

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 41

Banks and Thrift Institutions Committee Substitute Adopted 3/11/91

Short Title: Savings and Loan Technical Changes.

(Public)

Sponsors:

Referred to:

February 7, 1991

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CHANGES TO THE SAVINGS INSTITUTIONS LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 54B-10 reads as rewritten:

"§ 54B-10. Certificate of incorporation.

(a) The certificate of incorporation of a proposed mutual savings and loan association shall set forth:

- (1) The name of the association, which must not so closely resemble the name of an existing association doing business under the laws of this State as to be likely to mislead the public;
- (2) The county and city or town where its principal office is to be located in this State; and the name of its registered agent and the address of its registered office, including county and city or town, and street and number;
- (3) The period of duration, which may be perpetual. When the certificate of incorporation fails to state the period of duration, it shall be considered perpetual;
- (4) The purposes for which the association is organized, which shall be limited to purposes permitted under the laws of this State for savings and loan associations;

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- 1 (5) The amount of the entrance fee per withdrawable account based upon  
2 the amount pledged;
- 3 (6) The minimum amount on deposit in withdrawable accounts before it  
4 shall commence business;
- 5 (7) Any provision not inconsistent with this Chapter and the proper  
6 operation of a savings and loan association, which the incorporators  
7 shall set forth in the certificate of incorporation for the regulation of  
8 the internal affairs of the association;
- 9 (8) The number of directors, which shall not be less than seven,  
10 constituting the initial board of directors (which may be classified in  
11 accordance with the provisions of ~~G.S. 55-8-06~~ the certificate of  
12 incorporation) and the name and addresses of each person who is to  
13 serve as a director until the first meeting of members, or until his  
14 successor be elected and qualified;
- 15 (9) The names and addresses of the incorporators.
- 16 (b) The certificate of incorporation of a proposed stock savings and loan  
17 association shall set forth:
- 18 (1) The name of the association, which must not so closely resemble the  
19 name of an existing association doing business under the laws of this  
20 State as to be likely to mislead the public;
- 21 (2) The county and city or town where its principal office is to be located  
22 in this State; and the name of its registered agent and the address of its  
23 registered office, including county and city or town, and street and  
24 number;
- 25 (3) The period of duration, which may be perpetual. When the certificate  
26 of incorporation fails to state the period of duration, it shall be  
27 considered perpetual;
- 28 (4) The purposes for which the association is organized, which shall be  
29 limited to purposes permitted under the laws of this State for savings  
30 and loan associations;
- 31 (5) With respect to the shares of stock which the association shall have  
32 authority to issue:
- 33 a. If the stock is to have a par value, the number of such shares of  
34 stock and the par value of each;
- 35 b. If the stock is to be without par value, the number of such  
36 shares of stock;
- 37 c. If the stock is to be of both kinds mentioned in paragraphs a and  
38 b of subdivision (5) of this subsection, particulars in accordance  
39 with those paragraphs;
- 40 d. If the stock is to be divided into classes, or into series within a  
41 class of preferred or special shares of stock, the certificate of  
42 incorporation shall also set forth a designation of each class,  
43 with a designation of each series within a class, and a statement

- 1 of the preferences, limitations, and relative rights of the stock of  
 2 each class or series;
- 3 (6) The minimum amount of consideration to be received for its shares of  
 4 stock before it shall commence business;
- 5 (7) A statement as to whether stockholders have preemptive rights to  
 6 acquire additional or treasury shares of the association and any  
 7 provision limiting or denying said rights;
- 8 (8) Any provision not inconsistent with this Chapter or the proper  
 9 operation of a savings and loan association, which the incorporators  
 10 shall set forth in the certificate of incorporation for the regulation of  
 11 the internal affairs of the association;
- 12 (9) The number of directors, which shall not be less than seven,  
 13 constituting the initial board of directors (which may be classified in  
 14 accordance with the provisions of G.S. 55-8-06 the certificate of  
 15 incorporation) and the name and address of each person who is to  
 16 serve as a director until the first meeting of the stockholders, or until  
 17 his successor be elected and qualified;
- 18 (10) The names and addresses of the incorporators.

19 (c) The certificate of incorporation, whether for a mutual association or stock  
 20 association, shall be signed by the original incorporators, or a majority of them, but not  
 21 less than 10, and shall be acknowledged before an officer duly authorized under the law  
 22 of this State to take proof or acknowledgement of deeds, and shall be filed along with  
 23 two conformed copies in the office of the Administrator as provided in G.S. 54B-9."

24 Sec. 2. G.S. 54B-40 reads as rewritten:

25 "**§ 54B-40. Voluntary dissolution by directors.**

26 A State association may be voluntarily dissolved by a majority vote of the board of  
 27 directors when substantially all of the assets have been sold for the purpose of  
 28 terminating the business of the association or as provided in G.S. 55-14-01, and when a  
 29 certificate of dissolution is recorded in the manner required by this Chapter for the  
 30 recording of certificates of incorporation."

31 Sec. 3. G.S. 54B-62 reads as rewritten:

32 "**§ 54B-62. Relationship of savings and loan associations with the Savings**  
 33 **Institutions Division.**

34 (a) Except as provided by subsection (b) of this section, a savings and loan  
 35 association or any director, officer, employee, or representative thereof shall not grant  
 36 or give to the Administrator or to any employee of the Administrator's office, or to their  
 37 spouses, any loan or gratuity, directly or indirectly.

38 (b) Neither the Administrator nor any person on the staff of the Savings  
 39 Institutions Division shall:

- 40 (1) Hold an office or position in any State association or exercise any right  
 41 to vote on any State association matter by reason of being a member of  
 42 the association;
- 43 (2) Be interested, directly or indirectly in any savings and loan association  
 44 organized under the laws of this State; or

1 (3) Undertake any indebtedness, as a borrower directly or indirectly or  
2 endorser, surety or guarantor, or sell or otherwise dispose of any loan  
3 or investment to any savings and loan association organized under the  
4 laws of this State.

5 (c) Notwithstanding subsection (b) of this section, the Administrator or any other  
6 person employed in or by his office may be a withdrawable account holder and receive  
7 earnings on such account.

8 (d) If the Administrator or other person has any prohibited right or interest in a  
9 savings and loan association, either directly or indirectly, at the time of his appointment  
10 or employment, he shall dispose of it within 60 days after the date of his appointment,  
11 or employment. If the Administrator or other such person is indebted as borrower  
12 directly or indirectly, or is an endorser, surety or guarantor on a note, at the time of his  
13 appointment or employment, he may continue in such capacity until such loan is paid  
14 off.

15 (e) If the Administrator or any employee of the Division has a loan or other note  
16 acquired by a State savings bank through the secondary market, he may continue with  
17 the debt until such loan or note is paid off."

18 Sec. 4. G.S. 54B-101 reads as rewritten:

19 **"§ 54B-101. Directors.**

20 (a) The directors of a mutual association shall be elected by the members at an  
21 annual meeting, held pursuant to the terms of G.S. 54B-106, for such terms as the  
22 bylaws of the association may provide. Directors' terms may be classified in the  
23 certificate of incorporation. Voting for directors by withdrawable account holders shall  
24 be weighted according to the total amount of withdrawable accounts held by such  
25 members, subject to any maximum number of votes per member which an association  
26 may choose to prescribe in the bylaws of the association. Such requirements shall be  
27 fully prescribed in a detailed manner in the bylaws of the association.

28 (b) The directors of a stock association shall be elected by the stockholders at an  
29 annual meeting, held pursuant to the terms of G.S. 54B-106, for such terms as the  
30 bylaws of the association may provide. ~~Voting for directors shall be weighted according to~~  
31 ~~the number of shares of stock held by a stockholder. Such requirements shall be fully~~  
32 ~~prescribed in a detailed manner in the bylaws of the association. Directors' terms may be~~  
33 classified in the certificate of incorporation.

34 (c) Every State association shall have no less than five directors."

35 Sec. 5. G.S. 54B-131 reads as rewritten:

36 **"§ 54B-131. Right of setoff on withdrawable accounts.**

37 (a) Every association shall have a right of setoff, without further agreement or  
38 pledge, upon all withdrawable accounts owned by any member or customer to whom or  
39 upon whose behalf the association has made an unsecured advance of money by loan;  
40 and upon the default in the repayment or satisfaction thereof the association may, ~~with~~  
41 ~~30 days notice to the member or customer,~~ cancel on its books all or any part of the  
42 withdrawable accounts owned by such member or customer, and apply the value of such  
43 accounts in payment on account of such obligation. ~~Any association may accept the pledge~~  
44 ~~of withdrawable accounts in such association owned by a member or customer, other than the~~

1 borrower as additional security for any loan secured by a withdrawable account or by a  
2 withdrawable account and real property, or as additional security for any real property loan.

3 (b) An association which exercises the right of setoff provided in this section  
4 shall first give 30 days' notice to the member or customer that such right will be  
5 exercised. Such accounts may be held or frozen, with no withdrawals permitted, during  
6 the 30-day notice period. Such accounts may not be canceled and the value thereof may  
7 not be applied to pay such obligation until the 30-day period has expired without the  
8 member or customer having cured the default on the obligation. The amount of any  
9 member's or customer's interest in a joint account or other account held in the names of  
10 more than one person shall be subject to the right of setoff provided in this section.

11 (c) This section is not exclusive, but shall be in addition to contract, common  
12 law and other rights of setoff. Such other rights shall not be governed in any fashion by  
13 this section."

14 Sec. 6. G.S. 54B-132(a) reads as rewritten:

15 "**§ 54B-132. Minors as withdrawable account holders; safe deposit box lessees.**

16 (a) An association may issue a withdrawable account to a minor as the sole and  
17 absolute owner, or as a joint owner, and receive payments, pay withdrawals, accept  
18 pledges and act in any other manner with respect to such account on the order of the  
19 minor with like effect as if he were of full age and legal capacity. Any payment to a  
20 minor shall be a discharge of the association to the extent thereof. The account shall be  
21 held for the exclusive right and benefit of the minor, and any joint owners, free from the  
22 control of all persons, except creditors."

23 Sec. 7. Article 3 of Chapter 54B of the General Statutes is amended by adding  
24 a new section to read:

25 "**§ 54B-47. Merger of banks and associations.**

26 (a) Any State association, upon a majority vote of its board of directors, may  
27 apply to the Administrator for permission to merge with any bank, as defined in G.S.  
28 53-1.

29 (b) The State association shall submit a plan of merger as a part of the application  
30 to the Administrator. The Administrator may recommend approval of the plan of  
31 merger with or without amendment.

32 If he approves the plan, then the plan shall be submitted to the stockholders or  
33 members as provided in the next subsection. If he refuses to approve the plan, he shall  
34 state his objections in writing and give the merging association an opportunity to amend  
35 the plan to obviate such objections or to appeal his decision to the commission.

36 (c) After lawful notice to the stockholders or members of the association and full  
37 and fair disclosure, the substance of the plan must be approved by a majority of the total  
38 votes which stockholders or members of the association are eligible and entitled to cast.  
39 Such a vote by the stockholders or members may be in person or by proxy. Following  
40 the vote of the stockholders or members, the results of the vote certified by an  
41 appropriate officer of the association shall be filed with the Administrator. The  
42 Administrator shall then either approve or disapprove the requested merger.

43 (d) The Administrator may promulgate such rules and regulations as may be  
44 necessary to govern such mergers."

1           Sec. 8. This act is effective upon ratification.