

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 479
SENATE BILL 415

AN ACT TO PROVIDE FOR THE MERGER OF BANKS AND SAVINGS
INSTITUTIONS AND TO LIMIT THE SIMULTANEOUS
CONVERSION/MERGERS OF MUTUAL AND STOCK INSTITUTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-12 reads as rewritten:

"§ 53-12. Merger or consolidation of banks. banks and savings associations.

~~A bank may merge or consolidate with or transfer its assets and liabilities to another bank. Before such merger or consolidation or transfer shall become effective, each bank concerned in such merger or consolidation or transfer shall file, or cause to be filed, with the Commissioner of Banks, certified copies of all proceedings had by its directors and stockholders, which said stockholders' proceedings shall set forth that holders of at least two thirds of the stock voted in the affirmative on the proposition of merger or consolidation or transfer. Such stockholders' proceedings shall also contain a complete copy of the agreement made and entered into between said banks, with reference to such merger or consolidation or transfer. Upon the filing of such stockholders' and directors' proceedings as aforesaid, the Commissioner of Banks shall cause to be made an investigation of each bank to determine whether the interests of the depositors, creditors, and stockholders of each bank are protected, and find such merger or consolidation is in the public interest, and that such merger or consolidation or transfer is made for legitimate purposes, and his consent to or rejection of such merger or consolidation or transfer shall be based upon such investigation. No such merger or consolidation or transfer shall be made without the consent of the Commissioner of Banks. The expense of such investigation shall be paid by such banks. Notice of such merger or consolidation or transfer shall be published for four weeks before or after the same is to become effective, at the discretion of the Commissioner of Banks, in a newspaper published in a city, town, or county in which each of said banks is located, and a certified copy thereof shall be filed with the Commissioner of Banks. In case of either transfer or merger or consolidation the rights of creditors shall be preserved unimpaired, and the respective companies deemed to be in existence to preserve such rights for a period of three years.~~

(a) A bank may merge, consolidate with, or transfer its assets and liabilities to another bank or to a savings association, or a savings association may transfer its assets and liabilities to a bank. Before such merger or consolidation or transfer shall become effective, each bank or savings association concerned in such merger or consolidation or transfer shall file, with the Commissioner of Banks, certified copies of all proceedings

had by its directors and stockholders, or in the case of a mutual savings association, its directors and membership. The proceedings of the stockholders or membership shall set forth that (i) holders of at least two-thirds of the stock of the bank voted in the affirmative on the proposition of merger or consolidation or, (ii) in the case of a stock or mutual savings association, such percentage of the stock or of the membership as the laws applicable to such institutions require, voted in the affirmative on the proposition of merger or consolidation. The proceedings of the stockholders or memberships shall also contain a complete copy of the agreement made and entered into between said banks or savings associations, with reference to such merger or consolidation or transfer. Upon the filing of the proceedings as required by this section, the Commissioner of Banks may make an investigation of each bank or savings association, or both, to determine whether the interests of the depositors, creditors, and stockholders or members of each bank or savings association are protected, and if such merger or consolidation is in the public interest, and that such merger or consolidation or transfer is made for legitimate purposes. The Commissioner's consent to or rejection of such merger or consolidation or transfer shall be based upon such investigation. No merger or consolidation or transfer shall be made without the consent of the Commissioner of Banks. The expenses of any investigation shall be paid by the banks or savings associations, or both, involved in the proposed merger or consolidation or transfer. Notice of such merger or consolidation or transfer shall be published once a week for four consecutive weeks before the same is to become effective, at the discretion of the Commissioner of Banks, in a newspaper published in the county in which each of said banks or savings associations, or both, is located. If no newspaper is published in such county, then the notice shall be published in a newspaper having a general circulation in such county. A certified copy of the notice shall be filed with the Commissioner of Banks. In case of either transfer or merger or consolidation, the rights of creditors shall be preserved unimpaired and the respective companies deemed to be in existence to preserve such rights for a period of three years. For the purposes of this section, the term 'savings association' shall be construed to include a savings and loan association or a savings bank, whether organized under the laws of North Carolina or the United States.

(b) Unless otherwise required to be maintained, a bank may merge or otherwise consolidate into itself any subsidiary organized pursuant to G.S. 53-47, or acquired as a part of any merger or reorganization with another bank or bank holding company."

Sec. 2. G.S. 53-13 reads as rewritten:

"§ 53-13. Merged or consolidated banks and savings associations deemed one ~~bank.~~ bank or savings association.

In case of merger or consolidation when the agreement of merger or consolidation is made, and a duly certified copy thereof is filed with the Secretary of State, together with a certified copy of the approval of the Commissioner of Banks to such merger or consolidation, the ~~banks,~~ parties thereto, shall be held to be one company, possessed of the rights, privileges, powers, and franchises of the several companies, but subject to all the provisions of law under which it is created. The directors and other officers named in the agreement of consolidation shall serve until the first annual meeting for election

of officers and directors, the date for which shall be named in the agreement. On filing such agreement, all and singular, the property and rights of every kind of the several companies shall thereby be transferred and vested in such surviving company in the case of merger or in such new company in the case of consolidation, and be as fully its property as they were of the companies parties to the agreement."

Sec. 3. G.S. 53-17 reads as rewritten:

"§ 53-17. Fiduciary powers and liabilities of banks or trust companies merging or transferring assets and liabilities.

Whenever any ~~bank or trust company~~, bank, trust company, savings association, or savings bank, organized under the laws of North Carolina or the ~~acts of Congress, United States~~, and doing business in this State, shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other ~~bank or trust company~~ bank, trust company, savings association, or savings bank doing business in this State, as provided by the laws of North Carolina or the ~~acts of Congress, United States~~, all the then existing fiduciary rights, powers, duties and liabilities of such consolidating or merging or transferring ~~bank or banks and/or trust companies~~, institution, including the rights, powers, duties and liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity, whether under appointment by order of court, will, deed, or other instrument, shall, upon the effective date of such consolidation or merger or sale and transfer, vest in, devolve upon, and thereafter be performed by, the transferee ~~bank~~ institution or the consolidated or merged ~~bank or trust company~~, institution, and such latter ~~bank or trust company~~ institution shall be deemed substituted for and shall have all the rights and powers of the transferring ~~bank or trust company~~, institution."

Sec. 4. Article 3 of Chapter 54B of the General Statutes is amended by adding a new section to read:

"§ 54B-37.1. Simultaneous conversion/merger.

(a) The Administrator shall not approve any application for the conversion of an association from mutual to stock form and its simultaneous (i) merger into a stock-owned savings institution or bank or (ii) acquisition by an operating financial institution holding company except as authorized in subsection (b) of this section. As used in this section, 'simultaneous conversion/merger' shall mean a transaction in which the members of a mutual association proposing to convert to stock form are offered the opportunity to purchase (i) stock in the savings institution or bank into which it will be merged or (ii) stock in the holding company by which it will be acquired.

(b) The Administrator shall approve a plan of simultaneous conversion/merger only if:

- (1) The transaction is proposed to address supervisory concerns of the Administrator as to the safety and soundness of the mutual association;
or
- (2) The mutual association:
 - a. Operates in a local market area in which long-term trends make reasonable growth, continued profitability, and safe and sound operation appear unlikely;

- b. Furnishes evidence concerning its asset size, capital to assets ratio, and other factors, which may include a cost/benefit analysis, satisfactory to the Administrator that a simultaneous conversion/merger is more likely than remaining independent, merging with a mutual institution, converting to stock ownership, or other alternatives available to the association, to result in deposit, credit, and other financial services being provided within the local community safely and soundly on a long-term basis; and
- c. Furnishes evidence satisfactory to the Administrator that no director, officer, or other person associated with the parties to the proposed transaction will receive benefits as a result of the simultaneous conversion/merger which in the aggregate exceed those permitted under federal regulations governing similar transactions.

(c) The Administrator may adopt rules to govern simultaneous conversion/mergers, which rules shall contain restrictions or limitations which equal or exceed the limitations or restrictions contained in the rules of federal regulatory agencies governing similar transactions. No plan of a simultaneous conversion/merger shall be approved by the Administrator unless it includes notification by first class mail to the members of the association to be acquired explaining the details of the plan including economic benefits or incentives to be received by officers and directors of the association, if any. Shares of stock in the acquiring entity purchased at a discount or otherwise by members of the association as part of the simultaneous conversion/merger shall be without limitation on subsequent sales by such members: provided, however, rules adopted by the Administrator may place limitations of the sale of such stock purchased by officers and directors of the association."

Sec. 5. G.S. 54C-35 reads as rewritten:

"§ 54C-35. Merger of like savings banks.

Any two or more mutual savings banks or any two or more stock savings banks organized and operating, may merge or consolidate into a single savings bank. The procedure to effect the merger is as follows:

- (1) The directors, or a majority of them, of the savings banks that desire to merge may, at separate meetings, enter into a written agreement of merger signed by them and under the corporate seals of the respective savings banks specifying each savings bank to be merged and the savings bank that is to receive into itself the merging savings bank or banks, and prescribing the terms and conditions of the merger and the mode of carrying it into effect. The merger agreement may provide other provisions with respect to the merger as appear necessary or desirable, or as the Administrator may require.
- (2) The merger agreement together with copies of the minutes of the meetings of the respective boards of directors verified by the secretaries of the respective savings banks shall be submitted to the

Administrator, who shall cause a careful investigation and examination to be made of the affairs of the savings banks proposing to merge, including a determination of their respective assets and liabilities. Each savings bank that is investigated and examined shall pay the cost and expense for the examination. If, as a result of the investigation, the Administrator concludes that the members or stockholders of each of the savings banks proposing to merge will be benefited by the merger, the Administrator shall, in writing, approve the merger. If the Administrator deems that the proposed merger will not be in the interest of all members or stockholders of the savings banks so merging, the Administrator shall, in writing, disapprove the merger. If the Administrator approves the merger agreement, then it shall be submitted, within 45 days after notice to the savings banks of the approval, to the members or stockholders of each savings bank, as provided in subdivision (3) of this section. The savings bank may appeal the disapproval of the merger to the Commission.

- (3) ~~A meeting of the members or stockholders of each of the savings banks shall be held separately upon written notice of not less than 15 days to members or stockholders of each savings bank. The notice shall specify the time, place, and purpose for the calling of the meeting. Notice shall be made by personal service or postage prepaid mail to the last address of each member or stockholder appearing upon the records of the savings bank and by publication of notice at least once a week for two weeks preceding the meeting in one or more newspapers of general circulation in the county or counties where each savings bank has its principal or a branch office, or in a newspaper of general circulation in an adjoining county if none is available in the county. An appropriate officer of the savings bank shall make proof by affidavit at the meeting of the due service of the notice or call for the meeting. A special meeting of the members or stockholders of each of the savings banks shall be held separately upon notice of not less than 20 days to members or stockholders of each savings bank. The notice of meeting shall specify the time, place, and purpose of such meeting. Notice shall be given to members of each mutual savings bank in accordance with the methods specified in its charter and bylaws and by one or more of the following methods: (i) personal service or (ii) postage prepaid mail to the last address of each member appearing upon the records of the savings bank. Provided; however, with respect to a merger of two mutual savings banks, as an alternative to the methods of notice specified above, the mutual savings bank which is to be the surviving savings bank of the proposed merger may provide the notice of meeting by publication of notice at least once a week for four consecutive weeks in one or more newspapers in general circulation in the county or counties in which the savings bank has its~~

principal and any branch offices. Notice shall be given to stockholders of each stock-owned savings bank in accordance with the method specified for a meeting of stockholders in its charter and bylaws. The secretary or other officer of each savings bank shall make proof by certification at such meeting of the due service of the notice or call for said meeting.

- (4) At separate meetings of the members or stockholders of the respective savings banks, the members or stockholders may adopt, by an affirmative vote of a majority of the votes or shares present, in person or by proxy, a resolution to merge into a single savings bank upon the terms of the merger agreement as shall have been agreed upon by the directors of the respective savings banks and as approved by the Administrator. Upon the adoption of the resolution, a copy of the minutes of the proceedings of the meetings of the members or stockholders of the respective savings banks, certified by an appropriate officer of the merging savings banks, shall be filed in the office of the Administrator. Within 15 days after the receipt of a certified copy of the minutes of the meetings, the Administrator shall either approve or disapprove the proceedings for compliance with this section. If the Administrator approves the proceedings, the Administrator shall issue a certificate of approval of the merger. The certificate shall be filed and recorded in the office of the Secretary of State. When the certificate is so filed, the merger agreement shall take effect according to its terms and is binding upon all the members or stockholders of the savings banks merging, and it is deemed to be the act of merger of the constituent savings banks under the laws of this State, and the certificate or certified copy thereof is evidence of the agreement and act of merger of the savings banks and the observance and performance of all acts and conditions necessary to have been observed and performed precedent to the merger. Within 60 days after its receipt from the Secretary of State, the certified copy of the certificate shall be filed with the register of deeds of the county or counties in which the respective savings banks so merged have recorded their original certificates of incorporation. Failure to so file shall subject the savings bank to only a penalty of one hundred dollars (\$100.00) to be collected by the Secretary of State. If the Administrator disapproves the proceedings, the Administrator shall issue a written statement of the reasons for the disapproval and notify the savings banks to that effect. The savings banks may appeal the disapproval to the Commission.
- (5) Upon the merger of any savings bank, as above provided, into another:
 - a. Its corporate existence is merged into that of the receiving savings bank; and all its right, title, interest in and to all property of whatsoever kind, whether real, personal or mixed,

and things in action, and every right, privilege, interest or asset of any conceivable value or benefit then existing belonging or pertaining to it, or which would inure to it under an unmerged existence, 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 the receiving savings bank, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held, or enjoyed by the savings banks so merged; and the receiving savings bank shall absorb fully and completely the savings bank or banks so merged.

- b. Its rights, liabilities, obligations, and relations to any person shall remain unchanged and the savings bank into which it has been merged shall, by the merger, succeed to all the relations, obligations, and liabilities as though it had itself assumed or incurred the same. No obligation or liability of a member, customer, or stockholder in a savings bank that is a party to the merger shall be affected by the merger, but obligations and liabilities shall continue as they existed before the merger, unless otherwise provided in the merger agreement.
 - c. A pending action or other judicial proceeding to which a savings bank that is so merged is a party, is not deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order, or decree in the same manner as if the merger had not been made; or the receiving savings bank may be substituted as a party to the action or proceeding, and any judgment, order, or decree may be rendered for or against it that might have been rendered for or against the other savings bank if the merger had not occurred.
- (6) Notwithstanding any other provision of this section, the Administrator may waive any or all of the foregoing requirements upon finding that waiver would be in the best interest of the members or stockholders of the merging savings banks.”

Sec. 6. G.S. 54C-36 reads as rewritten:

"§ 54C-36. ~~Merger of savings banks where ownership is converted. Simultaneous conversion/merger.~~

(a) ~~Any two or more State mutual savings banks may merge to form a single State stock savings bank in separate merger conversion proceedings or in simultaneous merger conversion proceedings.~~

(b) ~~Any two or more State stock savings banks may merge to form a single State mutual savings bank in separate merger conversion proceedings or in simultaneous merger conversion proceedings.~~ The Administrator shall not approve any application for the conversion of a savings bank from mutual to stock form and its simultaneous (i) merger into a stock-owned savings institution or bank or (ii) acquisition by an operating

financial institution holding company except as authorized in subsection (b) of this section. As used in this section, 'simultaneous conversion/merger' shall mean a transaction in which the members of a mutual savings bank proposing to convert to stock form are offered the opportunity to purchase (i) stock in the savings institution or bank into which it will be merged or (ii) stock in the holding company by which it will be acquired.

(b) The Administrator shall approve a plan of simultaneous conversion/merger only if:

- (1) The transaction is proposed to address supervisory concerns of the Administrator as to the safety and soundness of the mutual savings bank; or
- (2) The mutual savings bank:
 - a. Operates in a local market area in which long-term trends make reasonable growth, continued profitability, and safe and sound operation appear unlikely;
 - b. Furnishes evidence concerning its asset size, capital to assets ratio, and other factors, which may include a cost/benefit analysis, satisfactory to the Administrator that a simultaneous conversion/merger is more likely than remaining independent, merging with a mutual institution, converting to stock ownership, or other alternatives available to the savings bank to result in deposit, credit, and other financial services being provided within the local community safely and soundly on a long-term basis; and
 - c. Furnishes evidence satisfactory to the Administrator that no director, officer, or other person associated with the parties to the proposed transaction will receive benefits as a result of the simultaneous conversion/merger which in the aggregate exceed those permitted under the federal regulations governing similar transactions.

(c) The Administrator may adopt rules to govern simultaneous conversion/mergers, which rules shall contain restrictions or limitations which equal or exceed the limitations or restrictions contained in the rules of federal regulatory agencies governing similar transactions. No plan of a simultaneous conversion/merger shall be approved by the Administrator unless it includes notification by first class mail to the members of the savings bank to be acquired explaining the plan including economic benefits or incentives to be received by officers and directors of the association, if any. Shares of stock in the acquiring entity purchased at a discount or otherwise by members of the savings bank as part of the simultaneous conversion/merger shall be without limitation on subsequent sales by such members: provided, however, rules adopted by the Administrator may place limitations of the sale of such stock purchased by officers and directors of the savings bank."

Sec. 7. G.S. 54C-40 is amended by adding a new subsection to read:

"(d) A merger between a mutual savings bank and a mutual savings and loan association shall be conducted in accordance with the provisions of G.S. 54C-35."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives