

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

S

D

SENATE DRS55100-LT-62 (3/9)

Short Title: Interstate Trust Services on Reciprocal Basis. (Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR INTERSTATE SERVICES ON A RECIPROCAL BASIS AND TO MAKE TECHNICAL CORRECTIONS TO ARTICLE 24 OF CHAPTER 53 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 53-301(a)(34) reads as rewritten:

"(34) "Office" with respect to a trust institution means its principal office, a trust office, or a representative trust office, but not a ~~branch~~ branch, with respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the term "office" also means the registered office."

**SECTION 2.** G.S. 53-301(a) is amended by adding the following new subdivision to read:

"(39a) "Registered office" means a registered office as described in G.S. 55D-30."

**SECTION 3.** G.S. 53-301(a)(54) reads as rewritten:

"(54) "Trust office" means an office, other than the principal office, ~~at~~ through which a trust institution acts as a ~~fiduciary~~ fiduciary, including, with respect to an out-of-state trust institution or a foreign trust institution without a physical office in this State, the registered office."

**SECTION 4.** G.S. 53-306 reads as rewritten:

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

An out-of-state trust institution that establishes or acquires and maintains one or more trust offices or representative trust offices in this State under the provisions of this Part or that maintains one or more branches in this State may, subject to the provisions of this Part, conduct any activity ~~at~~ through such a trust office, representative trust

1 office, or branch that a State trust company or a State bank is authorized to conduct ~~at~~  
2 through a trust office, representative trust office, or branch under the laws of this State."

3 **SECTION 5.** G.S. 53-307 reads as rewritten:

4 "**§ 53-307. Trust business of foreign trust institution.**

5 A foreign trust institution that establishes or acquires and maintains one or more  
6 trust offices in this State under the provisions of this Part may, subject to the provisions  
7 of this Part, also establish or acquire one or more representative trust offices and  
8 conduct any activity ~~at~~ through the trust offices or representative trust offices that a  
9 State trust company is authorized to conduct ~~at~~ through trust offices or representative  
10 trust offices under the laws of this State."

11 **SECTION 6.** G.S. 53-310 reads as rewritten:

12 "**§ 53-310. Offices of State trust companies.**

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

15 (b) A State trust company may engage in trust marketing ~~at~~ through a  
16 representative trust office as permitted by this Part.

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

22 **SECTION 7.** G.S. 53-314 reads as rewritten:

23 "**§ 53-314. Trust business ~~at~~ through a branch or trust office.**

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

30 **SECTION 8.** G.S. 53-317 reads as rewritten:

31 "**§ 53-317. Requirement of notice.**

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

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

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

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

8 **SECTION 9.** G.S. 53-318(a) reads as rewritten:

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

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

18 **SECTION 10.** G.S. 53-319(b) reads as rewritten:

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

- 23 (1) Evidence satisfactory to the Commissioner of compliance by the  
24 out-of-state trust institution with ~~any~~ all applicable requirements of  
25 Article 15 of Chapter 55 of the General Statutes;
- 26 (2) Evidence satisfactory to the Commissioner of compliance by the  
27 out-of-state trust institution with any applicable requirements of its  
28 home state regulator for maintenance of capital, for expansion within  
29 the borders of the home state, and for acquiring or establishing and  
30 maintaining each representative trust office in this State;
- 31 (3) Evidence satisfactory to the Commissioner that the out-of-state trust  
32 institution is not in a hazardous condition;
- 33 (4) ~~A~~ Unless waived by the Commissioner, a copy of the resolution  
34 adopted by the board of directors of the out-of-state trust institution (or  
35 similar governing body or a duly authorized committee thereof)  
36 authorizing the representative trust office;
- 37 (5) The proposed location of each proposed representative trust office; and  
38 (6) Payment of any fee set by rule."

39 **SECTION 11.** G.S. 53-320(a) reads as rewritten:

40 "(a) The Commissioner may examine any activity conducted through a trust office  
41 or representative trust office maintained in this State by an out-of-state trust institution  
42 to determine whether these activities are being conducted ~~the trust office or~~  
43 ~~representative trust office is being operated~~ in compliance with the laws of this State

1 and in accordance with safe and sound practices. The pertinent provisions of Part 4 of  
2 this Article shall apply to these examinations."

3 **SECTION 12.** G.S. 53-321(a) reads as rewritten:

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

- 6 (1) That activities of a trust office maintained by an out-of-state trust  
7 institution in this State ~~is being operated~~ are being conducted in  
8 violation of the laws of this State or any rule, order, or declaratory  
9 ruling issued by the Commissioner, or in an unsafe and unsound  
10 manner, or that the out-of-state trust institution does not meet or no  
11 longer meets the requirements of this Subpart for maintaining a trust  
12 office in this State; or  
13 (2) That an out-of-state trust institution is engaged in unauthorized trust  
14 activity.

15 In either event, the Commissioner may take any enforcement actions the  
16 Commissioner would be authorized to take if the trust office or the out-of-state trust  
17 institution were a State trust company and may issue an order temporarily or  
18 permanently prohibiting the out-of-state trust institution from engaging in trust business  
19 in this State."

20 **SECTION 13.** G.S. 53-322 reads as rewritten:

21 "**§ 53-322. Notice of transactions that cause a change in control.**

22 Each out-of-state trust institution that maintains a trust office or representative trust  
23 office in this State, or the home state regulator of the trust institution, shall give at least  
24 30 days' notice or, in the case of an emergency ~~transaction,~~ transaction or the cessation  
25 of trust activity in this State by an out-of-state trust institution or foreign trust institution  
26 whose only office in this State is a registered office, as much notice as practicable, to  
27 the Commissioner of:

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

37 **SECTION 14.** G.S. 53-323 reads as rewritten:

38 "**§ 53-323. Foreign trust institution application for trust office or representative**  
39 **trust office.**

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

- 1 (1) Evidence satisfactory to the Commissioner of compliance with ~~any~~ all  
2 applicable requirements of Article 15 of Chapter 55 of the General  
3 Statutes;
- 4 (2) Evidence satisfactory to the Commissioner of compliance by the  
5 foreign trust institution with any applicable requirements of its home  
6 country regulator for maintenance of capital, for expansion within the  
7 borders of its home country or within a political subdivision of its  
8 home country, and for acquiring or establishing and maintaining the  
9 trust office in this State;
- 10 (3) Evidence satisfactory to the Commissioner that the foreign trust  
11 institution is not in a hazardous condition;
- 12 (4) ~~A~~ Unless waived by the Commissioner, a copy of the resolution  
13 adopted by the board of directors of the foreign trust institution, or  
14 similar governing body or a duly-authorized committee thereof,  
15 authorizing the trust office; and
- 16 (5) Payment of any fee set by rule.

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

20 **SECTION 15.** G.S. 53-324(a) reads as rewritten:

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

26 **SECTION 16.** G.S. 53-326(a) reads as rewritten:

27 "(a) The Commissioner may examine any activity conducted through a trust office  
28 or representative trust office maintained in this State by a foreign trust institution to  
29 determine whether ~~the trust office or representative trust office is being operated~~ these  
30 activities are being conducted in compliance with the laws of this State and in  
31 accordance with safe and sound practices. The pertinent provisions of Part 4 of this  
32 Article shall apply to these examinations."

33 **SECTION 17.** G.S. 53-327(a) reads as rewritten:

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

- 36 (1) That activities of a trust office or representative trust office maintained  
37 by a foreign trust institution in this State ~~is being operated~~ are being  
38 conducted in violation of the laws of this State or any rule, order, or  
39 declaratory ruling issued by the Commissioner, or in an unsafe and  
40 unsound manner, or that the foreign trust institution does not meet or  
41 no longer meets the requirements of this Subpart for maintaining a  
42 trust office or representative trust office in this State; or
- 43 (2) That a foreign trust institution is engaged in unauthorized trust activity.

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

5 **SECTION 18.** G.S. 53-328 reads as rewritten:

6 "**§ 53-328. Notice of transactions that cause a change in control.**

7 Each foreign trust institution that maintains a trust office or representative trust  
8 office in this State, or the home country regulator of the foreign trust institution, shall  
9 give at least 30 days' notice (or, in the case of an emergency ~~transaction,~~ transaction or  
10 the cessation of trust activity in this State by an out-of-state trust institution or foreign  
11 trust institution whose only office in this State is a registered office, as much notice as  
12 practicable) to the Commissioner, in the form required by the Commissioner, of:

- 13 (1) Any merger, consolidation, share exchange, or other transaction that  
14 would cause a change of control of a foreign trust institution:  
15 a. That would be subject to Subpart D of Part 3 of this Article if  
16 the foreign trust institution were a State trust company; or  
17 b. Is required to be filed with any bank supervisory agency;  
18 (2) Any transfer of all or substantially all of the accounts or account assets  
19 of the foreign trust institution to another person; or  
20 (3) The ~~closing or transfer~~ closing, transfer, or discontinuance of any trust  
21 office or representative trust office in this State."

22 **SECTION 19.** This act becomes effective October 1, 2005.