

CHAPTER 14

S.B. No. 11

AN ACT

relating to the acquisition, management, and supervision of banks and bank holding companies located in Texas; providing penalties; amending The Texas Banking Code of 1943, as amended (Article 342-101 et seq., Vernon's Texas Civil Statutes), by amending Article 2 of Chapter I, Article 4 of Chapter IV, and Articles 12 and 14 of Chapter IX and by adding Article 16 to Chapter IX.

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

SECTION 1. Article 2, Chapter I, The Texas Banking Code of 1943, as amended (Article 342-102, Vernon's Texas Civil Statutes), is amended to read as follows:

"Article 2. DEFINITIONS. As used in this code the following terms, unless otherwise clearly indicated by the context, have the meanings specified below:

" 'Code'—The Texas Banking Code of 1943.

" 'Banking Department'—The Banking Department of Texas.

" 'Finance Commission' or 'Commission'—The Finance Commission of Texas.

" 'Banking Section'—The Banking Section of The Finance Commission of Texas.

" 'Building and Loan Section'—The Building and Loan Section of The Finance Commission of Texas.

" 'Commissioner'—The Banking Commissioner of Texas.

" 'Deputy Commissioner'—The Deputy Banking Commissioner of Texas.

" 'Departmental Examiner'—The Departmental Bank Examiner of The Banking Department of Texas.

" 'Examiner'—Bank Examiner of The Banking Department of Texas.

" 'Assistant Examiner'—Assistant Bank Examiner of The Banking Department of Texas.

" 'State Bank'—Any corporation hereafter organized under this Code, and any corporation heretofore organized under the laws of the State of Texas, and which was, prior to the effective date of this Act, subject to the provisions of Title 16 of the Revised Civil Statutes of Texas, 1925, as amended, including banks, trust companies, bank and trust companies, savings banks and corporations subject to the provisions of Chapter 9, Title 16 of the Revised Civil Statutes of Texas, 1925, as amended.

" 'Director, officer or employee'—Director, officer or employee of a state bank.

" 'Board'—Board of directors of a state bank.

" 'National Bank'—Any banking corporation organized under the provisions of Title 12, United States Code, Section 21 (U.S. Rev. Statutes, Section 5133) and the amendments thereto.

" 'State Building and Loan Association' or 'State Association'—Any building and loan or savings and loan association heretofore or hereafter organized under the laws of this State.

" 'Federal Savings and Loan Association'—Any savings and loan association heretofore or hereafter organized under the laws of the United States of America.

" 'District Court'—A district court of the county in which the bank involved is domiciled.

" 'City'—City, village, town, or similar community.

" 'Capital'—The common capital stock.

" 'Chapters and Articles'—The Chapters and articles of this Code.

" 'Bank Holding Company'—A company defined as a bank holding company by Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841).

" 'Bank Holding Company Act of 1956'—The federal Bank Holding Company Act of 1956, as amended, P.L. 84-511 (12 U.S.C. Sec. 1841 et seq.).

“Bank Services”—Activities, such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and marking of checks, statements, notices and similar items or other clerical, bookkeeping, accounting, statistical or similar functions performed by a bank, that may be categorized as data processing and any services associated with the electronic transfer of funds.

“Processor”—A state or national bank, banking affiliate, corporation, or other business that performs bank services.

“Texas Bank Holding Company”—A bank holding company that:

“(1) has its principal executive office in this State;

“(2) is not owned or controlled, directly or indirectly, by a bank holding company that has its principal executive office outside this State;

“(3) owns or controls, directly or indirectly:

“(A) state banks or national banks domiciled in this State holding not less than 50 percent of the total deposits, as defined by Section 2[3], Federal Deposit Insurance Act (12 U.S.C. Section 1813), held by all banks that it owns or controls, directly or indirectly; or

“(B) a state bank or national bank domiciled in this State and owned or controlled, directly or indirectly, such a bank on July 15, 1986; and

“(4) either:

“(A) owns or controls, directly or indirectly, a state bank or national bank domiciled in this State and owned or controlled, directly or indirectly, such a bank on July 15, 1986; or

“(B) acquires after July 15, 1986, ownership or control, direct or indirect, of any state bank or national bank in this State and at the time it becomes a bank holding company the only bank or banks owned or controlled by it, directly or indirectly, are located in this State.

“Out-of-State Bank Holding Company”—A bank holding company that is not a Texas bank holding company. For purposes of this code a bank holding company is considered an out-of-state bank holding company at all times after it becomes an out-of-state bank holding company.

“Control”—The ability or power to vote, directly or indirectly, 25 percent or more of any class of voting securities or the ability to control in any manner the election of a majority of the board of directors.

“Capital Adequacy Guidelines”—Regulations, rules, orders, or other guidelines relating to capitalization requirements of a state bank, national bank, or bank holding company adopted by the Bureau of the Comptroller of the Currency of the United States in the case of a national bank, the Board of Governors of the Federal Reserve System in the case of a bank holding company, the commissioner in the case of a state bank, or the successor to any of those authorities having the authority to regulate capitalization requirements of a state bank, national bank, or bank holding company, as the case may be.”

SECTION 2. Article 4, Chapter IV, The Texas Banking Code of 1943, as amended (Article 342–404, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Article 4. DIRECTORS—NUMBER—CHANGE OF NUMBER—ADVISORY DIRECTORS

“Section 1. A State bank shall have not less than five (5) nor more than twenty-five (25) directors, the majority of whom shall be residents of the State of Texas.

“Section 2. If the bank is owned or controlled, directly or indirectly, by an out-of-state bank holding company, directors who are employees or officers or spouses of employees or officers of the bank or out-of-state bank holding company, or an affiliate of the bank or out-of-state bank holding company shall not be counted as residents of the State of Texas for the purpose of Section 1 of this article. For the purposes of this section, ‘affiliate’ means a person or entity that directly, or indirectly

through one or more intermediaries, controls, is controlled by, or is under common control with the bank or out-of-state bank holding company.

“Section 3. The number of directors may be changed from time to time within the limits [above] prescribed by Sections 1 and 2 of this article, without amendment of the charter, by resolution adopted at any regular meeting of the stockholders or any special meeting of stockholders called for the purpose of electing directors, which resolution shall be spread on the minutes of the meeting, and a certified copy shall be filed with the Commissioner, for which filing no fee shall be charged.

“Section 4. The board of directors with the approval of the stockholders may elect an advisory board of directors in any number designated by resolution of the stockholders, which advisory directors shall not be required to comply with Article 5 of this Chapter and shall not have the right to vote as directors of the bank.”

SECTION 3. Article 12, Chapter IX, The Texas Banking Code of 1943 (Article 342-912, Vernon's Texas Civil Statutes), is amended to read as follows:

“Article 12. ACQUISITION OF BANK OR HOLDING COMPANY [~~UNDER FEDERAL LAW~~—NOTICE TO COMMISSIONER—RECOMMENDATIONS OF COMMISSIONER

“Section 1. A state bank, a national bank in the state, or a bank holding company seeking, *directly or indirectly*, to acquire or acquire control of a state bank, a [ex] national bank in [within] the state, or a bank holding company owning or controlling a state bank or a national bank located in the state, that submits an application for approval to the Board of Governors of the Federal Reserve System pursuant to Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842), shall transmit a copy of the application, as and when finally accepted for filing by the board of governors, to the commissioner.

“Section 2. If the application is made by a state bank or involves the *direct or indirect* acquisition of the voting shares or assets of a state bank, *including a bank holding company that owns or controls, directly or indirectly, a state bank*, the commissioner, on receipt of the notice prescribed by Subsection (b) of Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(b)), shall respond in writing within the time limit prescribed by that subsection. The response shall set forth the views and recommendations of the commissioner concerning the application. *If the commissioner shall determine that the application does not evidence compliance with the provisions of the Community Reinvestment Act of 1977 (12 U.S.C. Sec. 2901 et seq.) following his review according to the criteria in Section 6 of this Article 12, he shall include that determination in his response; provided, however, that the commissioner shall not be required to disapprove the application as a result of such determination.* If the commissioner disapproves the application, he shall, with the assistance of the attorney general, present evidence at the hearing held pursuant to Subsection (b) of Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(b)).

“Section 3. If the application is made by a national bank *located in the state* or involves the *direct or indirect* acquisition of the voting shares or assets of a national bank *located in the state, including a bank holding company that owns or controls, directly or indirectly, a national bank located in the state*, the commissioner shall advise the Board of Governors of the Federal Reserve System of any views and recommendations he may have concerning the application and other material before the board of governors in connection with the application. *If the commissioner shall determine that the application does not evidence compliance with the provisions of the Community Reinvestment Act of 1977 (12 U.S.C. Sec. 2901 et seq.) following his review according to the criteria in Section 6 of this Article 12, he shall include that determination in his advice to the board of governors; provided, however, that the commissioner shall not be required to recommend to the board of governors that the application be denied because of such determination.* If the commissioner recommends to the board of governors that the application be denied, he shall request that a hearing pursuant to Subsection (b) of Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(b)) be held. If the board of governors should grant such request, the commissioner shall, with the assistance of the attorney general, present evidence at the

hearing as hereinabove provided. If the board of governors should deny such request, the commissioner is authorized and directed to pursue the remedies available to him as an aggrieved party in accordance with the provisions of Section 9 of the Bank Holding Company Act of 1956 (12 U.S.C. Section 1848).

"Section 4. An out-of-state bank holding company that seeks to take an action specified in Section 1 of this article for which a copy of the application must be filed with the commissioner shall also file with the commissioner, when it delivers the application:

"(1) evidence that the out-of-state bank holding company is authorized to take the action under Article 16 of this chapter;

"(2) evidence that the out-of-state bank holding company and each state bank, national bank in this state, and bank holding company being acquired will, after the acquisition, comply with applicable capital adequacy guidelines, and that the consolidated equity capital condition of these banks in this state during the first three years after being acquired will be maintained at least at the level existing immediately prior to the acquisition less the consolidated net loss of these banks, if any;

"(3) agreements, subject to any contrary provision of applicable federal law, that while the out-of-state bank holding company directly or indirectly owns or controls any national bank in this state:

"(A) a majority of the directors of each national bank shall be residents of the State of Texas, except that directors who are employees or officers or spouses of employees or officers of the bank, out-of-state bank holding company, or an affiliate of the bank or out-of-state bank holding company may not be counted as residents of the State of Texas for the purpose of this paragraph; and

"(B) the out-of-state bank holding company will not directly or indirectly own or control:

"(i) an institution located in this state, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor performing similar functions, unless the institution is a bank as defined by Section 2, Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841); or

"(ii) an institution located in this state, the deposits of which are insured by the Federal Savings and Loan Insurance Corporation or any successor performing similar functions; and

"(4) an agreement to provide such additional information as may be required by rules promulgated by the commissioner.

"Section 5. (a) The commissioner shall advise the Board of Governors of the Federal Reserve System that the commissioner believes the application does not comply with Texas law and the commissioner shall present evidence at any hearing before the board of governors or pursue the remedies available to the commissioner as an aggrieved party in accordance with Section 9 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1848) if, on review of the materials filed by an out-of-state bank holding company under Sections 1 and 4 of this article, the commissioner believes that:

"(1) the out-of-state bank holding company is not authorized to take the proposed action under Article 16 of this chapter;

"(2) either:

"(i) the evidence submitted does not establish that the out-of-state bank holding company, and each state bank, national bank located in this state, and bank holding company being acquired will, after the proposed acquisition, comply with applicable capital adequacy guidelines and during the first three years after the acquisition maintain the consolidated equity capital condition which existed immediately prior to the acquisition less the consolidated net loss of these banks, if any; or

"(ii) the out-of-state bank holding company has not agreed to capitalize, simultaneously with completion of the transaction, any state bank being acquired in an amount sufficient to meet those guidelines; or

"(3) the out-of-state bank holding company has not entered into an agreement provided for in Subdivision (3) of Section 4 of this article.

"(b) In any hearing or in pursuing remedies under this section, the commissioner may request the assistance of the attorney general.

"Section 6. (a) In his review of a bank's compliance with the provisions of the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.), the commissioner is encouraged to give priority to the following criteria:

"(1) Continued and increased extension of credit or direct or indirect investment in projects or programs designed to develop or redevelop areas in which persons with low or moderate incomes reside, and designed to meet the credit needs of those low or moderate-income areas or that primarily benefit persons of low and moderate income, as long as those investments are consistent with sound banking practices, policies, and procedures. For the purposes of this review, personal installment loans, loans made to purchase, or loans secured by an automobile shall not be considered qualifying community reinvestment.

"(2) Continued and increased investments in governmentally insured, guaranteed, subsidized, or otherwise sponsored programs for housing, small farms, or businesses that address the needs of the low and moderate-income areas.

"(3) Continued and increased investments in residential mortgage loans, home improvement loans, housing rehabilitation loans, and small business or small farm loans originated in low and moderate-income areas, or the purchase of such loans originated in low and moderate-income areas.

"(4) Continued and increased investments for the preservation or revitalization of urban or rural communities in low and moderate-income areas.

"(5) Continued investments in the obligations of state and local governmental entities, priority to be given where possible to those entities located in the local community or local trade area of each bank.

"(6) That there will be no diminution of reasonable availability of banking services to all segments of the public and economy of this state, with special emphasis on economic development and the financing of enterprises to increase employment opportunities."

SECTION 4. Article 14, Chapter IX, The Texas Banking Code of 1943 (Article 342-914, Vernon's Texas Civil Statutes), is amended to read as follows:

"Article 14. SUPERVISION OF BANK HOLDING COMPANIES. (a) 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.

"(b) The Commissioner has jurisdiction over an out-of-state bank holding company to enforce an agreement filed with the Commissioner under Article 12 of this chapter.

"(c) A bank holding company that knowingly violates or participates in the violation of a provision of Article 12 of this chapter, an agreement filed with the Commissioner under that article, or a regulation or order issued by the Commissioner or the banking section under that article is liable to the state for a civil penalty in an amount, based on the severity of the violation, of not more than \$1,000 per day for each day during which the violation continues. The attorney general, at the request of the Commissioner, shall sue to collect the penalty."

SECTION 5. Chapter IX, The Texas Banking Code of 1943 (Article 342-101 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 16 to read as follows:

"Article 16. OUT-OF-STATE BANK HOLDING COMPANIES—AUTHORIZATION—LIMITATIONS

"Section 1. Except as otherwise provided by this article, an out-of-state bank holding company may, directly or indirectly, acquire or acquire control of a state

bank, national bank located in the state, or bank holding company owning or controlling, directly or indirectly, a state bank or national bank located in the state.

"Section 2. (a) Before September 1, 2001, the authority granted by Section 1 of this article is available to an out-of-state bank holding company only if each state bank or national bank in this state that would, on the effective date of the transaction, be owned or controlled, directly or indirectly, by the out-of-state bank holding company:

"(1) existed, or had its charter application filed by a person or entity other than any out-of-state bank holding company, before July 15, 1986, and since the latter of July 15, 1986, or the date its charter was granted has continuously operated as a bank, as defined in Section 2, Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841); or

"(2) has existed and continuously operated as a bank for a period of at least five years.

"(b) A bank that is the successor as a result of merger or acquisition of all or substantially all of the assets of a prior bank, while the successor bank and the prior bank are continuously operated as a bank, shall be considered to have been in existence and continuously operated for purposes of this section during the period of its existence and continuous operation as a bank and during the period of the existence and continuous operation of the prior bank. A bank effecting a purchase and assumption, merger, or similar transaction with or supervised by the Federal Deposit Insurance Corporation or any successor performing similar functions shall be considered to have been in existence and continuously operated for purposes of this section during the existence and continuous operation of the bank with respect to which the transaction was consummated.

"(c) This section expires September 1, 2001.

"Section 3. The authority granted by Section 1 of this article is not available to an out-of-state bank holding company that directly or indirectly owns or controls:

"(1) an institution located in this state, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor performing similar functions, unless such institution is a bank as defined by Section 2, Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841); or

"(2) an institution located in this state, the deposits of which are insured by the Federal Savings and Loan Insurance Corporation or any successor performing similar functions.

"Section 4. The authority granted in Section 1 of this article is not available to an out-of-state bank holding company if after the transaction the aggregate deposits of the state banks and national banks domiciled in this state owned or controlled, directly or indirectly, by the out-of-state bank holding company would exceed 25 percent of the total deposits of all state banks and national banks in this state as reported in the most recently available reports of condition or similar reports filed with state or federal authorities. For purposes of this section, the term 'deposit' has the meaning assigned by Section 2[3], Federal Deposit Insurance Act (12 U.S.C. Sec. 1813)."

SECTION 6. This Act takes effect January 1, 1987.

SECTION 7. 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 August 20, 1986, by a viva-voce vote; and that the Senate concurred in House amendment on August 28, 1986, by a viva-voce vote. Passed the House, with amendment, on August 27, 1986, by a non-record vote.

Approved Sept. 23, 1986.

Effective Jan. 1, 1987.