

CHAPTER 89

H.B. No. 1076

AN ACT

relating to the personal liability of officers and directors of insured depository institutions.

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

SECTION 1. Article 10, Chapter IV, The Texas Banking Code (Article 342–410, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 10. DIRECTORS, OFFICERS AND EMPLOYEES—LIABILITY—REIMBURSEMENT FOR EXPENSES. A. 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 Banking Commissioner.

B. 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.

C. For the purpose of applying this article to the *Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. No. 101-73, 12 U.S.C. Section 1811 et seq.)*, a disinterested director or officer of an insured depository institution may not be held personally liable in an action seeking monetary damages brought by the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or any other federal banking regulatory agency as provided by 12 U.S.C. Section 1821(k) unless the damages arise from the gross negligence or wilful or intentional misconduct of the officer or director during the officer's or director's term of office with the insured depository institution. A director or officer is disinterested with respect to a decision or transaction if the decision or transaction does not involve:

- (1) personal profit for the director or officer by dealing with the insured depository institution or usurping an opportunity of the institution;
- (2) buying or selling assets of the insured depository institution;
- (3) dealing with another insured depository institution or a corporation or other entity in which the director or officer:
 - (A) is also a director or officer; or
 - (B) has a significant financial interest; or
- (4) dealing with a family member of the director or officer.

D. In this article, "insured depository institution" has the meaning assigned by 12 U.S.C. Section 1813(c).

SECTION 2. This Act is not intended to change existing law regarding the personal liability of a director or officer of an insured depository institution but is a clarification of the law in effect immediately before the effective date of this Act regarding those matters. This Act applies to an action brought by a federal regulatory agency under 12 U.S.C. Section 1821(k) against a director or officer of an insured depository institution, regardless of whether the action was filed before, on, or after the effective date of this Act, unless the action was finally adjudicated by a court of competent jurisdiction before the effective date of this Act.

SECTION 3. 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 by the House on March 25, 1993, by a non-record vote; passed by the Senate on April 21, 1993: Yeas 29, Nays 0, 1 present, not voting.

Filed without signature May 5, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.