**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4238**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Sandifer and Taylor

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Introduced in the House on March 30, 2023

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Banks, consolidation and mergers

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 3/30/2023 House Introduced and read first time (House Journal‑page 22)

 3/30/2023 House Referred to Committee on **Labor, Commerce and Industry** (House Journal‑page 22)

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**VERSIONS OF THIS BILL**

[03/30/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4238_20230330.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 34-3-850, RELATING TO THE CONSOLIDATION OR MERGER OF BANKS AND TRUST COMPANIES, SO AS TO PROVIDE THAT CERTAIN BANKS OR TRUST COMPANIES MAY MERGE OR CONSOLIDATE WITH, OR SELL OR TRANSFER ASSETS AND LIABILITIES TO, A STATE OR FEDERALLY CHARTERED CREDIT UNION; BY AMENDING SECTION 34-28-230, RELATING TO THE POWER TO REORGANIZE, MERGE, CONSOLIDATE, OR SELL ASSETS OUT OF THE ORDINARY COURSE OF BUSINESS, SO AS TO PROVIDE THAT AN ASSOCIATION MAY REORGANIZE, MERGE, OR CONSOLIDATE INTO A STATE OR FEDERALLY CHARTERED CREDIT UNION; BY AMENDING SECTION 34-30-350, RELATING TO MERGERS OF STATE SAVINGS BANKS AND FEDERAL DEPOSITORY INSTITUTIONS, SO AS TO PROVIDE THAT A STATE OR FEDERALLY CHARTERED CREDIT UNION MAY MERGE WITH CERTAIN DEPOSITORY INSTITUTIONS UNDER A STATE SAVINGS BANK CHARTER OR A FEDERAL CHARTER; BY AMENDING SECTION 34-30-360, RELATING TO MERGERS OF STOCK STATE SAVINGS BANKS WITH BANKS OR ASSOCIATIONS, SO AS TO PROVIDE THAT A STOCK STATE SAVINGS BANK MAY APPLY TO MERGE WITH A STATE OR FEDERALLY CHARTERED CREDIT UNION; BY AMENDING SECTION 34-26-210, RELATING TO DISCRETIONARY POWERS OF THE SOUTH CAROLINA BOARD OF FINANCIAL INSTITUTIONS, SO AS TO PROVIDE THAT A CREDIT UNION SHALL HAVE THE POWER TO ENGAGE IN CERTAIN ACTIVITIES; BY AMENDING SECTION 34-26-615, RELATING TO BOARD VACANCIES, SO AS TO PROVIDE HOW THE BOARD MAY FILL VACANCIES; BY AMENDING SECTION 34-26-645, RELATING TO THE DUTIES OF THE BOARD, SO AS TO PROVIDE THAT CERTAIN DUTIES MAY BE DELEGATED; BY AMENDING SECTION 34-26-660, RELATING TO THE PURPOSE AND COMPOSITION OF A CREDIT UNION SUPERVISORY COMMITTEE, SO AS TO PROVIDE FOR CERTAIN BOARD APPOINTMENTS; BY AMENDING SECTION 34-26-665, RELATING TO THE SUSPENSION OF MEMBERS AND REPORTING, SO AS TO PROVIDE FOR CERTAIN SUSPENSIONS OR REMOVALS FOR CAUSE; AND BY AMENDING SECTION 34-26-670, RELATING TO THE SUSPENSION OR REMOVAL OF A SUPERVISORY COMMITTEE MEMBER, SO AS TO PROVIDE FOR SUSPENSION OR REMOVAL FOR CAUSE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 34‑3‑850 of the S.C. Code is amended to read:

 Section 34‑3‑850. (A) A bank or trust company organized under the laws of South Carolina or the acts of Congress, and doing business in this State, may merge or consolidate with, or sell or transfer some or all of its assets and liabilities to any other such bank, or trust company, or state or federally chartered credit union when all applicable laws governing the transactions are first complied with.

 (B) When any such bank, or trust company, or state or federally chartered credit union executes a transaction under the provisions of subsection (A):

 (1) all the then rights, powers, privileges, duties, appointments, and account designations regarding each fiduciary capacity or other relationship transferred, whether created by will, indenture, trust, court order, agreement, or other means;

 (2) title to all property, real, personal, and mixed;

 (3) all debts due on whatever account;

 (4) all other choses in action held in a fiduciary capacity;

 (5) each and every other interest, as a fiduciary, or contractual relationship, of or belonging to:

 (a) the disappearing corporation in the case of a merger;

 (b) each corporation in the case of a consolidation; or

 (c) the transferor, but only to the extent transferred, in the case of a transfer, as the case may be, shall, upon the effective date of the transaction and without further act or deed, vest in, devolve upon, and thereafter be performed by the resultant bank or trust company, entity or transferee, as the case may be.

 (C) A merger, consolidation, or transfer described in this section does not constitute a resignation or disqualification of any party to the merger or consolidation or a resignation or disqualification of the transferor or transferee, to serve as a fiduciary, or in any other capacity, under any documents, instruments, or agreements in existence or in effect prior to or after the merger, consolidation, or transfer, as the case may be, or a relinquishment of trust powers by any party to a merger or consolidation or by the transferor or transferee, as the case may be. However, in the case of a transfer, the transferor may resign as a fiduciary in favor of the transferee.

 (D) When any such merger or consolidation is approved and effected as provided for by law, all the rights, franchises, and fiduciary and other interests of such bank or trust company merged or consolidated in and to all property real, personal, and mixed and choses in action is considered to be transferred to and vested in the resultant bank or trust company entity without any deed or any other transfer. Upon the transfer of some or all of the assets of such bank or trust company pursuant to applicable law, to the extent transferred, all of the rights, franchises, and fiduciary and other interests of such bank or trust company in and to all property, real, personal, and mixed and choses in action are considered to have been transferred to and vested in the transferee bank or trust company without any deed or further transfer. In the case of such a merger or consolidation, the rights of creditors of such bank or trust company are preserved unimpaired, and all lawful debts and liabilities of such bank or trust company are considered to have been assumed by the resultant bank or trust company entity. In the case of a transfer, the rights of creditors and the rights of others to any claim, action, or proceeding pending against the transferor as of the date of the transfer, to the extent so transferred, are considered to have been transferred to and assumed by the transferee bank or trust company.

 (E) Any previous merger, consolidation, or transfer of any national bank to or into any state bank, or state trust company, or state or federally chartered credit union doing business in this State, in accordance with the provisions of this section, is ratified and confirmed subject to the conditions of this section.

 (F) In the case of a transfer, where the fiduciary or other relationship is a matter of public record, the transferor and transferee both shall use reasonable efforts to execute an affidavit in recordable form giving notice of the transfer which affidavit must be filed in the appropriate public records. Where the fiduciary or other relationship is not a matter of public record, the transferor and transferee both shall use reasonable efforts to give notice of the transfer to the person or entity originally responsible for establishing the fiduciary or other relationship, if possible, and if not then to the person or entity most directly affected by the change of fiduciary or change of relationship.

SECTION 2. Section 34‑28‑230(1) of the S.C. Code is amended to read:

 (1) Pursuant to a plan adopted by the board of directors and approved by the Board as equitable and as adequately protecting the interests of the association, its members or stockholders, its deposit account holders, and the public, an association shall, subject to Article 4 of this chapter, have power to reorganize, to merge, or consolidate into another association, or another company, or a state or federally chartered credit union, or to sell all or substantially all of its assets out of the ordinary course of business to another association, or another company, or a state or federally chartered credit union, provided the plan of the reorganization, merger, or consolidation or sale of assets meets the procedural requirements of the South Carolina Business Corporation Act, Chapters 1 to 25 of Title 33, for these transactions.

SECTION 3. Section 34‑30‑350 of the S.C. Code is amended to read:

 Section 34‑30‑350. Any two or more depository institutions, when one or more is a state savings bank and one or more is a federal federally insured depository institution including, but not limited to, a bank or state or federally chartered credit union, operating in South Carolina, may merge under either a state savings bank charter or a the appropriate federal or state charter.

SECTION 4. Section 34‑30‑360(A) of the S.C. Code is amended to read:

 Section 34‑30‑360. (A)A stock state savings bank, upon a majority vote of its board of directors, may apply to the board for permission to merge with a bank, as defined in Chapter 25;, or an association, as defined in Section 34‑28‑30; or a state or federally chartered credit union.

SECTION 5. Section 34‑26‑210(5) of the S.C. Code is amended to read:

 (5) By issuing operational instructions, the board may authorize state credit unions to engage in activities approved for federally‑chartered credit unions. The board may issue operational instructions authorizing state credit unions to engage in activities approved for federally chartered credit unions or as otherwise necessary or convenient for members.

 (6) Notwithstanding any other provisions of this chapter and in addition to any other powers or activities as authorized by this chapter, a credit union shall have the power to engage in any powers or activities permissible for a federal credit union.

 (a) A credit union shall provide thirty days’ prior written notice to the board before engaging in a power or activity permissible pursuant to this subitem.

 (b) During the thirty‑day review period, the board may request further information concerning any proposed power or activity, impose conditions based on safety and soundness on the proposed power or activity, or prohibit the credit union from engaging in the proposed power or activity if to do so would have a significant impact on the safety and soundness of the credit union.

 (c) Except as otherwise agreed to by a credit union, the board is considered to have granted approval for a credit union to engage in a power or activity if within thirty days of receipt of a written notice from a credit union, the board does not act.

 (d) A credit union may appeal an adverse decision by the board regarding a power or activity pursuant to Title 1, Chapter 23.

SECTION 6. Section 34‑26‑615 of the S.C. Code is amended to read:

 Section 34‑26‑615. The board of directors shall may fill any vacancies occurring in the board until successors elected at the next annual election have qualifiedfor the remainder of the unexpired term or in the manner provided in the bylaws. The board shall also fill vacancies in the credit and supervisory committees.

SECTION 7. Section 34‑26‑645 of the S.C. Code is amended by adding:

 (15) the duties proscribed pursuant to items (7), (8), and (9) may be delegated to credit union management with proper oversight and supervision by the board.

SECTION 8. Section 34‑26‑660(2) of the S.C. Code is amended to read:

 (2) The supervisory committee shall consist of three members to bewho may be elected by and from the membership or appointed by the board of directors as provided in the bylaws. Elections shall be held at the annual meeting or in such other manner as the bylaws provide. All members of the supervisory committee shall hold office for such terms as the bylaws provide.

SECTION 9. Section 34‑26‑665 of the S.C. Code is amended to read:

 Section 34‑26‑665. (1) The supervisory committee shall report any suspension of a any board member or credit committee member to the board of directors. The board shall meet not less than seven nor more than twenty‑onethirty days after such suspension to take appropriate final actions. The suspended person shall have the right to appear and be heard at the meeting.

 (2) Upon any suspension of any officer or board member, a membership meeting shall be called not less than seven nor more than twenty‑one days after such suspension. At such meeting the suspended person shall have the right to appear and be heard. The suspension shall be acted upon by the members and it shall be affirmed or reversed.Acting on a report from management, the supervisory committee, or upon its own investigation, the board of directors may suspend or remove any officer, board member, or committee member for cause. Suspension or removal for cause means:

 (a) accounts closed due to abusive or negligent behavior;

 (b) engaging in violent, belligerent, disruptive, or abusive activities including, but not limited to:

 (i) violence, intimidation, threats, harassment, or physical or verbal abuse of duly elected or appointed officials, employees, members, or agents of the credit union, which includes actions or behavior on credit union premises or through the use of telephone, mail, email, or other electronic communications;

 (ii) causing or threatening damage to credit union property;

 (iii) unauthorized use or access of credit union property;

 (iv) knowingly disseminating incorrect, misleading, confidential, or proprietary information regarding the credit union or its members; or

 (v) any actions that may cause material risk or financial harm to the credit union.

 (3) Before voting to suspend or remove an officer, board member, or committee member, the board shall provide the affected person with at least fifteen days’ notice of the board meeting during which the suspension or removal will be considered. Notice may be given in writing or by email if the affected person has consented to receiving electronic communications from the credit union. The affected person must have the opportunity to be heard but is not entitled to attend in person. The board meeting may be held in person or by any electronic means provided the parties have a reasonable opportunity to participate and can hear the proceedings as they occur. The affected person may choose to provide a written submission to the board instead of making an oral presentation at the meeting.

 (4) Once the affected person has had the opportunity to be heard or any written submission has been considered, the board shall act upon the suspension or removal, and it must be affirmed or reversed by a two‑thirds vote of those present at the meeting.

SECTION 10. Section 34‑26‑670 of the S.C. Code is amended to read:

 Section 34‑26‑670. Any member of the supervisory committee may be suspended or removed for failure to perform duties in accordance with this chapter, the articles of incorporation, or the bylaws, or for cause as defined in Section 34‑26‑665(2) by the board of directors by a two‑thirds vote of those present at a meeting. The committee member shall have the appeal rightsopportunity to be heard outlined in Section 34‑26‑665(2)(3).

SECTION 11. This act takes effect upon approval by the Governor.

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