

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1355*

Short Title: Bank/Savings Assn. Conversion.

(Public)

Sponsors: Senators Staton, Plyler, Carpenter, Conder; Block, Johnson of Cabarrus, Marvin, and Sands.

Referred to: Banks and Thrift Institutions.

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 converting associations shall be no more stringent
21 than those provided by rule or regulation applicable to other FDIC-insured commercial
22 banks.

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

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

43 In evaluating each of these conditions, the Commission shall consider a comparison
44 of the relevant financial ratios of the applicant with the average ratios of North Carolina

1 banks of similar asset size. The Commission may not approve a conversion where the
2 applicant presents an undue supervisory concern or has not been operated in a safe and
3 sound manner.

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

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

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

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

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

28 (i) Upon conversion of an association to a bank, the legal existence of the
29 association does not terminate, and the resulting bank is a continuation of the
30 association. The conversion shall be a mere change in identity or form of organization.
31 All rights, liabilities, obligations, interest, and relations of whatever kind of the
32 association shall continue and remain in the resulting bank. All actions and legal
33 proceedings to which the association was a party prior to conversion shall be unaffected
34 by the conversion and shall proceed as if the conversion had not taken place."

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

37 "**§ 54B-46. Conversion of bank to stock association.**

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

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

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

- 5 (1) The resulting stock association will operate in a safe, sound, and
6 prudent manner with adequate capital, liquidity, and earnings
7 prospects;
- 8 (2) The directors, officers, and other managerial officials of the bank are
9 qualified by character and financial responsibility to control and
10 operate in a legal and proper manner the stock association 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 stock association, and the proposed name is
16 not the same as one already adopted or appropriated by an existing
17 association in this State or so similar as to be likely to mislead the
18 public.

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

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

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

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

6 (f) If the Administrator approves the plan of conversion, then the bank shall
7 submit the plan to the stockholders as provided in subsection (g). After approval of the
8 plan of conversion, the Administrator shall supervise and monitor the conversion
9 process and shall ensure that the conversion is conducted pursuant to law and the bank's
10 approved plan of conversion.

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

20 (h) The Administrator may authorize the resulting stock association to do the
21 following:

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

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

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

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

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

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