

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2047\*

Short Title: Bank/Savings Assn. Conversion.

(Public)

Sponsors: Representatives Brubaker, Holmes, Dickson, Hasty, and Rogers.

Referred to: Commerce.

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 of the plan of conversion with or without amendment. The Commissioner of Banks

1 shall recommend approval of the plan of conversion if upon examination and  
2 investigation he finds that:

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

15 (d) Any action taken by the Commissioner of Banks pursuant to this section shall  
16 be subject to review by the State Banking Commission which may approve, modify, or  
17 disapprove any action taken or recommended by the Commissioner of Banks. The State  
18 Banking Commission may promulgate rules to govern conversions undertaken pursuant  
19 to this section. The requirements for converting associations shall be no more stringent  
20 than those provided by rule or regulation applicable to other FDIC-insured commercial  
21 banks.

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

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

42 In evaluating each of these conditions, the Commission shall consider a comparison  
43 of the relevant financial ratios of the applicant with the average ratios of North Carolina  
44 banks of similar asset size. The Commission may not approve a conversion where the

1 applicant presents an undue supervisory concern or has not been operated in a safe and  
2 sound manner.

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

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

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

20 (1) Wind up any activities legally engaged in by the association at the time  
21 of conversion but not permitted to State banks.

22 (2) Retain for a transitional period any assets and deposit liabilities legally  
23 held by the association at the effective date of the conversion that may  
24 not be held by State banks.

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

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

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

36 **"§ 54B-46. Conversion of bank to stock association.**

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

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

43 (c) The bank shall submit a plan of conversion as a part of the application to the  
44 Administrator. The Administrator may recommend approval of the plan of conversion

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

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

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

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 stock association.  
29       (2) Management. The management and the board of directors must be  
30 capable of supervising a sound stock association operation and  
31 overseeing the changes that must be accomplished in the conversion  
32 from a bank to a stock association.  
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 stock association must divest itself of all  
39 assets and liabilities that do not conform to State banking law or rules.  
40 The length of this transition period shall be determined by the  
41 Administrator 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 stock associations of similar asset size. The Commission may not approve a conversion  
2 where the applicant presents an undue supervisory concern or has not been operated in a  
3 safe and sound manner.

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

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

18 (h) The Administrator may authorize the resulting stock association to do the  
19 following:

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

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

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

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

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

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