

NORTH CAROLINA GENERAL ASSEMBLY
1963 SESSION

CHAPTER 1168
HOUSE BILL 712

1 AN ACT TO AMEND SUBCHAPTER V OF CHAPTER 54 OF THE GENERAL STATUTES
2 RELATING TO CO-OPERATIVE ORGANIZATIONS.

3
4 The General Assembly of North Carolina do enact:

5
6 **Section 1.** G.S. 54-130(2) is hereby amended to read as follows:

7 "(2) Association. The term 'association' means

8 a. Any corporation organized under this subchapter; or

9 b. Any foreign corporation which

10 (A) Is organized under any general or special act of another State
11 or the District of Columbia as a co-operative association for
12 the mutual benefit of its members and other patrons,

13 (B) Confines its operations in this State to the purposes specified
14 in, and restricts the return on the stock or membership capital
15 and the amount of its business with nonmembers to the limits
16 placed thereon by, this subchapter for corporations organized
17 hereunder, and

18 (C) Is authorized to transact business in this State pursuant to
19 G.S. 54-139."

20 **Sec. 2.** G.S. 54-130 is hereby further amended by renumbering subdivisions (3) and
21 (4) thereof as (4) and (5), respectively, and by inserting next after subdivision (2) thereof a
22 subdivision as follows:

23 "(3) Charter. The term 'charter' includes the original articles of incorporation,
24 together with all amendments thereto and articles of merger or
25 consolidation."

26 **Sec. 3.** G.S. 54-130 is hereby further amended by inserting next after the word
27 "organized" where it first occurs in the next to the last paragraph of the Section the words "or
28 domesticated", so that the paragraph as amended will read as follows:

29 "Associations organized or domesticated hereunder shall be deemed nonprofit, inasmuch as
30 they are not organized to make profits for themselves, as such, or for their members, but only
31 for their members as producers."

32 **Sec. 4.** G.S. 54-134(4) is hereby amended by striking out the words, "The term for
33 which it is to exist, not exceeding fifty years", and by inserting in lieu thereof the following:

34 "The period of duration, which may be perpetual. When the articles of incorporation fail to
35 state the period of duration, it shall be considered perpetual. Any association heretofore or
36 hereafter organized for a period less than perpetual, may by amendment to its articles of
37 incorporation, extend the period of its duration for a specified period or perpetually."

38 **Sec. 5.** G.S. 54-134 is hereby further amended by striking out the words, "and shall
39 be filed in accordance with the general corporation laws of this State", and by inserting in lieu
40 thereof the following: "and shall be filed as provided in G.S. 55A-4."

41 **Sec. 6.** G.S. 54-135 is hereby amended to read as follows:

1 "Amendments to Articles of Incorporation. (a) An association may amend its charter from
2 time to time in any and as many respects as may be desired, so long as its charter as amended
3 contains only such provisions as are lawful under this subchapter.

4 "(b) Amendments to the charter shall be made as follows: The board of directors shall by
5 a vote of not less than two-thirds of all of the members of the board, adopt a resolution
6 approving the proposed amendment or amendments and directing that the proposed amendment
7 or amendments be submitted to a vote at a meeting of members, which may be either an annual
8 or a special meeting. Written or printed notice setting forth the proposed amendment or
9 amendments, or a summary of the changes to be effected thereby shall be given to each
10 member entitled to vote at such meeting, within the time and in the manner provided in this
11 subchapter for the giving of notice of meetings of members. The proposed amendment shall be
12 adopted upon receiving at least a majority of the votes entitled to be cast by members present or
13 represented by proxy at such meeting.

14 "(c) The articles of amendment shall set forth:

- 15 (1) The name of the association;
- 16 (2) The amendment or amendments so adopted;
- 17 (3) A statement setting forth the date of the meeting of the board of directors at
18 which the amendment or amendments were approved by the board, that a
19 quorum was present at such meeting, and that such approval received a vote
20 of not less than two-thirds of all of the members of the board;
- 21 (4) A statement setting forth the date of the meeting of members at which the
22 amendment was adopted, that a quorum was present at such meeting, and
23 that such amendment received at least a majority of the votes entitled to be
24 cast by members present or represented by proxy at such meeting.
- 25 (5) The articles of amendment shall be executed by the association and shall be
26 filed all as provided in G.S. 55A-4.
- 27 (6) A certified copy of the articles of amendment shall be filed with the Chief of
28 the Division of Markets."

29 **Sec. 7.** G.S. 54-136 is hereby amended by adding at the end thereof a paragraph as
30 follows:

31 "Notwithstanding the foregoing provisions of this Section, any association may amend its
32 articles of incorporation to provide that thereafter any bylaw or bylaws of the association may
33 be amended or repealed, or any new bylaw may be adopted, either by the members or by the
34 board of directors, but if the members amend any bylaw or bylaws or adopt any new bylaw or
35 bylaws, such bylaw or bylaws shall not thereafter be amended or repealed by the board of
36 directors, and if the members repeal any bylaw or bylaws, such bylaw or bylaws shall not be
37 readopted by the board of directors; provided, however, that no bylaw shall be adopted by the
38 board of directors which shall require a higher number or percentage of members to be present
39 or represented at a members' meeting for the purpose of constituting a quorum, or a higher
40 number or percentage of such quorum to take action, than was the case before the power to
41 alter, amend, or repeal the bylaws was conferred upon the board of directors."

42 **Sec. 8.** G.S. 54-139, which reads as follows:

43 "Limitation of Use of Term 'Co-operative'. No person, firm or corporation, or association
44 hereafter organized or doing business in this State shall be entitled to use the word
45 'co-operative' as part of its corporate or other business name or title unless it has complied with
46 the provisions of this subchapter.", is hereby amended to read as follows:

47 "Domestication of Foreign Co-operative Corporations; Limitation on the Use of the Word
48 'Co-operative'. (a) A foreign corporation that can qualify as an association, as defined in G.S.
49 54-130(2)b (A) and (B), may, under the provisions of Article 8, Chapter 55A, if it be a
50 non-stock corporation, or under the provisions of Article 10, Chapter 55, if it be a stock
51 corporation, be authorized to transact business in this State.

1 "(b) The board of directors of each association shall, by resolution adopted by each such
2 board, approve a plan of merger setting forth:

- 3 (1) The names of the association proposing to merge, and the name of the
4 association into which they propose to merge, which is hereinafter
5 designated as the surviving association.
- 6 (2) The name which the surviving association is to have, which name may be
7 that of any of the associations involved in the merger or any other available
8 name, subject, however, to the limitations of G.S. 54-139 and G.S. 55A-10.
- 9 (3) The terms and conditions of the proposed merger.
- 10 (4) A statement of any changes in the charter of the surviving association to be
11 effected by such merger.
- 12 (5) Such other provisions not inconsistent with law as are deemed necessary or
13 desirable.

14 **"G.S. 54-160. Procedure for Consolidation.** (a) Any two or more domestic associations
15 organized under this subchapter, either with or without capital stock, may consolidate into a
16 new association pursuant to a plan of consolidation approved in the manner provided in this
17 Article.

18 "(b) The board of directors of each association shall, by resolution adopted by each such
19 board, approve a plan of consolidation setting forth:

- 20 (1) The names of the associations proposing to consolidate, and the name of the
21 new association into which they proposed to consolidate, which is
22 hereinafter designated as the new association. The name of the new
23 association may be that of any of the associations involved in the
24 consolidation or any other available name, subject, however, to the
25 limitations of G.S. 54-139 and G.S. 55A-10.
- 26 (2) The terms and conditions of the proposed consolidation.
- 27 (3) With respect to the new association, all of the appropriate statements
28 required to be set forth in articles of incorporation for associations organized
29 under this subchapter.
- 30 (4) Such other provisions not inconsistent with law as are deemed necessary or
31 desirable.

32 **"G.S. 54-161. Approval of Merger or Consolidation.** (a) A plan of merger or consolidation
33 shall be adopted in the following manner: The board of directors of each merging or
34 consolidating association shall adopt a resolution approving the proposed plan, and directing
35 that it be submitted to a vote at a meeting of members having voting rights, which may be
36 either an annual or a special meeting. Written or printed notice of the meeting shall be given to
37 each member entitled to vote at such meeting. The notice shall state that the proposed plan of
38 merger or consolidation will be considered and acted upon at the meeting, and a copy or a
39 summary of the plan of merger or plan of consolidation, as the case may be, shall be included
40 in or enclosed with such notice. Such notice shall contain a statement, displayed with
41 reasonable prominence, to the effect that objecting members are entitled, upon compliance with
42 G.S. 54-166, including the twenty-day demand requirement, to be paid the fair market value of
43 their stock or other property rights or interest in the association, but failure of the notice to
44 contain such a statement shall not invalidate the merger or consolidation. Each such notice shall
45 be mailed by first-class mail at such a time that not less than ten (10) days shall elapse between
46 the date of mailing the notice and the date of the meeting, and shall be mailed to the member at
47 his last address as it appears on the records of the association. The proposed plan shall be
48 adopted upon receiving at least two-thirds of the votes entitled to be cast by members present at
49 each such meeting where a quorum is present.

1 "(b) After such approval, and at any time prior to the filing of the articles of merger or
2 consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if
3 any, set forth in the plan of merger or consolidation.

4 **"G.S. 54-162. Articles of Merger or Consolidation.** (a) Upon such approval, articles of
5 merger or articles of consolidation shall be executed by each association and filed as provided
6 in G.S. 55A-4, except that a copy thereof certified by the Secretary of State shall also be
7 recorded in the office of the clerk of the Superior Court of each county wherein the constituent
8 associations have their principal places of business or their registered offices.

9 "(b) The articles of merger or consolidation shall set forth:

10 (1) The plan of merger or the plan of consolidation; and

11 (2) A statement setting forth the date of the meeting of the members of each
12 association at which the plan was adopted, that a quorum was present at such
13 meeting, and that such plan received at least two-thirds of the votes entitled
14 to be cast by members present at each such meeting where a quorum was
15 present.

16 "(c) The time when the merger or consolidation is effected is determined by the
17 provisions of G.S. 55A-4.

18 **"G.S. 54-163. Effect of Merger or Consolidation.** When such merger or consolidation has
19 been effected:

20 "(1) The several associations, parties to the plan of merger or consolidation, shall
21 be a single association which, in the case of a merger, shall be that
22 association designated in the plan of merger as the surviving association,
23 and, in the case of a consolidation, shall be the new association provided for
24 in the plan of consolidation.

25 "(2) The separate existence of all associations which are parties to the plan of
26 merger or consolidation, except the surviving or new association, shall
27 cease.

28 "(3) Such surviving or new association shall have all the rights, privileges,
29 immunities, and powers and shall be subject to all the duties and liabilities of
30 an association organized under this subchapter.

31 "(4) Such surviving or new association shall thereupon and thereafter, to the
32 extent consistent with its charter as established or changed by the merger or
33 consolidation, possess all the rights, privileges, immunities, and franchises,
34 as well of a public as of a private nature, of each of the merging or
35 consolidating associations; and all property, real and personal, and all debts
36 due on any account, and all other choses in action, and all and every other
37 interest, of or belonging to or due to each of the associations so merged or
38 consolidated, shall be taken and deemed to be transferred to and vested in
39 such single association without further act or deed; and the title to any real
40 estate, or any interest therein, vested in any of such associations shall not
41 revert or be in any way impaired by reason of such merger or consolidation.

42 "(5) Such surviving or new association shall thenceforth be responsible and liable
43 for all the liabilities, contracts or other obligations, and penalties of each of
44 the associations so merged or consolidated; and any claim existing or action
45 or proceeding, civil or criminal, pending by or against any of such
46 associations may be prosecuted as if such merger or consolidation had not
47 taken place, or such surviving or new association may be substituted in its
48 place; and any judgments rendered against any of the merged or
49 consolidated associations may be enforced against the surviving or new
50 association. Neither the rights of creditors nor any liens upon the property of

1 any merged or consolidated association shall be impaired by such merger or
2 consolidation.

3 "(6) In the case of a merger, the charter of the surviving association shall be
4 deemed to be amended to the extent, if any, that changes in its charter are
5 stated in the plan of merger. In the case of a consolidation, the articles of
6 consolidation shall be deemed to be the articles of incorporation of the new
7 association.

8 **"G.S. 54-164. Merger or Consolidation of Domestic and Foreign Associations.** (a) One or
9 more domestic associations organized under this subchapter and one or more foreign
10 corporations engaging in any activity such as is described in G.S. 54-132, and which is a
11 nonprofit co-operative in the sense that the term 'nonprofit' is used in G.S. 54-130, may be
12 merged or consolidated into an association of this State or an association or corporation of
13 another state if such merger or consolidation is permitted by the laws of the state under which
14 each such foreign association or corporation is organized.

15 "(b) Each domestic association shall comply with the provisions of this Article with
16 respect to the merger or consolidation, as the case may be, of domestic associations, and each
17 foreign association or corporation shall comply with the applicable provisions of the laws of the
18 state under which it is organized.

19 "(c) If the surviving or new association or corporation, as the case may be, is an
20 association or corporation of any state other than this State, it shall comply with the provisions
21 of this subchapter with respect to foreign corporations if it is to transact business in this State;
22 and if after the merger or consolidation it transacts no business in this State, the courts of this
23 State shall have jurisdiction in actions to enforce any obligation of any constituent association
24 of this State and process therein may be served as provided in G.S. 55-145.

25 "(d) The effect of such merger or consolidation shall be the same as in the case of the
26 merger or consolidation of domestic associations, if the surviving or new corporation is to be an
27 association of this State. If the surviving or new association or corporation is to be an
28 association or corporation of any state other than this State, the effect of such merger or
29 consolidation shall be the same as in the case of the merger or consolidation of domestic
30 associations except insofar as the laws of such other state provide otherwise.

31 "(e) If the new or surviving association or corporation is not an association of this State,
32 then notwithstanding anything in the foregoing provisions of this Section:

33 (1) The rights of any member of any constituent association that is an
34 association of this State to receive notice of objectors' rights, to file his
35 objection, upon such objection to demand and receive payment of the fair
36 market value of his stock or other property rights or interests in the
37 association, or to avail himself of any equitable relief to which he would be
38 entitled if the surviving or new association or corporation were an
39 association of this State, shall not be impaired; and

40 (2) The courts of this State shall have jurisdiction in actions to enforce the
41 aforesaid rights against the surviving or new association or corporation
42 regardless of whether or not said association or corporation is otherwise
43 subject to the jurisdiction of the courts of this State and in any such action
44 service of process may be made in the manner provided in G.S. 55-145 that
45 would be applicable if said association or corporation were transacting
46 business in this State.

47 **"G.S. 54-165. Sale, Lease or Exchange of Assets; Mortgage or Pledge of Assets.** (a) A sale,
48 lease, or exchange of all, or substantially all, the property and assets of an association organized
49 under the provisions of this subchapter may be made upon such terms and conditions and for
50 such consideration, which may consist in whole or in part of money or property, real or
51 personal, including shares of any corporation for profit, domestic or foreign, as may be

1 authorized in the following manner: The board of directors shall adopt a resolution
2 recommending such sale, lease, or exchange and directing that it be submitted to a vote at a
3 meeting of members, which may be either an annual or a special meeting. Written or printed
4 notice of the meeting shall be given to each member entitled to vote at such meeting. The
5 notice shall state that the proposed sale, lease, or exchange will be considered and acted upon at
6 such meeting, and a statement of the terms of the proposed sale, lease, or exchange, as the case
7 may be, shall be included in or enclosed with such notice. Each such notice shall be mailed by
8 first-class mail at such a time that not less than ten (10) full days shall elapse between the date
9 of mailing the notice and the date of the meeting, and shall be mailed to the member at his last
10 address as it appears on the records of the association. The proposed sale, lease, or exchange, as
11 the case may be, shall be adopted upon receiving at least two-thirds of the votes entitled to be
12 cast by members present at the meeting, if a quorum is present.

13 "(b) A mortgage or pledge of, or any other security interest in, all or any part or parts of
14 the property of the association may be made by authority of the board of directors of the
15 association without authorization of the members, unless otherwise provided in the charter or
16 bylaws adopted by the members.

17 **"G.S. 54-166. Rights of Objecting Members.** (a) Any member of an association effecting a
18 merger or consolidation may give to the association prior to or at the meeting of the members
19 to which the proposal of merger or consolidation is submitted to a vote, written notice that he
20 objects to such proposal. Within twenty (20) days after the date on which the vote was taken,
21 such member may, unless he votes in favor of the proposal, make written demand on the
22 association for payment of the fair market value of his stock or other property rights or interest
23 in the association. Such demand shall state the number and class of shares of stock owned by
24 him or the nature and amount of other property rights or interest owned by him in the
25 association. In addition to any other right he may have in law or equity, a member giving such
26 notice shall be entitled, if and when the merger or consolidation is effected, to be paid by the
27 surviving or new association, the fair market value of such stock, or other property rights or
28 interests, as of the day prior to the date on which the vote was taken, subject only to the
29 surrender by him of the certificate or certificates or other evidence of ownership of such stock
30 or other property rights or interests.

31 "(b) If within thirty (30) days after the date upon which the objecting member becomes
32 entitled to payment for such stock or other property rights or interest, the fair market value of
33 such stock or other property rights or interests is agreed upon between the member and the
34 surviving or new association, as the case may be, payment therefor shall be made within sixty
35 (60) days after the agreement, upon surrender of the certificate or other evidence of such
36 property rights or interests, whereupon the member shall cease to have any interest in such
37 stock or other property rights or interests in the association.

38 "(c) If within the thirty-day period mentioned in subsection (b) of this Section the
39 member and the association do not agree as to the fair market value of such stock or other
40 property rights or interests, the member may, within sixty (60) days after the expiration of the
41 thirty-day period, file a petition in the Superior Court of the county in which the association has
42 its registered office or principal place of business asking for the appointment by the clerk of the
43 Superior Court of that county of three qualified and disinterested appraisers to appraise the fair
44 market value of such stock or other property rights or interests. A summons as in other cases of
45 special proceedings, together with a copy of the petition, shall be served on the association at
46 least ten (10) days prior to the hearing of the petition by the court. The award of the appraisers,
47 or a majority of them, if no exceptions be filed thereto within ten (10) days after the award shall
48 have been filed in court, shall be confirmed by the court, and when confirmed shall be final and
49 conclusive, and the member, upon depositing with the court the proper stock certificates or
50 other evidence of such property rights or interests, shall be entitled to judgment against the
51 association for the appraised value thereof as of the day prior to the date on which the vote was

1 taken, together with interest thereon to the date of such confirmation. If either party files
2 exceptions to such award within ten (10) days after the award shall have been filed in court, the
3 case shall be transferred to the civil issue docket of the Superior Court for trial during term and
4 shall be there tried in the same manner, as near as may be practicable, as is provided in Chapter
5 40 of the General Statutes for the trial of cases under the eminent domain law of this State, and
6 with the same right of appeal to the Supreme Court as is permitted in that Chapter. The court
7 shall assess the cost of the proceedings as it shall deem equitable. Upon payment of the
8 judgment the owner of such stock or other property rights or interests shall cease to have any
9 interest in the association and the association shall be entitled to have said stock certificates or
10 other evidence of such property rights or interests surrendered to the association by the clerk of
11 court. Unless the member shall file such petition within the time herein prescribed, he and all
12 persons claiming under him shall have no right of payment hereunder, but in that event nothing
13 herein shall impair his status as a member.

14 "(d) If in the notices sent to members in connection with the meeting to vote upon a
15 proposed merger or consolidation no reference is made as required by this Article to the
16 provisions of this Section, any member entitled to but who did not avail himself of the
17 provisions of this Section, unless he voted for the proposal, is entitled, if he so demands in
18 writing within one year after the effective date of the merger or consolidation, to recover from
19 the surviving or new association, as the case may be, any damage which he suffered from
20 failure of the association of which he was a member to make the aforesaid reference.

21 "(e) The liability to pay for shares or to pay damages imposed by this Section on an
22 association extends to the successor association which acquires the assets of the predecessor,
23 whether by merger or consolidation.

24 "(f) Shares of stock acquired by an association pursuant to payment of the agreed fair
25 market value thereof or to payment of the judgment entered therefor, as in this Section
26 provided, may be held and disposed of by the association as in the case of other treasury shares.

27 "(g) The provisions of this Section shall not apply to a merger if on the date of the filing
28 of the articles of merger the surviving association is the owner of all the outstanding shares of
29 the other association, domestic or foreign, participating in the merger and if such merger makes
30 no changes in the relative rights of the members of the surviving association.

31 "(h) Notwithstanding any of the foregoing provisions of this Section, no member of an
32 association effecting a merger or consolidation, who objects thereto and makes written demand
33 for payment of the fair market value of his stock or other property rights or interests in the
34 association, as hereinbefore provided in this Section, shall be entitled to such payment at any
35 time prior to the time that he would otherwise be entitled to payment pursuant to valid
36 provisions of such stock, or valid provisions of the charter or the bylaws of the association, in
37 effect on the date of the vote for such merger or consolidation. However, in any case where the
38 owner of such stock or other property rights or interest in the association is not entitled,
39 because of valid provisions of his stock, or because of valid provisions of the charter or bylaws
40 of the association, to payment at the time hereinbefore provided in this Section, the fair market
41 value of such stock or other property rights or interest in the association, as of the day prior to
42 the date on which the vote was taken, may be determined in any manner hereinbefore provided
43 in this Section, and the amount so determined, without interest, shall be an obligation of the
44 surviving or new association, as the case may be, and shall be due and payable at the time that
45 the owner thereof would be entitled to payment pursuant to valid provisions of such stock, or
46 valid provisions of the charter or the bylaws of the association."

47 **Sec. 14.** G.S. 54-147 is hereby amended by changing the period at the end of said
48 Section to a comma and adding the following words: "or to any communication, written or oral,
49 between a business company or concern and persons with whom it has an existing contractual
50 relationship which communication relates to the performance of that contractual relationship
51 and duties and responsibilities arising therefrom."

1 **Sec. 15.** All laws and clauses of laws in conflict with the provisions of this Act are
2 hereby repealed.
3 **Sec. 16.** This Act shall become effective upon its ratification.
4 In the General Assembly read three times and ratified, this the 24th day of June,
5 1963.