

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 142
SENATE BILL 413

AN ACT TO AUTHORIZE THE CONVERSION OF SAVINGS ASSOCIATIONS
AND SAVINGS BANKS INTO COMMERCIAL BANKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-17.2 reads as rewritten:

"§ 53-17.2. Conversion of savings association to a State bank.

(a) Any association, as defined in G.S. 54B-4, or any savings bank as defined in G.S. 54C-4(b), 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 or savings bank and (ii) any other transaction that results in a change of identity of an association or savings bank 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~~ Upon a majority vote of its board of directors, any association or savings bank may apply to the Commissioner of Banks for permission to convert to a bank and for certification of appropriate amendments to ~~the association's~~ its certificate of incorporation to effect the conversion. A mutual association or savings bank must also convert to a stock form of organization before completing conversion to a bank.

(c) The association or savings bank 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 shall recommend approval of the plan of conversion if upon examination and investigation ~~he~~ the Commissioner finds that:

- (1) The resulting bank will operate in a safe, sound, and prudent manner with adequate capital, liquidity, and earnings prospects;
- (2) The directors, officers, and other managerial officials of the association or savings bank are qualified by character and financial responsibility to control and operate in a legal and proper manner the bank proposed to be formed as a result of the conversion;
- (3) The interest of the depositors, the creditors, and the public generally will not be jeopardized by the proposed conversion; and

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

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

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

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

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

(f) If the State Banking Commission approves the plan of conversion, then the association or savings bank shall submit the plan to the stockholders or members as provided in subsection (g). After approval of the plan of conversion, the Commissioner of Banks shall supervise and monitor the conversion process and shall ensure that the

conversion is conducted pursuant to law and the association's or savings bank's approved plan of conversion.

(g) After lawful notice to the stockholders or members of the association or savings bank and full and fair disclosure of the plan of conversion, the plan must be approved by a majority of the total votes that stockholders or members of the association or savings bank are eligible and entitled to cast. The vote by the stockholders or members may be in person or by ~~proxy~~ a proxy which has been executed within 45 days prior to the vote. Following the vote of the ~~stockholders~~, stockholders or members, the association or savings bank shall file with the Commissioner of Banks the results of the vote certified by an appropriate ~~officer of the association~~ officer. The Commissioner of Banks shall then approve the requested conversion and the association or savings bank shall file with the Secretary of State amended articles of incorporation with the certificate of the Commissioner of Banks attached. The conversion ~~of the association~~ to a bank shall be effective upon this filing.

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

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

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

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

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives