

CHAPTER 231

S.B. No. 1123

An Act relating to regulation and supervision of savings and loan associations; providing penalties; amending the Texas Savings and Loan Act, as amended (Article 852a, Vernon's Texas Civil Statutes), by amending Sections 1.02, 3.07, 6.07, 6.15, 10.03, 10.04, 11.12, 11.16, 11.17, and 11.18 and Subsections (a) and (f), Section 11.20; by revising Section 1.03 and Chapters 2, 5, 7, 8; and by adding Sections 10.031, 11.22, and 11.23 and Subsection (m) to Section 11.20; and amending Sections (b) and (e), Article 5, Chapter II, The Texas Banking Code of 1943 (Article 342-205, Vernon's Texas Civil Statutes).

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1.02, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1.02. FORM. This Act has been organized and divided in the following manner:

"(1) The Act is divided into Chapters, containing groups of related Articles. Chapters are numbered consecutively with cardinal numbers.

"(2) Chapters are divided into Sections, numbered consecutively with Arabic numerals.

"(3) Sections are divided into Subsections. [~~The Subsections within each Section are numbered consecutively with Arabic numerals enclosed in parenthesis.~~]"

SECTION 2. Section 1.03, Texas Savings and Loan Act, as amended (Article 852a, Vernon's Texas Civil Statutes), is revised to read as follows:

"Section 1.03. DEFINITIONS. In this Act the following terms, unless otherwise clearly indicated by the context, have these meanings:

"(1) 'Administrative Procedure Act' means the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

"(2) 'Association' means a savings and loan association subject to this Act.

"(3) 'Capital stock' means, with respect to a capital stock association, the units into which the proprietary interests in the association are divided.

"(4) 'Capital stock association' means an association authorized to issue capital stock.

"(5) 'Commissioner' means the Savings and Loan Commissioner.

"(6) 'Company' means a corporation, partnership, trust, joint-stock company, association, unincorporated organization, or other similar entity or a combination of any of these entities acting in concert.

"(7) 'Control' means the possession of the power to direct or cause the direction of the management and policies of an association by either direct or indirect means and shall be deemed to exist if a person, corporation, partnership, trust, or other legal entity individually or acting in concert with others, directly or indirectly owns, controls, holds with the power to vote, or holds irrevocable proxies representing, 25 percent of the voting rights of an association.

"(8) 'Earnings on savings accounts' means either interest contractually payable or dividends declared payable to holders of savings accounts in an association and is the cost of savings money to the association.

"(9) 'Federal association' means a savings and loan association incorporated under the Home Owner's Loan Act of 1933, whose principal business office is located in this state.

"(10) 'Loss reserves' means the aggregate amount of the reserves allocated by an association for the sole purpose of absorbing losses.

"(11) 'Member' means, with respect to a mutual association, a person holding a savings account with the association, assuming or obligated on a loan in which the association has an interest, or owning property that secures a loan in which the association has an interest.

"(12) 'Mutual association' means an association not authorized to issue capital stock.

"(13) 'Savings account' means the amount of money an association owes to an account holder as the result of the placement of funds in the association.

“(14) ‘Savings and loan association’ means an association whose primary purpose is to promote thrift and home financing and whose principal activity is the lending of money secured by liens on homes and other improved real estate.

“(15) ‘Savings and loan holding company’ means a company that directly or indirectly controls a savings and loan association or controls another company that directly or indirectly controls a savings and loan association.

“(16) ‘Savings liability’ means the aggregate amount of money owed to the account holders of an association at any particular time as shown by the books of the association.

“(17) ‘Shareholder’ means the owner of one or more shares of an association’s capital stock.

“(18) ‘Surplus’ means the aggregate amount of the undistributed earnings of an association held as undivided profits or unallocated reserves for general corporate purposes and any paid-in surplus held by the association.

“(19) ‘Unpursued cause of action’ means an existing claim belonging to an association on which a suit or other effective action has not been filed or taken by or on behalf of the association before the expiration of six months after the cause of action arose, involving:

“(A) a claim for monetary damages or recovery of property;

“(B) a claim for equitable relief;

“(C) a cause of action for breach of contract or for enforcement of a contract; or

“(D) a claim on a fidelity bond.

“(20) ‘Unsafe and unsound practices’ means, with respect to the operation of an association, an action or inaction that is likely to cause insolvency or substantial dissipation of assets or earnings or to otherwise reduce the ability of the association to timely satisfy withdrawal requests of savings account holders.

“(21) ‘Withdrawal value of a savings account’ means the net amount of money that may be withdrawn at any particular time by an account holder from a savings account.”

SECTION 3. Chapter 2, Texas Savings and Loan Act (Article 852a, Vernon’s Texas Civil Statutes), is revised to read as follows:

“CHAPTER TWO. FORMATION OF ASSOCIATIONS

“Section 2.01. INCORPORATION. (a) Five or more citizens of this state may apply to incorporate a savings and loan association by submitting to the commissioner, along with the proper filing fee, an application consisting of:

“(1) two copies of proposed articles of incorporation setting forth the name of the association, the site of the principal office, and the names and addresses of the initial directors;

“(2) two copies of the bylaws under which the association proposes to operate;

“(3) statements, exhibits, maps, and other data sufficiently detailed and comprehensive to enable the commissioner to make a determination under Section 2.07 of this Act;

“(4) other information relating to the proposed association and its operation required by rules of the commissioner and the Savings and Loan Section of The Finance Commission of Texas; and

“(5) financial information about the applicants, incorporators, directors, or shareholders that is required as part of the application for charter by rules of the Savings and Loan Section of The Finance Commission of Texas.

“(b) Financial information submitted under Subdivision (5) of Subsection (a) of this section is confidential and privileged from public disclosure, unless the commissioner finds that public disclosure is necessary.

“(c) If the application is for a capital stock association, the articles of incorporation must set out:

“(1) the aggregate number of shares of common stock that the association will have authority to issue;

“(2) the par value of each share or a statement that the shares are without par value;

“(3) a statement of whether the association will have authority to issue preferred stock;

“(4) the amount of stock that has been subscribed and will be paid for before the association begins business; and

“(5) a separate statement of the names and addresses of the subscribers, the amount subscribed by each, and the amount of paid-in surplus with which the association will begin business.

“(d) If the application is for a mutual association, the articles of incorporation must include a statement of the amount of savings liability of the association and the amount of the expense fund with which the association will begin business.

“(e) The bylaws of the proposed association must provide for the voting rights of the members, if a mutual association, or the shareholders, if a capital stock association.

“(f) The articles of incorporation and statements of fact submitted to the commissioner in connection with an application shall be subscribed and sworn to before an officer authorized to administer oaths.

“Section 2.02. **MANAGING OFFICER.** An applicant is not required at a hearing concerning the granting of the application to specify in the public record the name and qualifications of the proposed managing officer of the new association. This information may be presented to the commissioner at any time, but an association may not begin business unless it has first presented to the commissioner the name and qualifications of its proposed managing officer and that managing officer has been approved as qualified by the commissioner.

“Section 2.03. **COMMON STOCK.** (a) The commissioner may require before approving an application that a capital stock association have an aggregate amount of capital in the form of stock and paid-in surplus as specified by rules of the Savings and Loan Section of The Finance Commission of Texas. Paid-in surplus may be used instead of earnings to pay organization and operating expenses and dividends on savings accounts and to meet any loss reserve requirements. If the application is not approved or if the proposed association does not begin business, the stock subscriptions for capital stock and paid-in surplus shall be returned pro rata to the subscribers, less any lawful expenditures.

“(b) After issuance an association may not purchase, directly or indirectly, any of its own shares of common stock. Common stock may not be retired or redeemed until all liabilities of the association have been satisfied in full, including all amounts due to holders of savings accounts, unless the savings accounts are insured by an agency of the United States or prior written permission is obtained from the commissioner, and the purchase or redemption is authorized by a majority vote of the association’s stockholders at an annual or special meeting called for that purpose. The basis of the purchase or redemption must be first approved by the commissioner and, with respect to an association whose accounts are insured, consent must be obtained in writing from the insuring agency and filed with the commissioner. Preferred stock may be retired or redeemed in the manner provided in the articles of incorporation or the resolution of the board of directors of the association establishing the rights and preferences relating to the stock. Both common and preferred stock must be fully paid for in cash in advance of issuance, and an association may not make a loan against the shares of its outstanding stock.

“Section 2.04. **PREFERRED STOCK.** (a) If the articles of incorporation permit, shares of preferred stock may be divided into and issued in series. Each series must be clearly designated to distinguish its shares from the shares of other series or classes. All or part of a series and variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class must be identical except for the following rights and preferences:

“(1) the rate of dividend;

“(2) the price, terms, and conditions at which shares may be redeemed;

“(3) the amount payable on shares in the event of involuntary liquidation;

“(4) the amount payable on shares in the event of voluntary liquidation;

“(5) sinking fund provision for the redemption or purchase of shares;

“(6) the terms and conditions of conversion of shares that may be converted; and

“(7) voting rights.

“(b) If the articles of incorporation permit, the board of directors by resolution may divide classes of preferred stock into series, and within the limitations provided by this chapter and the articles of incorporation, may determine the relative rights and preferences of the shares of the series. Before the shares may be issued, a copy of the resolution shall be submitted to the commissioner. If the resolution conforms to this Act, the commissioner shall file it in his office, and after it is filed the resolution is considered an amendment of the association’s articles of incorporation.

“Section 2.05. **EXPENSE FUND REQUIREMENTS FOR PROPOSED MUTUAL ASSOCIATION.** The commissioner may require before approving the articles of incorporation of a mutual association that the association have subscriptions for an aggregate amount of savings accounts and an expense fund in an aggregate amount that the commissioner finds under rules of the Savings and Loan Section of The Finance Commission of Texas is necessary for the successful operation of the association. The expense of organizing the association, its operating expenses, and dividends declared and paid or credited to its savings account holders may be paid out of the expense fund until the association’s earnings are sufficient to pay those amounts. The amounts contributed to the expense fund do not constitute a liability of the association except as provided by this chapter. The contributions may be repaid pro rata to the contributors from the net earnings of the association after provision for required loss reserve allocations and payment or credit of dividends declared on savings accounts. If an association is liquidated before contributions to the expense fund have been repaid, any contributions to the expense fund remaining unspent after the payment

of expenses of liquidation, creditors, and the withdrawal value of savings accounts shall be paid to the contributors pro rata. The books of the association must reflect the expense fund. Contributors to the expense fund shall be paid dividends on the amounts contributed and for this purpose the contributions are considered savings accounts of the association.

“Section 2.06. HEARINGS ON APPLICATIONS TO INCORPORATE. (a) When a complete application to incorporate is filed, the commissioner shall issue public notice of the application and shall give any interested party an opportunity to appear, present evidence, and be heard for or against the application. The hearing shall be held before a hearing officer designated by the commissioner.

“(b) The hearing officer shall file with the commissioner a report on the hearing containing findings of fact on each condition set out by Section 2.07 of this Act and the evidence on which those findings are based.

“Section 2.07. APPROVAL OR DENIAL OF APPLICATION TO INCORPORATE. (a) The commissioner may not approve an application to incorporate unless he finds that:

“(1) the prerequisites to incorporation required by this chapter have been satisfied;

“(2) the character, responsibility, and general fitness of the persons named in the articles of incorporation command confidence and warrant belief that the business of the proposed association will be honestly and efficiently conducted in accordance with the intent and purpose of this Act and that the proposed association will have qualified full-time management;

“(3) there is a public need for the proposed association, and the volume of business in the community in which the proposed association will conduct its business indicates a profitable operation is probable; and

“(4) the operation of the proposed association will not unduly harm any existing association.

“(b) On this finding, the commissioner shall enter an order approving the application and stating the findings required by Subsection (a) of this section, issue under official seal a certificate of incorporation, and deliver a copy of the approved articles of incorporation and bylaws to the incorporators. The commissioner shall retain a copy of the articles of incorporation and bylaws as a permanent file. On delivery of the certificate to the incorporators, the association is a corporate body with perpetual existence unless terminated by law and may exercise the powers of a savings and loan association beginning on the date the commissioner certifies that he has received proof satisfactory to him that the required amount of the capital stock and paid-in surplus, with respect to a stock association, or the savings liability and expense fund, with respect to a mutual association, has been received by the association in cash, free of encumbrance.

“(c) On denial of an application, the commissioner shall enter an order to that effect that includes a written statement of the grounds for the denial. A copy of the order shall be delivered to the designated representative of the incorporators by certified mail.

“Section 2.08. DISSOLUTION OF ASSOCIATION FOR FAILURE TO COMMENCE BUSINESS. An association shall begin business not later than one year after the date of the approval of its application. The incorporators may request from the commissioner an extension of this time. If good cause is shown, the commissioner may grant a reasonable extension of this time. Failure to begin business as required by this Act constitutes grounds for dissolution of the association by suit brought in Travis County by the attorney general on request of the commissioner.

“Section 2.09. AMENDMENT OF ARTICLES OF INCORPORATION OR BYLAWS. An association, by resolution adopted by a majority vote of those entitled to vote attending an annual meeting or a special meeting called for the purpose, may amend its articles of incorporation or bylaws in a manner not inconsistent with this Act. An amendment may not take effect before it is filed with and approved by the commissioner.

“Section 2.10. CORPORATE NAME. The name of an association must include either the words ‘Savings Association,’ or ‘Savings and Loan Association.’ The word ‘Institution’ may be used instead of ‘Association.’ These words must be preceded by an appropriate descriptive word or words approved by the commissioner. The commissioner may not approve the incorporation of an association having the same name as another association authorized to do business in this state under this Act or a name so nearly resembling it as to be calculated to deceive unless the association is formed by the reincorporation, reorganization, or consolidation of other associations or on the sale of the property or franchise of an association. A person, firm, company, association, fiduciary, partnership, or corporation, either domestic or foreign, unless authorized to do business in this state under the provisions of this Act, may not do business under a name or title that indicates or reasonably implies that the business is the character or kind of business carried on or transacted by an association or that is calculated to lead any person to believe that the business is that of an association. On application by the commissioner or any association, a court of competent jurisdiction may issue an injunction to restrain the entity from violating or continuing to violate this section.

“Section 2.11. CHANGE OF OFFICE OR NAME. An association may not, without the prior approval of the commissioner, establish an office other than the principal office stated in its articles of incorporation, move an office from its immediate vicinity, or change its name. If requested, the commissioner shall give a person who might be affected an opportunity to be heard.

“Section 2.12. PREFERENCE TO LOCAL CONTROL. If an application to incorporate a new association is before the commissioner at the same time as an application for the establishment of an additional office by an existing association, both seeking to locate an office in the same community, and the principal office of the existing association is located in a different county than the community, the commissioner may give additional weight to the application having the greater degree of control vested in or held by residents of the community.

“Section 2.13. INCORPORATION TO TAKE OVER BUSINESS OF AN EXISTING ASSOCIATION. (a) Application may be made to the commissioner to incorporate an association for the purpose of purchasing the assets, assuming the liabilities other than liability to stockholders as such, and continuing the business of an association considered by the commissioner to be in an unsafe condition, which in this Act is called a reorganizing association, or for the purpose of acquiring by merger an existing association, which in this Act is called a merged association.

“(b) The application must include data and information that the commissioner requires or that is required by rules of the commissioner and the Savings and Loan Section of The Finance Commission of Texas. The capitalization of the association must be in an amount set by the commissioner sufficient to carry out the purposes for which incorporation is requested.

“(c) The Administrative Procedure Act does not apply to an application if the association to be reorganized or merged is considered by the commissioner to be in an unsafe condition and the application and all information relating to the application is confidential and privileged from public disclosure.

“(d) If the commissioner finds that the business of a reorganizing or merging association can be effectively continued under the proposed articles of incorporation and that the proposed reorganization or merger is in the best interest of the savers, depositors, creditors, and stockholders, if any, of the reorganizing association or the merged association and the public in general, the commissioner shall state those findings in writing and issue a certificate of incorporation under official seal. On issuance of the certificate, the association is a corporate body and a continuation of the reorganizing or merged association, subject to all its liabilities, obligations, duties, and relations. The association may exercise the powers of a savings and loan association under the laws of this state.

“(e) In the case of an acquisition merger, a shareholder of a capital stock association has the same dissenter's rights that a shareholder in a domestic business corporation would have under the Texas Business Corporation Act.”

SECTION 4. Section 3.07, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

“Section 3.07. ACCESS TO BOOKS AND RECORDS. Every borrower or savings account holder of an association has [member shall have] the right to inspect such books and records of an association as pertain to his loan [~~Permanent Reserve Fund Stock~~] or savings account. Otherwise, the right of inspection and examination of the books and records of an association shall be limited to the Commissioner or his duly authorized representatives as provided by Section 8.02 of [in] this Act, to persons duly authorized to act for the association and to any duly authorized agent of a governmental agency that has insured the savings accounts of the association. In a judicial proceeding the court may order the production of relevant and material books, records, and files, except that the [Federal instrumentality or agency authorized to inspect or examine the books and records of an association whose savings accounts are insured by the Federal Savings and Loan Insurance Corporation. The books and records pertaining to the accounts and loans of members shall be kept confidential by the Commissioner, his examiners and representatives, except where disclosure thereof shall be compelled by a court of competent jurisdiction, and no member or other person shall have access to the books and records or shall be furnished or shall possess a partial or complete list of the members except upon express action and authority of the board of directors. The] books, records and files of an association shall not be admissible as evidence in any proceeding concerning the validity of any tax assessment or the collection of delinquent taxes, penalties and interest except where (i) the owner of stock or an account is a proper party to the proceeding in which event the books, files and records pertaining to the account of such party shall be admissible or (ii) the association itself is a proper party to the proceeding in which event any book, file or record material to the proceeding shall be admissible. A person is not entitled to a partial or complete list of stockholders of a stock association or of the members of a mutual association except as expressly permitted by the board of directors.”

SECTION 5. Chapter 5, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is revised to read as follows:

"CHAPTER FIVE. LOANS, INVESTMENTS, OWNERSHIP OF REAL PROPERTY

"Section 5.01. LENDING AND INVESTMENT POWERS. The commissioner and the Savings and Loan Section of The Finance Commission of Texas shall adopt rules relating to the powers of associations operating under this Act to make loans and investments. The rules must contain provisions reasonably necessary to assure that loans made by an association are consistent with sound lending practices and that its investments will promote the purposes of this Act. The rules may include among other things provisions governing:

"(1) the type of loans and the conditions under which an association may originate, make, or sell loans;

"(2) the conditions under which an association may purchase or participate in loans made by other lenders;

"(3) the conditions for the servicing of loans for other lenders;

"(4) the conditions under which an association may lend money on the security of loans made by others;

"(5) the conditions under which an association may pledge loans held by it as collateral for borrowings by the association;

"(6) the conditions under which associations may invest in securities and debt instruments;

"(7) the documentation that an association must have in its loan files at the time of funding or purchase of a loan or the participation in a loan;

"(8) the form and content of statements of expenses and fees and other charges that are paid by borrowers or that borrowers are obligated to pay;

"(9) title information that must be maintained in force;

"(10) insurance coverage of property securing loans that must be provided by borrowers;

"(11) appraisal reports;

"(12) financial statements of borrowers;

"(13) the fees or other compensation that may be paid to an officer, director, employee, affiliated person, consultant, or any third party in connection with the procuring of any loan for an association;

"(14) the conditions under which the association may advance funds to pay taxes, assessments, insurance premiums, and other similar charges for the protection of its interest in property securing its loans;

"(15) the terms and conditions under which an association may acquire and deal in real property;

"(16) the valuation on an association's books of real property held by it;

"(17) the terms and conditions governing the investment by an association in subsidiary corporations and the powers that may be exercised by subsidiaries; and

"(18) other matters considered necessary to properly administer each type of transaction.

"Section 5.02. PROHIBITED TRANSACTIONS. An association may not engage in a transaction in violation of a rule adopted under Section 5.01 of this Act.

"Section 5.03. LOANS. An association may require borrowers to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. These payments may be collected by the association from the borrower and retained by it or paid to persons rendering services for which a charge has been made, including an officer, director, or employee of the association rendering the service, or the payments may be paid directly by the borrower to the persons rendering the services. An association may charge penalties for prepayment or late payments. Unless otherwise agreed in writing, prepayment of principal shall be applied on the final installment of the note or other obligation until this installment is fully paid, and further prepayments shall be applied on installments in the inverse order of their maturity. Expenses under this section shall not be deemed a part of the interest or compensation charged by the association for the loan of money.

"Section 5.04. ACQUISITION OF REAL PROPERTY. An association may own real property on which a facility used in connection with the operation of the association is located. Other real estate acquired by an association in the course of business shall be disposed of not later than five years after the date on which it is acquired unless the commissioner extends this time. Real property may be sold, conveyed, leased, improved, repaired, mortgaged, or exchanged for other real estate if the transaction is authorized by the board of directors.

"Section 5.05. ENLARGEMENT OF POWERS. Notwithstanding any provisions of this Act to the contrary, an association may make any loan or investment, perform any function, or engage in any activity permitted a federal association domiciled in this state.

"Section 5.06. *ADVANCES TO PAY TAXES, ETC., ON SECURITY.* (a) An association may pay taxes, assessments, insurance premiums, and other similar charges for the protection of the association's interests in property securing the association's real estate loans. These payments are advances and may be carried on the association's books as an asset of the association for which the association may charge and collect interest, or the payments may be added to the unpaid balance of the loan to which they apply as of the first day of the month in which the payments are made. The payments constitute a valid lien against the real estate securing the loan for which they were made.

"(b) An association may require a borrower to pay monthly in advance, in addition to interest or interest and principal, an amount equal to one-twelfth of the estimated annual taxes, assessments, insurance premiums, and other charges on the real estate securing a loan to enable the association to pay the charges as they become due. The amount of the monthly payment may be increased or decreased as is necessary to meet the charges. An association may carry the payments in trust in an account or may credit them to the indebtedness and advance the money for charges as they come due. An association shall keep a record of the status of taxes, assessments, insurance premiums, and other charges on all real estate securing its loans and on all real and personal property owned by it."

SECTION 6. Section 6.07, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 6.07. *SAVINGS ACCOUNTS OF [MARRIED WOMEN AND] MINORS.* Any association operating under this law and any Federal savings and loan association doing business in this State may accept savings accounts from any ~~married woman or~~ minor as the sole and absolute owner of such savings account, and may ~~receive payments thereon by or for such owner, and~~ pay withdrawals, accept pledges to the association, and act in any other manner with respect to such accounts on the order of ~~the [such married woman or]~~ minor. Any payment or delivery of rights to a ~~married woman or to any~~ minor, or a receipt or acquittance signed by ~~a married woman or by~~ a minor who holds a savings account, shall be a valid and sufficient release and discharge of such institution for any payment so made or delivery of rights to ~~the [such married woman or]~~ minor. The ~~[in the case of a minor, the]~~ receipt, acquittance, pledge or other action required by the institution to be taken by the minor shall be binding upon such minor with like effect as if he were of full age and legal capacity; provided, if any parent or guardian of such minor should not desire the minor to have authority to pledge, hypothecate, control, transfer or make withdrawals from his savings account, such fact may be made known to the association in writing by such parent or guardian, in which event the right of the minor to pledge, hypothecate, control, transfer and make withdrawals from the account during the minority of such minor shall not be exercised by him except with the joinder of such parent or guardian. In the event of the death of such minor, the receipt or acquittance of either parent or guardian of such minor shall be valid and sufficient discharge of such institution for any sum or sums not exceeding in the aggregate One Thousand Dollars (\$1,000)."

SECTION 7. Section 6.15, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 6.15. *WITHDRAWALS FROM SAVINGS ACCOUNTS.* Any savings account holder may at any time present a written ~~order [application]~~ for withdrawal of all or any part of his savings account except to the extent the same may be pledged to the association or to another person on the books of the association. The association may pay in full each and every withdrawal ~~order [request]~~ as presented and may collect early withdrawal penalties provided for by the certificate or contract applicable to the account ~~[without requiring that written application therefor be made or the association may elect to number, date and file in the order of actual receipt every withdrawal application and to pay such requests out of its net receipts. Not more than one half of the net receipts of the association in any month shall be applied to the payment of withdrawal applications unless the board of directors specifically authorizes the use of a greater portion of such receipts for such purpose. By the term 'Net receipts' is meant the cash receipts of the association as loan repayments, interest and investments in savings accounts less disbursements for all expenses necessary and incidental to the operation of the association in carrying on its business. Whenever the net receipts so made applicable to withdrawal applications on file for a particular month are not sufficient to pay such applications in full, the applications on file shall be paid out of such net receipts on a pro/rata basis or, with the approval of the Commissioner, the board of directors may fix maximum amounts to be paid upon any one application during any one month and payments shall be made pro/rata out of such net receipts to all applications on file subject to such maximum payment limitation. No association can obligate itself to pay withdrawals on any plan other than that set forth above. While an application for withdrawal by a member remains in effect~~

and unpaid; no withdrawal applications subsequently filed by the same member shall be paid and no loan shall be made secured by transfer or pledge of the account. A member filing a withdrawal application shall not become a creditor of the association by reason of such filing. Full payment may be made at any time to members whose entire interest in the association amounts to One Hundred Dollars (\$100) or less. The Commissioner with the approval of the Savings [Building] and Loan Section of the Finance Commission and the Governor of Texas may invoke a uniform limitation on the amounts withdrawable from savings accounts of associations subject to this Act during any period when such limitation is necessary in the public interest. [The membership of a savings account holder who has filed an application for withdrawal shall remain unimpaired so long as any withdrawal value remains to his credit on the books of the association. An application for withdrawal may be cancelled in whole or in part at any time by a member.]”

SECTION 8. Chapter 7, Texas Savings and Loan Act, as amended (Article 852a, Vernon’s Texas Civil Statutes), is revised to read as follows:

“CHAPTER SEVEN. COMPUTATION OF EARNINGS, TRANSFERS TO LOSS RESERVES, DIVIDENDS, SURPLUS

“Section 7.01. COMPUTATION OF NET INCOME. An association shall close its books at the times that its bylaws provide for the purpose of determining the gross income of the association for the period since the date of the last closing of its books. The amount of the gross income minus the amount of the expenses of operating the association for the period is the net income for the period. An association shall have prepared and published a statement of the association’s condition as of December 31 of each year and shall file a copy with the commissioner not later than January 15 of the following year.

“Section 7.02. MINIMUM NET WORTH REQUIREMENT. An association shall meet minimum net worth requirements required by rules of the commissioner and the Savings and Loan Section of The Finance Commission of Texas.

“Section 7.03. EARNINGS ON SAVINGS ACCOUNTS. An association whose bylaws contain the provision authorized by Section 6.19 of this Act may contract to pay interest on savings accounts. Other associations may pay earnings on savings accounts in the form of dividends declared by their board of directors. Earnings in the form of interest or dividends shall be computed and paid according to rules of the commissioner and the Savings and Loan Section of The Finance Commission of Texas.

“Section 7.04. DIVIDENDS ON CAPITAL STOCK. The board of directors of an association whose bylaws provide for the issuance of capital stock and that has capital stock outstanding may declare and pay dividends out of current or retained income, in cash or additional stock, to the holders of record of the stock outstanding on the date the dividends are declared.

“Section 7.05. USE OF SURPLUS ACCOUNTS AND EXPENSE FUND CONTRIBUTIONS. An association, at a closing date, may use all or part of a surplus account, whether earned or paid-in, or expense fund contributions on its books to meet expenses of operating the association for the period just closed, required transfers to loss reserves, or the payment or credit of dividends declared on savings accounts.”

SECTION 9. Chapter 8, Texas Savings and Loan Act (Article 852a, Vernon’s Texas Civil Statutes), is revised to read as follows:

“CHAPTER EIGHT. SUPERVISION AND REGULATION, AUDITS AND EXAMINATIONS, SUPERVISORY ORDERS, CONSERVATORSHIP, LIQUIDATION, VOLUNTARY SUPERVISORY CONTROL

“Section 8.01. SUPERVISION AND REGULATION. The Savings and Loan Department of Texas and the commissioner shall regulate associations and subsidiary corporations of associations operating under this Act and shall enforce this Act. The commissioner and the Savings and Loan Section of The Finance Commission of Texas may adopt rules relating to:

“(1) the minimum amounts of capital stock and paid-in surplus required for incorporation as a capital stock association and the minimum amounts of savings liability and expense funds required to incorporate as a mutual association;

“(2) the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or the Savings and Loan Department of Texas pursuant to this Act;

“(3) the books and records that an association shall keep and the location at which the books and records shall be maintained;

“(4) the accounting principles and practices that an association shall observe;

“(5) the conditions under which records may be copied or reproduced for permanent storage before the originals are destroyed;

“(6) the form, contents, and time of publication of statements of condition and the form and contents of annual reports or the reports that are to be prepared and published or filed by an association;

“(7) the manner by which assets, liabilities, and transactions in general are to be described when entered in the books of an association, so that the entry will be an accurate description of the subject matter of the entry; and

“(8) the conditions under which the commissioner may require assets to be charged off or reserves established by transfer from surplus or paid-in capital because of depreciation of or overstatement of value.

“Section 8.02. **AUDITS AND EXAMINATIONS.** The commissioner shall periodically cause an examination to be made into the affairs of each association, including its subsidiaries and transactions and the dealings of any savings and loan holding company related to its savings and loan subsidiaries, including an audit if an independent audit is not available or is unsatisfactory to the commissioner. On completion of an audit, one copy of the audit report, signed and certified by the auditor, shall be filed promptly with the commissioner. The commissioner, a deputy commissioner, or an examiner or auditor of the commissioner shall have free access to the books and records of an association or a subsidiary corporation or holding company of the association that relate to the association's business and to books and records kept by an officer, agent, or employee of one of the entities relating to or on which a record of its business is kept. The commissioner, deputy commissioner, examiner, or auditor may subpoena witnesses and administer oaths or affirmations in examination of the directors, officers, agents, or employees of an association or any other person in relation to its affairs, transactions, and condition and may require and compel by subpoena the production of records, books, papers, contracts, or other documents. On the failure to obey a subpoena or the refusal to appear or to answer of a witness whose testimony is sought or is being taken in connection with an examination, the commissioner may apply to a district court of Travis County for an order requiring obedience of the subpoena or testimony of the witness. The court shall issue the order if it finds that good cause exists for the issuance of the subpoena or the taking of the testimony. Failure to obey the court order may be punished as contempt of court. An examination may be made in conjunction with an examination by the Federal Home Loan Bank Board, a Federal Home Loan Bank, or the Federal Savings and Loan Insurance Corporation, and the commissioner shall accept an audit made by or accepted by one of these agencies in an examination of an association.

“Section 8.03. **EXTRA OR ADDITIONAL EXAMINATIONS.** If, in the judgment of the commissioner, the condition of an association renders it necessary or expedient to make an extra or additional examination or audit or to devote extraordinary attention to its affairs, the commissioner shall cause this to be done, and the association shall be charged with the cost. A copy of the report of the examination or audit shall be furnished promptly to the association examined or audited. The report shall be presented to the board of directors at its next regular meeting or at a special meeting called for that purpose and noted in the minutes of the meeting.

“Section 8.04. **GROUNDS FOR SUPERVISORY INTERVENTION IN AFFAIRS OF AN ASSOCIATION.** The commissioner may intervene in the affairs of an association if:

“(1) the association or a director, officer, agent, or other person participating in the conduct of the affairs of the association or a subsidiary of the association is engaging in, has engaged in, or is about to engage in an unsafe and unsound practice in conducting the affairs of the association or a violation of a provision of the articles of incorporation or bylaws of the association or any law, rule, supervisory order applicable to the association, or condition that the commissioner or the Savings and Loan Section of The Finance Commission of Texas has imposed on the association by written order or agreement; or has filed materially false or misleading information required pursuant to Section 11.20 of this Act;

“(2) a director, officer, employee, agent, or other person participating in the conduct of the affairs of the association or a subsidiary or holding company parent, if any, of the association has committed or is about to commit:

“(A) a fraudulent or criminal act in the conduct of the association's, subsidiary's, or holding company's affairs that may cause the association or a subsidiary to become insolvent or be in danger of insolvency, or another act that threatens immediate or irreparable harm to the general public or the association, its account holders, or creditors or to the subsidiary;

“(B) a breach of fiduciary duty, because of which the association or a subsidiary has suffered or will probably suffer substantial financial losses or other damages or that would seriously prejudice the interest of the holders of savings accounts or other security issued by the association;

“(C) a breach of an order or instructions of a conservator or supervisor in charge of the association's affairs;

“(D) a refusal to submit to interrogation under oath by the commissioner or the commissioner's agent with respect to the affairs of the association; or

“(E) a material alteration, concealment, removal, or falsification of books or records of the association or a subsidiary; or

“(3) the association is insolvent, is in imminent danger of insolvency, or is engaged in or is about to engage in making loans or investments and the market value of the investments or the value of the security for the loans is materially overstated, or the association has failed to maintain proper books and records from which the true financial condition of the association or the state of its affairs can be determined or has refused to authorize and direct a person having possession of the association’s or a subsidiary’s books, papers, records, or accounts to permit the commissioner or a duly authorized representative of the commissioner to inspect or examine them.

“Section 8.05. **TYPES OF SUPERVISORY ORDERS; SERVICE; CONFIDENTIALITY.** (a) If the commissioner has reasonable cause to believe that one or more of the grounds for intervention under Section 8.04 of this Act exists or is imminent, he may issue without notice and hearing one or more of the following types of temporary supervisory orders to take effect when issued that the commissioner considers necessary to correct and eliminate the grounds for supervisory action:

“(1) an order to cease and desist from continuing a particular action or course of action, an order to take affirmative action, or both as necessary to correct the condition that is a ground for supervisory intervention;

“(2) a removal or prohibition order suspending or prohibiting a director, officer, employee, agent, or any other person participating in the affairs of the association from participating in the conduct of the affairs of the association or another association subject to this Act;

“(3) an order requiring divestiture of control of an association obtained pursuant to Section 11.20 of this Act; or

“(4) an order placing the affairs of the association under the control of a conservator designated in the order who may take possession and control of the books, records, property, assets, liabilities, and business of the association and manage it under the direction of the commissioner.

“(b) A temporary supervisory order issued by the commissioner must contain a statement in reasonable detail of the facts constituting the basis for the order.

“(c) Service of a temporary supervisory order may be by certified or registered mail or by personal delivery by an agent of the commissioner. Service on an association is completed on receipt of the order by an officer or director of the association.

“(d) A temporary or final supervisory order and all notices, correspondence, or other records relating to the order are confidential and may not be revealed to the public, except for good reason by the commissioner, in a lawsuit or hearing under Section 8.06 of this Act, or by other lawful order or authority. However, the commissioner may disclose the information to a department, agency, or instrumentality of this or another state or the United States if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state or the United States.

“Section 8.06. **HEARING ON TEMPORARY SUPERVISORY ORDERS.** (a) A temporary supervisory order becomes final and unappealable 15 days after the date on which it is issued unless the association or a party affected by the order within that period requests a hearing before the commissioner on the issue of whether the order should be vacated, made permanent, or modified. The commissioner shall set the matter for hearing at the offices of the Savings and Loan Department of Texas in Austin. The date set for the hearing shall be not earlier than 10 days or later than 30 days after the date of the request.

“(b) The hearing shall be conducted as a contested case under the Administrative Procedure Act. The commissioner may enter a final order that vacates the temporary order or makes it permanent in its original or a modified form consistent with the facts found by the commissioner.

“(c) A temporary order may not be stayed pending a hearing unless the commissioner orders a stay, and a final order may not be stayed pending judicial review unless the reviewing court orders a stay for good cause.

“Section 8.07. **ENFORCEMENT OF SUPERVISORY ORDER.** (a) If the association or any person designated in an order violates or is about to violate the order, the commissioner may apply for injunctive relief in a district court in Travis County. A bond may not be required of the commissioner with respect to injunctive relief granted.

“(b) If an association or a person designated in a final order fails to comply with or otherwise violates the order, the commissioner may, after giving notice, assess a civil penalty against the association, the designated person, or both, in an amount not to exceed \$1,000 each for each day of the violation. The association may not reimburse or indemnify a person for all or part of the civil penalty. In addition to any other remedy provided by law the commissioner may institute a suit for injunctive relief and for collection of the civil penalty in a district court in Travis County. A bond may not be required of the commissioner with respect to injunctive relief granted.

“Section 8.08. PLACING AN ASSOCIATION UNDER CONSERVATOR. (a) Before or at the time of a hearing on an order placing an association under a conservator, the board of directors of the association may present to the commissioner a plan to continue the operation of the association in a manner that will correct or eliminate the grounds on which the order is based. If the commissioner approves the plan or a modification of a plan, he shall vacate the order placing the association under conservatorship conditioned on the approved plan’s being implemented and diligently prosecuted.

“(b) If no plan for continuing operations of the association is approved by the commissioner, the conservator shall continue to manage the affairs of the association under the direction and supervision of the commissioner unless the order is otherwise modified or vacated by subsequent order of the commissioner or as a result of judicial review.

“(c) The conservator and any deputy or assistant conservator appointed by the commissioner, on behalf of and under the supervision and direction of the commissioner, shall take charge of the books, records, property, assets, liabilities, and business of the association and shall conduct the business and affairs of the association. The conservator shall undertake the removal of the causes and conditions that necessitated the conservatorship. During the conservatorship, the conservator shall make such reports to the commissioner as the commissioner requires. The conservator shall take necessary measures to preserve, protect, and recover the assets or property of the association, including claims or causes of action belonging to or that may be asserted by the association. The conservator may deal with that property in the capacity of conservator and may file, prosecute, or defend against a suit by or against the association if the conservator considers this action necessary to protect the interested party or property affected by the suit.

“(d) During the period of conservatorship, an officer, director, shareholder, employee, agent, or other person participating in the conduct of the affairs of the association shall act according to the instructions of the conservator and shall exercise only the authority that the conservator expressly grants.

“(e) The commissioner shall determine the cost incident to the conservatorship, and this cost shall be paid out of the assets of the association as the commissioner directs.

“(f) Suit filed against an association or its conservator while a conservatorship order is in effect must be brought in a court of competent jurisdiction in Travis County. The conservator may file suit in a court of competent jurisdiction in Travis County against any person for the purpose of preserving, protecting, or recovering assets or property of the association, including a claim or cause of action belonging to or that may be asserted by the association.

“(g) During the period of conservatorship or supervisory control under Section 8.11 of this Act, a promise or agreement on the part of the association to make a loan of money that is not otherwise unenforceable under Chapter 26, Business & Commerce Code, and is made before the order imposing conservatorship or supervisory control is not enforceable against it unless the promise or agreement or a memorandum of it is:

“(1) in writing setting forth the material terms of the loan and its repayment;

“(2) signed by a duly authorized officer or employee of the association and the person to whom the promise or agreement was made; and

“(3) approved by the board of directors of the association.

“(h) The conservator shall serve for the period necessary to accomplish the purposes of the conservatorship. If the association is rehabilitated, it shall be returned to the management of the board of directors under terms that are reasonable and necessary to prevent recurrence of the conditions that created the need for the conservatorship.

“Section 8.09. LIQUIDATION BY COMMISSIONER’S ORDER. (a) If it appears doubtful to the commissioner that an association subject to a conservatorship order can be successfully rehabilitated, the commissioner may set a hearing to determine whether the association should be liquidated. Notice of the hearing shall be given not later than the 10th day before the hearing date by certified mail to the officers and directors of the association and by publication in a newspaper of general circulation in the county in which the principal office of the association is located.

“(b) If the commissioner finds that the association cannot be rehabilitated and that it is in the public interest and the best interest of the savings account holders and creditors of the association that it be closed and its assets liquidated, the commissioner may issue an order of liquidation appointing a liquidating agent and dissolving the association. The corporate existence of the association continues for three years after the day the order of liquidation is issued for the purpose of adjusting and settling claims not disposed of during the liquidation. If necessary, the commissioner may appoint a special liquidating agent for this purpose at the completion of the liquidation.

“(c) Under the supervision of the commissioner, the liquidating agent shall:

“(1) receive and take possession of the books, records, assets, and property of the association in liquidation;

“(2) sell, enforce collection of, and liquidate the assets and property of the association in liquidation;

“(3) sue in the name of the liquidating agent or in the name of the association in liquidation;

“(4) defend actions brought against the liquidating agent or the association in liquidation;

“(5) receive, examine, and pass on claims against the association in liquidation, including claims of members;

“(6) make distribution and payment to creditors, stockholders, and members as their interests may appear;

“(7) execute documents and papers and do other things that the liquidating agent considers necessary or desirable to the liquidation;

“(8) give notice to creditors and members directing them to present and prove their claims, by publishing the notice once a week in each of three successive weeks in a newspaper of general circulation in each county in which the association in liquidation maintained an office or branch for the transaction of business on the date it ceased unrestricted operations; and

“(9) from time to time make a ratable liquidation dividend on claims that have been proved to the satisfaction of the board of directors or the liquidating agent or adjusted in a court of competent jurisdiction and, after the assets of the association have been liquidated, make further liquidation dividends on claims previously proved or adjusted, and for this purpose the statement of an amount due to a claimant shown on the books and records of the association may be accepted instead of a formal proof of claim on behalf of the claimant, but all claims not filed before payment of the final dividend are barred, and claims rejected or disallowed by the liquidating agent are barred unless suit is instituted before three months after the day of notice of rejection or disallowance.

“(d) The provisions of the Administrative Procedure Act relating to a contested hearing apply to a hearing called by the commissioner to consider the question of liquidation of an association.

“Section 8.10. **COMPLETION OF LIQUIDATION.** A liquidating agent may be removed and another agent appointed by the commissioner with or without cause. If a liquidating agent resigns, dies, or becomes unable to serve for any reason, the commissioner shall promptly appoint another agent. When the liquidation is complete, the liquidating agent shall certify that fact to the commissioner, who shall issue an order closing the liquidation.

“Section 8.11. **VOLUNTARY SUBMISSION TO SUPERVISORY CONTROL.** The board of directors of an association may consent to the commissioner's placing the association under supervisory control. The commissioner may appoint the supervisor and one or more deputy supervisors who have the powers of a conservator under Section 8.08 of this Act and other powers established by agreement between the commissioner and the board of directors. The supervisory control continues until the problems giving rise to the supervisory control are corrected. The costs of the supervisory control shall be fixed by the commissioner and paid by the association.”

SECTION 10. Section 10.03, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

“Section 10.03. **REORGANIZATION, MERGER, AND CONSOLIDATION.**

(a) Pursuant to a plan adopted by the board of directors and approved by the Commissioner ~~as equitable to the members of the association and as not impairing the usefulness and success of other properly conducted associations~~, an association shall have power to reorganize or to merge or consolidate with another association or Federal association; provided, that the plan of such reorganization, merger or consolidation shall be approved by a majority of the total vote the members or shareholders are entitled to cast. Approval may be voted at either an annual meeting or at a special meeting called to consider such action. A shareholder of a capital stock association has the same dissenter's rights as a shareholder of a domestic corporation under the Texas Business Corporation Act. In all cases the corporate continuity of the resulting corporation shall possess the same incidents as that of an association which has converted in accordance with this Act. The home office of the association in the proposed merger possessing the largest assets shall be designated as the home office of the surviving association, unless otherwise approved by the Commissioner.

“(b) Upon being presented with a plan of reorganization, merger, or consolidation, the Commissioner shall give public notice of the proposed reorganization, merger, or consolidation in the county or counties in which the associations participating in the proposed plan have offices and give any interested party an opportunity to appear, present evidence, and be heard for or against the proposed plan. The hearing shall be held before a hearing officer designated by the Commissioner. If a protest is not received on or before the date of hearing, the hearing may be dispensed with by the Commissioner or hearing officer. The provisions of the Administrative Procedure Act applicable to a contested case apply to the hearing.

“(c) The Commissioner shall issue an order denying the proposed plan if the Commissioner finds that:

“(1) the reorganization, merger, or consolidation would substantially lessen competition or be in restraint of trade and would result in a monopoly or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan industry in any part of the state, unless the anticompetitive effects of the proposed reorganization, consolidation, or merger are clearly outweighed in the public interest by the probable effect of the reorganization, merger, or consolidation in meeting the convenience and needs of the community to be served;

“(2) in a merger or consolidation, the financial condition of either association would jeopardize the financial stability of the other association;

“(3) the proposed plan is not in the best interest of the associations that are parties to the plan;

“(4) the experience, ability, standing, competence, trustworthiness, or integrity of the management of the associations proposing the plan is such that the reorganization, merger, or consolidation would not be in the best interest of the associations that are parties to the plan;

“(5) after reorganization, merger, or consolidation the surviving association would not be solvent, have adequate capital structure, or be in compliance with the laws of this state;

“(6) the associations proposing the plan have not furnished all of the information pertinent to the application reasonably requested by the Commissioner; or

“(7) the associations proposing the plan are not acting in good faith. [In the case of prior common ownership, the association in the proposed merger possessing the largest assets shall be designated as the home office. Any order of the Commissioner approving the reorganization, merger, or consolidation of any association with another association or Federal association shall become final 10 days after the same has been delivered unless an association within the vicinity of the reorganizing, merging, or consolidating associations shall within such time request a public hearing before the Commissioner in regard to such order, objecting to such order on the basis that the reorganization, merger, or consolidation would materially constrict the ability of the objecting association to compete in its vicinity. Such hearing shall be promptly held, and the Commissioner on the basis of the evidence presented shall thereupon either continue such order in effect, modify the same, or set it aside.]”

SECTION 11. The Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes) is amended by adding Section 10.031 to read as follows:

“Section 10.031. **MERGER OF SUBSIDIARY CORPORATION INTO ASSOCIATION.** (a) One or more corporations organized under Texas law may merge into an association that owns all of the corporation's capital stock, under a plan of merger adopted by majority votes of the boards of directors of the association and each corporation.

“(b) An original and a copy of the articles of merger shall be submitted to the secretary of state and the commissioner. The articles of merger must be executed by the president or vice-president and a secretary or assistant secretary of the association and each corporation and must include:

“(1) the names of the association and each corporation;

“(2) a copy of the resolution of the association and each corporation adopting the plan of merger;

“(3) a statement of the number of shares of each class issued or authorized by each corporation;

“(4) a statement that all capital stock of each corporation is owned by the association; and

“(5) a statement incorporating the provisions of Subsection (f) of this section.

“(c) For a merger to be effective, it must be approved by both the secretary of state and the commissioner. If the secretary of state determines that the articles of merger comply with applicable law and that all fees and franchise taxes due from the corporation have been paid, the secretary of state shall approve the articles of merger as provided by Subsection (d) of this section. If the commissioner determines that the articles of merger comply with applicable law and that the merger is in the best interest of the association, the commissioner shall approve the articles of merger as provided by Subsection (d) of this section.

“(d) On approval of articles of merger, the approving officer shall:

“(1) endorse on the original and copy of the articles of merger the word 'filed' and the date of the approval;

“(2) file the original articles of merger in the records of the officer's office; and

“(3) issue and deliver to the association a certificate of merger to which is attached the copy of the articles of merger.

“(e) The merger takes effect when the latter of the required certificates of merger is issued.

“(f) Following the merger, the merged corporation ceases to exist as a separate entity, and only the association survives. The association assumes the rights and obligations of the corporation and owns the property of the association. The articles of incorporation of the association are considered amended to the extent that a change is stated in the plan of merger.

“(g) Section 10.03 of this Act does not apply to a merger under this section.”

SECTION 12. Section 10.04, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 10.04. **VOLUNTARY LIQUIDATION.** At any annual meeting or any special meeting called for such purpose, any association may by majority vote of its members or *shareholders* resolve to liquidate and dissolve the association; provided, that before such resolution shall take effect, a copy thereof certified to by the president and the secretary of the association, together with an itemized statement of its assets and liabilities sworn to by a majority of its board of directors, shall be filed with and approved by the Commissioner. When the Commissioner shall have approved such resolution it shall thereafter be unlawful for such association to accept any additional savings accounts or additions to savings accounts or to make any additional loans, but all its income and receipts in excess of actual expenses of liquidation of the association shall be applied to the discharge of its liabilities. The board of directors of the association, under the supervision of the Commissioner and in accordance with a plan of liquidation approved by him, shall thereupon proceed to liquidate the affairs of the association and reduce the assets thereof to cash for the purpose of paying, satisfying and discharging all existing liabilities and obligations of the association, including the withdrawal value of all savings accounts, the balance remaining, if any there be, to be distributed pro-rata among the savings account members of record on the date of adoption by the association of the resolution to liquidate. *In the case of a capital stock association, any assets remaining after liabilities and obligations have been fully paid and satisfied, including the withdrawal value of savings accounts, shall be distributed among the shareholders according to their liquidation rights [; provided, however, that if the association be one whose bylaws provide for the issuance of Permanent Reserve Fund Stock and such association has issued and has outstanding such stock, then any such balance remaining after all liabilities and obligations have been fully paid and satisfied, including the withdrawal value of all savings accounts, shall be distributed among the holders of such stock in proportion to their stockholding].* All expenses incurred by the Commissioner or any of his representatives during the course of any such liquidation shall be paid from the assets of the association. Upon completion of liquidation, the board of directors shall file with the Commissioner a final report and accounting of such liquidation. The approval of such report by the Commissioner shall operate as a complete and final discharge of the board of directors and each member in connection with the liquidation of such association."

SECTION 13. Section 11.12, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 11.12. **JUDICIAL REVIEW.** *Judicial review of an act, order, ruling, or decision of the Commissioner or of a rule adopted under this Act is as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).* [Any party with an interest in the subject matter thereof who is dissatisfied with any act, order, ruling or decision of the Commissioner taken or made, or with any rule or regulation promulgated by the Commissioner and the Building and Loan Section of the Finance Commission in connection with the administration of this Act, may secure judicial review thereof in the following manner:

"(1) **Venue.** (a) Proceedings for review of a removal order entered pursuant to Section 8.14 of this Act, may be instituted by filing a petition as in civil actions generally against the Commissioner, as defendant, either in a district court of Travis County, or in the district court of the county in which any person affected by such order resides or of the county in which the principal office of the association affected by such order is located.

"(b) Proceedings for review of other acts, orders, rulings or decisions of the Commissioner or of any rule or regulation promulgated by the Commissioner and the Building and Loan Section of the Finance Commission may be instituted by filing a petition as in a civil action generally against the Commissioner, as defendant, in a district court of Travis County and not elsewhere.

"(2) **Time for Filing.** Any petition for judicial review must be filed within thirty (30) days after the action, order, ruling or decision of the Commissioner is final or the rule or regulation complained of is promulgated.

"(3) **Stay of Enforcement.** The filing of a petition for review shall not itself stay the effect of the act, order, ruling, decision or rule or regulation complained of, but the Commissioner or the reviewing court may order a stay upon appropriate terms and if a stay is so granted no supersedeas bond shall be required.

"(4) **Service of Process.** The petition for review shall be served on the Commissioner and upon all parties of record in any hearing before the Commissioner in respect to the matter for which review is sought or upon the Commissioner alone if the matter for

which review is sought is a rule or regulation promulgated in connection with the administration of this Act. After service of such petition upon the Commissioner and within the time permitted for filing an answer, the Commissioner shall certify to the District Court in which such petition is filed the record of the proceedings to which the petition refers. The cost of preparing and certifying such record shall be paid to the Commissioner by the petitioner and taxed as part of the cost in the case, to be paid as directed by the court upon final determination of said cause.

"[(5) Trial: (a) The review of an order issued under Section 8.14 of this Act shall be tried in the same manner as civil actions generally and the complaining party shall be entitled to a jury. The trial shall be governed by the rules of civil procedure and all fact issues material to the validity of such order shall be determined de novo on the preponderance of the evidence and the substantial evidence rule shall not apply. Any relevant and competent evidence shall be admissible for or against the order.

"[(b) The review of any other act, order, ruling or decision of the Commissioner or of any rule or regulation shall be tried by the court without a jury in the same manner as civil actions generally and all fact issues material to the validity of the Act, order, ruling, decision or rule or regulation complained of shall be redetermined in such trial on the preponderance of the competent evidence, but no evidence shall be admissible which was not adduced at the hearing on the matter before the Commissioner or officially noticed in the record of such hearing.

"[(6) Burden of Proof and Judgment: The burden of proof shall be on the plaintiff. The reviewing court may affirm the action complained of or remand the matter to the Commissioner for further proceedings.

"[(7) Appeals: Appeals from any final judgment may be taken by either party in the manner provided for in civil actions generally, but no appeal bond shall be required of the Commissioner.]"

SECTION 14. Section 11.16, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 11.16. **PENALTY FOR FAILING TO COMPLY WITH LAW.** Any association knowingly violating the provisions of this law or failing to comply with the provisions of this law or any valid rules or regulations made thereunder may be required by the Commissioner to pay not more than One Thousand Dollars (\$1,000) [~~from Five Dollars (\$5) per day to Twenty-five Dollars (\$25)~~] per day to the Savings and Loan Department of Texas [~~Commissioner~~] for each day it so fails after lawful notice of the delinquency by the Commissioner. The Attorney General is authorized to file suit for the collection of such penalty upon certification by the Commissioner of the failure or refusal of such association to remit the penalty assessed by him."

SECTION 15. Section 11.17, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 11.17. **FALSE INFORMATION; PENALTY FOR SUPPRESSING EVIDENCE.** (a) Any person commits an offense if the person for the purpose of influencing the actions of an association or its employees, agents, or representatives or for the purpose of influencing the actions of the Savings and Loan Section of The Finance Commission of Texas, the Commissioner, or employees, agents, or representatives of the Savings and Loan Department of Texas, knowingly:

"(1) removes, mutilates, destroys, or conceals a paper, book, or record of an association or of the Commissioner or the Savings and Loan Department of Texas for the purpose of concealing a fact or suppressing evidence;

"(2) makes, passes, alters, or publishes a false, counterfeit, or forged instrument, paper, document, statement, or report to an association or to the Commissioner or the Savings and Loan Department of Texas; or

"(3) overvalues land, property, security, an asset, or income in connection with a transaction with an association.

"(b) An offense under this section is a felony punishable by a fine of not more than One Hundred Thousand Dollars (\$100,000), imprisonment for not more than 10 years, or both. [Every officer, director, employee or agent of any association subject to this Act who, for the purpose of concealing any fact or suppressing any evidence against himself or against any other person, abstracts, removes, mutilates, destroys or secretes any paper, book or record of any association or of the Commissioner, shall be deemed guilty of a felony and upon conviction therefor, shall be punished by confinement in the State penitentiary for a period of not less than one (1) year nor more than five (5) years.]"

SECTION 16. Section 11.18, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 11.18. ~~DISCLOSURE [OF EXAMINERS]-PENALTY.~~ The Commissioner and any examiner, inspector, deputy, assistant or clerk of the Savings and Loan Department of Texas, appointed or acting under the provisions of this Act, failing to keep secret any facts or information regarding an association obtained in the course of an examination or by reason of his official position, except when the public duty of the person requires ~~[such officer required him to report upon or take official action regarding the affairs of the association so examined],~~ or who wilfully makes a false official report as to the condition of such association, shall be removed from ~~[his position or] office or further employment with the department [and shall be fined not more than Five Hundred Dollars (\$500), or imprisoned in the county jail for not more than one (1) year, or both].~~ Reports of examinations made to the Commissioner shall be regarded as confidential and not for public record or inspection, except that for good reason same may be made public by the Commissioner, but copies thereof may ~~[- upon request of the association,] be furnished to the Federal Home Loan Bank Board or to the Federal Home Loan Bank for the purpose of meeting the requirements of the Federal Home Loan Bank Act.~~ Nothing herein shall prevent the proper exchange of information relating to associations and the business thereof with the representatives of savings and loan departments of other states or to any other department, agency, or instrumentality of this or another state or the United States if the Commissioner determines the disclosure to be necessary or proper for the enforcement of the laws of this state, another state, or the United States ~~[- but in no case shall the private business or affairs of any individual association be disclosed].~~ Any official violating any provision of this Section ~~[- in addition to the penalties herein provided,] shall be liable, with his bondsmen, to the person or corporation injured by the disclosure of such secrets. Unless otherwise provided by this Act, the [The] foregoing provisions shall not apply to any facts or information or to any reports of investigations obtained or made by the Commissioner or his staff in connection with any applications for a charter under this Act or in connection with any hearing held by the Commissioner under this Act, and any such facts, information or reports may be included in the record of the appropriate hearing. Notwithstanding the foregoing, the Commissioner shall report promptly to the Savings and Loan Section of the Finance Commission when either a cease and desist or removal order ~~[under Sections 8.13 and 8.14 of this article] has been issued to an association or a person.~~ The Commissioner shall furnish such information about the association or the person as the section members shall require in executive session."~~

SECTION 17. Subsections (a) and (f), Section 11.20, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), are amended to read as follows:

"(a) *A change in the control of an association may not take place unless an application for approval of the change of control has been filed with and approved by the commissioner. [No person may acquire any voting security of a savings and loan association or of any corporation or other entity owning voting securities of a savings and loan association if, after the acquisition, the person would own or possess the power to vote 25 percent or more of the voting securities of the association unless an application is filed with the commissioner for his review of the proposed transaction and for his action, if any, as provided by this section.]*"

"(f) If the commissioner issues an order denying an application, the applicant is entitled to a hearing if he requests one in writing not later than the 30th day after the day the application is filed or the 15th day after the day the application is denied, whichever date is later. After hearing the matter, the commissioner shall, within 30 days, enter a final order either affirming his denial or withdrawing his denial of the application. An applicant may not appeal the commissioner's denial of an application or order affirming his denial until a final order is entered. Any applicant shall have the right to appeal the final order only to the district court of Travis County, Texas, against the Savings and Loan Commissioner of Texas as defendant. ~~[The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but the action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court.]~~ Either party to the action may appeal to the appellate court having jurisdiction of the cause, and the appeal shall be at once returnable to the appellate court having jurisdiction of the cause and that action shall have precedence in that appellate court over all causes of a different character pending in that court. The commissioner shall not be required to give any appeal bond in any cause arising under this section. The filing of an appeal under this section shall not stay the order of the commissioner adverse to the applicant."

SECTION 18. Section 11.20, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended by adding Subsection (m) to read as follows:

"(m) *The Commissioner may, when it appears that a change in control may have taken place without prior approval, call a hearing to determine whether there has been in fact a change in*

control or whether unauthorized persons or corporations having no apparent ownership interest in the association, acting alone or in concert with others, effectively have indirect controlling or dominating influence over the management or policies of an association and, if so, whether an order that requires a divestiture of that unapproved or indirect control or other appropriate supervisory order should be issued.”

SECTION 19. Chapter 11, Texas Savings and Loan Act (Article 852a, Vernon’s Texas Civil Statutes), is amended by adding Sections 11.22 and 11.23 to read as follows:

“Section 11.22. **EMERGENCY CLOSING OF ASSOCIATIONS.** (a) If the officers of an association determine that an emergency exists or is impending that affects or may affect the association’s offices or operations, they may, in the reasonable and proper exercise of their discretion, determine not to conduct the involved operations or open the association’s offices on any business or banking day or, if the association has opened, to close the offices or suspend and close the involved operations during the continuation of the emergency. The office or operations closed shall remain closed until the officers determine that the emergency has ended and for additional time reasonably required to reopen. However, an office or operations may not remain closed for more than 48 consecutive hours, excluding other legal holidays, without the approval of the commissioner. An association closing an office or operations under this section shall give the commissioner as prompt notice of its action as conditions will permit and by any means available.

“(b) For the purposes of this section, ‘emergency’ means a condition or occurrence that may interfere physically with the conducting of normal business at the offices of an association or of particular association operations or that poses an imminent or existing threat to the safety or security of persons, property or both. Without limiting the generality of the foregoing, an emergency may arise as a result of fire; flood; earthquake; hurricane; tornado; wind, rain, or snowstorm; labor dispute and strike; power failure; transportation failure; interruption of communication facilities; shortage of fuel, housing, food, transportation, or labor; robbery or burglary or attempted robbery or burglary; actual or threatened enemy attack; epidemic or other catastrophe; riot; civil commotion; and other acts of lawlessness or violence, actual or threatened.

“(c) Any day on which an association, or one or more of its operations, is closed during all or part of its normal business hours under this section is a legal holiday for the association to the extent it suspends operations. Liability or loss of rights does not arise on the part of any association or a director, officer, or employee of the association from a closing authorized by this article.

“(d) This section shall be construed and applied as being in addition to and not in substitution for or limitation of any other provision in this Act or other law of this state or of the United States authorizing the closing of an association or excusing the delay by an association in the performance of its duties and obligations because of emergencies or conditions beyond the association’s control, or otherwise.

“Section 11.23. **AUTHORIZATION OF DERIVATIVE SUITS.** (a) The commissioner may bring a derivative suit in the right of an association based on an unpursued cause of action if:

“(1) the commissioner has determined that the association has an unpursued cause of action and that suit on that cause should be brought to protect the interest of the association, the shareholders, members, or creditors of the association, or the public interest; and

“(2) the association has not brought suit on the cause before the 31st day after the date on which the commissioner gives notice to the association that the suit should be brought.

“(b) Venue of the derivative suit, unless venue is mandatory, is in a district court of Travis County.

“(c) The commissioner may employ legal counsel to bring and prosecute the derivative suit. The commissioner may pay the counsel from funds appropriated for the operation of the savings and loan department or may require the association for which the suit is brought to pay the counsel directly or to reimburse the savings and loan department for the payment. An amount equal to the amount of the proceeds of a judgment on the suit, less unreimbursed costs and expenses, including attorney’s fees, incurred by the savings and loan department in prosecuting the suit, shall be paid to the association.”

SECTION 20. Sections (b) and (e), Article 5, Chapter II, The Texas Banking Code of 1943 (Article 342-205, Vernon’s Texas Civil Statutes), are amended to read as follows:

“(b) The Savings and Loan Commissioner, subject to the approval of the Savings and Loan Section of the Finance Commission, shall appoint one or more Deputy Savings and Loan Commissioners, one of which shall be designated by the Savings and Loan Commissioner to be vested with all of the powers and perform all of the duties of the Savings and Loan Commissioner during the absence or inability of the Savings and Loan Commissioner. A Deputy Savings and Loan Commissioner shall have had practical experience in a savings and loan association doing business in this State or experience in the Savings and Loan Department in this State. The Savings and Loan Commissioner may also appoint a Hearing Officer or Officers [;

who shall be full time employees of the Savings and Loan Department,] to conduct such investigations or public hearings as may be required by law of the Savings and Loan Commissioner. The Hearing Officer or Officers shall be vested for the purpose of such investigations or public hearings with the power and authority as the Savings and Loan Commissioner would have if he were personally conducting such investigation or public hearing, provided that the Hearing Officer or Officers shall not be authorized to make any order upon the final subject matter of such investigation or hearing; and provided, further, that the record of any investigation or public hearing conducted before the Hearing Officer may be considered by the Savings and Loan Commissioner in the same manner and to the same extent as evidence that is adduced before him personally in any such proceeding. The Savings and Loan Commissioner shall also appoint Savings and Loan Examiners. Each Deputy Savings and Loan Commissioner, the Savings and Loan Examiners, each Hearing Officer, and all other officers and employees of the Savings and Loan Department shall receive such compensation as is fixed by the Finance Commission which shall be paid from the funds of the Savings and Loan Department."

"(e) The rule-making power of the Savings and Loan Commissioner and the Savings [Building] and Loan Section of the Finance Commission shall not be exercised unless notice of the terms or substance of the proposed rule or regulation or amendment to existing rules or regulations has been given to all associations subject to regulation hereunder by [certified] mail, and, if within twenty (20) days after issuance of such notice, as many as five (5) associations request a hearing on such proposal, a public hearing shall be called by the Savings and Loan Commissioner at which any interested party may present evidence or argument relating to such proposal. After consideration of any relevant matter available from the files and records of the Savings and Loan [Banking] Department or presented at any such hearing, any rule, regulation or amendment approved and adopted pursuant to such hearing shall be promulgated in written form and the effective date thereof fixed by the order of adoption and promulgation."

SECTION 21. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 16, 1985, by the following vote: Yeas 31, Nays 0; passed the House on May 25, 1985, by a non-record vote.

Approved: June 3, 1985

Effective: August 26, 1985