§ 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 Commissioner of Banks 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 Commissioner of Banks, 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 Commissioner of Banks concludes that the members or stockholders of each of the savings banks proposing to merge will be benefited by the merger, the Commissioner of Banks shall, in writing, approve the merger. If the Commissioner of Banks deems that the proposed merger will not be in the interest of all members or stockholders of the savings banks so merging, the Commissioner of Banks shall, in writing, disapprove the merger. If the Commissioner of Banks 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 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 Commissioner of Banks. 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 Commissioner of Banks. Within 15 days after the receipt of a certified copy of the minutes of the meetings, the Commissioner of Banks shall either approve or disapprove the proceedings for compliance with this section. If the Commissioner of Banks approves the proceedings, the Commissioner of Banks 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 Commissioner of Banks disapproves the proceedings, the Commissioner of Banks 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 Commissioner of Banks 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. (1991, c. 680, s. 1; 1995, c. 479, s. 5; 2001-193, s. 16.)