

CHAPTER 224**S.B. No. 497**

An Act relating to the establishment, funding, and uses of the Texas Savings and Loan Supplemental Fund and to the creation, membership, administration, powers and duties, and dissolution of the Texas Savings and Loan Supplemental Fund Corporation.

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

SECTION 1. SHORT TITLE. This Act may be cited as the Texas Savings and Loan Supplemental Fund Act.

SECTION 2. PURPOSE. The purpose of this Act is to establish a fund in Texas to aid and assist the Savings and Loan Commissioner of Texas in maintaining the solvency of the associations that contribute to the fund and to safeguard the public interest and promote the public confidence in state chartered savings and loan associations doing business in the State of Texas by making available to the Savings and Loan Commissioner of Texas the additional resource of this fund to be used for the protection and rehabilitation of member associations' assets as well as the maintenance of the solvency of member associations.

SECTION 3. CONSTRUCTION. This Act shall be liberally construed to effect its purposes.

SECTION 4. DEFINITIONS. In this Act:

- (1) "Member association" means any savings and loan association chartered under the laws of the State of Texas and that is a member in good standing of the corporation.
- (2) "Commissioner" means the Savings and Loan Commissioner of Texas.
- (3) "Corporation" means the Texas Savings and Loan Supplemental Fund Corporation.

SECTION 5. CREATION OF THE CORPORATION. The Texas Savings and Loan Supplemental Fund Corporation is created as a nonprofit legal entity. Membership in the corporation shall be available to any savings and loan association chartered under the laws of Texas which is insured by the Federal Savings and Loan Insurance Corporation and which meets the membership standards approved by the commissioner and adopted by the board of directors as a part of the plan of operation. A savings and loan association is eligible for membership only so long as it remains insured by the Federal Savings and Loan Insurance Corporation. The corporation is under the supervision of the commissioner.

SECTION 6. BOARD OF DIRECTORS. (a) All corporate powers of the corporation shall be exercised by a board of directors, and the board shall manage the business and affairs of the corporation. The board of directors shall consist of the members of the Savings and Loan Section of The Finance Commission of Texas and six members elected by the member associations voting at an annual meeting.

(b) The regular term of office of an elected director shall be two years and until a successor has been elected and qualified. Of the original board of directors, three directors who are

representatives of the member associations shall be elected for two-year terms, and three directors shall be elected for one-year terms.

(c) At its first meeting after each director's election, the board of directors shall elect one of its members as chairman of the board. The board may appoint such other officers and employees as it deems advisable.

(d) The board of directors may remove any elected director and thereby create a vacancy on the board if the board of directors by a two-thirds majority vote at any meeting called for that expressly stated purpose declares the office of director to be vacant because such director has failed to maintain the standards specified for directors set out in the plan of operation or if the director otherwise fails to perform any of the duties required of him as director.

(e) The office of a director becomes vacant if the director dies, resigns, or is removed from office. A resignation shall be presented to the commissioner or to the chairman of the board. A vacancy occurring during a term of office shall be filled by election by a majority vote of the remaining directors.

(f) A director shall be disqualified to vote, act, or join in acting on any decision calculated to directly and specifically affect an association in which that director has a direct interest.

(g) In the election of directors and in voting on any other matter legally to come before a meeting of the member associations, each member association has one vote to be cast by a delegate authorized to act by that association. A majority of votes so cast shall elect directors or determine any question put to a vote of the directors.

(h) A quorum of the board of directors shall consist of not less than a majority of all directors; provided that a lesser number may adjourn from time to time and that a majority of directors holding office constitutes a quorum for filling a vacancy on the board.

(i) Regular meetings of the board of directors shall be held as determined by the board. Special meetings of the board of directors may be called by the chairman of the board, any three directors, or by the commissioner. Notice of the time and place of each meeting of the directors shall be given to each director and the commissioner at the time and in the manner specified in the plan of operation.

(j) The plan of operation of the corporation may provide for the creation by the board of directors of an executive committee consisting of not less than three directors. If authorized by the plan of operations, an act or authorization of an act by the executive committee within the authority delegated to it shall be as effective for all purposes as the act or authorization of the board of directors.

(k) The director shall not receive any compensation for serving on the board of directors, but is entitled to reimbursement for actual expenses incurred in performing duties as a director.

SECTION 7. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation may exercise the powers of a nonprofit corporation created under the laws of the state, including without limitation the power to:

- (1) enter into contracts of any nature;
- (2) sue and be sued;
- (3) subject to the provisions of this Act, purchase, hold, lease, receive, use, encumber, sell, exchange, transfer, lend, advance, convey, assign, give, grant, transmit, hypothecate, or dispose of any property or funds of any description, nature, or kind or of any interest, right, title, or privilege therein from or to any member association or any other corporation or person or other entity and to take collateral as security for any loan it makes, the capital stock of, as well as the assets of, any borrowing member association and to hold or dispose of any such collateral acquired as a result of default in the payment of such loans in any manner consistent with the purpose of this Act;
- (4) declare and pay dividends or interest on securities issued under the authority of this Act;
- (5) borrow funds; and
- (6) perform other acts not inconsistent with this Act necessary to enable the corporation effectively to promote and carry out its purposes.

(b) The corporation shall:

(1) make or issue, with the approval of the commissioner, a guaranty or other form of written assurance to the appropriate person, association, corporation, or other entity which is reasonably necessary to facilitate the sale, conveyance, assignment, transfer, or other disposition of all or any part of the property or assets of a member association which is subject to a conservatorship order of the commissioner and otherwise assist in the merger, consolidation, conservation, rehabilitation, or supervision of such member association upon the request and under the instruction of the commissioner;

(2) advance funds, with or without interest, upon such terms and conditions as the board may establish to aid directly or to provide special services for member associations subject to a conservatorship order of the commissioner to continue to operate and to maintain solvency;

(3) purchase from any member association, which is subject to a conservatorship order of the commissioner, interests in its assets at a price mutually agreed upon by the conservator of such member and board of directors, notwithstanding that such value may exceed the market value of the assets so purchased. A purchase shall be upon such terms and conditions as the board of directors may determine; provided, however, that all such terms, conditions, agreements, and values must be approved in writing by the commissioner;

(4) receive, in consideration for assistance provided under this Act, stock or other equity interest in the assisted member association or such other compensation acceptable to the board from the assisted member or another corporate entity which is a party to the transaction in which the assistance is rendered.

(c) A merger, sale of control of, or sale of any of the assets of a member association subject to a conservatorship order of the commissioner in aid of which funds from the supplemental fund have been advanced may be accomplished in such form and by such procedure that the board and the commissioner deem appropriate.

SECTION 8. TEXAS SAVINGS AND LOAN SUPPLEMENTAL FUND. (a) The corporation, acting on direction of the board of directors, pursuant to the plan of operation, may require member associations to purchase preferred stock, certificates of participation, or other types of securities issued by the corporation bearing interest or paying dividends at a specified rate or a variable rate determined by a specific method of computation. The corporation shall allocate each security issue ratably among the member associations on the basis of the relationship of each association's total assets as of December 31 of the year next preceding the date on which such securities are issued to the total assets of all member associations as of that date. The form, terms, and other matters relating to each issue of securities by the corporation shall be determined by the board except that the aggregate amount any member association shall be required to purchase of all types of securities shall never exceed an amount equal to two percent of the total assets of such member association as reflected on the annual statement of such association for the calendar year prior to the date of the required purchase filed with the commissioner as required by law or regulation.

(b) The commissioner may defer in whole or in part a requirement that a member association purchase securities of the corporation if the commissioner believes that the purchase would endanger the ability of the member association to maintain its solvency.

(c) Upon the failure of a member association to make a required purchase of securities of the corporation by the 10th banking day after the date fixed by the board of directors for such purchase, the board may cancel the membership of the defaulting association in the corporation.

(d) If a member association elects to surrender its membership or becomes ineligible for membership or has its membership cancelled, such association may present any securities of the corporation it holds for redemption. The corporation may defer redemption for no more than three years and shall continue to pay interest or dividends required under the terms of such securities until they are redeemed.

(e) Securities of the corporation held by member associations represent authorized investments of a savings and loan association under state law.

SECTION 9. INVESTMENT OF THE FUND. (a) Funds from the sale of securities of the corporation constitute the primary account of the corporation. These funds may be invested in certificates of deposit or other interest-bearing accounts in a savings and loan association or commercial bank domiciled in the state or in securities of not more than five years duration issued by the United States government, the state, or any municipality or governmental entity of the state if the securities are direct obligations of or are secured by the full faith and credit of the issuer.

(b) The corporation shall establish an administrative account in which it shall deposit interest and other earnings on the investment of the primary account. When the balance of the administrative account reaches \$50 million or five percent of the then current balance of the primary fund, whichever is greater, the corporation shall cease issuing securities until the balance in the administrative account is reduced below \$50 million or five percent of the then current balance of the primary fund. If the balance of the administrative account exceeds at any time 20 percent of the then current balance of the primary account, the corporation may begin a plan of redemption of securities issued by the corporation.

SECTION 10. AUTHORIZED EXPENDITURES. (a) The corporation may expend money from the administrative account for the usual and normal business operations of the corporation.

(b) When the commissioner has placed a member association in conservatorship, expenditures from the administrative or the primary account shall be made if the commissioner requests and directs that such be done for the purposes authorized by this Act. In no event may the

aggregate expenditure from the fund in aid of such member association exceed the lesser of (i) 10 percent of the current balance of the primary account, or (ii) 20 percent of such association's assets. Subject to these limitations, the plan of operation shall establish a maximum dollar amount which may be utilized for the purposes of this Act. Such amount shall represent the minimum amount to be expended by the commissioner prior to any certification of insolvency of a member association.

SECTION 11. PLAN OF OPERATION. (a) Promptly after the effective date of this Act, the commissioner shall prepare and promulgate a temporary plan of operation for organization of the corporation until the initial board of directors is selected, which plan shall include standards for membership in the corporation. After the directors have been selected and have taken office, the board shall submit to the commissioner its plan of operation which the board finds to be necessary and suitable to assure the fair, reasonable, and equitable administration of the corporation. Such plan shall become effective on approval in writing by the commissioner. The corporation may amend the plan from time to time and submit the amendment to the commissioner, and such amendment shall become effective upon approval in writing by the commissioner. Until the corporation submits a plan of operation the temporary plan promulgated by the commissioner shall remain in force until modified by the commissioner or superseded by a plan of operation submitted by the corporation and approved by the commissioner. The plan of operation must contain explicit standards for admission to and the retention of membership in the corporation. Member associations shall comply with the plan of operation.

(b) The plan of operation must:

- (1) establish procedures for handling the assets of the corporation;
- (2) establish the amount and method of reimbursing members of the board of directors under Subsection (k) of Section 6 of this Act;
- (3) establish regular places and times for meetings of the board;
- (4) establish procedures for keeping records of financial transactions of the corporation, its agents, and the board;
- (5) establish any additional procedures for issuing securities of the corporation under Section 8 of this Act;
- (6) contain additional provisions necessary or proper for the execution of the powers and duties of the corporation.

SECTION 12. REHABILITATION OF MEMBER ASSOCIATIONS UNDER CONSERVATORSHIP. The commissioner, if a member association has been placed under conservatorship as authorized by law, may request and the corporation shall pay from the administrative or the primary account to the extent permitted by the provisions of this Act the funds so requested to be used to rehabilitate such association and minimize the chance that such association will be liquidated.

SECTION 13. EXAMINATION OF THE CORPORATION AND ANNUAL REPORT. The board of directors shall submit to the commissioner, by April 1 of each year, audited financial statements of the preceding calendar year, prepared in accordance with generally accepted accounting principles consistently applied. These statements shall be certified by an independent certified public accountant. The commissioner may require additional supplemental information he believes is necessary.

SECTION 14. NO PREFERENTIAL TREATMENT. No preferential treatment shall be given by the commissioner to any savings and loan association in the regulation of that association solely because the association is or is not a member of the corporation.

SECTION 15. EXEMPTION FROM SECURITIES LAWS. Securities issued by the corporation under this Act shall not be considered "securities" under The Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes). A person authorized and acting on behalf of the corporation is exempt from the registration and licensing provisions of that Act, with respect to that person's participation in a sale or other transaction involving securities of the corporation.

SECTION 16. TAX EXEMPTION. The corporation shall be exempt from all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

SECTION 17. IMMUNITY. A member association or its agent or employee, the corporation or its agent or employee, a member of the board of directors, or the commissioner or his representative is not liable for an action taken or not taken in the performance of the individual's or organization's powers and duties under this Act.

SECTION 18. ADVERTISING PERMITTED. A member association may advertise or use for promotional purposes the fact that its assets are protected under this Act only to the extent and in the manner permitted and authorized by the plan of operation required to be adopted by this Act.

SECTION 19. DISSOLUTION. On approval of the commissioner, the unanimous approval of the board of directors, and with the approval of two-thirds of the member associations, the corporation may be dissolved. Procedures for dissolution shall be established by the commissioner and the board. In the event of a dissolution, funds in the primary account shall be utilized to redeem any securities issued by the corporation and held by member associations. If the primary account be insufficient for this purpose, the administrative account may be used. Upon a dissolution, no part of the earnings of the corporation may be distributed to any person or member association, but shall accrue to the State of Texas.

SECTION 20. CONDITIONS UNDER WHICH THE CORPORATION MAY EXERCISE POWERS. (a) The corporation may not exercise any of its powers and duties under Section 7 of this Act until the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation have officially recognized that the corporation will in the exercise of such powers reduce and minimize the liability of the Federal Savings and Loan Insurance Corporation and have taken such action as may be necessary to permit member associations to utilize without direct or indirect restraint all of the operational power and authority they might have under the laws of the State of Texas and the rules of the Texas Savings and Loan Department.

(b) If member associations are required to contribute to any similar fund (other than in the form of premiums payable for insurance of accounts to the Federal Savings and Loan Insurance Corporation) the corporation may be dissolved as provided in Section 19 of this Act.

SECTION 21. EMERGENCY. 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.

Passed the Senate on April 30, 1985, by a viva-voce vote; Senate concurred in House amendment on May 25, 1985, by a viva-voce vote; passed the House, with amendment, on May 23, 1985, by a non-record vote.

Approved: June 3, 1985

Effective: August 26, 1985