

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 995
Second Edition Engrossed 6/16/92

Short Title: Bank to Thrift Mergers.

(Public)

Sponsors: Senators Staton, Carpenter, Conder, and Plyler; Forrester and Bryan.

Referred to: Banks and Thrift Institutions.

May 27, 1992

A BILL TO BE ENTITLED

AN ACT TO ALLOW BANKS AND SAVINGS ASSOCIATIONS TO MERGE OR
CONSOLIDATE AND TO TRANSFER ASSETS AND LIABILITIES TO ONE
ANOTHER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-1 is amended by adding a new subdivision to read:

"(2a) Commissioner. – The term 'Commissioner' means the Commissioner
of Banks."

Sec. 2. G.S. 53-1 is amended by adding a new subdivision to read:

"(5a) Savings association. – The term 'savings association,' when used in
Article 2A of this Chapter, means a savings and loan association as
defined in G.S. 54B-4 or a savings bank as defined in G.S. 54C-4(27)."

Sec. 3. Chapter 53 of the General Statutes is amended by designating G.S.
53-12 through G.S. 53-17.2 as Article 2A with the heading "Corporate Changes."

Sec. 4. Article 2A of Chapter 53 of the General Statutes is amended by
adding a new section to read:

§ 53-12.1. Merger or consolidation of banks and savings associations.

(a) A bank and a savings association may merge or consolidate. A bank may
transfer its assets and liabilities to a savings association; a savings association may
transfer its assets and liabilities to a bank.

(b) Before a merger, consolidation, or transfer becomes effective, each institution
concerned in the merger, consolidation, or transfer shall file with the Commissioner
certified copies of all proceedings had by its directors and stockholders or, in the case of

1 a mutual savings association, as defined in G.S. 54B-4, its members. In the case of
2 banks, the proceedings shall set forth that holders of a majority of the stock of the bank
3 voted in the affirmative on the proposed merger, consolidation, or transfer. In the case
4 of savings associations, the proceedings shall set forth that the percentage of
5 stockholders or of members required by law also voted in the affirmative on the
6 proposed merger, consolidation, or transfer. The proceedings shall also contain a copy
7 of the entire agreement between the bank and savings association regarding the merger,
8 consolidation, or transfer.

9 (c) No merger, consolidation, or transfer where the surviving institution or
10 transferor is a State chartered bank may be made without the consent of the
11 Commissioner. In these cases and upon filing the proceedings, the Commissioner shall
12 investigate each bank and savings association to determine whether (i) the interests of
13 their depositors, creditors, and stockholders or members are protected, (ii) the merger,
14 consolidation, or transfer is in the public interest, and (iii) the merger, consolidation, or
15 transfer is made for legitimate purposes. The Commissioner shall consent to or reject
16 the merger, consolidation, or transfer based upon the investigation. The expense of the
17 investigation shall be paid by the bank and savings association involved in the proposed
18 merger, consolidation, or transfer. The Commissioner shall publish notice of the
19 merger, consolidation, or transfer for four weeks before or after the same is to become
20 effective, at the discretion of the Commissioner, in a newspaper published in a city,
21 town, or county in which each bank and savings association is located, and a certified
22 copy of the notice shall be filed with the Commissioner.

23 (d) After the effective date of the merger, consolidation, or transfer, each
24 institution is considered to continue in existence for the next three years in order to
25 preserve the rights of the creditors of each institution."

26 Sec. 5. G.S. 53-13 reads as rewritten:

27 "**§ 53-13. Merged or consolidated banks ~~deemed one bank.~~ and savings associations**
28 **deemed one bank or savings association.**

29 In case of merger or consolidation when the agreement of merger or consolidation is
30 made, and a duly certified copy ~~thereof~~ of the agreement is filed with the Secretary of
31 State, together with a certified copy of the approval of the Commissioner ~~of Banks~~ to
32 ~~such~~ the merger or consolidation, the banks, parties thereto, parties to the merger or
33 consolidation shall be held to be one company, possessed of the rights, privileges,
34 powers, and franchises of the several companies, but subject to all the provisions of law
35 under which it is created. The directors and other officers named in the agreement of
36 consolidation shall serve until the first annual meeting for election of officers and
37 directors, the date for which shall be named in the agreement. On filing ~~such~~ the
38 agreement, ~~all and singular,~~ the property and rights of every kind of the several
39 companies shall ~~thereby~~ be transferred and vested in ~~such~~ the surviving company in the
40 case of merger or in ~~such~~ the new company in the case of consolidation, and be as fully
41 its property as they were of the companies parties to the agreement."

42 Sec. 6. G.S. 53-17 reads as rewritten:

1 **"§ 53-17. Fiduciary powers and liabilities of ~~banks or trust companies~~ banks, trust**
2 **companies, or savings associations merging or transferring assets and**
3 **liabilities.**

4 Whenever any ~~bank or trust company,~~ bank, trust company, or savings association,
5 organized under ~~the laws of North Carolina or the acts of Congress,~~ State or federal law,
6 and doing business in this State, ~~shall consolidate or merge~~ consolidates or merges with
7 or ~~shall sell~~ sells to and ~~transfer~~ transfers its assets and liabilities to any other ~~bank or trust~~
8 ~~company~~ bank, trust company, or savings association doing business in this State, as
9 provided by ~~the laws of North Carolina or the acts of Congress,~~ State or federal law, all the
10 then existing fiduciary rights, powers, duties and liabilities of ~~such~~ the consolidating or
11 merging or transferring ~~bank or banks and/or trust companies,~~ institutions, including the
12 rights, powers, duties and liabilities as executor, administrator, guardian, or trustee,
13 ~~and/or or in~~ any other fiduciary capacity, whether under appointment by order of court,
14 will, deed, or other instrument, shall, upon the effective date of ~~such~~ the consolidation or
15 merger or sale and transfer, vest ~~in,~~ devolve upon, and thereafter be ~~performed by,~~ in the
16 transferee ~~bank~~ institution or the consolidated or merged ~~bank or trust company,~~
17 institution, and ~~such latter bank or trust company shall be deemed~~ that institution is
18 substituted for and shall have all the rights and powers of the transferring ~~bank or trust~~
19 ~~company~~ institution."

20 Sec. 7. This act is effective upon ratification.