

CHAPTER 639

S.B. No. 782

An Act relating to the regulation, management, and operation of banks and supervision of bank holding companies; amending The Texas Banking Code of 1943, as amended (Article 342-101 et seq., Vernon's Texas Civil Statutes), by amending Sections 6, 7, and 9, Article 15, Chapter I; Article 8, Chapter II, as amended; Article 9, Chapter II; Articles 4 and 8 and Sections A and D, Article 5, Chapter III; Articles 3, 6, 7, and 10, Chapter IV; Articles 3, 4, 7, and 12 and Section (b), Article 13, Chapter V; adding Article 9a to Chapter IV; Article 4a to Chapter VIII; and Articles 14 and 15 to Chapter IX; repealing Article 6, Chapter III and Article 6, Chapter VI.

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

SECTION 1. Section 6, Article 15, Chapter I, The Texas Banking Code of 1943, as amended (Article 342-115, Vernon's Texas Civil Statutes), is amended to read as follows:

"6. The State Banking Board shall adopt and publish such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it, provided, however, that such Board shall be governed by, and shall implement by appropriate regulations, the following rules of practice and procedure:

"(a) Notwithstanding any law or statute to the contrary, the State Banking Board shall enter into executive session and shall meet in private for their personal deliberations on the following questions: the proposed officers and directors of proposed banks, and their character and fitness; the good faith of the applicants; and the evidence concerning applications for conversion of national banks to State banks.

"(b) ~~[The minutes of the meetings of the Board shall set forth the names of persons appearing as applicants, as opponents, and their respective counsel, representatives, and expert witnesses, together with the substance of their testimony or presentations.]~~ The decision of the Board shall be evidenced in the minutes by the vote of each Board member in respect to each of the five statutory requisites for issuance of a bank charter, and no member shall abstain from voting unless he shall be disqualified for some ethical or personal reason, which ground of disqualification shall be stated in the record.

"(c) No member of the Board shall be an officer, director or otherwise interested in the management or operation of any State or national bank or savings and loan association; provided further, that if any Board member shall own or otherwise control any shares of stock in any State or national bank, or savings and loan association, that he shall file with the chairman a list of all such stocks, describing the security, the quantity, and the value thereof, which list shall be a public record of the Banking Board.

"(d) When either the State Treasurer or Commissioner is unable to personally attend an official meeting of the Board, the respective first deputy of such member may appear and vote in

his stead, provided that the Board rules shall prescribe the deputy by name and title who is so authorized, and provided further, that two such deputies may not both sit as substitute members of the Board at the same meeting.”

SECTION 2. Sections 7 and 9, Article 15, Chapter I, The Texas Banking Code of 1943, as amended (Article 342-115, Vernon’s Texas Civil Statutes), are amended to read as follows:

“7. *Judicial review of a State Banking Board decision is under the substantial evidence rule. [Any person, firm or corporation who is a party to, or is necessarily aggrieved by any final order, ruling or judgment of the State Banking Board shall have the right to appeal by filing a suit to set aside such order, ruling or judgment in the District Court of Travis County, Texas, within thirty (30) days following the date of rendition of such order, ruling or judgment. Provided, that in such cases the substantial evidence rule shall apply and govern the trial, as is the common practice in cases of appeal from administrative orders and as construed by the courts of this State. Pending final judgment of the court the order shall remain in effect, unless otherwise stayed or enjoined by the court upon proper application.]*”

“9. The State Banking Board is subject to the open meetings act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon’s Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon’s Texas Civil Statutes), *except that these Acts do not apply to a charter application filed and approved by the State Banking Board for the purpose of assuming the business of a failed or failing bank.*”

SECTION 3. Article 8, Chapter II, The Texas Banking Code of 1943 (Article 342-208, Vernon’s Texas Civil Statutes), as amended by Section 6, Chapter 499, and Section 1, Chapter 532, Acts of the 68th Legislature, Regular Session, 1983, is amended to read as follows:

“Article 8. **EXAMINATION--MAY ADMINISTER OATHS--FEES-- DISPOSITION.** The Commissioner shall examine each state bank annually and no more, unless the Commissioner deems additional examinations necessary to safeguard the interest of depositors, creditors, and stockholders, and to enforce the provisions of *this Code*, *except that the Commissioner may defer an examination for no more than six months if the Commissioner considers the deferment necessary for the efficient enforcement of this Code [the Banking Code of 1943].* The Commissioner may accept examinations of state banks by a federal agency in lieu of an examination required by this Article. The performance of bank services by a processor shall be subject to regulation and examination by the Commissioner to the same extent as if the services were being performed by the bank itself on its own premises. The Commissioner, Deputy Commissioner, Departmental Examiner and each examiner may administer oaths and examine any person under oath upon any subject which he deems pertinent to the financial condition of any state bank. The Commissioner *and the Banking Section of the Finance Commission* shall assess and collect a fee in connection with each examination, based on the bank’s total assets, covering the cost of such examination, the equitable or proportionate cost of maintenance and operation of the Banking Department, and the enforcement of the provisions of the Banking Code of 1943, including but not limited to, the premium on the bond of the Commissioner and other officers and employees of the Banking Department, and such other fidelity or casualty insurance or coverage required or furnished pursuant to or in connection with the provisions of the Banking Code of 1943, together with all other expenses of the Banking Department, which fee shall in no event be less than Fifty Dollars (\$50) for each examination so made. The Commissioner may assess and collect a fee annually, in addition to the fee collected in connection with each examination, based on the bank’s total assets, to cover the equitable or proportionate cost of maintenance and operation of the Banking Department and the enforcement of the provisions of the Banking Code of 1943. All sums of money paid to the Banking Department under this Code shall be deposited in the State Treasury to the credit of a special fund to be known as the Banking Department Expense Fund and may be used only for the administration of this Code.”

SECTION 4. Article 9, Chapter II, The Texas Banking Code of 1943, as amended (Article 342-209, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Article 9. **CALL STATEMENTS--FILING--PUBLICATION--POSTING-- PENALTY.** The Commissioner shall ~~[at least twice each year]~~ call upon each state bank *four times each year* to make and publish a statement of its financial condition as of the close of business on a date specified in such call. Such statements shall be upon such form and reflect such information as may be prescribed by the Commissioner ~~[and shall be filed with the Commissioner within the time specified in the call].~~ Such statement shall be published within the time specified in the call in some newspaper of general circulation published in the county of the bank’s domicile, or if no such newspaper is published in said county, then in a newspaper of general circulation published in an adjacent county, and a publisher’s certificate

reflecting such publication shall be filed with the Commissioner within the time specified in the call. A copy of the latest called statement shall be kept posted in the lobby of the banking house at a point accessible to the public. Any state bank which fails to [file or] publish such statement or to file such publisher's certificate, within the periods herein prescribed in the call, or to post such notice, shall be subject to a penalty not exceeding Five Hundred Dollars (\$500.00) to be collected by suit by the Attorney General on behalf of the Commissioner."

SECTION 5. Article 4, Chapter III, The Texas Banking Code of 1943, as amended (Article 342-304, Vernon's Texas Civil Statutes), is amended to read as follows:

"Article 4. **ARTICLES OF ASSOCIATION.** The articles of association of a state bank shall be signed and acknowledged by each incorporator and shall contain:

- "1. The name of the corporation.
- "2. The city or town and the county of its domicile.
- "3. Such of the powers listed in Article 1 of this Chapter as it shall choose to exercise.
- "4. The capital and the denomination and number of shares.
- "5. *The preferred stock, if any, and the terms and conditions of its issuance.*
- "6. The number of directors.
- "7. ~~6.~~ The period of duration, which may be perpetual."

SECTION 6. Sections A and D, Article 5, Chapter III, The Texas Banking Code of 1943, as amended (Article 342-305, Vernon's Texas Civil Statutes), are amended to read as follows:

"A. Applications for a State bank charter shall be granted only upon good and sufficient proof that all of the following conditions presently exist:

- "(1) A public necessity exists for the proposed bank;
- "(2) The proposed capital structure is adequate;
- "(3) ~~The proposed bank is to be established~~ *The proposed bank's anticipated volume of business [in the community where such proposed bank is to be established] is such as to indicate profitable operation [of the proposed bank];*
- "(4) The proposed officers and directors have sufficient banking experience, ability and standing to render success of the proposed bank probable; and
- "(5) The applicants are acting in good faith.

"The burden to establish said conditions shall be upon the applicants."

"D. Upon filing of the application, the Commissioner shall promptly set the time and place for public hearing of the application for charter, giving the applicants reasonable notice thereof. Before the 10th day preceding the day on which the hearing is held, the Commissioner shall publish notice of the hearing in a newspaper of general circulation in the county where the proposed bank is to be located. *If a protest of the application is not filed, the Commissioner may cancel the hearing, and if the Commissioner does so, the Board shall vote to determine whether the necessary conditions set out in Section A of this article have been established, based on the application. If the Board votes to deny the application, the Commissioner shall notify the applicant and the applicant may request a hearing on the application not later than the 30th day after the date on which the notice is sent to the applicant.* After full and public hearing the Board shall vote and determine whether the necessary conditions set out in Section A above have been established. Should the Board, or a majority of the Board, determine all of the said conditions affirmatively, then the application shall be approved; if not, then the application shall be denied. If approved, and when the Commissioner receives satisfactory evidence that the capital has been paid in full in cash, the Commissioner shall deliver to the incorporators a certified copy of the Articles of Association, and the bank shall come into corporate existence. Provided however, that the State Banking Board may make its approval of any application conditional, and in such event shall set out such condition in the resolution granting the charter, and the Commissioner shall not deliver the certified copy of the Articles of Association until such condition has been met, after which the Commissioner shall in writing inform the State Banking Board as to compliance with such condition and delivery of the Articles of Association."

SECTION 7. Article 8, Chapter III, The Texas Banking Code of 1943, as amended (Article 342-308, Vernon's Texas Civil Statutes), is amended to read as follows:

"Article 8. **MERGER--TRUST POWERS.** Any two or more state banks, or if national banks are hereafter authorized by the laws of the United States to participate in such a merger, any one or more state banks and any one or more national banks domiciled in this State may, with the approval of the Commissioner and the written consent of the owners of record of two-thirds of the capital of each of said banks, be merged. Said merging banks shall file with the Commissioner:

- "(1) A statement of the plan of merger approved by the board of directors of each merging bank, by a majority vote of the qualified directors.

~~“(2) [Written consent to such merger executed by the owners of record of two-thirds of the capital of each merging bank.~~

~~“(3) Certificate of merger stating the facts required by Article 4 of this chapter and executed and acknowledged by a majority of the qualified directors of each merging bank.~~

“The Banking Commissioner shall thereupon investigate the condition of the merging banks and if he finds that the state bank which will result from the merger (hereafter called the ‘resulting bank’) will be solvent and its capital unimpaired; that it will have adequate capital structure; that such merger *does not violate the anti-trust laws of this state [is to the best interest of the depositors, creditors and stockholders of the merging banks and of the public in general; that the distribution of the stock of the resulting bank is to be upon an equitable basis]*; and that the resulting bank has in all respects complied with the laws of this State relative to the incorporation of State banks, he may approve such merger, and, if he so approves, he shall deliver to the resulting bank a certified copy of the certificate of merger, which certificate shall constitute the charter and articles of association of the resulting bank [~~; and shall be filed as provided in Article 6 of this chapter~~]. The resulting bank shall be deemed a continuation in entity and identity of each of the banks involved in the merger; shall be subject to all the liabilities, obligations, duties and relations of each merging bank; and shall without the necessity of any conveyance, assignment or transfer become the owner of all of the assets of every kind and character formerly belonging to the merging banks; further, provided, that if any merging bank shall at the time of the merger be acting as trustee, guardian, executor, administrator, or in any other fiduciary capacity, the resulting bank shall, without the necessity of any judicial action or action by the creator of such trust, continue such office, trust or fiduciary relationship and shall perform all of the duties and obligations and exercise all of the powers and authority connected with or incidental to such fiduciary relationship in the same manner as though the resulting bank had been originally named or designated as such fiduciary.

“The naming or designating by a testator, or the creator of a living trust, of any one of the merging banks to act as trustee, guardian, executor or in any other fiduciary capacity shall be considered the naming or designating of the bank resulting from the merger.

“A stockholder may dissent from the merger by following the procedure provided by Article 5.12, Texas Business Corporation Act. That procedure applies to a merger under this article, as if the state bank were a corporation organized under the Texas Business Corporation Act.”

SECTION 8. Article 3, Chapter IV, The Texas Banking Code of 1943, as amended (Article 342-403, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Article 3. **BY-LAWS--ADOPTION AND AMENDMENT.** The stockholders of a state bank shall adopt by-laws which may be amended at any regular annual meeting of the stockholders, or, if the purpose of the meeting is stated in the notice, at any special meeting of the stockholders called for that purpose. Neither the by-laws nor any amendment thereto shall be effective until filed with the Commissioner and approved by him. *The stockholders may delegate to the board of directors the power to alter, amend, or repeal the by-laws or to adopt new by-laws, and the stockholders may rescind a board action with regard to the by-laws at a meeting at which the amendment of by-laws is permitted under this article. The by-laws may contain any provisions for the regulation and management of the affairs of the bank not inconsistent with law or the Articles of Association.*”

SECTION 9. Article 6, Chapter IV, The Texas Banking Code of 1943, as amended (Article 342-406, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Article 6. **DIRECTORS’ ELECTION--TERM--FAILURE TO ELECT-- VACANCY--FAILURE TO FILL VACANCY--ADDITION OF DIRECTORS.** Each state bank shall, at its regular annual meeting of stockholders, or at some adjournment thereof, or at a special meeting of stockholders called for such purpose, elect directors who shall serve until the next regular annual meeting of stockholders. *A director shall hold office until the director’s successor has been elected and qualified, unless removed according to the provisions of the Articles of Association or the by-laws. The Articles of Association or by-laws may provide that at a meeting of the stockholders called expressly for that purpose, a director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors, subject to any further restriction on removal contained in the Articles of Association or the by-laws [and until their successors have been elected and have qualified].* If any state bank fails to elect directors within (60) days after its regular annual meeting, the Commissioner may, after ten (10) days notice by mail, call a meeting of stockholders for the purpose of electing directors, and if the stockholders do not elect directors at the meeting so called, the Commissioner may close the bank and liquidate it pursuant to the provisions of Chapter VIII of this Code.

“Any vacancy on the board of directors may be filled by a majority vote of the remaining directors, and any director so appointed shall hold his office until the next election; provided if

the vacancy reduces the number of directors to less than that required by Article 4 of this Chapter, it shall be filled within thirty (30) days from the date it occurs and upon the failure to fill such vacancy within the above prescribed time limit, the Commissioner may close the bank and liquidate it pursuant to the provisions of Chapter VIII of this Code.

"A majority of the full board of directors of a state bank, when authorized by resolution adopted at any regular meeting of stockholders or at any special meeting of stockholders called for such purpose, may at any time increase the number of directors of a state bank and appoint persons to fill the resulting positions and the persons so appointed shall serve until the next regular annual meeting of stockholders; provided, however, that the board of directors shall not increase the number of directors by more than two (2) during any one year and the total number of directors shall never exceed the maximum number now or that may hereafter be authorized by law. The resolution of the stockholders, as herein provided, and any action of the board of directors pursuant thereto, shall be spread upon the minutes of the stockholders or directors meeting, as the case may be, and a certified copy shall be filed with the Commissioner, for which filing no fee shall be charged. This provision shall be cumulative of all existing laws relating to increasing the number of directors of a state bank and the filling of the positions thereby created."

SECTION 10. Article 7, Chapter IV, The Texas Banking Code of 1943, as amended (Article 342-407, Vernon's Texas Civil Statutes), is amended to read as follows:

"Article 7. **DIRECTORS--OATH AND ACCEPTANCE.** Prior to taking office each director in a state bank shall take oath that he accepts the position as director; that he will not violate, nor knowingly permit any officer, director or employee of the bank to violate, the laws of the State of Texas in the conduct of the business of the bank; and that he will diligently perform his duties as director. Such affidavit shall be sworn and subscribed to before a notary public, spread upon the minutes of the directors' meeting [~~; and a duplicate original thereof filed with the Commissioner.~~]"

SECTION 11. Chapter IV, The Texas Banking Code of 1943, as amended (Article 342-401 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 9a to read as follows:

"Article 9a. **ACTIONS WITHOUT MEETING; TELEPHONE MEETINGS.** A. *An action required or permitted by this Code to be taken at a meeting of the shareholders of a state bank may be taken without a meeting if a consent in writing, setting forth the action taken, is signed by all of the shareholders entitled to vote on the action. Unless the Articles of Association or by-laws provide otherwise, an action required or permitted to be taken at a meeting of the board of directors or a committee of the board may be taken without a meeting if a consent in writing, setting forth the action taken, is signed by all the members of the board or committee. A consent under this article has the same force and effect as a unanimous vote at a meeting, and this may be stated in articles or a document or instrument filed with the Commissioner.*

"B. *Subject to the provisions of this Code relating to notice of meetings and unless otherwise restricted by the Articles of Association or by-laws, shareholders, members of the board of directors, or members of a committee designated by the board may participate in and hold a meeting by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting under this section constitutes presence in person at the meeting, except for a person who participates in the meeting for the express purpose of objecting to the transaction of business on the ground that the meeting is not lawfully called or convened.*"

SECTION 12. Article 10, Chapter IV, The Texas Banking Code of 1943, as amended (Article 342-410, Vernon's Texas Civil Statutes), is amended to read as follows:

"Article 10. **DIRECTORS, OFFICERS AND EMPLOYEES-- LIABILITY--REIMBURSEMENT FOR EXPENSES.** Except as otherwise provided by statute, directors and officers of state banks shall be liable for financial losses sustained by state banks to the extent that directors and officers of other corporations are now responsible for such losses in equity and common law. Any officer or director who does not approve of any act or omission of the board, and desires to relieve himself from any personal liability for such act or omission shall promptly announce his opposition to such act or omission and cause such opposition to be spread upon the minutes of the directors' meeting. If for any reason such opposition is not spread upon the minutes of the directors' meeting, he shall promptly report the facts to the Commissioner.

"Any person may be indemnified or reimbursed by a state bank, through action of its board, for reasonable expenses actually incurred by him in connection with any action, suit or proceeding to which he is a party by reason of his being or having been a director, officer or employee of said bank *or having served as a director, officer, partner, venturer, proprietor, trustee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, at the request of the bank.* The

board may authorize the purchase by the bank of insurance covering the indemnification of directors, officers or employees *and may prospectively indemnify directors, officers, or employees*. If there is a compromise of such an action or threatened action, there shall be no indemnification or reimbursement for the amount paid to settle the claim or for reasonable expenses incurred in connection with such claim without the vote, or the written consent, of the owners of record of a majority of the stock of the bank. No such person shall be indemnified or reimbursed if he has been finally adjudged to have been guilty of, or liable for, willful misconduct, gross neglect of duty, or a criminal act. This article shall not bar any right or action to which such person would be entitled at common law or any other statute of this State."

SECTION 13. Article 3, Chapter V, The Texas Banking Code of 1943, as amended (Article 342-503, Vernon's Texas Civil Statutes), is amended to read as follows:

"Article 3. **ENGAGING IN COMMERCE--EXCEPTIONS.** No state bank shall invest its funds in trade or commerce by buying and selling goods, wares, merchandise or chattels or by owning or operating an industrial plant except when necessary to avoid a loss on a loan or investment previously made in good faith. Provided that to the extent that national banks may now or hereafter have authority to do so, a state bank may become the owner and lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property.

"Rental payments collected by the bank under the lease agreement shall be considered to be rent and shall not be deemed to be interest or compensation for the use of money loaned.

"The aggregate of the bank's investment in properties so acquired shall not exceed limits prescribed by the Banking Section of the Finance Commission as they may be adjusted from time to time, and property so acquired shall not be retained more than six (6) months beyond the duration of the original lease period agreed to by the customer for whom the property was acquired, except with written permission of the Banking Commissioner.

"A state bank may invest not more than ten per cent (10%) of its capital stock and certified surplus in shares of stock of a corporation that have preference over any other class of stock issued by the corporation as to the payment of dividends, or that entitles the holder to cumulative, noncumulative, or partially cumulative dividends of the corporation, if the stock has been approved by the Commissioner. A state bank may not invest more than five per cent (5%) of its capital stock and certified surplus in the stock of any one issuer."

SECTION 14. Article 4, Chapter V, The Texas Banking Code of 1943, as amended (Article 342-504, Vernon's Texas Civil Statutes), is amended to read as follows:

"Article 4. **REAL ESTATE LOANS--LIMITATIONS--EXCEPTIONS.** State banks are authorized to make loans upon the security of real estate and invest their funds in obligations secured by real estate subject to such rules and regulations as may be imposed by the Banking Section of the Finance Commission of Texas relating to margin requirements, repayment programs or terms, and the aggregate in the various types of classes of real estate loans [~~;~~ provided, however, that no state bank shall make a loan upon security of real estate or invest its funds in obligations secured by real estate unless:

"[1. The security is a lien upon such real estate or the loan or investment made by the bank is wholly guaranteed by the Administrator of Veterans Affairs under Title III of the Serviceman's Readjustment Act of 1944; as amended from time to time.

"[2. Such loan or obligation is supported by:

"[(a) either an attorney's opinion or a mortgagee's title insurance policy;

"[(b) evidence of payment of all taxes other than taxes for the current year;

"[(c) a written appraisal of such real estate signed by an appraiser; and

"[(d) if the improvements situated upon such real estate constitute an appreciable portion of the security, adequate coverage insuring the interest of the bank against loss by fire and tornado.

"[3. The limitations, restrictions and requirements of this Article shall not apply to a loan or obligation insured by the Federal Housing Administration, or to any loan or obligation which the United States of America has unconditionally guaranteed as to payment of both principal and interest through a federal agency or instrumentality, or to security taken to prevent loss on a loan or investment previously made in good faith.

"[4. Construction loans:

"[(a) The following loans made to finance the construction of buildings shall not be considered as loans secured by real estate within the meaning of this Article but shall be classed as ordinary commercial loans; provided that such loans shall be secured by a first lien on the real estate upon which the building or buildings are being constructed:

"[(1) loans having maturities which shall be fixed by the Banking Section of the Finance Commission, made to finance the construction of industrial or commercial

buildings on which there are valid and binding agreements entered into by financially responsible lenders to advance the full amount of the bank's loan upon completion of the buildings; and

"[(2) loans made to finance the construction of residential or farm buildings having maturities which shall be fixed by the Banking Section of the Finance Commission from time to time;

"[(b) Such loans or obligations shall be supported by:

"[(1) either an attorney's opinion; a mortgagee's title insurance policy or a mortgagee's title insurance policy binder;

"[(2) evidence of payment of all taxes other than taxes for the current year;

"[(3) either a written appraisal of such real estate, signed by an appraiser, or a valid and binding agreement entered into by a financially responsible lender or lenders to advance the full amount of the bank's loan upon completion of the buildings; and

"[(4) insurance coverage upon the building or buildings under construction in an amount adequate to insure the interest of the bank against loss by fire, tornado and other casualties.

"[(e) No state bank shall invest its funds in, or be liable on, any such loans covered by this Section in an amount in excess of that prescribed by the Banking Section of the Finance Commission:

"[5. Loans made to established industrial or commercial businesses in which the Housing and Home Finance Administrator or the Small Business Administration cooperates or purchases a participation under the provisions of Section 102 or 102a of the Housing Act of 1948, as amended, or of the Small Business Act of 1952, shall not be subject to the requirements, restrictions or limitations of this Article upon loans secured by real estate:

"[6. Loans made to businesses where the bank looks for repayment out of the operations of the borrower's business, relying primarily on the borrower's general credit standing and forecast of operations, with or without other security, but wishes to take a mortgage on the borrower's real estate as a precaution against contingencies, shall not be considered as real estate loans within the meaning of this Article but shall be classed as ordinary commercial loans:

"[7. Loans may be made to finance the construction of buildings during periods of construction which shall be fixed by the Banking Section of the Finance Commission from time to time upon the security of:

"[(a) a purchase contract entered into pursuant to the provisions of the Public Buildings Purchase Contract Act of 1954 or the Post Office Department Property Act of 1954; or an assignment thereof irrevocably binding the Administrator of General Services or the Postmaster General to commence payments at a specified date not later than one month from the date of completion and acceptance of the building and to continue such payments at least at annual intervals until the loan has been paid in full; and

"[(b) a bid and performance bond with one or more financially responsible sureties thereon in favor of the General Services Administration or the Post Office Department, jointly with the lender, without complying with the requirements, restrictions or limitations of this Article concerning loans secured by real estate, even though the lender may hold additional security in the form of a mortgage, deed of trust, title to the premises involved, or other such lien on such premises]."

SECTION 15. Article 7, Chapter V, The Texas Banking Code of 1943, as amended (Article 342-507, Vernon's Texas Civil Statutes), is amended to read as follows:

"Article 7. LIMIT OF LIABILITY OF ANY ONE BORROWER--EXCEPTIONS--PENALTY. (a) *In this Article:*

"(1) 'Loans and extensions of credit' includes all direct or indirect advances of funds to a person that are made on the basis of an obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person, and to the extent specified by the Commissioner, the term includes a liability of a state bank to advance funds to or on behalf of a person under a contract.

"(2) 'Person' includes an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government, or agency, instrumentality, or political subdivision of a sovereign government or other similar entity or organization.

"(b) The total loans and extensions of credit by a state bank to a person outstanding at one time may not exceed twenty-five per cent (25%) of its capital and certified surplus. This limitation does not apply to the following classes of loans, extensions of credit, indebtedness, or liability [~~No state~~

bank shall permit any person or any corporation to become indebted or in any other way liable to it in an amount in excess of twenty-five per cent (25%) of its capital and certified surplus. The phrase "indebted or in any other way liable" shall be construed to include liability as partner or otherwise. The above limitation shall not apply to the following classes of indebtedness or liability:

"1. Liability as endorser or guarantor of commercial or business paper discounted by or assigned to the bank by the actual owner thereof who has acquired it in the ordinary course of business.

"2. Indebtedness evidenced by banker's acceptances, bills of exchange or drafts drawn against actually existing values and secured by a lien upon goods in transit with shippers' order bills of lading or comparable instruments attached.

"3. Indebtedness evidenced by notes or other paper secured by liens upon agricultural products, manufactured goods, or other chattels in storage in bonded warehouses or elevators with warehouse or elevator receipts attached, cotton yard tickets, signed by a bonded weigher, when the value of the security is not less than one hundred twenty-five per cent (125%) of the indebtedness, and the bank's interest therein is adequately insured against loss, with insurance policies or certificates of insurance attached.

"4. Deposit in a state or national bank [reserve depository], or a Federal Reserve Bank.

"5. Indebtedness of another state or national bank arising out of [~~short-term loans when such~~] loans with [~~are made out of the excess cash reserve funds of the lending bank and have~~] settlement periods of less than one week.

"6. Indebtedness arising out of the daily transaction of the business of any clearing house association in this State.

"7. Bonds and other legally created general obligations of any State or of any county, city, municipality or political subdivision thereof and indebtedness of the United States of America, or any instrumentality or agency of the United States Government.

"8. Any portion of any indebtedness which the United States Government or any agency or instrumentality of the United States Government has unconditionally agreed to purchase or has unconditionally guaranteed as to payment of both principal and interest.

"9. Liability under an agreement by a third party to repurchase from the bank an indebtedness that the United States Government or any agency or instrumentality of the United States Government has unconditionally agreed to purchase or has unconditionally guaranteed as to payment of both principal and interest, to the extent that the agreed repurchase price does not exceed the purchase price agreed to or value guaranteed by the United States, its agency or instrumentality.

"10. Indebtedness secured by obligations which are issued by or guaranteed, both as to principal and interest, by the United States and the market value of which is one hundred per cent (100%) of such indebtedness at all times.

"11. Indebtedness fully secured by a segregated deposit account in the lending bank.

"12. *Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that carries a full recourse endorsement or unconditional guarantee by the person transferring the paper, if the bank's files or the knowledge of its officers of the financial condition of each maker of the consumer paper is reasonably adequate and if an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily on the responsibility of each maker for payment of the loans or extensions of credit and not on a full or partial recourse endorsement or guarantee by the transferor.*

"(c) The limitations of this Article as to the loans or extensions of credit of each maker are the sole applicable loan limitations.

"(d) The Commissioner may prescribe rules to administer and carry out this Article, including rules to define or further define terms used in this Article or to establish limits or requirements other than those specified in this Article for particular classes or categories of loans or extensions of credit. The Commissioner may determine if a loan putatively made to a person shall, for purposes of this Article, be attributed to another person.

"(e) Any officer, director or employee of a state bank who knowingly violates or participates in the violation of any provision of this Article shall upon conviction be fined not more than Five Thousand Dollars (\$5,000) or confined in the State penitentiary not more than five (5) years, or both."

SECTION 16. Article 12, Chapter V, The Texas Banking Code of 1943, as amended (Article 342-512, Vernon's Texas Civil Statutes), is amended to read as follows:

"Article 12. **INVESTMENT IN A BANK.** A state bank may invest its capital and certified surplus in another bank [.] or in a bank holding company, *if the stock of the bank or bank holding company is owned exclusively by depository institutions and the bank or bank holding company*

and its subsidiaries are engaged exclusively in providing services for other depository institutions and their directors, officers, and employees, except that:

“(1) the investing bank may not acquire or retain ownership, control, or power to vote more than five percent of any class of voting securities of the other bank or of the bank holding company; and

“(2) the investing bank may not invest more than 10 percent of its capital and certified surplus in the other bank or in the bank holding company.”

SECTION 17. Section (b), Article 13, Chapter V, The Texas Banking Code of 1943, as amended (Article 342-513, Vernon's Texas Civil Statutes), is amended to read as follows:

“(b) A subsidiary corporation may perform only those functions that a state bank or a bank holding company is authorized to perform under the laws of this state.”

SECTION 18. Chapter VIII, The Texas Banking Code of 1943, as amended (Article 342-801 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 4a to read as follows:

“**Article 4a. PRIORITY OF CLAIMS--PAYMENT.** On liquidation of a state bank claims for payment have the following priority:

“(1) obligations incurred by the Commissioner, fees and assessments due to the Department, and expenses of liquidation, all of which may be covered by a proper reserve of funds;

“(2) claims of depositors having an approved claim against the general liquidating account of the bank;

“(3) claims of general creditors having an approved claim against the general liquidating account of the bank;

“(4) claims otherwise proper that were not filed within the time prescribed by this Code;

“(5) approved claims of subordinated creditors; and

“(6) claims of stockholders of the bank.”

SECTION 19. Chapter IX, The Texas Banking Code of 1943, as amended (Article 342-901 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 14 to read as follows:

“**Article 14. SUPERVISION OF BANK HOLDING COMPANIES.** The Commissioner has jurisdiction over a bank holding company to the same extent as a state bank if the bank with the largest amount of total assets owned by the bank holding company is a state bank or if the majority of the combined assets of state and national banks owned by the bank holding company are held by state banks. The Commissioner shall accept the Reports of Inspection of the Board of Governors of the Federal Reserve System.”

SECTION 20. Chapter IX, The Texas Banking Code of 1943, as amended (Article 342-901 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 15 to read as follows:

“**Article 15. SERVICE OF PROCESS ON STATE BANK.** The president, a vice-president, or a cashier of a state bank is an agent of the bank on whom process, notice, or demand required or permitted by law to be served on the bank may be served.”

SECTION 21. Article 6, Chapter III, and Article 6, Chapter VI, The Texas Banking Code of 1943, as amended (Articles 342-306 and 342-606, Vernon's Texas Civil Statutes), are repealed.

SECTION 22. 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 9, 1985, by a viva-voce vote; Senate concurred in House amendment on May 27, 1985, by a viva-voce vote; passed the House, with amendment, on May 25, 1985, by a non-record vote.

Approved: June 14, 1985

Effective: August 26, 1985