

CHAPTER 765

H.B. No. 1212

AN ACT

relating to the creation of state limited banking associations.

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

SECTION 1. Article 2, Chapter I, The Texas Banking Code (Article 342-102, Vernon's Texas Civil Statutes), is amended by amending Subsections (8), (10), and (24) and adding Subsections (26) and (27) to read as follows:

(8) "State Bank"—Any *banking association or limited banking association* [~~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.

(10) "Board"—Board of directors *or board of managers* of a state bank or a person or group of persons acting in a comparable capacity for a private bank.

(24) "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 *or board of managers*.

(26) "*Banking Association*"—A state bank that is organized under Subchapter B, Chapter III, of this Code.

(27) "*Limited Banking Association*"—A state bank that is organized under Subchapter C, Chapter III, of this Code.

SECTION 2. Section (a), Article 13, Chapter I, The Texas Banking Code (Article 342-113, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Finance Commission, through resolution, may promulgate general rules and regulations not inconsistent with the Constitution and Statutes of this State, and from time to time amend the same, which rules and regulations shall be applicable alike to all state banks and, where indicated, to all private banks to effect the following ends and purposes:

1. To prevent state banks, as determined by the Finance Commission to be required to protect investors in state banks, from concentrating an excessive or unreasonable portion of their resources in any particular type or character of loan, security, or investment and to otherwise establish standards for investments by state banks.

2. To provide adequate fidelity coverage or insurance on the officers and employees of state banks, and fire, burglary, robbery and other casualty coverage for state banks, so as to prevent loss through theft, defalcation or other casualty, and to make certain that the insurer or surety is solvent and will be able to pay losses sustained.

3. To provide for the preservation of the books and records of the Banking Department and of state and private banks during such time as said books and records are of value, and to permit the destruction or other disposition of such books and records after the same are no longer of any value.

4. To permit state banks to transact their affairs in any manner or make any loan or investment which they could do under existing or any future law, rule or regulation were they organized and operating as a National bank under the laws of the United States; but this authority does not abridge State laws or diminish or limit any rights or powers specifically given to state banks by such laws; and it is further provided that, any provision of this Code to the contrary notwithstanding, the transaction of affairs and making of loans or investments permitted by valid rules and regulations shall not constitute a violation of any penal provision of the statutes of this state.

5. From time to time upon request of the Banking Commissioner, to define, identify and determine incidental powers which a state or private bank may exercise as necessary to its specific powers under Article 2 [1], Chapter III of this Code.

SECTION 3. Chapter III, The Texas Banking Code (Article 342-301 et seq., Vernon's Texas Civil Statutes), is amended to read as follows:

CHAPTER THREE—ORGANIZATION [INCORPORATION], MERGER, REORGANIZATION, PURCHASE OF ASSETS OF ANOTHER BANK, DISBURSING AGENT[, AMENDMENT OF ARTICLES OF ASSOCIATION] OF STATE BANKS; SPECIAL PROVISIONS FOR LIMITED BANKING ASSOCIATIONS;[,] AND CONVERSION

SUBCHAPTER A. GENERAL PROVISIONS

Art. 1. ORGANIZATION OF STATE BANKS. Subject to the provisions of this Code, a state bank may be organized as either a banking association or as a limited banking association.

Art. 2. POWERS. Subject to the provisions of this Code, five (5) or more persons, a majority of whom are residents of this state, may form a banking association or a limited banking association [~~incorporate a state bank~~], with any one or more of all the following powers:

(a) To receive time and demand deposits at interest or without interest; to lend money with or without security at interest; and to buy, sell and discount bonds, negotiable instruments and other evidences of indebtedness;

(b) To act as fiscal agent or transfer agent and in such capacity to receive and disburse money and to transfer registered and countersigned certificates of stock, bonds or other evidences of indebtedness;

(c) To act as trustee under any mortgage or bond issue and to accept and execute any trust not inconsistent with the laws of this state;

(d) To act under the order or appointment of any court of record, without giving bond, as guardian, receiver, trustee, executor, administrator and, although without general depository powers, as depository for any moneys paid into court;

(e) To purchase, invest in, and sell bills of exchange, bonds, mortgages and other evidences of indebtedness, and to lend money and to charge and collect interest thereon in advance or otherwise;

(f) To receive savings deposits with or without the payment of interest;

(g) To receive time deposits with or without the payment of interest;

(h) To issue, sell and negotiate notes, bonds and other evidences of indebtedness, and, in addition, to issue and sell, for cash or on an installment basis, investment certificates, creating no relation of debtor and creditor between the bank and the holder, to be retired solely out of specified surplus, reserves, or special retirement account, and containing such provisions relative to yield, retirement, penalties, withdrawal values, and obligations of the issuing bank as may be approved by the Banking Commissioner.

A state bank shall have all incidental powers necessary to exercise its specific powers.

Art. 3[2]. LEGISLATIVE CONTROL. The rights, privileges and powers conferred by this Code are held subject to the right of the Legislature to amend, alter or reform the same.

[Art. 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. The period of duration, which may be perpetual.

[Art. 5. APPLICATION FOR AND GRANTING OF CHARTERS—APPROVAL. 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's anticipated volume of business is such as to indicate profitable operation;~~
 - ~~(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.]~~

~~[B.—Applicants desiring to incorporate a State bank shall file with the Banking Commissioner an application for charter upon official forms prepared and prescribed by the Banking Commissioner. All persons subscribing to the capital stock of the proposed bank shall sign and verify under oath a statement of such stock subscribed, and which statement shall truly report the number of shares and the amount to be paid in consideration; the names, identity, title and address of any other persons who will be beneficial owners of such stock or otherwise share an interest or ownership in said stock, or who will pay any portion of the consideration; whether said stock is to be pledged as security for any loan; whether a loan has been committed or is intended for the subscription and purchase of said stock, and if so, the name and address of such person or corporation which is intended to loan funds for said purchase; the names of any cosigners, guarantors, partners or other persons liable for the repayment of any loan financing the purchase of such stock. Provided, however, that the verified statement of subscribers to stock shall be confidential and privileged from public disclosure prior to the final determination by the Board of the application for a charter, unless the Board shall find that public disclosure prior to public hearing and final determination of the charter application is necessary to a full development of the factual record.]~~

~~[C.—The Banking Commissioner shall require deposit of such charter fees as are required by law and shall proceed to conduct a thorough investigation of the application, the applicants and their personnel, and the charter conditions alleged. The actual expense of such investigation and report shall be paid by the applicants, and the Banking Commissioner may require a deposit in an estimated amount, the balance to be paid in full prior to hearing of the application. A written report of the investigation shall be furnished to the State Banking Board and shall be made available to all interested parties at their request.]~~

~~[D.—Upon filing of the application, the Banking 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 Banking 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 Banking Commissioner may cancel the hearing, and if the Banking 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 Banking 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 Banking Commissioner receives satisfactory evidence that the capital has been paid in full in cash, the Banking 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 Banking Commissioner shall not deliver the certified copy of the Articles of Association until such condition has been met, after which the Banking Commissioner shall in writing inform the State Banking Board as to compliance with such condition and delivery of the Articles of Association.]~~

~~[E.—The provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) governing contested cases do not apply to charter~~

applications filed for the purpose of assuming the assets and liabilities of any bank deemed by the Banking Commissioner to be in an unsafe condition.

~~[F. The financial statement of a proposed officer or director filed under this article is confidential and not subject to public disclosure.]~~

Art. 4[7]. CERTIFICATE OF AUTHORITY—POSTING—REVOCATION OF CHARTER. No state bank may do business until it receives a certificate of authority from the Banking Commissioner, which shall not be delivered until it has elected the officers and directors *or managers, as appropriate*, named in the application for charter or other officers and directors *or managers* approved by the Banking Commissioner; shall have adopted by-laws approved by the Banking Commissioner; and shall have complied with all the other requirements of this Code relative to the incorporation of state banks.

If any state bank does not open and actually engage in business within three months after the granting of its charter, or conditional approval of application for charter, the Banking Commissioner may so inform the State Banking Board which may in its discretion forfeit the charter or cancel its conditional approval of application for charter, without any judicial action.

Each state bank shall keep its certificate of authority posted in its lobby at a point accessible to the public.

Art. 5[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 Banking 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 Banking Commissioner:

(1) A statement of the plan of merger approved by the board of directors *or managers, as appropriate*, of each merging bank, by a majority vote of the qualified directors *or managers*.

(2) Certificate of merger stating the facts required by Article 30 or Article 62, *as appropriate*, [4] of this chapter and executed and acknowledged by a majority of the qualified directors *or managers* 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; 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. 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.

Art. 6[9]. REORGANIZATION—INCORPORATION TO TAKE OVER BUSINESS OF OTHER BANKS—TRUST POWERS. A state bank may be incorporated to take over the business of any incorporated bank or banks, state or national, as a step in the reorganization of such bank or banks, (which bank or banks, whether one or more, will be hereafter referred to as the “reorganizing bank”), and shall, subject to the provisions of this article, be authorized to purchase assets from the reorganizing bank and as consideration therefor, assume all liabilities, known or unknown, of the reorganizing bank, other than its liability to stockholders as such.

Persons desiring to incorporate a state bank under the provisions of this article shall proceed in the manner provided in Article 31 and Article 63 [5] of this Chapter, and in addition, shall file with the Banking Commissioner:

(1) The proposed contract whereby the state bank is to purchase the assets from and assume the liabilities of the reorganizing bank, as above mentioned.

(2) Contracts, if any, whereby the proposed state bank is to purchase for cash the whole or any part of the right of any or all of the stockholders of the reorganizing bank to receive liquidating dividends upon liquidation of the reorganizing bank, which contracts shall expressly provide that they shall be binding and effective only in event the reorganizing bank is placed in voluntary liquidation within ten (10) days of the granting of the application for the charter applied for. Such contracts shall be executed on behalf of the proposed bank by the persons applying for the charter.

If the Banking Commissioner, after investigation, determines that the proposed bank, if incorporated, will, after its capital has been paid in full and all contracts above mentioned finally consummated, be solvent, its capital adequate and unimpaired, that such reorganization is to the best interest of the reorganizing bank, its depositors, creditors and stockholders and the public in general, and that upon incorporation such bank will have in all other respects complied with the law, he shall recommend to the State Banking Board that the charter be granted.

If the State Banking Board concurs in the findings of the Banking Commissioner, it shall grant the application, and the Banking Commissioner shall deliver a certified copy of the articles of association in the manner provided in Article 31 and Article 63 [5] of this chapter. Provided, however, that the Banking Commissioner shall not deliver a certificate of authority until the contracts above mentioned have been fully consummated, and the requirements of Article 4 [7] of this chapter have been met. The state bank so incorporated shall be deemed a reorganization of the reorganizing bank, and a continuation of such bank in entity and identity, subject to all of its liabilities, obligations, duties and relations, save and except its liability to stockholders as such, and shall pay and perform each and every obligation, duty and liability of the reorganizing bank in exactly the same manner as the reorganizing bank was obligated to do; further provided that if the reorganizing bank was at the time of incorporation of the new state bank, named or acting as guardian, trustee, executor, administrator or in any other fiduciary capacity, such state bank shall, without the necessity of any judicial action, or action by the creator of such trust, continue the trusteeship or other fiduciary relation and perform all of the duties and obligations of the reorganizing bank and exercise all the powers and authority relative thereto; and neither the reorganization of such bank, nor any liquidation of such bank in connection therewith, shall be deemed a resignation or refusal to act. The naming or designating by a testator or the creator of a living trust of the reorganizing bank 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 reorganization.

The new state bank shall give notice of its assumption of the liabilities of the reorganizing bank by publishing notice thereof once each week for a period of two (2) weeks in some newspaper of general circulation published in the county of its domicile, or in event no such newspaper is published in said county, then in a newspaper of general circulation published in an adjacent county. The first notice shall be published within ten (10) days after the delivery of the certificate of authority to such bank.

Art. 7[10]. PURCHASE OF ASSETS OF ANOTHER BANK—DISBURSING AGENT. Any state bank may, with the consent of the Banking Commissioner, purchase the whole or any part of the assets of any other state bank or of any national bank domiciled in this State, and may hold the purchase price and any additional funds delivered to it by the selling bank

in trust for or as a deposit to the credit of the selling bank. The purchasing bank may act as agent of the selling bank in disbursing the funds so held in trust or on deposit by paying the depositors and creditors of the selling bank, provided that if the purchasing bank acts under written contract of agency which specifically names each depositor and creditor and the amount to be paid each, and if such agency is confined to the purely ministerial act of paying such depositors and creditors the amounts due them as determined by the selling bank and reflected in the contract of agency and involves no discretionary duties or authority other than the identification of the depositors and creditors named, and if such contract is approved by the Banking Commissioner, then the purchasing bank may rely upon such contract of agency and the instructions included therein, and shall not be in any way liable or responsible for any error made by the selling bank in determining its liabilities, the depositors and creditors to whom such liabilities are due, or the amounts due such depositors and creditors; nor liable or in any way responsible for any preference which may result from the payments made pursuant to such contract of agency and the instructions included therein. Further provided that, in event the selling bank should, at any time after such sale of assets, be closed and come into the hands of the Banking Commissioner or, if a national bank into the hands of a receiver, then the purchasing bank shall pay to the Banking Commissioner as statutory liquidator or to the receiver of such national bank the balance of the funds held by it in trust or on deposit for the selling bank, not theretofore paid to the depositors and creditors of the selling bank, and shall thereupon stand discharged of any and all liabilities, obligations or responsibilities to the selling bank, its receiver, the Banking Commissioner as its statutory liquidator, or to the depositors, creditors or stockholders thereof. Provided further that payment to any depositor or creditor of the selling bank of the amount to be paid him under the terms of the contract of agency may be effected by the purchasing bank opening an account in the name of such depositor or creditor, crediting such account with the amount to be paid the depositor or creditor under the terms of such agency contract, and mailing a duplicate deposit ticket evidencing such credit to such depositor or creditor at his address as reflected by the records of the selling bank, or delivering it to him personally, and the relation of debtor to creditor shall thereupon arise between the purchasing bank and such depositors and creditors to the extent and only to the extent of the credit reflected by such deposit tickets. Further provided, that if any such depositor or creditor checks upon the credit so created, or if he does not within sixty (60) days of the mailing or the personal delivery of such deposit ticket protest the transaction and demand payment from the selling bank, he shall be deemed to have ratified the transaction and to the extent of the credit so created to have accepted the obligation of the purchasing bank as reflected by said deposit ticket in satisfaction of the obligation of the selling bank, and the obligation of the selling bank to the extent of such credit shall be deemed paid and satisfied within the meaning of this article.

Art. 8[11]. EXISTING CORPORATIONS—POWERS RETAINED. All corporations which on the effective date of this Act were subject to the provisions of Title 16 of the Revised Civil Statutes of Texas, 1925, as amended, or any chapter thereof, shall retain the powers provided in their charters.

~~[Art. 12. AMENDMENT OF ARTICLES OF ASSOCIATION—RIGHTS OF STOCK-HOLDERS UPON INCREASE IN CAPITAL—STOCK OPTION PLANS. Subject to the provisions of this Code, any state bank may amend its articles of association for any lawful purpose.~~

~~[If the owners of record of two-thirds of the capital stock, at any regular meeting of stockholders, or any special meeting called for that purpose, vote to amend the charter, the board of directors shall prepare, execute in the manner provided for the execution of articles of association, and file with the Banking Commissioner an amendment to the articles of association. If the Banking Commissioner finds that the amendment is not violative of law and does not prejudice the interest of depositors and creditors or the public, he shall approve such amendment and deliver to the bank a certified copy thereof, and said amendment shall thereupon become effective; provided, however, that if a state bank does not have the power to receive demand deposits, no amendments of its articles of association adopting any power provided under Subsection (a), (b), (c), (d), or (f) of Article 1 of this Chapter and no amendment changing the domicile of any state bank shall be effective until approved by the State Banking Board in the manner provided for the approval of an original application for~~

~~charter. Any state bank may amend its articles of association to extend its corporate existence for a perpetual period or for any period of years.~~

~~[Each stockholder of a state bank shall be entitled to his proportionate part of any increase of stock effected out of surplus funds or undivided profits, and shall be entitled to subscribe for his proportionate share of any capital increase to be paid in cash; provided, however, the bank may arrange for the disposition of fractional shares by those entitled thereto or pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined. Each stockholder or his assignee, in event he elects to assign such rights of subscription, shall subscribe for and pay the amount of such subscription to the corporation within ten (10) days after the stockholders have adopted such amendment, otherwise the board of directors may allocate the unsubscribed or unpaid portion of the increase among the other stockholders or otherwise as they deem to the best interest of the bank.~~

~~[With prior approval of the owners of record of two-thirds of the capital stock, shares of stock in a bank, which are created by a capital increase, may be allocated to and purchased by the bank out of its surplus which is not certified or out of its undivided profits to be held by the bank for fulfilling the requirements of an officer or employee stock option or bonus plan, whereby officers or employees, or both, of the bank are given options to purchase or a bonus of shares of the bank's capital stock at a specified price, subject to the following requirements and restrictions:~~

~~[The number of shares so held shall not, at any time, exceed five percent (5%) of the total number of shares outstanding in the hands of other stockholders. Employee benefit plans, including employee stock option plans, stock bonus plans, restricted stock option or bonus plans, or any other plans, the sole purpose of which is to compensate employees of the bank for services rendered to the bank, authorized under this Article, may not extend beyond a period of ten years from the date of issuance. No officer or employee who owns or controls more than five percent (5%) of the bank's capital stock shall be eligible to participate or to continue participation in a stock option plan authorized by this Article.]~~

Art. 9[13]. CONVERSION OF STATE BANK INTO NATIONAL BANK. The owners of record of two-thirds of the capital of any solvent state bank may, by vote or written consent, authorize its officers and directors or *managers, as appropriate*, to take such action as may be necessary under the laws of the United States to convert it into a national bank, provided, however, that the state bank shall not cease to be a state bank subject to the supervision of the Banking Commissioner until (1) the Banking Commissioner has been given written notice of the intention to convert for at least thirty (30) days, (2) such bank has published notice thereof at least once a week for four (4) weeks in a newspaper of general circulation published in the county of its domicile, or, if no such newspaper is published in the county, in an adjacent county, (3) the bank has filed with the Banking Commissioner a transcript of the conversion proceedings, sworn to by a majority of the qualified directors or *managers* and a publisher's certificate showing publication of the notice above provided, and (4) such bank has received a certificate of authority to do business as a national bank.

Art. 10[13a]. CONVERSION OF NATIONAL BANK INTO STATE BANK. A national bank or association located in this state which follows the procedures prescribed by the laws of the United States to convert into a state bank, shall be granted a certificate of incorporation in the state when the State Banking Board finds that the bank meets the standards as to location of office, capital structure and business experience of officers and directors or *managers, as appropriate*, for the incorporation of a state bank. In considering the application for conversion from a national bank into a state bank the Board shall consider and determine that the new bank meets with all the requirements of a new state bank applicant. Included also in the application for conversion and to be considered along with the other information submitted shall be the terms of the transition from a national bank into a state bank which shall also show that the provisions of Public Law 706 of the 81st Congress of the United States have been fully satisfied. Such conversion shall be governed by the provisions of this Article and shall not be governed by Article 6 [(9)], now codified as Article 342-306 [342-309], Vernon's Texas Civil Statutes.

Art. 11[14]. CHANGE OF DOMICILE. (a) A state bank or trust company may change its domicile to one of its previously established branch locations on prior written approval of

the Banking Commissioner. A state bank or trust company may change its domicile to any other location on prior approval of the State Banking Board.

(b) Applications for a change of domicile subject to approval of the State Banking Board shall be granted by the State Banking Board only upon good and sufficient proof that all the following conditions exist:

- (1) a public necessity exists for the bank at the proposed location;
- (2) proposed capital structure is adequate;
- (3) volume of business in the community where the bank is to be located is such as to indicate profitable operation of the bank at that location;
- (4) the proposed officers and directors or *managers, as appropriate*, have sufficient banking experience, ability, and standing to render success of the bank probable; and
- (5) the applicants are acting in good faith.

(c) If the proposed relocation of the bank would effect an abandonment of all or part of the community presently served by the bank, the bank must establish that the abandonment is consistent with the original determination of public necessity for the establishment of a bank at that location.

SUBCHAPTER B. ORGANIZATION OF STATE BANKING ASSOCIATIONS

Art. 30. ARTICLES OF ASSOCIATION. The articles of association of a state banking association shall be signed and acknowledged by each incorporator and shall contain:

- (1) *the name of the association;*
- (2) *the city or town and the county of its domicile;*
- (3) *such of the powers listed in Article 2 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; and*
- (7) *the period of duration, which may be perpetual.*

Art. 31. APPLICATION FOR AND GRANTING OF CHARTERS—APPROVAL. (a) Applications for a charter for a state banking association 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's anticipated volume of business is such as to indicate profitable operation;*
- (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.

(b) Applicants desiring to incorporate a state banking association shall file with the Banking Commissioner an application for charter upon official forms prepared and prescribed by the Banking Commissioner. All persons subscribing to the capital stock of the proposed bank shall sign and verify under oath a statement of such stock subscribed, and the statement shall truly report the number of shares and the amount to be paid in consideration; the names, identity, title, and address of any other persons who will be beneficial owners of such stock or otherwise share an interest or ownership in said stock, or who will pay any portion of the consideration; whether said stock is to be pledged as security for any loan; whether a loan has been committed or is intended for the subscription and purchase of said stock, and if so, the name and address of such person or corporation that is intended to loan funds for said purchase; the names of any cosigners, guarantors, partners or other persons liable for the repayment of any loan financing the purchase of such stock. Provided, however, that the verified statement of subscribers to stock shall be confidential and

privileged from public disclosure prior to the final determination by the Board of the application for a charter, unless the Board shall find that public disclosure prior to public hearing and final determination of the charter application is necessary to a full development of the factual record.

(c) The Banking Commissioner shall require deposit of such charter fees as are required by law and shall proceed to conduct a thorough investigation of the application, the applicants and their personnel, and the charter conditions alleged. The actual expense of such investigation and report shall be paid by the applicants, and the Banking Commissioner may require a deposit in an estimated amount, the balance to be paid in full prior to hearing of the application. A written report of the investigation shall be furnished to the State Banking Board and shall be made available to all interested parties at their request.

(d) Upon filing of the application, the Banking 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 Banking 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 Banking Commissioner may cancel the hearing, and if the Banking 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 Banking 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, the application shall be approved; if not, the application shall be denied. If approved, and when the Banking Commissioner receives satisfactory evidence that the capital has been paid in full in cash, the Banking 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 Banking Commissioner shall not deliver the certified copy of the articles of association until such condition has been met, after which the Banking Commissioner shall in writing inform the State Banking Board as to compliance with such condition and delivery of the articles of association.

(e) The provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) governing contested cases do not apply to charter applications filed for the purpose of assuming the assets and liabilities of any bank deemed by the Banking Commissioner to be in an unsafe condition.

(f) The financial statement of a proposed officer or director filed under this article is confidential and not subject to public disclosure.

Art. 32. AMENDMENT OF ARTICLES OF ASSOCIATION—RIGHTS OF STOCKHOLDERS UPON INCREASE IN CAPITAL—STOCK OPTION PLANS. Subject to the provisions of this code, any state banking association may amend its articles of association for any lawful purpose.

If the owners of record of two-thirds of the capital stock, at any regular meeting of stockholders, or any special meeting called for that purpose, vote to amend the charter, the board of directors shall prepare, execute in the manner provided for the execution of articles of association, and file with the Banking Commissioner an amendment to the articles of association. If the Banking Commissioner finds that the amendment is not violative of law and does not prejudice the interest of depositors and creditors or the public, he shall approve such amendment and deliver to the bank a certified copy thereof, and said amendment shall thereupon become effective; provided, however, that if a state bank does not have the power to receive demand deposits, no amendments of its articles of association adopting any power provided under Section (a), (b), (c), (d), or (f) of Article 2 of this chapter and no amendment changing the domicile of any state bank organized as a banking association shall be effective until approved by the State Banking Board in the manner provided for the approval of an original application for charter. Any state bank organized as a banking association may

amend its articles of association to extend its corporate existence for a perpetual period or for any period of years.

Each stockholder of a state banking association shall be entitled to his proportionate part of any increase of stock effected out of surplus funds or undivided profits, and shall be entitled to subscribe for his proportionate share of any capital increase to be paid in cash; provided, however, the bank may arrange for the disposition of fractional shares by those entitled thereto or pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined. Each stockholder or his assignee, in the event he elects to assign such rights of subscription, shall subscribe for and pay the amount of such subscription to the corporation within ten (10) days after the stockholders have adopted such amendment, otherwise the board of directors may allocate the unsubscribed or unpaid portion of the increase among the other stockholders or otherwise as they deem to be the best interest of the bank.

With prior approval of the owners of record of two-thirds of the capital stock, shares of stock in a bank, which are created by a capital increase, may be allocated to and purchased by the bank out of its surplus which is not certified or out of its undivided profits to be held by the bank for fulfilling the requirements of an officer or employee stock option or bonus plan, whereby officers or employees, or both, of the bank are given options to purchase or a bonus of shares of the bank's capital stock at a specified price, subject to the following requirements and restrictions:

The number of shares so held shall not, at any time, exceed five percent (5%) of the total number of shares outstanding in the hands of other stockholders. Employee benefit plans, including employee stock option plans, stock bonus plans, restricted stock option or bonus plans, or any other plans, the sole purpose of which is to compensate employees of the bank for services rendered to the bank, authorized under this article, may not extend beyond a period of ten (10) years from the date of issuance. No officer or employee who owns or controls more than five percent (5%) of the bank's capital stock shall be eligible to participate or to continue participation in a stock option plan authorized by this article.

SUBCHAPTER C. ORGANIZATION OF AND SPECIAL PROVISIONS FOR LIMITED BANKING ASSOCIATIONS

Art. 60. *DEFINITIONS.* In this subchapter:

(1) "Full Liability Participant" means a participant that agrees under the terms of the participation agreement to be liable under any judgment, decree, or order of court, for the entire amount of any debt, obligation, or liability of the limited banking association.

(2) "Manager" means a person elected to the board of managers of a limited banking association. For purposes of franchise taxes, "manager" shall be equivalent to "director."

(3) "Participant" means the owner of a share in a limited banking association entitled to participate in the management of the limited banking association, or entitled to participate in the election of the board of managers of the limited banking association.

(4) "Participation Agreement" means the instrument stating the agreement among the participants of a limited banking association relating to the rights and duties of the participants and participant-transferees including allocations of income, loss, deduction, credit, distributions, liquidation rights, redemption rights, liabilities of participants, priority rights of participant-transferees to transfer ownership shares, rights of participants to purchase ownership shares of participant-transferees, the procedures for elections and voting by participants, and any other matter not prohibited by or inconsistent with this code.

(5) "Participant-Transferee" means a person holding an ownership share in a limited banking association who has not received the unanimous consent of all participants of the limited banking association to be a participant of the association or who otherwise becomes a participant-transferee under this subchapter.

Art. 61. *FILING NOTICE OF FULL LIABILITY.* A copy of the provisions of a participation agreement by which a participant of the limited banking association agrees to become a full liability participant shall be filed with the Banking Commissioner with the

name and address of each full liability participant. The filed copy shall be available for public inspection.

Art. 62. LIMITED BANKING ASSOCIATION ARTICLES OF ASSOCIATION AND REGULATIONS. (a) The articles of association of a limited banking association must be signed and acknowledged by each organizer and must contain:

- (1) the name of the limited banking association;
- (2) the city or town and the county of the limited banking association's domicile;
- (3) the powers listed in Article 2 of this chapter that the limited banking association chooses to exercise;
- (4) the capital, denomination, and number of participation shares;
- (5) the number of managers; and
- (6) the period of duration.

(b) The articles of association may contain a provision that, on the death, expulsion, bankruptcy, or dissolution of a participant of the limited banking association or the occurrence of any other event that terminates participation in the association, grants to the remaining participants the right on unanimous consent to continue the business of the association.

(c) The name of every limited banking association must include the words "Limited Banking Association" or the letters "LBA." The name of a limited banking association may not:

(1) contain a word or phrase that indicates or implies that it is organized for a purpose other than banking;

(2) be the same as, or deceptively similar to, the name of a state bank, corporation, or limited partnership or a foreign corporation or limited partnership authorized to transact business in this state.

(d) The participants of a limited banking association shall adopt regulations that may be amended at any regular annual meeting of the participants, or, if the purpose of the meeting is stated in the notice, at any special meeting of the participants called for that purpose. Neither the regulations nor any amendment to the regulations may be effective until filed with the Banking Commissioner and approved by the Banking Commissioner. The regulations do not need to contain all of the provisions of the participation agreement or address each subject matter of the participation agreement, but in the event of a conflict between a provision of the regulations and the participation agreement, the regulation provision prevails. The participants may delegate to the board of managers the power to alter, amend, or repeal the regulations or to adopt new regulations, and the participants may rescind a board action with regard to the regulations at a meeting at which the amendment of regulations is permitted under this article. The regulations may contain any provision for the regulation and management of the affairs of the bank not inconsistent with law or the articles of association.

Art. 63. APPLICATION FOR AND GRANTING OF LIMITED BANKING ASSOCIATION CHARTERS—APPROVAL. (a) Applications for a charter for a limited banking association shall be granted only on 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's anticipated volume of business is such as to indicate profitable operation;
- (4) the proposed officers and managers 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 those conditions shall be on the applicants.

(b) Applicants desiring to organize a limited banking association shall file with the Banking Commissioner an application for charter on official forms prepared and prescribed

by the Banking Commissioner. All persons subscribing to the participation shares of the limited banking association shall sign and verify under oath a statement of the participation shares subscribed, which statement shall truly report the number of shares and the amount to be paid in consideration; the names, identity, title, and address of any other persons who will be beneficial owners of the participation shares or otherwise share an interest or ownership in the participation shares, or who will pay any portion of the consideration; whether the participation shares are to be pledged as security for any loan; whether a loan has been committed or is intended for the subscription and purchase of the participation shares, and if so, the name and address of the person or corporation that is intended to loan funds for the purchase; and the names of any cosigners, guarantors, partners or other persons liable for the repayment of any loan financing the purchase of the participation shares. Provided, however, that the verified statement of the participants is confidential and privileged from public disclosure prior to the final determination by the Board of the application for a charter, unless the Board shall find that public disclosure prior to the public hearing and final determination of the charter application is necessary to a full development of the factual records.

(c) The Banking Commissioner shall require deposit of the charter fees required by law and shall proceed to conduct a thorough investigation of the application, the applicants and their personnel, and the charter conditions alleged. The actual expense of the investigation and report shall be paid by the applicants, and the Banking Commissioner may require a deposit in an estimated amount, the balance to be paid in full prior to hearing of the application. A written report of the investigation shall be furnished to the State Banking Board and shall be made available to all interested parties at their request.

(d) On filing of the application, the Banking 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 Banking 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 Banking Commissioner may cancel the hearing, and if the Banking 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 Banking 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 conditions affirmatively, the application shall be approved; if not, the application shall be denied. If approved, and when the Banking Commissioner received satisfactory evidence that the capital has been paid in full in cash, the Banking Commissioner shall deliver to the organizers a certified copy of the articles of association, and the limited banking association shall come into existence. Provided, however, that the State Banking Board may make its approval of any application conditional, and if so shall set out the condition in the resolution granting the charter, and the Banking Commissioner shall not deliver the certified copy of the articles of association until the condition has been met, after which the Banking Commissioner shall in writing inform the State Banking Board as to compliance with the condition and delivery of the articles of association.

(e) The provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) governing contested cases do not apply to charter applications filed for the purpose of assuming the assets and liabilities of any bank deemed by the Banking Commissioner to be in an unsafe condition.

(f) The financial statement of a proposed officer or manager filed under this article is confidential and not subject to public disclosure.

Art. 64. **LIABILITY OF PARTICIPANTS AND MANAGERS.** (a) Except as provided by Section (b) of this article, the participants, participant-transferees, and managers of a limited banking association may not be held liable for any debt, obligation, or liability of the limited banking association or under any judgment, decree, or order of court, for a debt, obligation, or liability of the limited banking association. A participant, other than a full

liability participant, or a manager of a limited banking association is not a proper party to proceedings by or against a limited banking association, unless the object of the proceeding is to enforce a participant's or manager's right against or liability to a limited banking association.

(b) A full liability participant of a limited banking association is liable under a judgment, decree, or order of court, for a debt, obligation, or liability of the limited banking association that accrued during the participation of the full liability participant in the limited banking association and until the full liability participant or a successor in interest files a notice of withdrawal as a full liability participant from the limited banking association with the Banking Commissioner. The filed notice of withdrawal shall be available for public inspection.

Art. 65. CONTRACTING DEBTS AND OBLIGATIONS. Except as provided by this article or the articles of association or regulations of the limited banking association, debts, liabilities, and other obligations may be contracted for or incurred on behalf of a limited banking association by:

(1) a majority of the managers, if management of the limited banking association has been vested in a board of managers;

(2) a majority of the participants, if management of the limited banking association is retained by the participants; or

(3) any officer or other agent vested with actual or apparent authority.

Art. 66. CONTRIBUTION OF CAPITAL. Contributions of capital by a participant of a limited banking association shall consist of cash.

Art. 67. MANAGEMENT OF LIMITED BANKING ASSOCIATION. (a) Management of a limited banking association is vested in the participants in proportion to each participant's contribution to capital as adjusted from time to time to properly reflect any additional contribution. The articles of association may provide that management of a limited banking association is vested in a board of managers elected by the participants as prescribed by the regulations. If management is by a board of managers, the participants shall elect the managers annually as provided in the regulations. If there are fewer than five (5), or more than twenty-five (25) participants, management of the limited banking association is vested in a board of managers consisting of not fewer than five (5), nor more than twenty-five (25), managers. A majority of managers must be residents of the state, or if management is vested in the participants, a majority of the participants must be residents of the state.

(b) The articles of association, regulations, and participation agreement of a limited banking association may use the terms "Director" and "Board" instead of "Manager" and "Board of Managers," respectively.

Art. 68. AMENDMENT OF LIMITED BANKING ASSOCIATION ARTICLES OF ASSOCIATION—RIGHTS OF PARTICIPANTS ON INCREASE IN CAPITAL. (a) Subject to this code, a limited banking association may amend its articles of association for any lawful purpose.

(b) If the participants of the association holding two-thirds of the participation shares, at any regular meeting of participants, or any special meeting of participants called for that purpose, vote to amend the charter, the board shall prepare, execute in the manner provided for the execution of articles of association, and file with the Banking Commissioner an amendment to the articles of association. If the Banking Commissioner finds that the amendment is not violative of law and does not prejudice the interest of depositors and creditors or the public, the Banking Commissioner shall approve the amendment and deliver to the bank a certified copy of the amendment, and the amendment is then effective; provided, however, that if a limited banking association does not have the power to receive demand deposits, no amendments of its articles of association adopting any power under Section (a), (b), (c), (d), or (f) of Article 2 of this chapter and no amendment changing the domicile of any limited banking association shall be effective until approved by the State Banking Board in the manner provided for the approval of an original application for charter. No limited banking association may amend its articles of association to extend its period of existence for a perpetual period or for any period of years unless the period of

existence is expressly contingent on those events resulting in dissolution of the limited banking association provided for in Article 71 of this chapter.

(c) Each participant or participant-transferee of a limited banking association is entitled to the participant's or participant-transferee's proportionate part of any increase in participation share effected out of surplus funds or undivided profits, and is entitled to subscribe to the participant's or participant-transferee's proportionate share of any capital increase to be paid in cash; provided, however, the bank may arrange for the disposition of fractional shares by those entitled to them or pay in cash the fair value of fractions of a share as of the time when those entitled to receive the fractions are determined. Each participant or participant-transferee must subscribe for and pay the amount of the subscription within ten (10) days after the participants have adopted the amendment, otherwise the board may allocate the unsubscribed or unpaid portion of the increase among the participants or otherwise as the board deems to be in the best interest of the bank.

Art. 69. WITHDRAWAL OR REDUCTION OF PARTICIPANT'S CONTRIBUTION TO CAPITAL. (a) Subject to Article 1, Chapter VI, of this code a participant may not receive from a limited banking association any part of the participant's contribution to capital until:

(1) all liabilities of the bank, except liabilities to participants on account of contribution to capital, have been paid or, if after the withdrawal or reduction, sufficient property of the bank will remain to pay those liabilities;

(2) all participants consent, unless the return of the contribution to capital may be demanded as provided in this chapter; or

(3) the articles of association are canceled or amended to set out the withdrawal or reduction.

(b) A participant may demand the return of the participant's contribution to capital on the dissolution of the association and the failure by the participants to exercise the right for the business of the limited banking association to be carried on by the remaining participants as provided by Article 71 of this chapter.

(c) Unless allowed by the articles of association or by the unanimous consent of all participants of the limited banking association, a participant may demand the return of the participant's contribution to capital only in cash.

Art. 70. INTEREST IN LIMITED BANKING ASSOCIATION; TRANSFERABILITY OF INTEREST. (a) The interest of all participants or participant-transferees in a limited banking association is the personal estate of the participant or the participant-transferee and may be transferred or assigned as provided by the regulations or the participation agreement. A transferee of a participant's interest has the status of a participant-transferee and does not by the transfer become a participant or obtain any right to participate in the management of the limited banking association. A participant-transferee is entitled to receive only a share of profits, return of contribution, or other distributive benefit in respect to the interest transferred to which the participant who transferred or assigned the interest would otherwise be entitled. A participant-transferee may become a participant only if:

(1) all of the participants of the limited banking association approve the acceptance of the participant-transferee as a participant by unanimous written consent; or

(2) specifically authorized in the articles of association, the regulations, or the participation agreement and all of the full liability participants of the limited banking association approve the acceptance of the participant-transferee as a participant by unanimous written consent.

(b) Additional participants may be added by a limited banking association in the same manner as participant-transferees after payment in full in cash of the capital contribution to the limited banking association payable in respect to the issuance of additional participation interests.

Art. 71. DISSOLUTION. A limited banking association organized under this chapter is dissolved on:

(1) the expiration of the period fixed for the duration of the limited banking association;

(2) a vote to dissolve or the execution of a written consent to dissolve by all full liability participants, if any, and a sufficient number of other participants that combined with all full liability participants hold at least two-thirds of the participation interest in the association, or a greater fraction as provided by the articles of association, and that include all full liability participants; or

(3) except as provided by the articles of association, the death, insanity, expulsion, bankruptcy, retirement, or resignation of a full liability participant, if the limited banking association has a full liability participant, unless:

(A) at least one full liability participant remains in the association after the occurrence of the event; or

(B) all remaining participants elect in writing not later than the 90th day after the occurrence of the event to continue the business of the association.

Art. 72. OTHER PROVISIONS RELATED TO LIMITED BANKING ASSOCIATIONS. A limited banking association is subject to this code. For purposes of the provisions of this code other than this subchapter:

(1) a manager and the board of managers are considered to be a director and the board of directors, respectively;

(2) if there is not a board of managers, a participant is considered to be a director and all of the participants are considered to be the board of directors;

(3) a participant or participant-transferee is considered to be a stockholder;

(4) a participation share is considered to be a share of stock; and

(5) regulations are considered to be bylaws of the association.

SECTION 4. Section F, Article 1a, Chapter IV, The Texas Banking Code (Article 342-401a, Vernon's Texas Civil Statutes), is amended to read as follows:

F. This Article does not apply to:

(1) the acquisition of securities in connection with the exercise of a security interest or otherwise by way of foreclosure on default in the payment of a debt previously contracted for in good faith, provided that the person acquiring such securities does not vote the securities so acquired without having given written notice of such foreclosure to the Banking Commissioner;

(2) transactions governed by Article 5, 6, or 7 [8, 9, or 10] of Chapter III of this Code;

(3) transactions requiring the prior approval of the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 (12 U.S.C.A. Sec. 1841, et seq., and 26 U.S.C.A., Sec. 1101, et seq.);

(4) acquisitions by the owner of more than fifty per cent (50%) of the voting securities of the bank; or acquisitions of less than ten per cent (10%) of the voting securities of the bank in any one (1) year by the owner of twenty-five per cent (25%) or more, but not more than fifty per cent (50%), of those voting securities, provided that such acquisition does not result in the owner of twenty-five per cent (25%) or more acquiring fifty per cent (50%) or more of the voting securities;

(5) acquisitions or transfers by operation of law or by will or intestate succession, provided that the person acquiring such securities does not vote the securities so acquired without having given written notice of acquisition to the Banking Commissioner; or

(6) any transaction which the Banking Commissioner by rule or order may exempt as not being contemplated by the purposes of this Article or the regulation of which is not necessary or appropriate to achieve the objectives of this Article.

No provision of this Section shall excuse or diminish the notice requirements provided elsewhere in this Code.

SECTION 5. Article 6, Chapter V, The Texas Banking Code (Article 342-506, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6. OWN STOCK—SECURITY—ACQUISITION—DISPOSITION—INVESTMENT CERTIFICATES—MATURITY. No state bank shall acquire a lien by pledge or otherwise on its shares of stock nor purchase or acquire title to such stock, except to prevent

loss upon a loan or investment previously made in good faith. Provided, however, that with the approval of the owners of record of two-thirds of the capital stock, a bank may purchase and carry as treasury stock its own shares for the purpose of fulfilling the requirements of an officer or employee stock option or bonus plan authorized by Article 32 or 68 [12], Chapter III of this code.

The number of shares so held shall not, at any time, exceed five per cent (5%) of the total number of shares outstanding in the hands of the other stockholders.

If a state bank acquires a lien upon or title to its stock under the exception first provided for in this Article, it shall not permit such lien to continue for more than two (2) years, nor shall it hold title to such stock for more than one (1) year. Provided that the stock on which the bank has a lien plus the stock held by it as owner shall not exceed, in par value, the aggregate of all surplus accounts and undivided profits of said bank; provided, however, that any provision of this Code to the contrary notwithstanding, a state bank may make loans, charge or collect in advance interest thereon at a rate not exceeding that permitted by law, together with other charges permitted by this Code, and take as collateral thereof its investment certificates, issued simultaneously with the granting of the loans or otherwise, requiring weekly, semi-monthly, monthly or other regular periodic installments to be paid upon such certificates; such loans, subject to acceleration for specified causes, shall mature when the withdrawal value of the investment certificate or certificates securing the same equals the face amount of the note evidencing the loans, and shall be comparable in form and principle of operation to sinking-fund loans which building and loan associations are now authorized to make under the laws of this State.

SECTION 6. Article 2, Chapter VII, The Texas Banking Code (Article 342-702, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2. **BROKERED FUNDS DEFINED—REPORTING—BANKING COMMISSIONER'S AUTHORITY.** For the purpose of this article, "brokered funds" are funds accepted by a bank on which a fee in money is paid or agreed to be paid, directly or indirectly, either to the depositor of such funds or a third party by such bank or a third party, in addition to any interest to be paid under the contract of repayment.

In the event that any bank shall accept brokered funds as defined herein, it shall forthwith notify the Banking Commissioner in writing of the acceptance of such funds, the depositor and his address, any loans, if any, made in consideration of or conditioned upon said deposit, and listing the borrower, his address, and any collateral securing said loan, and such other information concerning said deposit and loan as the Banking Commissioner may require and on such forms as may be prescribed by the Banking Commissioner. The Banking Commissioner may further require any bank to report such brokered funds and loans as above described, if any, which have been accepted or made previous to the effective date of this Act.

Provided, however, should the Banking Commissioner find from examination or other evidence that a bank is being operated in an unsafe manner, or insolvency of the bank is threatened, or the continued acceptance of brokered funds will threaten the liquidity of the bank, then the Banking Commissioner shall have the authority to act as follows:

(a) to issue an order to cease and desist from further accepting any brokered funds, or otherwise to regulate the amount of such funds which may be accepted or the rate of interest to be paid, and

(b) to issue a written order stating that after the effective date thereof all brokered funds accepted by said bank shall be and are hereby classified as the issuance, sale and negotiation of "notes, bonds, and other evidence of indebtedness" by the bank as provided in Paragraph (h), Article 2 [1], Chapter III of such Code, and not as deposits received by the bank as provided in Paragraph (a), Article 2 [1], Chapter III of the Banking Code of 1943 as amended. In the event that brokered funds are accepted after issuance of such order, it shall be the duty of said bank to state in the contract of repayment that in the event of liquidation of the issuing bank, the owner and holder of such contract of repayment shall be considered and treated as a common creditor and not as a depositor of the bank, and a cash reserve of ten percent (10%) of the total outstanding brokered funds shall be maintained against such funds, in the same manner as cash reserves are maintained against demand deposits and time deposits.

Provided further, that the Banking Commissioner may exercise any or all of the powers above provided, which shall be cumulative of any other powers and remedies provided elsewhere in this Code.

SECTION 7. Section 171.001(b), Tax Code, is amended to read as follows:

(b) In this chapter:

(1) "Banking corporation" means each state, national, domestic, or foreign bank, *including a limited banking association organized under Subchapter C, Chapter III, The Texas Banking Code (Article 342-360 et seq., Vernon's Texas Civil Statutes)*, and each bank organized under Section 25(a), Federal Reserve Act (12 U.S.C. Secs. 611-631) (edge corporations), but does not include a bank holding company as that term is defined by Section 2, Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841).

(2) "Corporation" includes:

(A) a limited liability company, as defined under the Texas Limited Liability Company Act; and

(B) a state or federal savings and loan association.

(3) "Charter" includes a limited liability company's certificate of organization.

(4) "Internal Revenue Code" means the Internal Revenue Code of 1986 in effect for the federal tax year beginning on or after January 1, 1990, and before January 1, 1991, and any regulations adopted under that code applicable to that period.

(5) "Officer" and "director" include a limited liability company's directors and managers *and a limited banking association's directors and managers and participants if there are no directors or managers.*

(6) "Savings and loan association" includes a state or federal savings bank.

(7) "Shareholder" includes a limited liability company's member *and a limited banking association's participant.*

SECTION 8. 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 by the House on May 12, 1993, by a non-record vote; passed by the Senate on May 22, 1993, by a viva-voce vote.

Approved June 18, 1993.

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