

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 41

Short Title: Savings and Loan Technical Changes.

(Public)

Sponsors: Senators Staton; Carpenter, Conder, and Plyler.

Referred to: Banks and Thrift Institution.

February 7, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CHANGES TO THE SAVINGS INSTITUTIONS
3 LAW.

4 The General Assembly of North Carolina enacts:

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

6 "**§ 54B-10. Certificate of incorporation.**

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

- 9 (1) The name of the association, which must not so closely resemble the
10 name of an existing association doing business under the laws of this
11 State as to be likely to mislead the public;
- 12 (2) The county and city or town where its principal office is to be located
13 in this State; and the name of its registered agent and the address of its
14 registered office, including county and city or town, and street and
15 number;
- 16 (3) The period of duration, which may be perpetual. When the certificate
17 of incorporation fails to state the period of duration, it shall be
18 considered perpetual;
- 19 (4) The purposes for which the association is organized, which shall be
20 limited to purposes permitted under the laws of this State for savings
21 and loan associations;
- 22 (5) The amount of the entrance fee per withdrawable account based upon
23 the amount pledged;

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

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

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

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

23 **"§ 54B-40. Voluntary dissolution by directors.**

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

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

30 **"§ 54B-62. Relationship of savings and loan associations with the Savings**
31 **Institutions Division.**

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

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

- 38 (1) Hold an office or position in any State association or exercise any right
39 to vote on any State association matter by reason of being a member of
40 the association;
- 41 (2) Be interested, directly or indirectly in any savings and loan association
42 organized under the laws of this State; or
- 43 (3) Undertake any indebtedness, as a borrower directly or indirectly or
44 endorser, surety or guarantor, or sell or otherwise dispose of any loan

1 or investment to any savings and loan association organized under the
2 laws of this State.

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

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

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

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

17 **"§ 54B-101. Directors.**

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

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

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

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

34 **"§ 54B-131. Right of setoff on withdrawable accounts.**

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

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

9 (c) If an association shall proceed in good faith as provided in this section,
10 but it is later determined that the association was not entitled to have held or setoff
11 funds, then the association's sole obligation shall be to return the funds to the member's
12 or customer's account together with interest at the rate that would have applied if the
13 account had not been held or setoff; the association shall not otherwise be liable for any
14 costs or damages. This section is not exclusive, but shall be in addition to contract,
15 common law and other rights of setoff. Such other rights shall not be governed in any
16 fashion by this section."

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

18 **"§ 54B-132. Minors as withdrawable account holders; safe deposit box lessees.**

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

26 Sec. 7. This act is effective upon ratification.