

**CHAPTER 638**

S.B. No. 746

An Act relating to the operation and regulation of certain state-licensed foreign bank agencies; adding Chapter X and amending Article 2, Chapter IX, and Article 1, Chapter 1, The Texas Banking Code of 1943 (Article 342-101 et seq., Vernon's Texas Civil Statutes).

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

**SECTION 1.** The Texas Banking Code of 1943 (Article 342-101 et seq., Vernon's Texas Civil Statutes) is amended by adding Chapter X to read as follows:

*“Chapter X. FOREIGN BANK AGENCIES*

*“Article 1. DEFINITIONS. In this chapter:*

*“(1) ‘Foreign bank agency’ means an agency of a foreign bank corporation established and operating under this chapter.*

*“(2) ‘Foreign bank corporation’ means a banking corporation not organized under the laws of the United States or a state, territory, commonwealth, or other political subdivision of the United States.*

*“Article 2. PURPOSES. A foreign bank corporation may, on complying with this chapter, establish in a county in this state having a population of more than 1,500,000 according to the most recent federal census a foreign bank agency to perform in this state the functions permitted by this chapter.*

*“Article 3. APPLICABILITY OF STATE BANKING CODE. A foreign bank agency is subject to the provisions of Chapters I, II, V, and IX of this code as if the foreign bank agency were a state bank, unless it appears, from the context or otherwise, that a provision is clearly applicable only to a bank or trust company organized under the laws of this state or the United States.*

*“Article 4. FILING REQUIRED; PROCESS. (a) Before transacting business in this state through a foreign bank agency, a foreign bank corporation shall file with the secretary of state:*

*“(1) a duly authenticated copy of its articles of incorporation and bylaws or other constitutive documents, and if a copy is in a language other than English, a translation of the document, under the oath of the translator, must be attached;*

*“(2) a duly executed instrument, by its terms of indefinite duration and irrevocable, appointing the secretary of state as its agent for service of process on whom a notice or process issued by a court in this state may be served in an action or proceeding relating to the business of the foreign bank corporation in this state; and*

*“(3) a written certificate of designation, which may be changed from time to time by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person to whom such notice or process shall be forwarded by the secretary of state.*

*“(b) On receipt of a notice or process, the secretary of state shall promptly forward it by registered or certified mail to the officer, agent, or other person designated. Failure of the foreign bank agency to maintain a designated person does not affect the validity of service mailed to the last designated person at the last designated address. Service of notice or process on the secretary of state as agent for a foreign bank corporation has the same effect as personal service would have if made in this state on the foreign bank corporation.*

*“(c) A foreign bank corporation transacting business in this state through a foreign bank agency in accordance with this code is not doing business in this state for the purposes of Part Eight, Texas Business Corporation Act.*

*“Article 5. REQUIREMENTS FOR MAINTAINING A FOREIGN BANK AGENCY. A foreign bank corporation may not maintain in this state a foreign bank agency or an office for carrying on functions permitted for a foreign bank agency unless the corporation:*

*“(1) is authorized by its charter to carry on such a business and the foreign banking corporation has complied with the laws of the country under which it is chartered;*

*“(2) has furnished to the banking department proof of the nature and character of its business and of its financial condition that the banking department requires;*

*“(3) has filed with the banking department a certified copy of the information required by Article 4 of this chapter to be supplied to the secretary of state;*

*“(4) has paid to the banking department a nonrefundable application fee of \$3,000; and*

*“(5) has received a license duly issued to it by the banking department.*

*“Article 6. APPLICATION FOR LICENSE. (a) To obtain a license for a foreign bank agency, a foreign bank corporation must submit to the banking department an application. The application must be subscribed and acknowledged and must state:*

*“(1) the name of the foreign bank corporation;*

*“(2) the street and post office address and county where the agency's business is to be transacted;*

*“(3) the name of the person to be in charge of the business and affairs of the agency;*

*“(4) the location of its initial principal office in this state;*

*“(5) the amount of the foreign bank corporation's capital actually paid in and the amount subscribed for and unpaid; and*

*“(6) the actual value of the assets of the foreign bank corporation, which must be at least \$100 million in excess of its liabilities, and a complete and detailed statement of its financial condition as of a date not more than 360 days before the date of the application.*

*“(b) The banking department may require an opinion audit of the applicant or the equivalent.*

*“(c) The foreign bank corporation shall submit with the application a duly authenticated copy in English of its articles and bylaws or an equivalent, satisfactory to the banking department.*

*“(d) The application must be on a form prescribed by the banking department and must contain information that the banking department requires.*

*“(e) The banking department may approve or disapprove an application, but may not approve an application unless the requirements of this code relating to foreign bank agencies are met.*

*“(f) The banking department may disapprove an application if after reasonable inquiry it finds that:*

"(1) the foreign bank corporation is organized or chartered in a country that does not permit banks organized under the laws of this state or national banks domiciled in this state to undertake activities in the country similar to those described in Article 7 of this chapter; and

"(2) granting an application of a foreign bank corporation organized or chartered in such a country would be detrimental to the public interest.

"(g) The banking department may disapprove an application if after reasonable inquiry it finds that granting the application would be detrimental to the public interest.

"Article 7. LICENSES; PERMISSIBLE ACTIVITIES. (a) A foreign bank corporation may engage in the business authorized by the provisions of this code relating to foreign bank agencies for not more than one year after the date of the license or until the license is suspended or revoked. A license is not transferable or assignable. The license shall be at all times conspicuously displayed in the place of business specified in the license. The foreign bank agency may change the location of its office, with the prior written approval of the banking department, to another location in a county where agencies are authorized to be established by Article 2 of this chapter. A foreign bank agency may not maintain more than one office in this state. For the purposes of this article, a place where loans are originated is not an office of the foreign bank agency if the loans are actually approved and made at the licensed office of the foreign bank agency.

"(b) A license may be renewed annually on application to the banking department within 30 days before its expiration on a form available from the banking department for that purpose. The banking department shall renew the license unless it determines on examination that:

"(1) the foreign bank corporation is not in a safe and satisfactory condition and has not complied with the requirements of law relating to foreign bank agencies;

"(2) the renewal will be detrimental to the public interest; or

"(3) the foreign bank corporation has not authorized the renewal by proper corporate action.

"(c) An application for renewal must be accompanied by a renewal fee of \$500.

"(d) A license may be revoked by the banking department at any time on its determination that the foreign bank corporation has not met the criteria established by Section (b) of this article for the renewal of a license. At the time the banking department receives a certified copy of a final judgment (from which all appeals have been exhausted) entered by a court of competent jurisdiction determining that any of the prohibitions established by Section (i) of Article 7 of this chapter are unenforceable:

"(1) all licenses shall be revoked by the banking department;

"(2) all license applications then pending shall be rejected;

"(3) no further licenses shall be granted; and

"(4) thereafter all agencies of foreign bank corporations shall be prohibited.

"(e) If a license is revoked or a renewal refused, the rights and privileges of the foreign bank corporation to transact the licensed business promptly cease, and the foreign banking corporation shall surrender the license to the banking department within 24 hours after the time written notice of the revocation or refusal is received by the licensee. This notice may be received by a director, officer, agent, or employee of the foreign bank corporation present in this state.

"(f) A foreign bank corporation licensed to transact business in this state through a foreign bank agency may:

"(1) borrow and lend money with or without real or personal security;

"(2) purchase, sell, and make loans whether or not secured by bonds or mortgages on real property;

"(3) engage in foreign exchange transactions;

"(4) issue, advise, confirm, and otherwise deal with letters of credit and pay, accept, or negotiate drafts drawn thereunder;

"(5) accept bills of exchange or drafts;

"(6) buy or acquire and sell or dispose of (but not discount) bills of exchange, drafts, notes, acceptances, and other obligations for the payment of money;

"(7) maintain credit balances;

"(8) receive money for transmission and transmit the money from its licensed office in this state to any other place; and

"(9) perform such other activities as the banking department may from time to time determine are analogous or incidental to the foregoing; provided that the foreign bank corporation may not exercise fiduciary powers or receive deposits in this state and may not otherwise exercise banking or discounting privileges in this state.

"(g) For the purposes of this section, credit balances are funds received at the foreign bank agency incidental to or arising out of the exercise of its authorized activities in this state that are not intended to be deposits and that do not remain in the foreign bank agency after the transaction or transactions to which they relate are completed.

*“(h) A foreign bank corporation’s authority to purchase and own real estate and loan money in this state is subject to the limitations imposed on state banks by Chapter V of this code.*

*“(i) The operation of a federal agency of a foreign bank corporation having as its home state a state other than this state is hereby expressly prohibited. No foreign bank corporation may maintain a branch in this state. As used in this section, the terms ‘federal agency’ and ‘home state’ bear the respective meanings established by the International Banking Act of 1978 (12 U.S.C. Sections 3101 and 3103(c)).*

*“Article 8. FINANCIAL CERTIFICATIONS; RESTRICTIONS. Before opening a foreign bank agency in this state and annually as long as the foreign bank agency is maintained in this state, the foreign bank corporation shall furnish the banking department with a copy of its annual financial statement, expressed in the currency of the country of its incorporation.*

*“Article 9. REPORTS. A foreign bank corporation doing business through a foreign banking agency in this state shall, at the times and in the form that the banking department prescribes, make written reports in English to the banking department under oath of one of its officers, managers, or agents transacting business in this state. The report must show the amount of the foreign bank corporation’s assets and liabilities and contain other matters that the banking department requires. If the foreign bank corporation fails to make this report or knowingly makes a false statement in the report, it is grounds for revocation of the license for the foreign bank agency.*

*“Article 10. TAXATION. A foreign bank agency licensed under this chapter is subject to the franchise tax in accordance with Chapter 171 of the Tax Code.*

*“Article 11. DISSOLUTION. (a) If a foreign bank corporation licensed to maintain a foreign bank agency in this state is dissolved or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, an officer, manager, or agent of the former foreign banking corporation shall deliver to the banking department:*

*“(1) a certificate of the official responsible for records of banking corporations of the foreign bank corporation’s jurisdiction of incorporation attesting to the occurrence of that event; or*

*“(2) a certified copy of an order or decree of a court of the jurisdiction directing the dissolution of the foreign bank corporation, the termination of its existence, or the cancellation of its authority.*

*“(b) The filing of the certificate, order, or decree has the same effect provided by Section (e) of Article 7 of this chapter as if the license issued under this chapter were revoked by the banking department.”*

**SECTION 2.** Article 2, Chapter IX, The Texas Banking Code of 1943 (Article 342-902, Vernon’s Texas Civil Statutes), is amended as follows:

**“Article 2. UNAUTHORIZED BANKING; ADVERTISING; PRIVATE BANKS; PENALTY.** It shall be unlawful for any person, corporation, firm, partnership, association or common law trust:

*“(1) To conduct a banking or trust business or to hold out to the public that it is conducting a banking or trust business; or*

*“(2) To use in its name, stationery or advertising, the term ‘bank,’ ‘bank and trust,’ ‘savings bank,’ ‘certificate of deposit,’ ‘trust’ or any other term or word calculated to deceive the public into the belief that such person, corporation, firm, partnership, association, common law trust, or other group of persons is engaged in the banking or trust business.*

*“Provided, however, that this Article shall not apply to (1) national banks; (2) state banks; (3) foreign bank agencies established under Chapter X of this code in the promotion and conduct of activities permitted thereunder; (4) other corporations heretofore or hereafter organized under the laws of this state or of the United States to the extent that such corporations are authorized under their charter or the laws of this state or of the United States to conduct such business or to use such term; and (5) [~~4~~] private banks which were actually and lawfully conducting a banking business on the effective date of this Act so long as the owners of such bank, their successors or assigns, shall continuously conduct a banking business in the city or town where such private bank was domiciled on the effective date of this Act; provided, however, that such private banks shall include the word ‘Unincorporated’ in their firm or business names and such word shall be prominently set out upon the stationery and in all the advertising of such private banks.*

*“This article shall not bar an individual from acting in any fiduciary capacity if he does not hold out to the public that he is conducting any branch of the trust business.*

*“Any person, corporation, firm, partnership, association or common law trust violating any provision of this article shall forfeit Five Hundred Dollars (\$500.00) for every day it continues so to do. Suits to recover such penalty shall be instituted in the name of the State of Texas by the Attorney General or by a District or County Attorney under his direction either in the county where the principal office of such person, corporation, firm, partnership, association or common law trust is situated, or in Travis County, Texas. Such penalties, when recovered, shall be paid into the State Treasury for the use of the School Fund.”*

**SECTION 3.** Article 1, Chapter 1, The Texas Banking Code of 1943 (Article 342-101, Vernon's Texas Civil Statutes), is amended to read as follows:

"Article 1. **SCOPE OF ACT--SHORT TITLE.** This code provides a complete system of laws governing the organization, operation, supervision and liquidation of state banks, and to the extent indicated by the context, governing private banks, *foreign bank agencies*, and national banks domiciled in this State; as authorized by Article 16, Section 16 of the Constitution of the State of Texas, and as provided by Article 3, Section 43 of the Constitution of the State of Texas. This Act, and all amendments thereto, may be cited as 'The Texas Banking Code of 1943.'"

**SECTION 4.** 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 2, 1985, by the following vote: Yeas 24, Nays 1; Senate concurred in House amendments on May 27, 1985, by a viva-voce vote; passed the House, with amendments, on May 25, 1985, by a non-record vote.

Approved: June 14, 1985

Effective: August 26, 1985