existing law.

HISTORY: 1962 Code Section 8‑255; 1952 Code Section 8‑255; 1942 Code Section 7837; 1935 (39) 482; 1936 (39) 1484.

**SECTION 34‑3‑350.** Directors shall review reports of examinations.

Upon the examination of any State banking institution the State Board of Bank Control shall, as soon as it can conveniently do so, forward a copy of the report of the examination to the cashier of the bank who shall within thirty days of receipt of the report call a meeting of the directors of the bank for the purpose of reviewing the report and taking such action as is necessary. In forwarding such report to the cashier the Board shall use the form of notice contained in Section 34‑3‑360 and in certifying to the Board that such reports have been reviewed by the directors the president or cashier shall use the form contained in Section 34‑3‑370 and all directors who were present at the meeting shall sign the form contained in Section 34‑3‑370, certifying that they have received the report of the Board.

HISTORY: 1962 Code Section 8‑256; 1952 Code Section 8‑256; 1942 Code Section 7869; 1932 Code Section 7877; 1929 (36) 127; 1933 (38) 296; 1936 (39) 1484.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 82, Review of Reports and Statements.

S.C. Jur. Banks and Banking Section 88, Cashier.

**SECTION 34‑3‑360.** Form of notice to cashier.

The form of notice from the State Board of Bank Control to the cashier of the bank referred to in Section 34‑3‑350 shall be as follows:

To the cashier: In accordance with the law I enclose copy of the report of examination of your bank made \_\_\_\_\_\_\_\_\_\_, 19\_\_\_, by the State Board of Bank Control, \_\_\_\_\_\_\_\_\_\_, with the request that it be considered at a meeting of your directors to be held within thirty days from this date and a record of the action taken thereon entered upon the minutes. Please also fill out and return the form attached.

|  |  |
| --- | --- |
|  |  |
|  | State Board of Bank Control. |

HISTORY: 1962 Code Section 8‑257; 1952 Code Section 8‑257; 1942 Code Section 7869; 1932 Code Section 7877; 1929 (36) 127; 1933 (38) 296; 1936 (39) 1484.

**SECTION 34‑3‑370.** Form of report to State Board.

The form of report to the State Board of Bank Control referred to in Section 34‑3‑350 shall be as follows:

To the State Board of Bank Control:

The report of the recent examination of this bank has been received, was submitted to the directors at a board meeting held \_\_\_\_\_\_\_\_\_\_ and was duly considered and a record of the action taken made upon the minutes.

|  |  |
| --- | --- |
|  |  |
|  |  |
|  | (President or Cashier) |
|  |  |
| Name and location of bank. |  |

We, the undersigned directors of \_\_\_\_\_\_\_\_\_\_ bank, have reviewed the report of the State Board of Bank Control under date of \_\_\_\_\_\_\_\_\_\_.

HISTORY: 1962 Code Section 8‑258; 1952 Code Section 8‑258; 1942 Code Section 7869; 1932 Code Section 7877; 1929 (36) 127; 1933 (38) 296; 1936 (39) 1484.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 88, Cashier.

**SECTION 34‑3‑380.** Report of condition.

All institutions doing business in this State in lending money and receiving deposits, under acts of incorporation granted by the State, under penalty of a forfeiture of their charters, shall provide when and as called for by the State Board of Financial Institutions, without previous notice, a correct report of the condition and business of the institution. The report shall contain a statement under oath by the president or cashier of the institution of the amount of the capital stock paid in, deposits, discounts, property, and liabilities of the institution verified by three of the directors. This section applies to all private banking institutions whether chartered or not. The board shall accept in lieu of the report required by this section a report of condition filed with the federal banking agencies.

HISTORY: 1962 Code Section 8‑259; 1952 Code Section 8‑259; 1942 Code Section 7861; 1932 Code Sections 1354, 7858; Cr. C. ‘22 Sections 245, 3988; Cr. C. ‘12 Sections 255, 2642; Civ. C. ‘02 Section 1766; G. S. 1352; R. S. 1468; 1874 (15) 526; 1904 (24) 398; 1909 (26) 90; 1933 (36) 296; 1936 (39) 1484; 1985 Act No. 128, Section 3; 1995 Act No. 116, Section 1, eff (became law without the Governor’s signature on June 13, 1995).

Effect of Amendment

The 1995 amendment provided for submitting a report of condition filed with federal banking agencies in lieu of the report required by this section.

CROSS REFERENCES

This section and Sections 34‑3‑390 to 34‑3‑420 not applying to national banks, see Section 34‑3‑20.

Federal Aspects

Federal Deposit Insurance Corporation, see 12 U.S.C.A. Sections 265, 1811 et seq.

LIBRARY REFERENCES

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

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 17, Report of Condition.

S.C. Jur. Banks and Banking Section 88, Cashier.

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

**SECTION 34‑3‑390.** Repealed by 1995 Act No. 116, Section 3, eff upon approval (became law without the Governor’s signature on June 13, 1995).

Editor’s Note

Former Section 34‑3‑390 was entitled “Effect of failure to publish report of condition” and was derived from 1962 Code Section 8‑260; 1952 Code Section 8‑260; 1942 Code Section 7861; 1932 Code Sections 1354, 7858; Cr. C. ‘22 Sections 245, 3988; Cr. C. ‘12 Sections 255, 2642; Civ. C. ‘02 Section 1766; G. S. 1352; R. S. 1468; 1874 (15) 526; 1904 (24) 398; 1909 (26) 90; 1933 (36) 296; 1936 (39) 1484.

**SECTION 34‑3‑400.** Repealed by 1995 Act No. 116, Section 3, eff upon approval (became law without the Governor’s signature on June 13, 1995).

Editor’s Note

Former Section 34‑3‑400 was entitled “Statements required from branch banks” and was derived from 1962 Code Section 8‑261; 1952 Code Section 8‑261; 1942 Code Section 7863; 1932 Code Section 7859; Civ. C. ‘22 Section 3989; 1914 (28) 587; 1931 (37) 289.

**SECTION 34‑3‑410.** Repealed by 1995 Act No. 116, Section 3, eff upon approval (became law without the Governor’s signature on June 13, 1995).

Editor’s Note

Former Section 34‑3‑410 was entitled “Publishing statements by banks” and was derived from 1962 Code Section 8‑262; 1952 Code Section 8‑262; 1942 Code Section 7862; 1932 Code Section 7860; Civ. C. ‘22 Section 3990; Civ. C. ‘12 Sections 2651, 2652; 1909 (26) 91; 1913 (28) 65; 1919 (31) 48; 1933 (38) 296; 1936 (39) 1484; 1943 (43) 167; 1987 Act No. 63 Section 1, eff April 28, 1987.

**SECTION 34‑3‑420.** Statement shall be sent to Board; failure to report.

The statements referred to in Section 34‑3‑380 shall be sent to the State Board of Financial Institutions within thirty days of the statement date requested and shall be in such form as may be required by the board. Any bank which fails to report within the time given, without excuse given to the board, shall be subject to a fine of ten dollars a day for each day’s delay, collectible by the board in any court of competent jurisdiction.

HISTORY: 1962 Code Section 8‑263; 1952 Code Section 8‑263; 1942 Code Section 7862; 1932 Code Section 7860; Civ. C. ‘22 Section 3990; Civ. C. ‘12 Sections 2651, 2652; 1909 (26) 91; 1913 (28) 65; 1919 (31) 48; 1933 (38) 296; 1936 (39) 1484; 1943 (43) 167; 1995 Act No. 116, Section 2, eff (became law without the Governor’s signature on June 13, 1995).

Effect of Amendment

The 1995 amendment revised the date the reports must be submitted, deleted the reference to Section 34‑3‑400, and substituted “State Board of Financial Institutions” for “State Board of Bank Control”.

RESEARCH REFERENCES

Encyclopedias

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

ARTICLE 7

Retention of Records

**SECTION 34‑3‑510.** Records shall be retained.

Every bank shall retain its business records for such periods as are or may be prescribed by or in accordance with the terms of this article. Each bank shall retain permanently the minute books of meetings of its shareholders and directors and all records which the State Board of Bank Control shall, in accordance with the terms of this article, require to be retained permanently. All other bank records shall be retained for such periods as the Board shall, in accordance with the terms of this article, prescribe.

HISTORY: 1962 Code Section 8‑265; 1960 (51) 1673; 1961 (52) 160.

CROSS REFERENCES

Retention of bank records, see S.C. Code of Regulations R. 15‑14.

RESEARCH REFERENCES

Encyclopedias

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

**SECTION 34‑3‑520.** Regulations classifying records.

The State Board of Bank Control shall from time to time issue regulations classifying all records kept by banks and prescribing the period for which records of each class shall be retained. The periods may be permanent or for a lesser term of years. The regulations may from time to time be amended or repealed. Prior to issuing any such regulation, the Board shall consider:

(1) Actions at law and administrative proceedings in which the production of bank records might be necessary or desirable;

(2) State and Federal statutes of limitation applicable to such actions or proceedings;

(3) The availability of information contained in bank records from other sources; and

(4) Such other matters as the Board shall deem pertinent, in order that its regulations will require banks to retain their records for as short a period as is commensurate with the interests of bank customers and shareholders and of the people of this State in having bank records available.

HISTORY: 1962 Code Section 8‑266; 1960 (51) 1673.

CROSS REFERENCES

Retention of bank records, see S.C. Code of Regulations R. 15‑14.

**SECTION 34‑3‑530.** Destruction of records.

Any bank may dispose of any records which have been retained for the period prescribed by or in accordance with the terms of this article for retention of records of its class, and shall thereafter be under no duty to procure such record in any action or proceeding. Whether or not in any given case destruction of such records prior to the minimum retention periods prescribed by or in accordance with the terms of this article constitutes negligence shall remain a question of fact to be determined by all circumstances in that case, and such earlier destruction shall not per se constitute negligence and no presumption of negligence shall arise therefrom.

HISTORY: 1962 Code Section 8‑267; 1960 (51) 1673.

CROSS REFERENCES

Retention of bank records, see S.C. Code of Regulations R. 15‑14.

**SECTION 34‑3‑540.** Copies and reproductions of bank records; admissibility in evidence.

(A) Any corporation, institution, or association whose deposits are insured by the federal government or an agency or a nonprofit corporation that has been designated by the State to originate or hold educational loans made to or on behalf of students may cause promissory notes, checks, drafts, and records kept by the corporation, institution, association, or agency to be copied or reproduced by:

(1) photostatic, photographic, or microfilming process; or

(2) electronic graphic imaging through scanning, digitizing, or other means.

(B) These processes or means must correctly copy, reproduce, or form a medium for copying or reproducing the original record so that an accurate facsimile of the original can be printed or otherwise reproduced on paper, film, or similar medium. The reproduction is considered 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 into evidence, regardless of whether the institution retains or disposes of the original, provided that the original document otherwise qualified as a business record pursuant to the South Carolina Uniform Business Records as Evidence Act or the appropriate state or federal rules of evidence.

HISTORY: 1962 Code Section 8‑268; 1956 (49) 1673; 1957 (50) 179; 1960 (51) 1673; 1985 Act No. 128, Section 4; 1995 Act No. 132, Section 1, eff June 28, 1995; 1998 Act No. 331, Section 1, eff June 9, 1998.

Effect of Amendment

The 1995 amendment revised the entities to which this section applies, and revised the manner in which records may be copied, reproduced and admitted into evidence.

The 1998 amendment designated the first paragraph and items (1) and (2) following it as subsection (A), and made a nonsubstantive change in that text; designated the remaining text as subsection (B); and in subsection (B), in the second sentence substituted “reproduction” for “printed reproduction”, deleted the designator for item (1), and deleted item (2) requiring certification of the copy by the custodian.

CROSS REFERENCES

Retention of bank records, see S.C. Code of Regulations R. 15‑14.

RESEARCH REFERENCES

Encyclopedias

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

S.C. Jur. Mortgages Section 121, Evidence; Sufficiency of Proof.

**SECTION 34‑3‑550.** Application of article.

This article shall be applicable to banks and trust companies chartered under the laws of this State, and to the extent that they are not in contravention of any law or regulation of the United States, the provisions of such article shall apply and inure to the benefit of national banking associations doing business in this State.

HISTORY: 1962 Code Section 8‑269; 1960 (51) 1673.

CROSS REFERENCES

Retention of bank records, see S.C. Code of Regulations R. 15‑14.

RESEARCH REFERENCES

Encyclopedias

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

ARTICLE 9

Relationship with Federal Deposit Insurance Corporation

**SECTION 34‑3‑610.** “Banking institution” defined.

The term “banking institution,” as used in this article shall be construed to mean any bank, trust company, bank and trust company, stock savings bank, mutual savings bank or cash depository which is now or may hereafter be organized under the laws of this State.

HISTORY: 1962 Code Section 8‑271; 1952 Code Section 8‑271; 1942 Code Section 7837; 1935 (39) 482; 1936 (39) 1484.

RESEARCH REFERENCES

Encyclopedias

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

**SECTION 34‑3‑620.** Relationship with Federal Deposit Insurance Corporation generally.

Any banking institution organized under the laws of this State may, on the authority of its board of directors and upon approval of the State Board of Bank Control, enter into such contracts, incur such obligations and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers or liquidators by virtue of those provisions of Section 8 of the Federal “Banking Act of 1933” (Section 12B of the Federal Reserve Act, as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits or of any other provisions of that or of any other act or resolution of Congress to aid, regulate or safeguard banking institutions and their depositors including any amendments of such provisions or any substitutions therefor. And any such banking institution may also, upon approval of the State Board of Bank Control subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

HISTORY: 1962 Code Section 8‑272; 1952 Code Section 8‑272; 1942 Code Section 7837; 1935 (39) 482; 1936 (39) 1484.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Sections 941 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 13, The Federal Deposit Insurance Corporation.

S.C. Jur. Banks and Banking Section 102, Association With Federal Deposit Insurance Corporation.

**SECTION 34‑3‑630.** Federal Deposit Insurance Corporation as receiver or liquidator.

The Federal Deposit Insurance Corporation may, with the approval of the State Board of Bank Control, be and act without bond as receiver or liquidator of any banking institution the deposits in which are to any extent insured by the Corporation and which shall have been closed on account of inability to meet the demands of its depositors.

The State Board of Bank Control may, in the event of such closing, tender to the Corporation the appointment as receiver or liquidator of such banking institution and, if the Corporation accepts such appointment, it shall have all the powers and privileges provided by the laws of this State with respect to a receiver or liquidator of a banking institution, its depositors and other creditors and be subject to all the duties of such receiver or liquidator.

HISTORY: 1962 Code Section 8‑273; 1952 Code Section 8‑273; 1942 Code Section 7837; 1935 (39) 482; 1936 (39) 1484.

CROSS REFERENCES

Appointing Federal Deposit Insurance Corporation as conservator, see Section 34‑5‑30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 132, Status as Appointed Receiver.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Miscellaneous: Banks and Banking: The Role of the FDIC. 30 S.C. L. Rev. 123.

NOTES OF DECISIONS

In general 1

Constitutionality 2

Propriety of Board decisions 3

1. In general

Obvious purpose of Code 1976 Section 34‑3‑630 is to take full advantage of protection provided by Federal Deposit Insurance Act by permitting FDIC to serve as receiver in any case where federal act authorizes FDIC to do so; Section 34‑3‑630 must be construed as authorization to State Board of Bank Control and not as restriction. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951.

Code 1976 Section 34‑3‑630 authorizes Federal Deposit Insurance Corporation to be appointed as receiver when state bank has been closed “on account of inability to meet the demands of its depositors” as that phrase is defined in Federal Deposit Insurance Act (12 USCA Section 1821(e)). Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951.

2. Constitutionality

Shareholders of failed bank, which was organized under and owed its very existence to state banking laws, were estopped to challenge constitutionality of Code 1976 Sections 34‑3‑630, 34‑3‑640, and 34‑3‑660 on due process grounds. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951.

Code 1976 Sections 34‑3‑630, 34‑3‑640 and 34‑3‑660 are not unconstitutional as written under Fourteenth Amendment of United States Constitution. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951.

Code 1976 Section 34‑3‑630 is not unconstitutionally vague insofar as it authorizes Federal Deposit Insurance Corporation as to act as receiver of bank which has been closed “on account of inability to meet the demands of its depositors.” Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951.

3. Propriety of Board decisions

Decision of State Board of Bank Control to close bank and appoint Federal Deposit Insurance Corporation as receiver, and decision of banking commissioner and state court to approve sale of bank’s assets to FDIC, were proper and in accordance with provisions of Code 1976 Sections 34‑3‑630, 34‑3‑640, and 34‑3‑660. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951. Banks And Banking 63.5

Since neither bank, parent company nor shareholders exercised right of appeal from State Board of Bank Control and state court decisions effectuating closing of bank, appointment of Federal Deposit Insurance Corporation as receiver, and sale of bank’s assets to FDIC, those decisions were not subject to collateral attack in federal court proceeding. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951.

Decision of State Board of Bank Control to close bank and appoint Federal Deposit Insurance Corporation as receiver would not be overturned for abuse of discretion where there were reasonable grounds for determination that bank should be closed on account of insolvency and inability to meet demands of depositors. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951. Banks And Banking 63.5

**SECTION 34‑3‑640.** Assets pass to Federal Deposit Insurance Corporation on appointment as receiver of liquidator.

Upon the acceptance of the appointment as receiver or liquidator as aforesaid by the Federal Deposit Insurance Corporation, the possession of and title to all the assets, business and property of such banking institution of every kind and nature shall, with the consent of the Commissioner of Banking, pass to and vest in the Corporation.

HISTORY: 1962 Code Section 8‑274; 1952 Code Section 8‑274; 1942 Code Section 7837; 1935 (39) 482; 1934 (39) 1484.

NOTES OF DECISIONS

In general 1

Constitutionality 2

Propriety of Board decisions 3

1. In general

After FDIC purchases assets of closed bank holding company, including company’s claims against its officers and directors for mismanagement, FDIC is not sole party entitled to assert claims until district court has adjudicated claims of shareholders. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (ABTS) (C.A.4 (S.C.) 1977) 558 F.2d 711, on remand 460 F.Supp. 549.

Code 1962 Sections 8‑274 and 8‑276 [Code 1976 Sections 34‑3‑640 and 34‑3‑660] gives authority to the Federal Deposit Insurance Corporation (FDIC), acting as receiver of a closed bank, to sell all assets of the bank, including claims of the bank against its officers and directors, to the FDIC in its insurer capacity. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (ABTS) (D.C.S.C. 1976) 412 F.Supp. 302, vacated 558 F.2d 711, on remand 460 F.Supp. 549.

2. Constitutionality

Shareholders of failed bank, which was organized under and owed its very existence to state banking laws, were estopped to challenge constitutionality of Code 1976 Sections 34‑3‑630, 34‑3‑640, and 34‑3‑660 on due process grounds. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951.

Code 1976 Sections 34‑3‑630, 34‑3‑640 and 34‑3‑660 are not unconstitutional as written under Fourteenth Amendment of United States Constitution. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951.

3. Propriety of Board decisions

Decision of State Board of Bank Control to close bank and appoint Federal Deposit Insurance Corporation as receiver, and decision of banking commissioner and state court to approve sale of bank’s assets to FDIC, were proper and in accordance with provisions of Code 1976 Sections 34‑3‑630, 34‑3‑640, and 34‑3‑660. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951. Banks And Banking 63.5

**SECTION 34‑3‑650.** Federal Deposit Insurance Corporation subrogated to rights of depositors paid by it.

Whenever any banking institution shall have been closed as aforesaid and the Federal Deposit Insurance Corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, the Corporation, whether or not it shall become receiver or liquidator of such closed banking institution, shall be subrogated to all rights of the owners of such deposits against such closed banking institution in the same manner and to the same extent as subrogation of the Corporation is provided for in subsection (1) of Section 12B of the Federal Reserve Act, as amended (being Section 8 of the Federal “Banking Act of 1933”) or in any amendments thereof or any substitutions therefor, in the case of the closing of a national bank. But the rights of depositors and other creditors of such closed institutions shall be determined in accordance with the applicable provisions of the laws of this State.

HISTORY: 1962 Code Section 8‑275; 1952 Code Section 8‑275; 1942 Code Section 7837; 1935 (39) 482; 1936 (39) 1484.

Federal Aspects

Subrogation rights of Federal Deposit Insurance Corporation against closed banking institution under Federal Deposit Insurance Corporation Act (12 U.S.C.A. Sections 1811 et seq.), to which Section 12B of Federal Reserve Act (Section 8 of Federal Banking Act of 1933) has been transferred, see 12 U.S.C.A. Section 1821.

**SECTION 34‑3‑660.** Closed institutions may borrow or sell assets to Federal Deposit Insurance Corporation.

With respect to any banking institution which is closed (a) on account of inability to meet the demands of its depositors, (b) by action of the Commissioner of Banking or of a court or (c) by action of its directors or in the event of its insolvency or suspension, the Commissioner of Banking or the receiver or liquidator of such institution with the permission of the Commissioner of Banking may borrow from the Federal Deposit Insurance Corporation and furnish any part or all of the assets of such institution to such Corporation as security for a loan from it. But when the Corporation is acting as such receiver or liquidator the order of a court of record of competent jurisdiction shall be first obtained approving such loan. Upon an order of a court of record of competent jurisdiction and with the permission of the Commissioner of Banking, the receiver or liquidator of any such institution may sell to the Corporation any part or all of the assets of such an institution. The provisions of this section shall not be construed to limit the power of any banking institution, the Commissioner of Banking or receivers or liquidators to pledge or sell assets in accordance with any existing law.

HISTORY: 1962 Code Section 8‑276; 1952 Code Section 8‑276; 1942 Code Section 7837; 1935 (39) 482; 1936 (39) 1484.

NOTES OF DECISIONS

In general 1

Constitutionality 2

Propriety of Board decisions 3

1. In general

After FDIC purchases assets of closed bank holding company, including company’s claims against its officers and directors for mismanagement, FDIC is not sole party entitled to assert claims until district court has adjudicated claims of shareholders. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (ABTS) (C.A.4 (S.C.) 1977) 558 F.2d 711, on remand 460 F.Supp. 549.

Bank which, on certain date, failed to meet demand for repayment of $9 million promissory note, could not have continued for long to meet demands of depositors and other creditors, and had liabilities exceeding true value of its assets, was insolvent for purposes of Code 1976 Section 34‑3‑660 on that date, whether “insolvency” be defined as equitable insolvency or bankruptcy insolvency. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951.

Code 1962 Sections 8‑274 and 8‑276 [Code 1976 Sections 34‑3‑640 and 34‑3‑660] gives authority to the Federal Deposit Insurance Corporation (FDIC), acting as receiver of a closed bank, to sell all assets of the bank, including claims of the bank against its officers and directors, to the FDIC in its insurer capacity. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (ABTS) (D.C.S.C. 1976) 412 F.Supp. 302, vacated 558 F.2d 711, on remand 460 F.Supp. 549.

2. Constitutionality

Shareholders of failed bank, which was organized under and owed its very existence to state banking laws, were estopped to challenge constitutionality of Code 1976 Sections 34‑3‑630, 34‑3‑640, and 34‑3‑660 on due process grounds. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951.

Code 1976 Sections 34‑3‑630, 34‑3‑640 and 34‑3‑660 are not unconstitutional as written under Fourteenth Amendment of United States Constitution. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951.

3. Propriety of Board decisions

Decision of State Board of Bank Control to close bank and appoint Federal Deposit Insurance Corporation as receiver, and decision of banking commissioner and state court to approve sale of bank’s assets to FDIC, were proper and in accordance with provisions of Code 1976 Sections 34‑3‑630, 34‑3‑640, and 34‑3‑660. Federal Deposit Ins. Corp. v. American Bank Trust Shares, Inc. (D.C.S.C. 1978) 460 F.Supp. 549, affirmed 629 F.2d 951. Banks And Banking 63.5

ARTICLE 11

Conversion of National Bank Into State Bank; Consolidation or Merger

**SECTION 34‑3‑810.** National bank may become State bank; procedure.

Any banking corporation organized under the laws of the United States and doing business in this State may become an incorporated bank of this State with all the powers and subject to all the obligations and duties of banks incorporated under the laws of this State, provided such banking corporation has authority by virtue of the laws of the United States to dissolve its organization as a national banking corporation.

A national banking corporation desiring to become such an incorporated bank under the laws of this State shall proceed in the following manner:

(1) It shall take such action in the manner prescribed or authorized by the laws of the United States as shall make its dissolution as a national banking corporation effective at a specified future date; and

(2) A majority of its directors shall thereafter and before the time when its dissolution becomes effective execute under their hands and seals in duplicate, upon the authority of a resolution adopted by the owners of at least two thirds of its capital stock at a meeting held after ten days’ notice thereof given to each stockholder by registered mail, a certificate setting forth the following facts:

(a) its name and place of business as a national banking association and the name that it proposes to use as its corporate name after becoming a banking corporation under the laws of this State,

(b) the amount of its capital stock and the number of shares into which it is divided and the par value of each,

(c) the names of its directors and of its officers at the date of its dissolution as a national bank and who will constitute its directors and officers as a State bank and

(d) the date upon which its dissolution as a national banking association shall become effective and upon which date it shall commence business as a bank under the laws of this State.

Such certificate in duplicate shall be thereupon lodged with the Secretary of State, who shall endorse on the certificate in duplicate the date of its filing in his office. One duplicate of the certificate shall be filed in the office of the Secretary of State and the other so endorsed shall be issued to the bank and be recorded in the office of the register of deeds in the county in which the principal place of business of the bank is located.

HISTORY: 1962 Code Section 8‑121; 1952 Code Section 8‑121; 1942 Code Section 7866; 1932 Code Section 7834; 1926 (34) 945.

Code Commissioner’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

CROSS REFERENCES

Use of certified mail, see Section 2‑7‑90.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 43, Merger or Consolidation of National Bank Into a State Bank.

**SECTION 34‑3‑820.** Time corporate existence as State bank commences.

After the issuance of such certificate by the Secretary of State and the payment to him of the same fees as would be payable for the incorporation of a bank under the laws of this State with a similar capital stock, the corporate existence of such bank as a State bank shall begin as soon as its dissolution as a national banking corporation becomes effective.

HISTORY: 1962 Code Section 8‑122; 1952 Code Section 8‑122; 1942 Code Section 7866; 1932 Code Section 7834; 1926 (34) 945.

**SECTION 34‑3‑830.** Transfer of assets, property and rights of national bank.

At the time the corporate existence of such State bank begins all the property of the former national banking corporation, including all of its right, title and interest in and to all property of whatsoever 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, belonging or appertaining to it or which would inure to it shall immediately by act of law and without any conveyance or transfer and without any further act or deed be vested in and become the property of such State bank, which shall have, hold and enjoy them in its own right as fully and to the same extent as they were possessed, held and enjoyed by the national banking corporation. The State bank shall be deemed to be a continuation of the entity and of the identity of the national banking corporation operating under and pursuant to the laws of this State, and all the rights, obligations and relations of the national banking corporation to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust and in or in respect to any executorship or trusteeship or other trust or fiduciary function shall remain unimpaired, and such State bank, as of the beginning of its corporate existence, shall by operation of this section succeed to all such rights, obligations, relations and trust and the duties and liabilities connected therewith and shall execute and perform each and every such trust or relation in the same manner as if such State bank had itself assumed the trust or relation, including the obligations and liabilities connected therewith. If such national banking corporation is acting as administrator, coadministrator, executor, coexecutor or cotrustee of or in respect to any estate or trust being administered under the laws of this State such relation, as well as any other similar fiduciary relation, and all rights, privileges, duties and obligations connected therewith shall remain unimpaired and shall continue into and in the State bank, from and as of the beginning of its corporate existence, irrespective of the date when such relation may have been created or established and irrespective of the date of any trust agreement relating thereto or the date of the death of any testator or decedent whose estate is being so administered. Neither the act of the national banking corporation, under Section 34‑3‑810 in fixing the date of or providing for its liquidation or dissolution, nor its liquidation or dissolution under the national banking laws, nor any other thing done in connection with the change from a national to a State bank shall, in respect to any such executorship, trusteeship or similar fiduciary relation, be deemed to be or to effect, under the laws of this State, a renunciation or revocation of any letters of administration or letters testamentary to such relation, nor a removal or resignation for any such executorship or trusteeship, nor shall they be deemed to be of the same effect as if the executor or trustee had died or otherwise become incompetent to act.

HISTORY: 1962 Code Section 8‑123; 1952 Code Section 8‑123; 1942 Code Section 7866; 1932 Code Section 7834; 1926 (34) 945.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 43, Merger or Consolidation of National Bank Into a State Bank.

NOTES OF DECISIONS

In general 1

1. In general

Policy of section applies to conversion of State bank into national bank. This and other like statutes providing for the continuance of fiduciary powers in cases of consolidation of corporations, merger of a State bank with a national bank and conversion of a national bank into a State bank indicate that the General Assembly has laid down a policy in the State for the continuance of trust powers; so in the case of a conversion of a State bank into a national bank the Supreme Court held this policy applicable in the absence of any State or Federal statute expressly governing the situation. Citizens & Southern Nat. Bank of South Carolina v. Conner (S.C. 1940) 195 S.C. 203, 11 S.E.2d 271, 131 A.L.R. 748. Banks And Banking 66; Trusts 159

Trust fund investments. This section [Code 1962 Section 8‑123] enabling trustee bank, changing from national to State bank, to continue administering trust, did not give bank power to change investment of trust funds. Bass v. Adams (S.C. 1931) 163 S.C. 381, 161 S.E. 697. Banks And Banking 65

Trust estate did not become part of stock of new bank subsequently becoming insolvent, formed by merger of trustee bank, so as to make estate liable as stockholder where change of investment of trust funds was not made in manner prescribed by will of settlor. Bass v. Adams (S.C. 1931) 163 S.C. 381, 161 S.E. 697. Banks And Banking 47(1)

**SECTION 34‑3‑840.** Directors and organization.

The directors and officers of the national banking corporation in office at the time of its dissolution shall be the directors and officers of the bank created in pursuance of this article until the first annual election of directors and officers thereafter and may take all necessary measures to perfect its organization and to adopt such bylaws and regulations concerning its business and management as may be proper and not inconsistent with law.

HISTORY: 1962 Code Section 8‑124; 1952 Code Section 8‑124; 1942 Code Section 7866; 1932 Code Section 7834; 1926 (34) 945.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 43, Merger or Consolidation of National Bank Into a State Bank.

**SECTION 34‑3‑850.** Consolidation or merger of banks and trust companies.

(A) A bank or trust company organized under the laws of South Carolina or the acts of Congress, and doing business in this State, may merge or consolidate with, or sell or transfer some or all of its assets and liabilities to any other such bank or trust company when all applicable laws governing the transactions are first complied with.

(B) When any such bank or trust company executes a transaction under the provisions of subsection (A):

(1) all the then rights, powers, privileges, duties, appointments, and account designations regarding each fiduciary capacity or other relationship transferred, whether created by will, indenture, trust, court order, agreement, or other means;

(2) title to all property, real, personal, and mixed;

(3) all debts due on whatever account;

(4) all other choses in action held in a fiduciary capacity;

(5) each and every other interest, as a fiduciary, or contractual relationship, of or belonging to:

(a) the disappearing corporation in the case of a merger;

(b) each corporation in the case of a consolidation; or

(c) the transferor, but only to the extent transferred, in the case of a transfer, as the case may be, shall, upon the effective date of the transaction and without further act or deed, vest in, devolve upon, and thereafter be performed by the resultant bank or trust company, or transferee, as the case may be.

(C) A merger, consolidation, or transfer described in this section does not constitute a resignation or disqualification of any party to the merger or consolidation or a resignation or disqualification of the transferor or transferee, to serve as a fiduciary, or in any other capacity, under any documents, instruments, or agreements in existence or in effect prior to or after the merger, consolidation, or transfer, as the case may be, or a relinquishment of trust powers by any party to a merger or consolidation or by the transferor or transferee, as the case may be. However, in the case of a transfer, the transferor may resign as a fiduciary in favor of the transferee.

(D) When any such merger or consolidation is approved and effected as provided for by law, all the rights, franchises, and fiduciary and other interests of such bank or trust company merged or consolidated in and to all property real, personal, and mixed and choses in action is considered to be transferred to and vested in the resultant bank or trust company without any deed or any other transfer. Upon the transfer of some or all of the assets of such bank or trust company pursuant to applicable law, to the extent transferred, all of the rights, franchises, and fiduciary and other interests of such bank or trust company in and to all property, real, personal, and mixed and choses in action are considered to have been transferred to and vested in the transferee bank or trust company without any deed or further transfer. In the case of such a merger or consolidation, the rights of creditors of such bank or trust company are preserved unimpaired, and all lawful debts and liabilities of such bank or trust company are considered to have been assumed by the resultant bank or trust company. In the case of a transfer, the rights of creditors and the rights of others to any claim, action, or proceeding pending against the transferor as of the date of the transfer, to the extent so transferred, are considered to have been transferred to and assumed by the transferee bank or trust company.

(E) Any previous merger, consolidation, or transfer of any national bank to or into any state bank or trust company doing business in this State, in accordance with the provisions of this section, is ratified and confirmed subject to the conditions of this section.

(F) In the case of a transfer, where the fiduciary or other relationship is a matter of public record, the transferor and transferee both shall use reasonable efforts to execute an affidavit in recordable form giving notice of the transfer which affidavit must be filed in the appropriate public records. Where the fiduciary or other relationship is not a matter of public record, the transferor and transferee both shall use reasonable efforts to give notice of the transfer to the person or entity originally responsible for establishing the fiduciary or other relationship, if possible, and if not then to the person or entity most directly affected by the change of fiduciary or change of relationship.

HISTORY: 1962 Code Section 8‑125; 1952 Code Section 8‑125; 1942 Code Section 7867; 1932 Code Section 7876; 1930 (36) 1345; 1969 (56) 299; 1987 Act No. 76 Section 1, eff July 1, 1987.

Effect of Amendment

The 1987 amendment rewrote this section.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 37, Authority to Merge or Consolidate.

S.C. Jur. Banks and Banking Section 38, Requirements for Plan of Merger or Consolidation.

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

S.C. Jur. Banks and Banking Section 40, Effect of Merger or Consolidation‑ Assets Vest in Resulting Bank.

S.C. Jur. Banks and Banking Section 41, Effect of Merger or Consolidation‑ Rights of Creditors/Others.

S.C. Jur. Banks and Banking Section 44, Merger or Consolidation of State Bank Into a National Bank.

S.C. Jur. Banks and Banking Section 45, Sale and Other Disposition of Assets.