

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 415

Short Title: Banks/Savings Institutions Mergers.

(Public)

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Sponsors: Senators Soles, Warren, and Carpenter.

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Referred to: Commerce

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March 20, 1995

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MERGER OF BANKS AND SAVINGS INSTITUTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-12 reads as rewritten:

**"§ 53-12. Merger or consolidation of ~~banks~~ banks and savings associations.**

~~A bank may merge or consolidate with or transfer its assets and liabilities to another bank. Before such merger or consolidation or transfer shall become effective, each bank concerned in such merger or consolidation or transfer shall file, or cause to be filed, with the Commissioner of Banks, certified copies of all proceedings had by its directors and stockholders, which said stockholders' proceedings shall set forth that holders of at least two thirds of the stock voted in the affirmative on the proposition of merger or consolidation or transfer. Such stockholders' proceedings shall also contain a complete copy of the agreement made and entered into between said banks, with reference to such merger or consolidation or transfer. Upon the filing of such stockholders' and directors' proceedings as aforesaid, the Commissioner of Banks shall cause to be made an investigation of each bank to determine whether the interests of the depositors, creditors, and stockholders of each bank are protected, and find such merger or consolidation is in the public interest, and that such merger or consolidation or transfer is made for legitimate purposes, and his consent to or rejection of such merger or consolidation or~~

1 ~~transfer shall be based upon such investigation. No such merger or consolidation or~~  
2 ~~transfer shall be made without the consent of the Commissioner of Banks. The expense of~~  
3 ~~such investigation shall be paid by such banks. Notice of such merger or consolidation or~~  
4 ~~transfer shall be published for four weeks before or after the same is to become effective,~~  
5 ~~at the discretion of the Commissioner of Banks, in a newspaper published in a city, town,~~  
6 ~~or county in which each of said banks is located, and a certified copy thereof shall be~~  
7 ~~filed with the Commissioner of Banks. In case of either transfer or merger or~~  
8 ~~consolidation the rights of creditors shall be preserved unimpaired, and the respective~~  
9 ~~companies deemed to be in existence to preserve such rights for a period of three years.~~

10 (a) A bank may merge, consolidate with, or transfer its assets and liabilities to  
11 another bank or to a savings association, or a savings association may transfer its assets  
12 and liabilities to a bank. Before such merger or consolidation or transfer shall become  
13 effective, each bank or savings association concerned in such merger or consolidation or  
14 transfer shall file, with the Commissioner of Banks, certified copies of all proceedings  
15 had by its directors and stockholders, or in the case of a mutual savings association, its  
16 directors and membership. The proceedings of the stockholders or membership shall set  
17 forth that (i) holders of at least two-thirds of the stock of the bank voted in the affirmative  
18 on the proposition of merger or consolidation or, (ii) in the case of a stock or mutual  
19 savings association, such percentage of the stock or of the membership as the laws  
20 applicable to such institutions require, voted in the affirmative on the proposition of  
21 merger or consolidation. The proceedings of the stockholders or memberships shall also  
22 contain a complete copy of the agreement made and entered into between said banks or  
23 savings associations, with reference to such merger or consolidation or transfer. Upon  
24 the filing of the proceedings as required by this section, the Commissioner of Banks may  
25 make an investigation of each bank or savings association, or both, to determine whether  
26 the interests of the depositors, creditors, and stockholders or members of each bank or  
27 savings association are protected, and if such merger or consolidation is in the public  
28 interest, and that such merger or consolidation or transfer is made for legitimate purposes.  
29 The Commissioner's consent to or rejection of such merger or consolidation or transfer  
30 shall be based upon such investigation. No merger or consolidation or transfer shall be  
31 made without the consent of the Commissioner of Banks. The expenses of any  
32 investigation shall be paid by the banks or savings associations, or both, involved in the  
33 proposed merger or consolidation or transfer. Notice of such merger or consolidation or  
34 transfer shall be published once a week for four consecutive weeks before the same is to  
35 become effective, at the discretion of the Commissioner of Banks, in a newspaper  
36 published in the county in which each of said banks or savings associations, or both, is  
37 located. If no newspaper is published in such county, then the notice shall be published  
38 in a newspaper having a general circulation in such county. A certified copy of the notice  
39 shall be filed with the Commissioner of Banks. In case of either transfer or merger or  
40 consolidation, the rights of creditors shall be preserved unimpaired, and the respective  
41 companies deemed to be in existence to preserve such rights for a period of three years.  
42 For the purposes of this section, the term 'savings association' shall be construed to

1 include a savings and loan association or a savings bank, whether organized under the  
2 laws of North Carolina or the United States.

3 (b) Unless otherwise required to be maintained, a bank may merge or otherwise  
4 consolidate into itself any subsidiary organized pursuant to G.S. 53-47, or acquired as a  
5 part of any merger or reorganization with another bank or bank holding company."

6 Sec. 2. G.S. 53-13 reads as rewritten:

7 "**§ 53-13. Merged or consolidated banks and savings associations deemed one ~~bank,~~**  
8 **bank or savings association.**

9 In case of merger or consolidation when the agreement of merger or consolidation is  
10 made, and a duly certified copy thereof is filed with the Secretary of State, together with  
11 a certified copy of the approval of the Commissioner of Banks to such merger or  
12 consolidation, the ~~banks,~~ parties thereto, shall be held to be one company, possessed of  
13 the rights, privileges, powers, and franchises of the several companies, but subject to all  
14 the provisions of law under which it is created. The directors and other officers named in  
15 the agreement of consolidation shall serve until the first annual meeting for election of  
16 officers and directors, the date for which shall be named in the agreement. On filing such  
17 agreement, all and singular, the property and rights of every kind of the several  
18 companies shall thereby be transferred and vested in such surviving company in the case  
19 of merger or in such new company in the case of consolidation, and be as fully its  
20 property as they were of the companies parties to the agreement."

21 Sec. 3. G.S. 53-17 reads as rewritten:

22 "**§ 53-17. Fiduciary powers and liabilities of banks or trust companies merging or**  
23 **transferring assets and liabilities.**

24 Whenever any ~~bank or trust company,~~ bank, trust company, savings association or  
25 savings bank, organized under the laws of North Carolina or the ~~acts of Congress,~~ United  
26 States, and doing business in this State, shall consolidate or merge with or shall sell to  
27 and transfer its assets and liabilities to any other ~~bank or trust company~~ bank, trust  
28 company, savings association or savings bank doing business in this State, as provided by  
29 the laws of North Carolina or the ~~acts of Congress,~~ United States, all the then existing  
30 fiduciary rights, powers, duties and liabilities of such consolidating or merging or  
31 transferring ~~bank or banks and/or trust companies,~~ institution, including the rights, powers,  
32 duties and liabilities as executor, administrator, guardian, trustee, and/or any other  
33 fiduciary capacity, whether under appointment by order of court, will, deed, or other  
34 instrument, shall, upon the effective date of such consolidation or merger or sale and  
35 transfer, vest in, devolve upon, and thereafter be performed by, the transferee ~~bank~~  
36 institution or the consolidated or merged ~~bank or trust company,~~ institution, and such latter  
37 ~~bank or trust company~~ institution shall be deemed substituted for and shall have all the  
38 rights and powers of the transferring ~~bank or trust company.~~ institution."

39 Sec. 4. This act is effective upon ratification.