

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 2047*
Committee Substitute Favorable 6/7/90
Banks and Thrift Senate Committee Substitute Adopted 6/15/90

Short Title: Bank/Savings Assn. Conversion.

(Public)

Sponsors:

Referred to:

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. A transaction in which the resulting bank is a subsidiary or an affiliate of a bank holding company or bank which has been in existence for at least two years shall not be subject to the provisions of this section but shall be subject to the approval of the Commissioner of Banks.

(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.

1 (c) The association shall submit a plan of conversion as a part of the application
2 to the Commissioner of Banks. The Commissioner of Banks may recommend approval
3 of the plan of conversion with or without amendment. The Commissioner of Banks
4 shall recommend approval of the plan of conversion if upon examination and
5 investigation he finds that:

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

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

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

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

1 length of this transition period shall be determined by the
2 Commissioner and shall be specified when the application for
3 conversion is approved.

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

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

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

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

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

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

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

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

3 **"§ 54B-46. Conversion of bank to stock association.**

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

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

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

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

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

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

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

28 (d) Any action taken by the Administrator pursuant to this section shall be
29 subject to review by the Commission which may approve, modify, or disapprove any
30 action taken or recommended by the Administrator. The Commission may promulgate
31 rules to govern conversions undertaken pursuant to this section. The requirements for a
32 converting bank shall be no more stringent than those provided by rule or regulation
33 applicable to other FDIC-insured stock associations. The requirements for a converting
34 bank shall be no less stringent than those provided by rule or regulation applicable to
35 other FDIC-insured stock associations, except as may be allowed during transition
36 periods permitted by subdivisions (e)(4) and (h)(2) of this section.

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

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

43 (2) Management. The management and the board of directors must be
44 capable of supervising a sound stock association operation and

1 overseeing the changes that must be accomplished in the conversion
2 from a bank to a stock association.

3 (3) Public Convenience. The Commission must determine that the
4 conversion will have a positive impact on the convenience of the
5 public and will not substantially reduce the services available to the
6 public in the market area.

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

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

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

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

32 (h) The Administrator may authorize the resulting stock association to do the
33 following:

34 (1) Wind up any activities legally engaged in by the bank at the time of
35 conversion but not permitted to stock associations.

36 (2) Retain for a transitional period any assets and deposit liabilities legally
37 held by the bank at the effective date of the conversion that may not be
38 held by stock associations.

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

42 (i) Upon conversion of a bank to a stock association, the legal existence of the
43 bank does not terminate, and the resulting stock association is a continuation of the
44 bank. The conversion shall be a mere change in identity or form of organization. All

1 rights, liabilities, obligations, interest, and relations of whatever kind of the bank shall
2 continue and remain in the resulting stock association. Except as may be authorized
3 during a transitional period by the Administrator pursuant to subsection (h), a stock
4 association resulting from the conversion of a bank shall have only those rights, powers,
5 and duties which are authorized for stock associations by the laws of this State and the
6 United States. All actions and legal proceedings to which the bank was a party prior to
7 conversion shall be unaffected by the conversion and proceed as if the conversion had
8 not taken place."

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

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