

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2047\*  
Committee Substitute Favorable 6/7/90

Short Title: Bank/Savings Assn. Conversion.

(Public)

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Sponsors:

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Referred to:

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May 23, 1990

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR DIRECT CONVERSION OF A SAVINGS  
INSTITUTION TO A BANK AND A BANK TO A SAVINGS INSTITUTION.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 53 of the General Statutes is amended by adding at the end a new section to read:

**"§ 53-17.2. Conversion of savings association to a State bank.**

(a) Any association, as defined in G.S. 54B-4, may convert to a State bank as provided in this section. A mutual association must first convert to a stock association before applying for conversion to a bank as provided in this section. As used in this section, the term 'conversion' includes (i) a transaction in which a State bank assumes all or substantially all of the liabilities and purchases all or substantially all of the assets of an association and (ii) any other transaction that results in a change of identity of an association to a State bank; however, the term does not include a transaction in which the resulting bank is a subsidiary or an affiliate of a bank holding company or a bank if the bank holding company or bank has been in existence for at least two years as of the date the transaction is approved.

(b) Any association, upon a majority vote of its board of directors, may apply to the Commissioner of Banks for permission to convert to a bank and for certification of appropriate amendments to the association's certificate of incorporation to effect the conversion.

(c) The association shall submit a plan of conversion as a part of the application to the Commissioner of Banks. The Commissioner of Banks may recommend approval

1 of the plan of conversion with or without amendment. The Commissioner of Banks  
2 shall recommend approval of the plan of conversion if upon examination and  
3 investigation he finds that:

- 4 (1) The resulting bank will operate in a safe, sound, and prudent manner  
5 with adequate capital, liquidity, and earnings prospects;
- 6 (2) The directors, officers, and other managerial officials of the  
7 association are qualified by character and financial responsibility to  
8 control and operate in a legal and proper manner the bank proposed to  
9 be formed as a result of the conversion;
- 10 (3) The interest of the depositors, the creditors, and the public generally  
11 will not be jeopardized by the proposed conversion; and
- 12 (4) The proposed name will not mislead the public as to the character or  
13 purpose of the resulting bank, and the proposed name is not the same  
14 as one already adopted or appropriated by an existing bank in this  
15 State or so similar as to be likely to mislead the public.

16 (d) Any action taken by the Commissioner of Banks pursuant to this section shall  
17 be subject to review by the State Banking Commission which may approve, modify, or  
18 disapprove any action taken or recommended by the Commissioner of Banks. The State  
19 Banking Commission may promulgate rules to govern conversions undertaken pursuant  
20 to this section. The requirements for a converting association shall be no more stringent  
21 than those provided by rule or regulation applicable to other FDIC-insured commercial  
22 banks. The requirements for a converting association shall be no less stringent than  
23 those provided by rule or regulation applicable to other FDIC-insured commercial  
24 banks, except as may be allowed during transition periods permitted by subdivisions  
25 (e)(4) and (h)(2) of this section.

26 (e) In the absence of the promulgation of rules under subsection (d), the  
27 conditions to be met for approval of the application for conversion should include the  
28 following:

- 29 (1) Condition. The applicant's general condition must reflect adequate  
30 capital, liquidity, reserves, earnings, and asset composition necessary  
31 for safe and sound operation of the resulting bank.
- 32 (2) Management. The management and the board of directors must be  
33 capable of supervising a sound banking operation and overseeing the  
34 changes that must be accomplished in the conversion from an  
35 association to a bank.
- 36 (3) Public Convenience. The Commission must determine that the  
37 conversion will have a positive impact on the convenience of the  
38 public and will not substantially reduce the services available to the  
39 public in the market area.
- 40 (4) Transition. Within a reasonable time after the effective date of the  
41 conversion, the resulting bank must divest itself of all assets and  
42 liabilities that do not conform to State banking law or rules. The  
43 length of this transition period shall be determined by the

1 Commissioner and shall be specified when the application for  
2 conversion is approved.

3 In evaluating each of these conditions, the Commission shall consider a comparison  
4 of the relevant financial ratios of the applicant with the average ratios of North Carolina  
5 banks of similar asset size. The Commission may not approve a conversion where the  
6 applicant presents an undue supervisory concern or has not been operated in a safe and  
7 sound manner.

8 (f) If the State Banking Commission approves the plan of conversion, then the  
9 association shall submit the plan to the stockholders as provided in subsection (g).  
10 After approval of the plan of conversion, the Commissioner of Banks shall supervise  
11 and monitor the conversion process and shall ensure that the conversion is conducted  
12 pursuant to law and the association's approved plan of conversion.

13 (g) After lawful notice to the stockholders of the association and full and fair  
14 disclosure of the plan of conversion, the plan must be approved by a majority of the  
15 total votes that stockholders of the association are eligible and entitled to cast. The vote  
16 by the stockholders may be in person or by proxy. Following the vote of the  
17 stockholders, the association shall file with the Commissioner of Banks the results of  
18 the vote certified by an appropriate officer of the association. The Commissioner of  
19 Banks shall then approve the requested conversion and the association shall file with the  
20 Secretary of State amended articles of incorporation with the certificate of the  
21 Commissioner of Banks attached. The conversion of the association to a bank shall be  
22 effective upon this filing.

23 (h) The Commissioner of Banks may authorize the resulting bank to do the  
24 following:

- 25 (1) Wind up any activities legally engaged in by the association at the time  
26 of conversion but not permitted to State banks.  
27 (2) Retain for a transitional period any assets and deposit liabilities legally  
28 held by the association at the effective date of the conversion that may  
29 not be held by State banks.

30 The length, terms, and conditions of the transitional periods under subdivisions (1) and  
31 (2) are subject to the discretion of the Commissioner of Banks.

32 (i) Upon conversion of an association to a bank, the legal existence of the  
33 association does not terminate, and the resulting bank is a continuation of the  
34 association. The conversion shall be a mere change in identity or form of organization.  
35 All rights, liabilities, obligations, interest, and relations of whatever kind of the  
36 association shall continue and remain in the resulting bank. Except as may be  
37 authorized during a transitional period by the Commissioner of Banks pursuant to  
38 subsection (h), a bank resulting from the conversion of an association shall have only  
39 those rights, powers and duties which are authorized for banks by the laws of this State  
40 and the United States. All actions and legal proceedings to which the association was a  
41 party prior to conversion shall be unaffected by the conversion and shall proceed as if  
42 the conversion had not taken place."

43 Sec. 2. Article 3 of Chapter 54B of the General Statutes is amended by  
44 adding a new section to read:

1 **"§ 54B-46. Conversion of bank to stock association.**

2 (a) Any bank, as defined in G.S. 53-1, may convert to a stock association as  
3 provided in this section.

4 (b) Any bank, upon a majority vote of its board of directors, may apply to the  
5 Administrator for permission to convert to a stock association and for certification of  
6 appropriate amendments to the bank's certificate of incorporation to effect the  
7 conversion.

8 (c) The bank shall submit a plan of conversion as a part of the application to the  
9 Administrator. The Administrator may recommend approval of the plan of conversion  
10 with or without amendment. The Administrator shall recommend approval of the plan  
11 of conversion if upon examination and investigation he finds that:

12 (1) The resulting stock association will operate in a safe, sound, and  
13 prudent manner with adequate capital, liquidity, and earnings  
14 prospects;

15 (2) The directors, officers, and other managerial officials of the bank are  
16 qualified by character and financial responsibility to control and  
17 operate in a legal and proper manner the stock association proposed to  
18 be formed as a result of the conversion;

19 (3) The interest of the depositors, the creditors, and the public generally  
20 will not be jeopardized by the proposed conversion; and

21 (4) The proposed name will not mislead the public as to the character or  
22 purpose of the resulting stock association, and the proposed name is  
23 not the same as one already adopted or appropriated by an existing  
24 association in this State or so similar as to be likely to mislead the  
25 public.

26 (d) Any action taken by the Administrator pursuant to this section shall be  
27 subject to review by the Commission which may approve, modify, or disapprove any  
28 action taken or recommended by the Administrator. The Commission may promulgate  
29 rules to govern conversions undertaken pursuant to this section. The requirements for  
30 converting banks shall be no more stringent than those provided by rule or regulation  
31 applicable to other FDIC-insured commercial stock associations.

32 (e) In the absence of the promulgation of rules under subsection (d), the  
33 conditions to be met for approval of the application for conversion should include the  
34 following:

35 (1) Condition. The applicant's general condition must reflect adequate  
36 capital, liquidity, reserves, earnings, and asset composition necessary  
37 for safe and sound operation of the resulting stock association.

38 (2) Management. The management and the board of directors must be  
39 capable of supervising a sound stock association operation and  
40 overseeing the changes that must be accomplished in the conversion  
41 from a bank to a stock association.

42 (3) Public Convenience. The Commission must determine that the  
43 conversion will have a positive impact on the convenience of the

1           public and will not substantially reduce the services available to the  
2           public in the market area.

- 3           (4)   Transition. Within a reasonable time after the effective date of the  
4           conversion, the resulting stock association must divest itself of all  
5           assets and liabilities that do not conform to State banking law or rules.  
6           The length of this transition period shall be determined by the  
7           Administrator and shall be specified when the application for  
8           conversion is approved.

9           In evaluating each of these conditions, the Commission shall consider a comparison  
10          of the relevant financial ratios of the applicant with the average ratios of North Carolina  
11          stock associations of similar asset size. The Commission may not approve a conversion  
12          where the applicant presents an undue supervisory concern or has not been operated in a  
13          safe and sound manner.

14          (f)   If the Administrator approves the plan of conversion, then the bank shall  
15          submit the plan to the stockholders as provided in subsection (g). After approval of the  
16          plan of conversion, the Administrator shall supervise and monitor the conversion  
17          process and shall ensure that the conversion is conducted pursuant to law and the bank's  
18          approved plan of conversion.

19          (g)   After lawful notice to the stockholders of the bank and full and fair disclosure  
20          of the plan of conversion, the plan must be approved by a majority of the total votes that  
21          stockholders of the bank are eligible and entitled to cast. The vote by the stockholders  
22          may be in person or by proxy. Following the vote of the stockholders, the bank shall  
23          file with the Administrator the results of the vote certified by an appropriate officer of  
24          the bank. The Administrator shall approve the requested conversion and the bank shall  
25          file with the Secretary of State amended articles of incorporation with the certificate of  
26          the Administrator attached. The conversion of the bank to a stock association shall be  
27          effective upon this filing.

28          (h)   The Administrator may authorize the resulting stock association to do the  
29          following:

- 30               (1)   Wind up any activities legally engaged in by the bank at the time of  
31               conversion but not permitted to stock associations.  
32               (2)   Retain for a transitional period any assets and deposit liabilities legally  
33               held by the bank at the effective date of the conversion that may not be  
34               held by stock associations.

35          The length, terms, and conditions of the transitional periods under subdivisions (1) and  
36          (2) are subject to the discretion of the Administrator, but may not exceed five years after  
37          the effective date of the conversion.

38          (i)   Upon conversion of a bank to a stock association, the legal existence of the  
39          bank does not terminate, and the resulting stock association is a continuation of the  
40          bank. The conversion shall be a mere change in identity or form of organization. All  
41          rights, liabilities, obligations, interest, and relations of whatever kind of the bank shall  
42          continue and remain in the resulting stock association. All actions and legal  
43          proceedings to which the bank was a party prior to conversion shall be unaffected by the  
44          conversion and proceed as if the conversion had not taken place."

1           Sec. 3. This act does not affect the validity of (i) any bank/savings institution  
2 conversion accomplished through a purchase and assumption or otherwise or (ii) the  
3 reorganization of a bank into a bank holding company, where the conversion or  
4 reorganization was completed before the effective date of this act.

5           Sec. 4. This act is effective upon ratification and applies to applications for  
6 conversion approved on or after that date.